



सत्यमेव जयते

आयुक्त का कार्यालय, (अपीलस)
Office of the Commissioner,

केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय

Central GST, Appeal Commissionerate- Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

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क फाइल संख्या : File No : V2(GST)174&175/North/Appeals/2018-19

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-002-APP-171 to 172-18-19

दिनांक Date : 18/02/2019 जारी करने की तारीख Date of Issue:

25/3/2019

श्री उमाशंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals) Ahmedabad

ग आयुक्त, केन्द्रीय GST, अहमदाबाद North आयुक्तालय द्वारा जारी मूल आदेश : दिनांक : से सृजित

Arising out of Order-in-Original: 105&106/FINAL, Date: 24/09/2018 Issued by: Deputy Commissioner, CGST, Div: IV, Ahmedabad North.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the Appellant & Respondent

M/s. Contract Pharmacal Corporation India Pvt. Ltd

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।

I. Any person aggrieved by this Order-In-Appeal issued under the Central Excise Act 1944, 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 अंतर्गत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अवर 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 प्रक्रिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(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।

(b) 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।

(c) 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।

(d) 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- षोबी/35-इ के अंतर्गत:-

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

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 दूसरा मंजिल, बहमाली

भवन, असारवा, अहमदाबाद, गुजरात 380016

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhavan, Asarwa, Ahmedabad-380016 in case of appeals other than as mentioned in para-2(i) (a) above.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इ.ए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणों की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहाँ रूपए 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नागित सार्वजनिक क्षेत्र के बैंक की शाखा का हो

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 उपर्युक्त 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 bear 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 उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्टेट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 39फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014) की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 23 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "माँग किए गए शुल्क" में निम्न शामिल है

- (i) धारा 11 डी के अंतर्गत निर्धारित रकम
- (ii) सेनवैट जमा की ली गई गलत राशि
- (iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

→ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होंगे।

For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores, 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.

→ Provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(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।

(6)(i) 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."

II. Any person aggrieved by an Order-in-Appeal issued under the Central Goods and Services Tax Act, 2017/Integrated Goods and Services Tax Act, 2017/Goods and Services Tax (Compensation to States) Act, 2017, may file an appeal before the appropriate authority.



ORDER - IN - APPEAL

Two appeals have been filed before the Appellate Authority under section 107 of the Central Goods and Services Act, 2017 by M/s Contract Pharmacal Corporation India Private Limited, Plot No.42, Panchratna Industrial Estate, Part-3, Changodar, Sarkhej-Bavla Highway, Ahmedabad-382213 [henceforth-'appellant'] holding GSTIN No.24AAFCC2957E1ZV against two Order In Original dated 24.09.2018 (henceforth, 'impugned orders') passed by the Deputy Commissioner CGST&CX, Division-IV, Ulariya, Sanand, Ahmedabad North (henceforth, 'adjudicating authority') in Form GST RFD 06 as detailed below:

Sr. No.	Appeal No.	Order No. and date of GST RFD- 06	Period of dispute	Amount under dispute
				Integrated Tax (Rs.)
1	V2(GST)174/North/Appeals/2018-19	105/FINAL dated 24.09.2018	July 2017	14,31,923/-
2	V2(GST)175/North/Appeals/2018-19	106/FINAL dated 24.09.2018	July 2017	13,38,899/-

2. The facts of the case, in brief, are that the appellant filed two refund claims dated 07.08.2018 in the form RFD-01A of IGST Rs.14,31,923/- and Rs.13,38,899/- paid by them on export of services during July and August,2017 respectively being Zero rated supply of Services in term of sub-section (3) of Section 16 of Integrated Goods and Service Tax Act, 2017 read with Section 54 of Central Goods and Service Tax Act, 2017 which was rejected under impugned orders mainly for non compliance of query raised under deficiency memo dated 21.08.2018.

3. Being aggrieved with the impugned order the appellant preferred this appeals under prescribed form GST APL-01 contesting *inter alia*, that the adjudication authority has rejected the refund claims without serving the notice in Form GST RFD-08 in term of Rule 92 of Central Goods and Service Tax Rules, 2017 and hence the appellant could not reply in form GST RFD-09. Thus, rejection of refunds without providing an opportunity of being heard resulted in violation of principles of natural justice; that the appellant is also not granted refund of ninety per cent on provisional basis as provided under Section 54(6) of the CGST Act,2017; that no time limit has been prescribed for the purpose of replying the deficiencies under CGST Act,2017 and CGST Rules,2017, the impugned orders are in violation of Circular No. 59/33/2018-GST dated 04.09.2018; that as per the said circular dated 04.09.2018, no order in Form GST RFD-04/06 can be issued in



respect of an application against which a deficiency memo has been issued. However the adjudicating authority has passed GST RFD-06 rejecting the refund; they also cited Circular no.70/44/2018 GST dated 26.10.2018 in this regard. Etc.,

4. Personal hearing was held on 17.01.2019 wherein Shri Rohan Thakkar, Chartered Accountants appeared on behalf of the appellant, reiterated the grounds of appeal and submitted copies of circulars dated 15.11.2017, 04.09.2018 & 26.10.2018 in the matter.

5. I have carefully gone through the facts of both the cases and submissions made in the appeal memorandums. On perusal of records, I observe that the refund claims has been rejected by the adjudicating authority on the ground that the appellant did not submitted the reply to deficiency memo dated within stipulated time period as per rule 93(1) read with Circular no.17/17/2017-Central Tax dated 15.11.2017. It would be therefore pertinent to go through said rules and circular:

5.1 Rule 93(1) of CGST Rules,2017 :

93. Credit of the amount of rejected refund claim.-

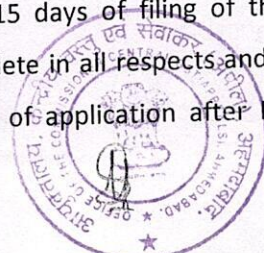
(1) Where any deficiencies have been communicated under sub-rule (3) of rule 90, the amount debited under sub-rule (3) of rule 89 shall be re-credited to the electronic credit ledger.

(2) Where any amount claimed as refund is rejected under rule 92, either fully or partly, the amount debited, to the extent of rejection, shall be re-credited to the electronic credit ledger by an order made in FORM GST PMT-03.

Explanation.- For the purposes of this rule, a refund shall be deemed to be rejected, if the appeal is finally rejected or if the claimant gives an undertaking in writing to the proper officer that he shall not file an appeal.

Plain reading of the above rule 93(1) stipulates that amount debited under sub-rule (3) of rule 89 shall be re-credited to the electronic credit ledger of the claimant if deficiencies have been communicated to them. Further, some clarifications and guidelines are issued under Circular no.17/17/2017-Central Tax dated 15.11.2017 in respect of manual filling and processing of refund claims in respect of Zero-rated supplies. Para 3.3 clarifies that;

"Deficiencies, if any, in documentary evidences are to be ascertained and communicated in **FORM GST RFD-03** within 15 days of filing of the refund application. Deficiency Memo should be complete in all respects and only one Deficiency Memo shall be given. Submission of application after Deficiency



Memo shall be treated as a fresh application. Resubmission of the application, after rectifying the deficiencies pointed out in the Deficiency memo, shall be made by using the ARN and debit entry number generated originally. If the application is not filed afresh within thirty days of the communication of the deficiency memo, the proper officer shall pass an order in FORM GST PMT-03 and re-credit the amount claimed as refund through FORM GST RFD-01B."

5.2 It also stipulates for grant of provisional refund within seven days of issue of acknowledgements with the remark as under:

" The amount of provisional refund shall be calculated taking into account the total input tax credit, without making any reduction for credit being provisionally accepted. Provisional refund shall be granted separately for each head CT / ST / UT / IT/ Cess within 7 days of acknowledgement in FORM GST RFD-04. Before sanction of the refund a declaration shall be obtained that the applicant has not contravened rule 91(1). Payment advice to be issued in FORM GST RFD-05. Refund would be made directly in the bank account mentioned in the registration."

5.3 Said circular also clarifies that submission of the application after deficiency memo shall be treated as a fresh application. It nowhere provides for issuance of order in the FORM RFD-06 in a case where Deficiency Memo RFD-03 has been issued. It is presumed that once deficiency memo complete in all respect has been issued, it becomes mandatory for the claimant to re-submit the application after rectifying the deficiencies pointed out therein and If the application is not filed afresh by the claimant within thirty days of the communication of the deficiency memo, the proper officer shall pass an order in FORM GST PMT-03 and re-credit the amount claimed as refund through FORM GST RFD-01B if claim pertains to ITC unutilized due to zero rated supplies. Issuing of the order RFD-06 for rejection of refund claim was not required at this stage for the reasons that no fresh application of refund after rectifying the deficiencies pointed out has been filed by the claimant and no show cause notice was issued. Thus, the method prescribed mandates that once deficiency memo is issued, the claimant has to apply a fresh within thirty days in absence of which as a conclusiveness of the refund claim, the amount claimed shall be re-credited in electronic credit ledger of the claimant by the refund sanctioning authority without passing any formal rejection order. In this regard I observe that in the deficiency memo dated 21.08.2018 itself it is mentioned that "*you are advised to file a fresh refund application after rectification of above deficiencies*". I find that this remark was sufficient to communicate the conclusiveness of the refund application status to the claimant and no separate order RFD-06 at such stage was required.



5.4 In view of these, neither the Rule 93(1) of CGST Rules,2017 nor the Circular no.17/17/2017-Central Tax dated 15.11.2017 stipulates for passing of an order either rejecting or sanctioning the refund by the adjudicating authority in the FORM RFD-06 in such stage of processing the refund application. Therefore, issuances of both the impugned orders RFD-06 were premature at such stage. Though the refund has been denied on account of non compliance of query memo, it would not be proper to consider that it has been rejected wrongfully. The action of Issuance of RFD-06 order which was not required at this stage is nothing but an additional communication to the claimant as well as procedural error on the part of the adjudicating authority.

6. It is further contested by the appellant that refund of ninety per cent on provisional basis as provided under Section 54(6) of the CGST Act,2017 is also not granted to them. As per the provisions of Rule 91 of the CGST Rules,2017 the refund sanctioning authority on being prima facie satisfied that the amount claimed as refund under sub-rule (1) is due to the applicant in accordance with the provisions of subsection (6) of section 54, has to sanction the amount of refund due to the said applicant on a provisional basis within a period not exceeding seven days. Said rule 91 CGST Rules,2017 is reproduced below for ease of reference:

RULE 91. Grant of provisional refund. — (1) The provisional refund in accordance with the provisions of sub-section (6) of section 54 shall be granted subject to the condition that the person claiming refund has, during any period of five years immediately preceding the tax period to which the claim for refund relates, not been prosecuted for any offence under the Act or under an existing law where the amount of tax evaded exceeds two hundred and fifty lakh rupees.

(2) The proper officer, after scrutiny of the claim and the evidence submitted in support thereof and **on being prima facie satisfied** that the amount claimed as refund under sub-rule (1) is due to the applicant in accordance with the provisions of sub-section (6) of section 54, shall make an order in **FORM GST RFD-04***, sanctioning the amount of refund due to the said applicant on a provisional basis within a period not exceeding seven days from the date of the acknowledgement under sub-rule (1) or sub-rule (2) of rule 90.

(3) The proper officer shall issue a payment advice in **FORM GST RFD-05*** for the amount sanctioned under sub-rule (2) and the same shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund.

In this context, I find from the quarry memo dated 21.08.2018 that it was observed by the adjudicating authority that inter alia, FRC was not matching with the amount mentioned in said supply of service and no



remittance was ascertained. FIRC's being essential documents for arriving at the status of remittance, issuance of the query memo by the adjudicating authority were proper. In absence of remittance status, the adjudicating authority was unable **satisfying prima facie** that the amount claimed as refund is due to the applicant and hence non sanctioning the amount of refund to the applicant/appellant on a provisional basis is justifiable. Similarly, other deficiencies as mentioned in deficiency memo makes refund untenable.

7. In view of the above, I reject the appeals filed by the appellant and uphold the impugned orders.

8. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

Both the appeals filed by the appellant stands disposed of in above terms.

U. Shankar

(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

Date:

Attested

(D.A.Panna)
Superintendent
Central Tax(Appeals)
Ahmedabad



By R.P.A.D.

To,

M/s. Contract Pharmacal Corporation India Private Limited,
Plot No.42, Panchratna Industrial Estate, Part-3,
Changodar, Sarkhej-Bavla Highway,
Ahmedabad-382213.

Copy to:

1. The Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner of Central Tax, Ahmedabad - North.
3. The Additional Commissioner, Central Tax (System), Ahmedabad North.
4. The Deputy Commissioner, CGST Division-IV, Ulariya, Sanand, Ahmedabad - North.
5. Guard File.
6. P.A. File