



सत्यमेव जयते

आयुक्त का कार्यालय
Office of the Commissioner

केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
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By SPEED POST

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(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/2456/2023 / 9163
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-002-APP-131/23-24 and 30.10.2023
(ग)	पारित किया गया / Passed By	श्री ज्ञानचंद जैन, आयुक्त (अपील) Shri Gyan Chand Jain, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of Issue	20.11.2023
(ङ)	Arising out of Order-In-Original No. GST-06/D-VI/(O&A)/431/Josh/AM/2022-23 dated 23.12.2022 passed by The Assistant Commissioner, Central Exice & CGST Division-IV, Ahmedabad North	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Josh Derma Care Pvt. Ltd, 303, Milestone Building, Near Khodiyar Restaurant, Nr. Drive In Cinema, Thaltej, Ahmedabad-380055

कोई व्यक्ति इस अपील-आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील अथवा पुनरीक्षण आवेदन प्रस्तुत कर सकता है, जैसा कि ऐसे आदेश के विरुद्ध हो 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) केन्द्रीय 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 :-

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 :-

(क) यदि माल की हानि के मामले में जब ऐसी हानिकार खाने 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 प्रक्रिया के दौरान हुई हो।

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.



(ख) 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।

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.

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

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

(घ) 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 हों।

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.

(2) 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। उसके साथ खाता इ का मुख्य शीर्ष 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.

(3) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम होतो 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 सेवा कर 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 :-

(2) उक्तलिखित परिच्छेद 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।

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 above para.

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 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 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 मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रू 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.

(6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) एके प्रति अपील के मामले में कर्तव्यमांग (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 सेवाकर के अंतर्गत, शामिल होगा कर्तव्य की मांग (Duty Demanded)।

- (1) खंड (Section) 11D के तहत निर्धारित राशि;
- (2) लिया गलत सेनवैट क्रेडिट की राशि;
- (3) 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।

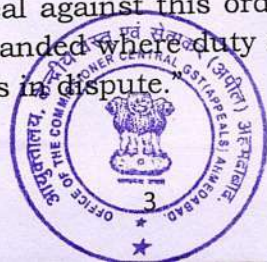
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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.

(6) (i) 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. Josh Derma Care Pvt. Ltd., situated at 303, Milestone Building, Near Khodiyar Restaurant, Nr. Drive In Cinema, Thaltej, Ahmedabad-380055 (hereinafter referred to as "the appellant") against Order-in-Original No. GST-06/D-VI/(O & A)/431/Josh/AM/2022-23 dated 23.12.2022 passed by The Assistant Commissioner, Central Excise & CGST Division-IV, Ahmedabad North (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, the facts of the case are that the appellant are holding Service tax Registration No AACCCJ7896ASD001. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) and ST-3 for the FY 2015-16, it was noticed that the appellant has shown less amount of "Value of Services provided" in the ST-3 against the amount shown as "Total Amount paid/Credited Under 194C, 194H, 194I, 194J" and "Sales of Service" in their ITR filed with the Income Tax Department, as under:-

Sr. No.	Year	Value Difference in ITR & ST-3 Return	Service Tax (in Rs.)
1.	2015-16	Rs. 19,80,584/-	Rs.2,76,356/-

The appellant were called upon explanation along with the supporting documents viz. balance sheet, P & L Account, Income Tax Returns, Form 26AS and ST-3 for the concerned period. However, the appellant neither submitted any documents nor responded in satisfactory manner.

2.1 Subsequently, the appellant was issued Show Cause Notice No. CGST-06/04-805/O & A/Josh/2020-21 dated 23.12.2020 demanding Service Tax amounting to Rs. 2,76,356/- for the period FY 2015-16 under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994. The SCN also proposed recovery of interest under Section 75 and imposition of penalties under Section 76, 77 and Section 78 of the Finance Act, 1994. The appellant filed their detailed submission along with a register containing patient wise details for the period from Oct-2015 to Nov-2015.

2.2 As no one attended the personal hearing from the appellant end, the Show Cause Notice was adjudicated on the basis of the records available/submitted, vide the impugned order by the adjudicating authority wherein the demand of Service Tax amounting to Rs. 2,76,356/- 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 2016-17. Further (i) Penalty of Rs. 2,76,356/- was also imposed on the appellant under Section 78 of the Finance Act, 1994; (ii) Penalty of Rs. 5,000/- was imposed on the appellant under Section 77 of the Finance Act, 1994; read with Rule 7C of the Service Tax Rules, 1994.



The adjudicating authority refrained from imposition of penalty on the noticee under Section 76 of the Finance Act, 1994.

3. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal on the following grounds:

- The appellant submitted that “Josh Derma Care Pvt. Ltd.” bearing STC NO AAICC7896ASD001 is a clinical establishment having specialization in curing skin diseases. They are engaged in providing “Health care Services” which are exempted from Service tax as per Sr. No 2 of Notification No 25/2012-ST. however some of services provided by them attracts S. Tax and they were filing ST-3 returns regularly.
- The appellant states that the show cause notice and Impugned Order have been passed in ignorance and/or without fully appreciative of the facts. The Impugned Order is in violation of principle of natural justice, bad in law and deserves to be set aside for the reasons set out herein below:
- The appellant submit that it is evident from impugned order that the show cause notice was issued to the appellant on the basis of information provided by CBDT and ST-3 returns filed by the appellant without analyzing the details .The show cause notice is issued only on the presumption that the differential amount reflected in the IT/ 26AS is attracting service tax.
- In this regard the appellant invited attention to the CBIC Instructions dated 01.04.2021 and 23.04.2021 issued vide F.No.137/47/2020-ST and 26.10.2021. Para 2 of the same is reproduced as under:

2. In this regard, the undersigned is directed to inform that CBIC vide instructions dated 01.04.2021 and 23.04.2021 issued vide F. No. 137/47/2020-ST, has directed the field formations that while analysing ITR-TDS data received from Income Tax. a reconciliation statement has to be sought from the taxpayer for the difference and whether the service income earned by them for the corresponding period is attributable to any of the negative-list services specified in Section 66D of the Finance Act, 1994 or exempt from payment of Service Tax, due to any reason. IT was further reiterated that demand notices may not be issued indiscriminately based on the difference between the ITR-TDS taxable value and the taxable value in Service Tax Returns.

The appellant submitted that the as show cause notice was issued prior to issuance of aforesaid instruction. Therefore it would be pertinent to have look at para 3 of the above said instruction which direct how to deal with such a show cause notice. The text of the said para is reproduced as under:



3. It is once again reiterated that instructions of the Board to issue show cause notices based on the difference in ITR-TDS data and service tax returns only after proper verification of facts, may be followed diligently. Pr. Chief Commissioner/Chief Commissioner (s) may devise a suitable mechanism to monitor and prevent issue of indiscriminate show cause notices. Needless to mention that in all such cases where the notices have already been issued, adjudicating authorities are expected to pass a judicious order after proper appreciation of facts and submission of the notice.

- Further, The appellant also submitted that they have not received any of the communication referred in the impugned order and therefore could not produced the required details and failed in attending personal hearing. As the appellant has not got the opportunity of personal hearing, the impugned OIO is issued in gross violation of principal of natural justice. They have relied upon the following judgments:

- (i) In the case of ashesh Goradia vs Commissioner of Central Excise, Mumbai-III reported at 2013 (295) E.L.T. 547 (Tri. - Mumbai) wherein the Hon'ble Tribunal has remanded back the matter in absence of the personal hearing
- (ii) In case of V.K. Thampi vs Collector of Customs and Central Excise, Cochin reported at 1988 (33) E.L.T. 424 (Tribunal) wherein it has been held that as the appellant were deprived from availing the opportunity of personal hearing, the order was issued without observing the principal of natural justice and such order is not sustainable under the law.

- They have submitted that services provided by them are "Health Care services" which are exempted vide Notification No 25/2012-ST sr. No 2 which is produced as under:

2. (i) Health care services by a clinical establishment, an authorised medical practitioner or para-medics;

(ii) Services provided by way of transportation of a patient in an ambulance, other than those specified in (i) above;

(Above entry 2 has been substituted vide NTF. NO. 06/2015-ST, DT. 01/03/2015)

[OLD- 2. Health care services by a clinical establishment, an authorized medical practitioner or para-medics;]

The said notification defines health care service as under:

- (1) "health care services" means any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognized system of medicines in India and includes services by way of transportation of the patient to and from a clinical establishment, but does not include hair transplant or cosmetic or plastic surgery except



when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma:

The said notification also define clinical establishment as under:

(i) "clinical establishment" means a hospital, nursing home, clinic, sanatorium or any other institution by, whatever name called, that offers services or facilities requiring diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognized system of medicines in India, or a place established as an independent entity or a part of an establishment to carry out diagnostic or investigative services of diseases;

- In their records & Books of accounts, the appellant have categorized exempted as "Medical services" and taxable as "Non Medical" while submitting reconciliation of income recorded in their books and ST-3 returns for the period Oct-2015 to Mar-2016, they have not shown exempted services in their ST-3 return. the breakup is as under:

2 nd half 15-16	As per books			As per ST-3			Difference		
	Non medical	Medical	total	Non medical	Medical	total	Non medical	Medical	total
Oct-15	340890	1140513	1481403	340890	0	340890	0	1140513	1140513
Nov-15	344560	870505	1215065	344560	0	344560	0	870505	870505
Dec-15	504650	1824391	2329041	504650	1824391	2329041	0	0	0
Jan-16	351600	1117823	1469423	351600	1160675	1512275	0	-42852	42852
Feb-16	318700	1122816	1441516	318700	1122816	1441516	0	0	0
Mar-16	214750	1043962	1258712	214750	1031547	1246297	0	12415	12415
total	2075150	7120010	9195160	2075150	5139429	7214579	0	1980581	1980581

The difference amount has been taken into consideration for calculation of the service tax which is not taxable. The appellant denied all the allegations and submitted that they have not contravened any provisions of the Financial Act, 1994.

- The appellant submitted that the demand raised on the basis of the reconciliation of income shown in ITR with the books of account without considering the submission is not legally sustainable. They denied all the demand confirmed vide impugned OIO and requested that same may be quashed and set- aside.

4. Personal hearing in the case was held on 12.10.2023. Shri Pravin Dhandharia, Chartered Accountant, appeared on behalf of the appellant for personal hearing and reiterated the submission made in the appeal. He requested to allow their appeal and set aside the impugned order.

5. On going through the appeal memorandum, it is noticed that the impugned order was issued on 23.12.2022. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum, during the course of personal hearing and documents available on record. The issue to be decided in the present appeal is whether the



beyond the surface of the body. They can be bothersome and may catch on clothing or cause pain. For removal of them one can opt freezing them with liquid nitrogen (cryotherapy), cutting them off with surgical scissors or a scalpel (excision) or burning them with electrical energy (hyfrecaction).

- (iv) The activity "Comedone Extraction" is a form of mechanical exfoliation that physically removes acne blockages from the skin. It's a widely used method of treatment for acne vulgaris. This is the best way to clean out the Blackheads or Whiteheads through the professional.
- (v) The activity "wart removal" involves cutting or scraping warts off with a special instrument. In Laser surgery, the wart is heated and destroyed using a laser beam. Warts often go away on their own after your immune system fights off the virus. Because warts can spread, cause pain and be unsightly. Therefore the treatment requires.
- (vi) The activity "Peel surgery" is a procedure in which a chemical solution is applied to the skin to remove the top layers. The skin that grows back is smoother.
- (vii) The activity "Nail Surgery" involves detachment of the body of the nail plate from its primary adherences. Nail surgery may be required to treat painful nail conditions, such as: Infected ingrown toenails, Thickened or distorted toenails, Toenails affected by a fungal infection.
- (viii) The activity "Laser hair reduction" is a medical procedure that uses a concentrated beam of light (laser) to remove unwanted hair. During laser hair removal, a laser emits a light that is absorbed by the pigment (melanin) in the hair. Laser hair removal is effective, efficient in compare to traditional methods and provides a long-term solution for getting rid of unwanted hair.
- It appears that all the above services may fall in "cosmetic services" as well as in "health care services" also. Therefore, in the instant case, patient to patient study is required.

9. The demand raised plainly on the basis of the difference of income shown in ITR and ST-3, without considering the facts of each & every case, is not legally sustainable .As contended by the appellant, second opinion may also be taken from any doctor/specialist in the instant case. Considering the above contention of the Appellant, I have the considered view that no such exercise have been done. In absence of the proper examination of each & every case, the correct liability of service tax can't be ascertained. It can't be correctly decide whether service tax is applicable or not on the differential amount. Further, as per appellant

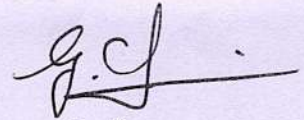


submission, they were not heard in person also. Therefore, I find it proper to remand back the impugned order to the adjudicating authority to re-examine and decide it afresh, following the principle of natural justice.

10. In view of above, I remand back the impugned order to the adjudicating authority to re-examine the issue and decide it afresh.

11. 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.

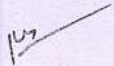


(ज्ञानचंद जैन)

आयुक्त (अपील्स)

Date :30.10.2023

Attested



Manish Kumar
Superintendent(Appeals),
CGST, Ahmedabad



By RPAD / SPEED POST

To,
M/s. Mihir Kishorbhai Chandrana,
situated at 135, Manipur AMTS bus stand,
Bopal sanand road-380058

Appellant

The Assistant Commissioner,
CGST, Division-IV,
Ahmedabad North

Respondent

Copy to :

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Commissioner, CGST, Ahmedabad North
- 3) The Deputy Commissioner, CGST, Division III Ahmedabad North
- 4) The Assistant Commissioner (HQ System), CGST, Ahmedabad North
(for uploading the OIA)
- 5) Guard File
- 6) PA file

