



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**

DIN:- 20230264SW000092499A

(क)	फाइल संख्या / File No.	GAPPL/COM/STP/1763/2022-APPEAL / 8946-50
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-131/2022-23 and 28.02.2023
(ग)	पारित किया गया / Passed By	श्री अखिलेश कुमार, आयुक्त (अपील) Shri Akhilesh Kumar, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	28.02.2023
(ङ)	Arising out of Order-In-Original No. 45/AC/DEM/ST/Bhagwandas/2021-22 dated 01.03.2022 passed by the Assistant Commissioner, CGST, Division-Mehsana, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Bhagwandas Narayandas Chaudhari, Chaudhari Vas, At-Dela, Post-Dela, Taluka-Mehsana, Dist-Mehsana-384001

कोई व्यक्ति इस अपील-आदेश से असंतोश 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:-

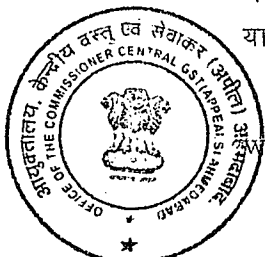
**Revision application to Government of India:**

(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, 4<sup>th</sup> 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 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 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 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 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004।

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> 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-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 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.

(6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय 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)।

- (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."

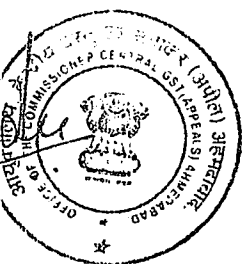


अपीलिय आदेश / ORDER-IN-APPEAL

The present appeal has been filed by M/s. Bhagwandas Narayandas Chaudhari, Chaudhari Vas, At-Dela, Post-Dela, Tal. & Distt.: Mehsana - 384002 Gujarat (hereinafter referred to as "*the appellant*" ) against the Order-In Original No. 45/AC/DEM/ST/Bhagwandas/2021-22, dated 01.03.2022 (hereinafter referred as *the 'impugned order'*), passed by the Assistant Commissioner, CGST & C.Ex., Division-Mehsana, Commissionerate- Gandhinagar. [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. AARPC3879NSD001 for providing taxable services. As per the information received from the Income Tax department, discrepancies were observed in the total income declared in Income Tax Returns/26AS, when compared with Service Tax Returns of the appellant for the period F.Y. 2015-16 and 2016-17. In order to verify the said discrepancies as well as to ascertain the fact whether the appellant had discharged their Service Tax liabilities during the period F.Y. 2015-16 & 2016-17, letters dated 08.05.2020, 15.06.2020 and 02.07.2020 were issued to them through emails by the department. The appellant failed to file any reply to the query. It was also observed by the Service Tax authorities that the appellant had not declared actual taxable value in their Service Tax Returns for the relevant period. It was also observed that the nature of services provided by the appellant were covered under the definition of 'Service' as per Section 65B(44) of the Finance Act, 1994, and their services were not covered under the 'Negative List' as per Section 66D of the Finance Act,1994. Further, their services were not exempted vide the Mega Exemption Notification No.25/2012-S.T., dated 20.06.2012 (as amended). Hence, the services provided by the appellant during the relevant period were considered taxable.

3. In the absence of any other available data for cross-verification, the Service Tax liability of the appellant for the F.Y. 2015-16 was determined on the basis of value of difference between 'Sales of Services under Sales/Gross Receipts from Services (Value from ITR)' as provided by the Income Tax department and the 'Taxable Value' shown in the Service Tax Returns for the relevant period as per details below:



TABLE

(Amount in "Rs.")

Period	Taxable Value as per Income Tax Data	Taxable value declared in ST-3 Returns	Difference of Value as per Income Tax Data	Rate of Service Tax [Including Cess]	Service Tax Demanded
2015-16	11,57,968	0	11,57,968	14.5 %	1,67,905

4. Accordingly, a Show Cause Notice was issued to the appellant vide F.No.V.ST/ 11A-235/Bhagwandas/2020-21, dated 18.08.2020, wherein it was proposed to demand and recover:

- Service Tax amount of Rs.1,67,905/- under proviso to Section 73(1) of the Finance Act, 1994 along with Interest under Section 75 of the Finance Act,1994 ;
- Penalties under Section 77(2), 77 C & 78 of the Finance Act, 1994.

5. The Show Cause Notice was adjudicated vide *the impugned order* wherein *the adjudicating authority* has:

- Confirmed the demand of Service Tax amount of Rs.1,67,905/- under Sub-section (2) of Section 73 of the Finance Act, 1994.
- Ordered to pay interest under Section 75 of the Finance Act, 1994, on the above demand of Service Tax.
- Imposed a penalty of Rs.20,000/- under Section 70 of the Finance Act, 1994.
- Imposed a penalty of Rs.10,000/- under Section 77(2) of the Finance Act, 1994.
- Imposed a penalty @ Rs.200/- per day till the date of compliance or Rs.10,000/-, whichever is higher under Section 77(1)(c) of the Finance Act, 1994.
- Imposed a penalty of Rs.1,67,905/- under Section 78 of the Finance Act,1994.
- Option was given for reduced penalty vide clause (ii) of the second proviso to Section 78(1) of the Finance Act, 1994.

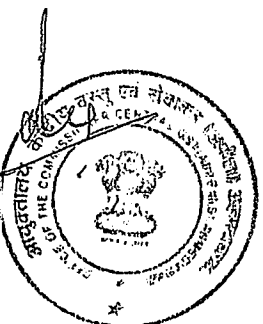
6. Being aggrieved with the impugned order, the appellant have filed the present appeal on the following grounds:-

- The appellant is individual concern and earned income from various works and also earn salary / interest as partner.



- During the adjudication proceedings appellant's son appeared before the adjudicating authority and intimated regarding appellant's death and submitted death certificate. He requested to drop the proceedings as he has not readily available any details. The adjudicating authority has not considered facts of the case and passed the present order.
- SCN was issued based on presumptions and third party information without any verification.
- Extended period of limitation not applicable in terms of proviso to Section 73(1) of the Finance Act, 1994. In support they relied upon the decision in case of M/s Cosmic Dye Chemical Vs Collector of C.Ex., Bombay [1995(75) ELT 721 (SC)].
- The appellant submitted the particulars of income and tax applicability as under :-

Particular	Income Amount	Applicability of Tax
Interest Income	89,083/-	Exempt
Profit received as partner	8,205/-	Exempt
Remuneration Income received from firm as partner	66,529/-	Exempt
Remuneration Income received from firm as partner	15,00/-	Exempt
Works contract Income	5,99,214/-	Distt. Asstt. Exm. Office- Rs. 22,500/- [Exempt] S R Chaudhary & Co. Sweeper- Rs. 1,94,969/- [Exempt] Office of the Div. Manager - Rs.2,54,051/-
Contract Income	5,58,754/-	Rent a cab
Total	13,36,785/-	
Total of Exempt Income	9,55,040/-	
Net Income	3,81,745/-	
Basic Exemption Limit	10,00,000/-	As per Notification No.33/2012-S.T.



- As per the details given in the Annexure, the appellant have only Rent a cab income of Rs.5,58,754/- which after allowing the abatement of Rs.3,35,252/- , income of Rs.2,23,501/- only is taxable on which Service Tax liability comes to Rs.32,408/-. They have submitted relevant documents in support of their claims.
- They also contended that since there are no tax liabilities, no penalty is imposable upon them as there was no intention to evade tax. They relied upon the decision of *Apex Court in case of M/s Hindustan Steel Vs State of Orissa- 1978 ELT (J159)*.

7. Personal hearing in the matter was held on 10.02.2023. Shri Arpan Yagnik, Chartered Accountant, appeared as authorized representative of the appellant. He reiterated submissions made in the appeal memorandum. He submitted a copy of death certificate of the appellant during hearing. He stated that the appellant has expired and the proceedings may be abated.

8. I have gone through the facts of the case, submissions made in the Appeal Memorandum as well as submissions made at the time of personal hearing and the material available on the record. The issue before me for decision is as to whether the impugned order confirming the demand of service tax amounting to Rs.1,67,905/- along with interest and penalty is legal and proper *or* otherwise. The demand pertains to the period to F.Y. 2015-16.

9. It is evident from the facts available on record that Late Shri Bhagwandas Narayandas Chaudhari was the Proprietor of the appellant firm. He has expired on 02.05.2018. It is also observed that in the present case the Show Cause Notice has been issued on 18.08.2020 after the death of the proprietor.

9.1 I find it relevant to refer to the judgment of the Hon'ble Supreme Court in the case of *Shabina Abraham-[2015 (322) ELT 372 (S.C)]*. In the said case, I find that the questions raised before the Hon'ble Supreme Court that - "(i) Whether the dead person's property, in the form of his or her estate, can be taxed without the necessary machinery provisions in a tax statute?; and (ii) Whether an assessment proceeding under the Central Excise and Salt Act, 1944, can continue against the legal representatives/estates of a sole proprietor/manufacturer after he is dead?".



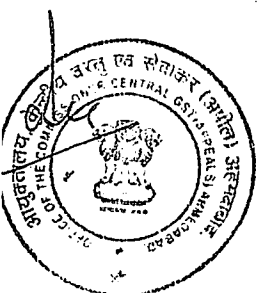
9.1.1 In the said case, the Hon'ble Supreme Court allowed the appeal and set aside the judgment of the High Court of Kerala and that of the learned Single Judge restored. It is pertinent to mention that the learned single Judge of the High Court had quashed the proceedings against the legal heirs stating that "*the Central Excise and Salt Act did not contain any provisions for continuing assessment proceedings against a dead person*" which was subsequently reversed by the Division Bench of the High Court of Kerala.

9.2 It further relevant to refer to the judgment of Hon'ble CESTAT, New Delhi in case of *M/s. J.S. Singh Engineering Contractor Versus Commissioner of CGST (Appeals) [2019 (7) TMI 1417-CESTAT, New Delhi]* wherein Hon'ble Tribunal vide Final Order Nos. 50933-50934/2019 dated 11.07.2019 held that:-

*"11. Having considered the rival contentions, I hold that the issue of show cause notice in the name of deceased person under the provisions of Finance Act, 1994, is ab initio void in view of the ruling of the Hon'ble Supreme Court in the case of Shabina Abraham (supra). Further, I find that there is no specific provision or machinery provision for recovery of tax dues, after death of the proprietor. In the facts and circumstances of the case, I hold that Section 87 (c) of the Finance Act, 1994 is not applicable. Accordingly, the appeals are allowed and the impugned orders are set aside".*

9.3 Further, I also find that Hon'ble CESTAT, New Delhi in similar matter in case of *Commissioner of Central Excise, Chandigarh Versus Shree Ambica Steel Industries* reported at [2013 (288) E.L.T. 420 (Tri. - Del.)] held that:

*"7. We have considered the rival contentions and perused the records. Undisputedly, late Smt. Bimla Rani was the proprietor of the respondent-firm M/s. Shree Ambica Steel Industries. She died on 17-9-2006 and after her death the legal heir applied for cancellation of Excise registration in the name of the firm and the registration was admittedly cancelled by the Department in October, 2006. It is well settled that a sole proprietorship concern has no legal entity independent of its proprietor. Thus it is obvious that the death of late Smt. Bimla Rani of the respondent-company ceased to exist. That being the case, the relevant show cause notice dated 2-4-2009 issued to M/s. Shree Ambica Steel Industries, Mandi Gobindgarh is bad in law as it was issued against any non-existent firm. This circumstance in itself is sufficient to dismiss the appeal filed by the Department".*

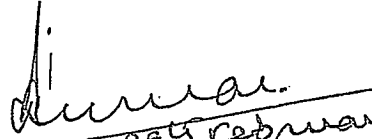




9.4 I find that the ratio of the judgments of Hon'ble Supreme Court and CESTAT, as discussed above, are squarely applicable to the facts of the present case. In the present case, I find that the Show Cause Notice has been issued to a proprietorship firm, which has already been ceased to exist, due to death of the proprietor Late Shri Bhagwandas Narayandas Chaudhari. Accordingly, in view of the judgments as discussed above, I find that the Show Cause Notice as well as the impugned order issued in the present case is not legally sustainable and liable to be set aside. Further, as the demand has been set aside, the question of interest on demand and imposition of penalties does not arise.

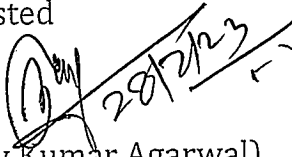
10. On careful consideration of the relevant legal provisions and submission made by the appellant, I find that the demand confirmed by the adjudicating authority vide the impugned order is not sustainable on merits, as discussed in Para- 9 to Para-9.4 above. Accordingly, the impugned order is set aside and the appeal filed by the heir of the appellant is allowed.

11. अपीलकर्ता 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.

  
(Akhilesh Kumar)  
Commissioner (Appeals)

Date: 23 .02.2023

Attested

  
(Ajay Kumar Agarwal)  
Assistant Commissioner [In-situ] (Appeals)  
Central Tax, Ahmedabad.



**BY RPAD / SPEED POST**

To,  
M/s. Bhagwandas Narayandas Chaudhari,  
Chaudhari Vas, At-Dela,  
Post-Dela, Tal & Distt. Mehsana-384002.

Copy to: -

1. The Principal Chief Commissioner, CGST & C.Ex., Ahmedabad Zone.
2. The Principal Commissioner, CGST & C.Ex., Commissionerate: Gandhinagar.
3. The Assistant Commissioner, CGST & C.Ex., Division-Mehsana, Commissionerate: Gandhinagar.
4. The Superintendent (System), CGST, Appeals, Ahmedabad. (for uploading the OIA).
5. ~~Guard File.~~
6. P.A. File.

