



**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: 20221164SW0000717831

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/389/2022-APPEAL/5438-42
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-68/2022-23
दिनांक Date : 24-11-2022 जारी करने की तारीख Date of Issue 28.11.2022
आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. CGST/A'bad North/Div-VII/ST/DC/81/2021-22
दिनांक: 17.11.2021, issued by Deputy/Assistant Commissioner, CGST, Division-VII,
Ahmedabad-North
- घ अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

M/s Govind Ramjilal Sharma,
A1 502, Sahajanand City,
Kudasan Gandhinagar-382421

2. Respondent

The Deputy/ Assistant Commissioner, CGST, Division-VII, Ahmedabad
North, 4th Floor, Shahjanand Arcade, 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) 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।

(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।

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 मामले 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। उसके 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.

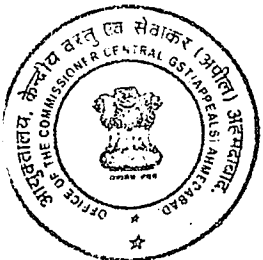
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 filed to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

- (4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूचि-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 11D 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।

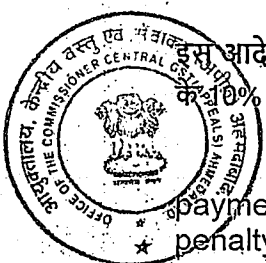
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

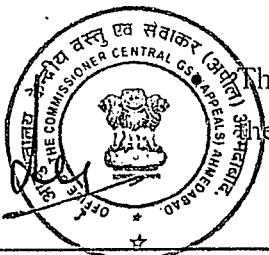
The present appeal has been filed by Shri Govind Ramjilal Sharma, A1 502, Sahajanand City, Kudasán, Gandhinagar – 382421 (hereinafter referred to as “the appellant”) against Order-in-Original Number CGST/A’bad-North/Div-VII/ST/DC/81/2021-22 dated 17.11.2021 (hereinafter referred to as “the impugned order”) passed by the Deputy Commissioner, Central GST, Division VII, Ahmedabad North (hereinafter referred to as “the adjudicating authority”).

2. Briefly stated, the fact of the case is that the appellant was holding PAN No. AMDPS7458M. On scrutiny of the data received from CBDT for the Financial Year 2014-15 & 2015-16, it was noticed that the appellant had earned an income of Rs. 28,38,386/- during the FY 2014-15 and earned an income of Rs. 29,15,098/- during the FY 2015-16, which was reflected under the heads “Sales / Gross Receipts from Services (Value from ITR)” in their return filed before 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 was called upon to submit copies of Balance Sheet, Profit & Loss accounts, Income Tax Returns, Form 26AS, for the period from FY 2014-15 to 2017-18 (up to Jun-17), however, the appellant had not responded to the letters issued by the department.

2.1 Subsequently, the appellant was issued a Show Cause Notice No. CGST/AR-V/Div-VII/A’bad-North/27/2020-21 dated 26.09.2020 demanding Service Tax amounting to Rs. 7,73,514/- for the period FY 2014-15 & FY 2015-16, under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994. The SCN also proposed recovery of un-quantified amount of Service Tax for the period FY 2016-17 & FY 2017-18 (up to Jun-17). The SCN also proposed recovery of interest and imposition of penalties under Section 77 and 78 of the Finance Act, 1994. The Show Cause Notice was adjudicated vide the impugned order by the adjudicating authority wherein the demand of Service Tax amounting to Rs. 10,41,743/- 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 October-2014 to June-17, after extending cum-tax benefit. Further (i) Penalty of Rs. 10,41,743/- was also imposed on the appellant under Section 78 of the Finance Act, 1994; (ii) Penalty of Rs. 10,000/- was imposed on the appellant under Section 77(1) of the Finance Act, 1994 for failure to provide documents / details called for by the department; and (iii) Penalty of Rs. 10,000/- was imposed on the appellant under Section 77(2) of the Finance Act, 1994 for failure to assess their correct service tax liability and failed to file correct service tax returns.

3. Being aggrieved with the impugned order, the appellant has preferred the present appeal on the following grounds:

The appellant is a RTO Consultant and involved in professional and technical services. In the present case, the officers have issued the SCN apparently on the basis of an extended



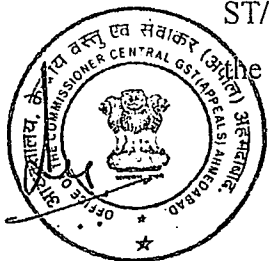
period of 5 years from the relevant date. However, in almost all cases the SCN is issued only for the reason that the turnover in income tax records does not match with the turnover in the service tax records. The reason for such mismatch is conveniently ignored by the officers even when pointed out citing the notifications of exemption and RCM. Hence, such SCN will not pass the test of validity if and when challenged.

- The SCN claiming difference between IT return and ST return is merely roving and fishing inquiry without even bothering to find that the persons are not liable to either register under service tax nor collect and pay service tax as per various notifications issued by Central Government. The department cannot use extended 5 year period to make a roving and fishing inquiry when all transactions carried out by them fall within the above notifications. It should have been done within 30 months of relevant date.
- The apex court has in the case of M/s. Cosmic Dye chemical Vs Collector of Cen. Excise, Bombay - 1995 (75) E.L.T. 721 (S.C.) held that the burden is on the revenue to prove any of the above elements to uphold validity of an extended period of 5 years and the detailed verification must be made prior to issuing SCN and complete details be provided to the person in the SCN.
- Inspired by the decision of SC in the case of M/s. Cosmic Dye chemical Vs Collector of Cen. Excise, Bombay (supra), the board issued a Circular no. 1053/02/2017-CX, F.No. 96/1/2017-CX.I dated 10.03.2017 laying down guidelines for issuance of SCN. In principle, it laid down that such SCN cannot be issued for making roving and fishing inquiry. The burden is on the department to prove with evidence and details as to which transaction falls in the above category. The officers are mandated to carry out proper verification before issuing such SCN.
- The burden cannot be laid on the party to prove no fraud etc. Otherwise, there will be no difference between 30 months period and 5 years period if roving and fishing inquiry is allowed to be made for SCN of 5 years.
- The allegations of fraud and collusion etc. are allegations of serious nature and they cannot be just thrown at a party lightly and in a vague manner. These allegations lead to serious consequences and such light mannered, routine allegations if upheld will give unbridled and arbitrary powers to the department to just allege and leave the party receiving notice scurrying to somehow prove his innocence and bona fide which is not the mandate of law.
- In cases, where the duty is not levied or paid or short-levied or short paid or erroneously refunded, it can be recovered by the appropriate officer within 30 months from the relevant date. The expression "relevant date" is defined in the section itself. But the said



period of 30 months gets extended to five years where such non-levy, short levy, etc., is "by reason of fraud, collusion or any wilful misstatement or suppression of facts or contravention of any of the provisions of this Act or of the rules with intent to evade payment of duty.

- Now so far as fraud and collusion are concerned, it is evident that the requisite intent, i.e., intent to evade duty is built into these very words. So far as misstatement or suppression of facts is concerned, they are clearly qualified by the word "wilful" preceding the words "misstatement or suppression of facts" which means with intent to evade duty. The next set of words "contravention of any of the provisions of this Act or rules" are again qualified by the immediately following words "with intent to evade payment of duty". It is therefore, not correct to say that there can be a suppression or misstatement of fact, which is not wilful and yet constitute a permissible ground.
- In the above circumstances and case because the facts establish that the misstatement of facts in the declaration filed by the appellant or the suppression of facts therein, as the case may be - cannot be called wilful, the appeal is allowed.
- Further it is also to be stated in the order that the show cause has been issued on the basis of third party data i.e. provided by CBDT, so if the intentions of the appellant is of malafide in nature then he might not had given any information to CBDT also via his Income tax returns, so it can be said that the intentions of appellant was not a malafide or he was not trying to hide any information/facts so in that case the show cause to be issued within the period of 30 month from the relevant date and hence which is expired and show cause is time barred in the given case.
- In other words, so for SCN to be valid both the following conditions must be fulfilled:
 - (1) Service tax should have been underpaid / not paid / excess refund AND
 - (2) It should have happened due to fraud, collusion by the party.
 If only condition 1 is satisfied then 30 months is limitation period. If both 1 and 2 both are satisfied only then the 5 years period is applicable
- In the instant SCN, in fact only 1 condition is satisfied as the appellant has not taken service tax registration & hence not paid service tax so only the period of 30 months will be the limitation period from the relevant date & so show cause to be issued within that period only.
- The order passed by Deputy Commissioner vide OIO No. CGST/A'bad North/Div-VII/ST/DC/81/2021-22 is bad in law & deserves to be uncalled for as order not passed within the limitation period.



- The Deputy Commissioner has erred in law and on facts and levied the tax to be payable of Rs. 10,41,743/- to be recovered under section 73(1) of Finance Act 1994, by invoking the extended period. The same deserves to be deleted.
- The Deputy Commissioner has erred in law and on facts in charging interest under section 75 of Finance Act 1994, The same deserves to be deleted.
- The Deputy Commissioner has erred in law and on facts in imposing the penalty of Rs. 10,41,743/- under section 78 of Finance Act 1994, The same deserves to be deleted.

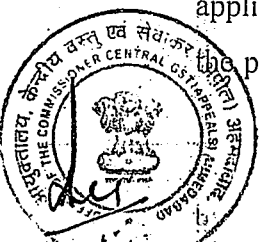
4. Personal hearing in the case was held on 18.11.2022. Shri Nilesh J. Nandankar, Chartered Accountant, and Shri Aakash Nayak, Advocate, appeared on behalf of the appellant for personal hearing. They reiterated submission made in appeal memorandum.

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 dispute involved in the present appeal relates to non payment of service tax by the appellant on the service provided by them as RTO consultant. The demand pertains to the period FY 2014-15 to 2017-18 (up to Jun-2017). The adjudicating authority had confirmed the demand for the period from October-2014 to June-2017, after extending cum-tax benefit, under proviso to Sub-section (1) of the Section 73 of the Finance Act, 1994 and dropped the demand for the period April-2014 to September-2014 as time barred.

6. I find that the main contention of the appellant is that his intentions was not a malafide and that he was not trying to hide any information/facts so in that case the show cause to be issued within the period of 30 month from the relevant date. Hence, show cause is time barred in the given case and order was passed without taking into consideration the limitation period.

7. It is observed that the appellant has not disputed the taxability of services provided by them i.e. professional and technical services as a RTO consultant. They have in the appeal memorandum claimed that the services provided by them were exempted vide notification and were under RCM. No further details was provided by them.

8. I find that the adjudicating authority, while confirming service tax demand, held that the activity undertaken by the appellant were classifiable under the category of "Business Auxiliary Services" defined under Section 65(105)(zzb) of the Finance Act, 1994. However, I find that the provisions under Section 65(105) of the Finance Act, 1994 has been replaced by negative list based service tax regime vide Notification No. 20/2012-ST dated 05.06.2012, made applicable w.e.f. 01.07.2012. Hence, the adjudicating authority has confirmed the demand under the provisions prevalent before 01.07.2012, which are not in existence for the period of demand

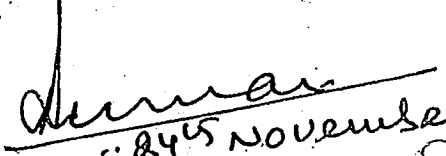


pertaining to FY 2014-15 onwards. Therefore, I find that the impugned order passed by the adjudicating authority without specifying correct charging provision is thus not proper and legal.


7.2 Therefore, I find that it would be prudent that the present case is required to be remanded to the adjudicating authority for the proper scrutiny and for specifying correct charging(s) provision. The appellants are also directed to produce relevant documents before the adjudicating authority to arrive at correct assessment.

8. In view of the above discussion, I hereby remand the case to the adjudicating authority for passing the order a fresh after proper scrutiny of the case after following principles of natural justice.

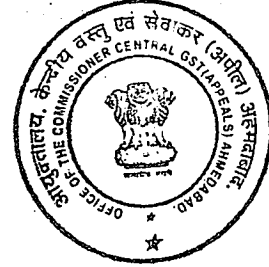
9. अपील कर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है
The appeal filed by the appellant stands disposed of in above terms.


24 November 2022
(Akhilesh Kumar)
Commissioner (Appeals)

Attested


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

Date : 24.11.2022



By RPAD / SPEED POST

To,
Shri Govind Ramjilal Sharma,
A1 502, Sahajanand City,
Kudasan,
Gandhinagar – 382421

Appellant

The Deputy Commissioner,
CGST, Division-VII, 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 VII, Ahmedabad North
- 4) The Assistant Commissioner (HQ System), CGST, Ahmedabad North

(for uploading the OIA)

✓ 5) Guard File

6) PA file