



सत्यमेव जयते

आयुक्त (अपील) का कार्यालय,
Office of the Commissioner (Appeal),
केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
07926305065- टेलिफैक्स 07926305136



DIN: 20230864SW0000000C0E

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/3808/2023-APPEAL /14803

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-72/2023-24
दिनांक Date : 18-08-2023 जारी करने की तारीख Date of Issue 21.08.2023

आयुक्त (अपील) द्वारा पारित
Passed by Shri Shiv Pratap Singh, Commissioner (Appeals)

ग Arising out of Order-in-Original No. CGST/WT07/HG/881/2022-23 दिनांक: 15.2.2023,
issued by The Assistant Commissioner, CGST, Division-VII, Ahmedabad North

घ अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

M/s. Maruti Travels, 3, Kaveri Complex, 3, Subhash Bridge Circle, Near
RTO, Ahmedabad - 380027

2. Respondent

The Assistant Commissioner, CGST Division-VII, Ahmedabad North, 4th
Floor, Shajanand Arcade, Nr. Helmet Circle, Memnagar, Ahmedabad-380052

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति
नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application,
as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :
Revision application to Government of India :

(1) केंद्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त
धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त
मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी
चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision
Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building,
Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the
following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में
या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे
वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur 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.



(क) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(A) 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.

(ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(B) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(c) 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 and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उराके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी 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.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद -380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.



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.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

- (3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellate Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

- (4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

- (5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

- (7) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग" (Duty Demanded) -

- (i) (Section) खंड 11.D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇒ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील दाखिल करने के लिए पूर्व शर्त बना दिया गया है.

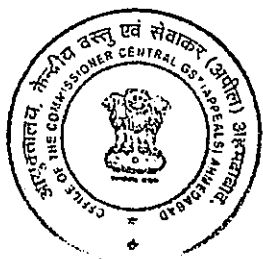
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



ORDER-IN-APPEAL

The present appeal has been filed by M/s. Maruti Travels, 3, Kaveri Complex, 3, Subhash Bridge Circle, Near RTO, Ahmedabad – 380027 (hereinafter referred to as “the appellant”) against Order-in-Original No. CGST/WT07/HG/881/2022-23 dated 15.02.2023 (hereinafter referred to as “the impugned order”) passed by the Assistant Commissioner, CGST Division-VII, Ahmedabad North (hereinafter referred to as “the adjudicating authority”).

2. Briefly stated, the facts of the case are that the appellant were holding Service Tax Registration No. AAOFM0582BSD001. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the Financial Year 2014-15, it was noticed that there is difference of value of service amounting to Rs. 15,12,057/- between the gross value of service provided in the said data and the gross value of service shown in Service Tax return filed by the appellant for the FY 2014-15. Accordingly, it appeared that the appellant had earned the said substantial income by way of providing taxable services but not paid the applicable service tax thereon. The appellant were called upon to submit clarification for difference along with supporting documents, for the said period. However, the appellant had not responded to the letters issued by the department.

2.1 Subsequently, the appellant were issued Show Cause Notice No. CGST/Div-VII/A'bad-North/TPD-UR/246/20-21 dated 26.09.2020 demanding Service Tax amounting to Rs. 1,86,891/- for the period FY 2014-15, under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994. The SCN also proposed recovery of interest under Section 75 of the Finance Act, 1994; and imposition of penalties under Section 77 and Section 78 of the Finance Act, 1994.

2.2 The Show Cause Notice was adjudicated, ex-parte, vide the impugned order by the adjudicating authority wherein the demand of Service Tax amounting to Rs. 1,86,891/- was confirmed under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994 along with Interest under Section 75 of the Finance Act, 1994 for the period from FY 2014-15. Further, (i) Penalty of Rs. 1,86,891/- was also imposed on the appellant under Section 78 of the Finance Act, 1994; (ii) Penalty of Rs. 4,000/- was imposed on the appellant under Section 77(1)(a) and Section 77(1)(c) of the Finance Act, 1994; and (iii) Penalty of Rs. 1,000/- was imposed on the appellant under Section 77(2) of the Finance Act, 1994.



- Demand Vide above SCN invoking proviso to Section 73 is time barred as there is no intention at the end of the appellant to evade payment of tax and therefore extended period of limitation cannot be invoked.
- Since Tax it self is not payable, Interest and Penalty cannot be demanded from the appellant.

4. Personal hearing in the case was held on 28.07.2023. Ms. Labdhi Shah, Chartered Accountant, appeared on behalf of the appellant for personal hearing and reiterated submissions made in appeal memorandum. She submitted that the appellant provided rent a cab service to the corporate(s). The liability to pay Service Tax was on the recipient. All the supporting documents in this regard have been submitted with the appeal. In view of the same, she requested to set aside the impugned order.

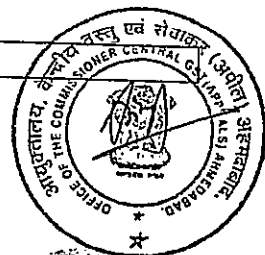
5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum and documents available on record. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority, confirming the demand of service tax against the appellant along with interest and penalty, in the facts and circumstance of the case, is legal and proper or otherwise. The demand pertains to the period FY 2014-15.

6. It is observed that main contention of the appellant are that (i) they have provided Rent-a-Cab service to the body corporate and the liability to pay service tax will be on service receiver i.e. body corporate as per Sr. 7(a) of Notification No. 30/2012-ST dated 20.06.2012; and (ii) the appellant is not availing any Cenvat credit, as per Notification No. 26/2012-ST service tax is leviable only on 40% of value of services and as their taxable value remains below threshold limit of exemption during the FY 2013-14 and FY 2014-15, they were not required to pay any service tax. It is also observed that the adjudicating authority had confirmed the demand of service tax vide impugned order passed ex-parte.

7. For ease of reference, I reproduce (i) relevant provision providing for abatement under Notification No. 26/2012-ST dated 20.06.2012, as amended; and (ii) relevant provision for reverse charge mechanism as provided under Notification No. 30/2012-ST dated 20.06.2012, as amended, which reads as under:

Notification No. 26/2012-Service Tax dated 20.06.2012, as amended vide Notification No. 08/2014-ST dated 11.07.2014

Sl.	Description of taxable service	Percentage	Conditions
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No.	(1)	(2)	(3)	(4)
9A.	Transport of passengers, with or without accompanied belongings, by – a. a contract carriage other than motor cab. b. a radio taxi c. a stage carriage	40		CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004

"Notification 30/2012 Service Tax dated 20.6.2012 GSR.....(E).-In exercise of the powers conferred by sub-section (2) of section 68 of the Finance Act, 1994 (32 of 1994), and in supersession of (i) notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 15/2012-Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 213(E), dated the 17th March, 2012, and (ii) notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 36/2004-Service Tax, dated the 31st December, 2004, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 849 (E), dated the 31st December, 2004, except as respects things done or omitted to be done before such supersession, the Central Government hereby notifies the following taxable services and the extent of service tax payable thereon by the person liable to pay service tax for the purposes of the said sub-section, namely:-

I. The taxable services, -

(A)

(v) provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers to any person who is not in the similar line of business or supply of manpower for any purpose [or security service- (Inserted by Notification No.45/2012-ST, dated 7-8-2012 w.e.f. 7-8-2012.)] or service portion in execution of works contract by any individual, Hindu Undivided Family or partnership firm, whether registered or not, including association of persons, located in the taxable territory to a business entity registered as body corporate, located in the taxable territory

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Table

Sl. No.	Description of a service	Percentage of service tax payable by the person providing service	Percentage of service tax payable by any person liable for paying service Tax other than the service provider
7.	(a) in respect of services provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers on abated value to any person who is not engaged in the similar line of business	NIL	100%
	(b) in respect of services provided or agreed to be	50%	50%

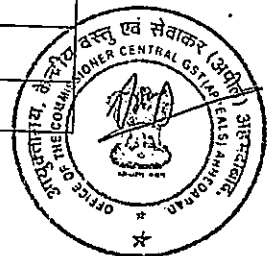


provided by way of renting of a motor vehicle designed to carry passengers on non abated value to any person who is not engaged in the similar line of business		
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8. I find that as the appellant is not availing any Cenvat credit, in such case the service tax is leviable only on 40% of value of services in view of the above provisions of Notification No. 26/2012-ST dated 20.06.2012. Whereas, as per Notification No. 30/2012-ST dated 20.06.2012, if the recipient of service is a Body Corporate, the assessee is not required to pay any service tax and the recipient of service is required to pay service tax on 40% of gross value of Invoice on reverse charge basis. However, I find that in the present case, the appellant has not produced any documentary evidence demonstrating that they have provided services only to the Body Corporate. I find that along with appeal memorandum the appellant have only provided Form 26AS for the FY 2014-15 and no other documents provided by them, though the appellant during the course of personal hearing contended that they had submitted all the supporting documents in this regard with the appeal. Under such circumstances, I find that the appellant has merely made a bold contention, without submitting any supporting documentary evidence under appeal memorandum, that their service falls under RCM and in terms of Sr. No. 7(a) of Notification No. 30/2012-ST dated 20.06.2012 and they are not required to pay any service tax. Their contentions are not legally tenable.

9. On verification of the Form 26AS for the FY 2014-15, I find that the appellant received amount of Rs. 7,38,46,110/- from the below mentioned entity, on which the TDS under Section 194C of the Income Tax Act, 1994 has been deducted.

Sr. No.	Name of the party	Amount (in Rs.)
1	Account Officer HQT (BSNL)	94327
2	Bharat Sanchar Nigam Limited, Account Officer (East)	44200
3	Bharat Sanchar Nigam Limited, Account Officer, Cash West	44800
4	Bharat Sanchar Nigam Limited	41213
5	Bharat Sanchar Nigam Limited	1009188
6	Oil & Natural Gas Corporation Ltd.	11086630
7	Executive Eng. N. P. Const (REH) DN. No. 3, Vadodara	1570910
8	Indian Oil Corporation Ltd.	9746188
9	Oil & Natural Gas Corporation Ltd.	17507652
10	Oil & Natural Gas Corporation Ltd.	32701002
	Total	73846110



9.1 On verification of the status of the aforesaid entity, I find that "the Executive Eng. N.P. Const (REH) DN. No. 3, Vadodara" not termed as Body Corporate and not falls under the definition of Body Corporate and therefore, the contentions of the appellant that they have provided services only to the body corporate is not legally tenable.

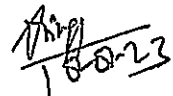
10. However, as regard the contention of the appellant that they have not availing any Cenvat credit, therefore, as per Notification No. 26/2012-ST service tax is leviable only on 40% of value of services is correct and thus, the taxable value of the appellant is comes to Rs. 6,04,823/- (40% of Differential amount of Rs. 15,12,057/-).

10.1 As regard, the contention of the appellant that benefit of threshold limit of exemption as per the Notification No. 33/2012-ST dated 20.06.2012 also available to them, I find that it is not disputed that the appellant are liable to pay service tax only on abated value of 40%. Considering the taxable receipt of the appellant during the FY 2013-14 was only Rs. 22,76,303/- as per the Profit & Loss Account and Form 26AS submitted by the appellant; the abated taxable value for the FY 2013-14 is Rs. 9,10,521/-, which is below threshold limit of Rs. 10 lakh in terms of Notification No. 33/2012-ST dated 20.06.2012. Accordingly, the appellant is not liable to pay service tax in respect of taxable services provided by them during FY 2014-15 on the taxable value of Rs. 6,04,823/-.

11. In view of above, I hold that the impugned order passed by the adjudicating authority confirming demand of Service Tax on the income received by the appellant during the FY 2014-15, is not legal and proper and deserve to be set aside as enumerated above. Accordingly, I set aside the impugned order and allow the appeal filed by the appellant.

12. अपील कर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है ।


The appeal filed by the appellant stands disposed of in above terms.

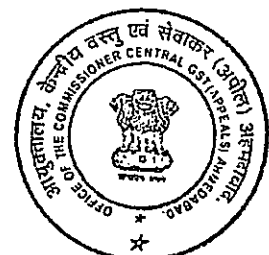


(Shiv Pratap Singh)
Commissioner (Appeals)

Date : 18.08.2023

Attested


(R. C. Maniyar)
Superintendent(Appeals),
CGST, Ahmedabad



By RPAD / SPEED POST

To,

M/s. Maruti Travels

Appellant

3, Kaveri Complex,

3, Subhash Bridge Circle, Near RTO,

Ahmedabad - 380027

The Assistant Commissioner,

Respondent

CGST Division-VII,

Ahmedabad North

Copy to :

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Commissioner, CGST, Ahmedabad North
- 3) The Assistant Commissioner, CGST Division-VII, Ahmedabad North
- 4) The Assistant Commissioner (HQ System), CGST, Ahmedabad North
(for uploading the OIA)

5) Guard File

6) PA file

