



सत्यमेव जयते

आयुक्त का कार्यालय

Office of the Commissioner

केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय

Central GST, Appeals Ahmedabad Commissionerate
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आज़ादी का
अमृत महोत्सव

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(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/1511/2023 / 806
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-002-APP-168/23-24 and 21.12.2023
(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	03.01.2024
(ङ)	Arising out of Order-In-Original No. CGST/WT07/HG/680/2022-23 dated 12.12.2022 passed by The The Assistant Commissioner, CGST Division-VII, Ahmedabad North	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	Dharmen Rajendrakumar Chotaliya B-7, Virnagar Society, Bhimjipura, Nawa Wada, Ahmedabad-380013

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 प्रकिया 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 हो।

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 भीतरमूल-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 सवूत 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 होती रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्नरकम 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 वताए 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 अपीलिय 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 अपीलिय 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 अपीलिय न्यायाधिकरण (सिस्टेट) एके प्रति अपीलो 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)।

- (7) खंड (Section) 11D के तहत निर्धारित राशि;
- (8) लिया गलत सेनवैट क्रेडिट की राशि;
- (9) 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:

- (vii) amount determined under Section 11 D;
- (viii) amount of erroneous Cenvat Credit taken;
- (ix) 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

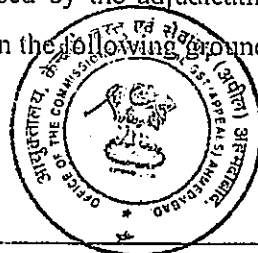
The present appeal has been filed by M/s. Dharmen Rajendrakumar Chotaliya, situated at B-7, Vimagar society, Bhimjipura , Nawa wada, Ahmedabad – 380013 (hereinafter referred to as “the appellant”) against Order-in-Original No. CGST/WT07/HG/680/2022-23 dated 12.12.2022 (hereinafter referred to as “the impugned order”) passed by the Assistant Commissioner, Central GST and C. Ex., Division-VII, Ahmedabad North (hereinafter referred to as “the adjudicating authority”).

2. Briefly stated, the facts of the case are that the appellant are holding PAN No. BATPC5462J. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the FY 2014-15, it was noticed that the appellant had earned an income of Rs. 28,05,697/- during the FY 2014-15, which was reflected under the heads “Sales of Services (Value from ITR)” filed with the Income Tax department. Accordingly, it appeared that the appellant had earned the said substantial income by way of providing taxable services but has neither obtained Service Tax registration nor paid the applicable service tax thereon. The appellant vide letter dated 25.07.2020 & summon dated 18.08.2020, was called upon to submit copies of relevant documents for assessment for the above said period. However, the appellant had not responded to the letters issued by the department.

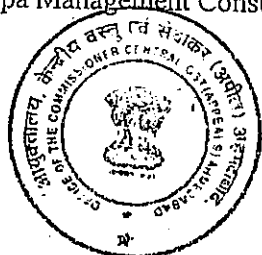
2.1 Subsequently, the appellant was issued Show Cause Notice No. CGST/AR-V/Div-VII/A'bad- North/TPD-UR/134/20-21 dated 27.09.2020 demanding Service Tax amounting to Rs. 3,46,784/- for the period FY 2014-15, under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994. The SCN also proposed recovery of interest under Section 75 of the Finance Act, 1994 and imposition of penalties under Section 77(1)(2) and Section 78 of the Finance Act, 1994.

2.2 PH in the case were also held on dated 01.08.2022, 03.08.2022 & 05.08.2022 but no one attended the same. Therefore, The Show Cause Notice was adjudicated by the authority on the ex-parte basis, wherein the demand of Service Tax amounting to Rs. 3,46,784/- 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. 3,46,784/- was also imposed on the appellant under Section 78 of the Finance Act, 1994; and (ii) Penalty of Rs. 3,000/- was imposed on the appellant under Section 77(1) of the Finance Act, 1994; and (iii) Penalty of Rs. 3,000/- was imposed on the appellant under Section 77(2) of the Finance Act, 1994

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



- The appellant is engaged in business of supply of construction material, supply of service and composite supply of goods and services for construction related work. They stated that no demand can be made beyond the prescribe time limit i.e. five years. As the last date of filing return for the period from 01.04.2014 to 30.09.2014 was 25.10.2014 and SCN has been issued on dated 27.09.2020 which was required to be issued on or before 25.10.2019. Therefore the SCN and impugned order are liable to set aside for income of Rs 24,08,804/- received in the said period.
- The appellant submitted that they have not received any letter issued by the department before issuing SCN. Further they couldn't file their reply against the impugned SCN due to COVID pandemic. PH letter were also not received by them. Further they submitted that the SCN was issued without proper verification about taxability of the service provided them. As they were not heard in person, the same is violation of principle of natural justice. Reliance is placed on the following judgements:
 - a) D.P. Mahesh vs Assistant Commissioner(CT)(Addl), Thiruvanniyur Assessment Circle, Chennai [2013] 58 VST 434 (Mad.)
 - b) Palaniappa Sago Factory vs DCTO Attur Assessment circle (2009) 24 VST 248
 - c) Mohinder Singh Gill v Chief Commissioner, AIR 1978 SC 851
 - d) Canara Bank v V.K. Awasthy AIR 2005 SC 2090.
- Further, they submitted that only on the basis of data provided by the income tax department, Show Cause Notice was issued without further verification and the same is not legal as per law. Reliance is placed on the following judgements:
 - (a) Forward Resources Pvt. Ltd. vs. CCE & ST - Surat - I - Final Order No.A/10801/2022 Dated 15.07.2022 (Ahmedabad Tribunal).
 - (b) Krishna Construction Co., vs. CCE ST - Bhavnagar - Final Order No.A/10973 / 2022 Dated 12.08.2022 (Ahmedabad Tribunal).
 - (c) M/s Quest Engineers & Consultants Pvt. Ltd. Vs. Commissioner, CGST & C. Ex., Allahabad [2022 (58) GSTL 345 (Tri.-All.).
 - (d) Kush Constructions v. CGST NACIN 2019 (24) G.S.T. L. 606 (Tri. - All.)
 - (e) Luit Developers Private Limited Vs Commissioner of CGST & Central Excise.
 - (f) Synergy Audio Visual Workshop Pt Ltd versus Commissioner of Service Tax Bangalore 2008 (10) STR 578 (Tri. - Bang.).
 - (g) CCE Ludhiana vs Deluxe Enterprises 2011 (22) STR 203.
 - (h) Faquir Chand Gulati vs. Uppal Agencies Pvt. Ltd. 2008 (12) STR 401 (SC)
 - (i) Alpa Management Consultant Pvt. Ltd. vs. CST 2006 (4) STR 21 (Tri. - Bang.).



- The appellant submitted that out of total income Rs. 28,05,697/-in F.Y. 2015-15 ,Rs 18,55,000/- were from sale of material/goods and rest Rs. 9,50,697/- was earned from providing service. They submitted that activity of sale of goods is covered under the negative list and does not attract service tax. Further, income received for sale of service Rs. 9,50,697/- is below the permissible SSI exemption limit which is available to them as per Notification no 33/2012-ST dated 20.06.2012.
- The appellant also submitted that besides above, the value of the services provided by the appellants should be treated as cum tax. The adjudicating authority failed to calculate the correct tax amount. they placed the reliance on the below :
 - a) Trade Notice No 20/2002 dated 23.05.2002 of Delhi-II Commissionerate.
 - b) Rajmahal Hotel v CCE 2006(4) STR 370(Tri-Del)
 - c) Gem star enterprises(p) Ltd v CCE 2007(7) STR 342
 - d) Panther Detective Services v CCE 2006(4) STR 116(Tri-Del)
 - e) Advantage Media Consultant(10) STR 0449(Tri-Cal),
- The appellant submitted that they have concealed nothing from the department. They were of bona fide belief that their service was not liable to pay service tax for reasons provided as above. The demand raised on the basis of the income shown in ITR without further enquiry 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 28.08.2023 Shri Pratik Trivedi,CA, appeared on behalf of the appellant for personal hearing. He reiterated submissions made in appeal memorandum. He also filed additional submission and stated that the appellant provided construction with supply of material. The value of material and services was shown separately in the invoices. The income from services is below from threshold limit. He stated that The SCN for the first half period of F.Y. 2014-15 was time barred and requested to set aside the OIO.

Further, due to change in the appellate authority, Personal hearing in the case was again held on 11.10.2023 but the appellant didn't attend the same. However, reply of PH letter cum additional submission was received by post on dated 12.10.2023 in this regard.



5. 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 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.

6. I find that in the SCN in question, the demand has been raised for the period FY 2014-15 based on the Income Tax Returns filed by the appellant. Except for the value of "Sales of Services" provided by the Income Tax Department, no other cogent reason or justification is forthcoming from the SCN for raising the demand against the appellant. As the appellant has shown their income from "Sales of Services" in their ITR filed for the F.Y 2014-15. but neither they got registered with the service tax department nor paid any service tax for the concerned period. The appellant also failed to file their submission before the adjudicating authority, Therefore, the adjudicating authority adjudicated the matter ex parte.

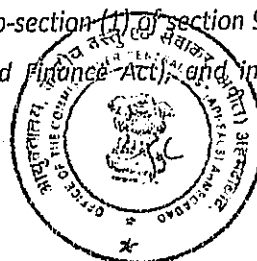
7. In the present case, I find that letters were issued to the appellant seeking details and documents, which were allegedly not submitted by them. However, without any further inquiry or investigation, the SCN has been issued only on the basis of details received from the Income Tax department. Further, PH were also held in the matter but the appellant failed to file their submission before the adjudicating authority. In absence of the documentary evidences the demand was confirmed by the adjudicating authority.

8. It is observed that the main contentions of the appellant in the appeal memorandum is that they were engaged in the business of supply of construction material, supply of service and composite supply of goods and services for construction related work. As per submission. out of total income Rs. 28,05,697/- in F.Y. 2014-15, Rs 18,55,000/- were from sale of material/goods and rest Rs. 9,50,697/- was earned from providing service. The activity of sale of goods is covered under the negative list and does not attract service tax as per section 66D(entry (e)) of the Finance Act,1994. Same is produced as under:

(e) "trading of goods."

Further, as per submission, income received for sale of service Rs. 9,50,697/- is below the permissible SSI exemption limit which is available to them as per Notification no 33/2012-ST dated 20.06.2012. Relevant portion of the same is re-produced as under:

G.S.R..... (E). - In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Finance Act), and in supersession of the



Government of India in the Ministry of Finance (Department of Revenue) notification No. 6/2005-Service Tax, dated the 1st March, 2005, published in the Gazette of India, Extraordinary, Part I, Section 3, Sub-section (i), vide G.S.R. number 140(E), dated the 1st March, 2005, except as respects things done or omitted to be done before such supersession, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts taxable services of aggregate value not exceeding ten lakh rupees in any financial year from the whole of the service tax leviable thereon under section 66B of the said Finance Act;-

In support of their claim they have submitted Ledger account, sample bills, P & L , ITR for the F.Y. 2014-15. On verification of the same, it can be seen that they have mentioned service amount and goods amount separately in their invoices. Further, on going through the P & L, expenses of material purchase may also be seen. As per the ITR for the assessment year 2014-15(F.Y. 2013-14) their service turnover is Rs. 0(Zero). Hence they are eligible for threshold exemption. Therefore the contention made by the appellant appears to be sustainable.

9. In view of the above discussion, I am of the considered view that the activity carried out by the appellant not liable to pay Service Tax during the FY 2014-15. Since the demand of Service Tax is not sustainable on merits, there does not arise any question of charging interest or imposing penalties in the case.

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

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.

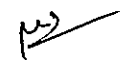


(ज्ञानचंद जैन)

आयुक्त (अपील्स)

Date : 21.12.23

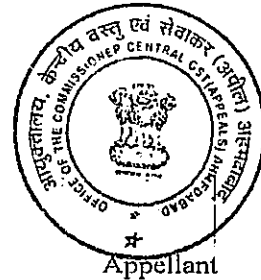
Attested



Manish Kumar
Superintendent(Appeals),
CGST, Ahmedabad

By RPAD / SPEED POST

To,
M/s. Dharmen Rajendrakumar Chotaliya,



Appellant

Situated at B-7, Virnagar society,
Bhimjipura , Nawa wada,
Ahmedabad – 380013

Respondent

The Assistant Commissioner,
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



