



सत्यमेव जयते

आयुक्त का कार्यालय

Office of the Commissioner

केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय

Central GST, Appeals Ahmedabad Commissionerate  
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी, अहमदाबाद-380015

GST Bhavan, Ambawadi, Ahmedabad-380015

Phone: 079-26305065 - Fax: 079-26305136

E-Mail : [commrappl1-cexamd@nic.in](mailto:commrappl1-cexamd@nic.in)

Website : [www.cgstappealahmedabad.gov.in](http://www.cgstappealahmedabad.gov.in)



आज़ादी का  
अमृत महोत्सव

**By SPEED POST**

DIN:- 20231264SW000000AB1E

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|-----|---|---|
| (क) | फ़ाइल संख्या / File No.   | GAPPL/COM/STP/2230/2023 / 4777-81   |
| (ख) | अपील आदेश संख्या और दिनांक / Order-In -Appeal and date  | AHM-EXCUS-002-APP-160/23-24 and 06.12.2023  |
| (ग) | पारित किया गया / Passed By  | श्री ज्ञानचंद जैन, आयुक्त (अपील)<br>Shri Gyan Chand Jain, Commissioner (Appeals)        |
| (घ) | जारी करने की दिनांक / Date of Issue   | 28.12.2023  |
| (ङ) | Arising out of Order-In-Original No. GST-06/D-VI/O&A/497/YALAN/AM/2022-23 dated 20.1.2023 passed by The The Assistant Commissioner, CGST Division-VI, Ahmedabad North |   |
| (च) | अपीलकर्ता का नाम और पता / Name and Address of the Appellant   | Yalan Salon<br>126, Orchid Centre Opp. Safal Parisar 1 & 2, Bopal<br>Ahmedabad - 380058 |

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:-

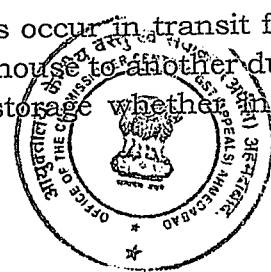
**Revision application to Government of India:**

(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, 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 प्रक्रिया के दौरान हुई हो।

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



(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

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

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

(घ) अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं 2) 1998 धारा 109 द्वारा नियुक्त किए गए 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 रूपये या उससे कम होतो रूपये 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.

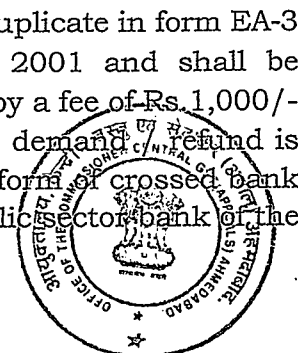
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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-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 or refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the



place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची -1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रू 6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) एके प्रति 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।

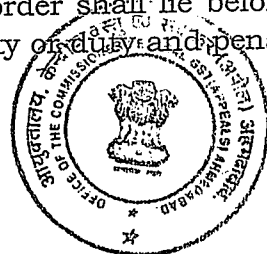
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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



ORDER-IN-APPEAL

The present appeal has been filed by M/s. Yalan Salon, 126, Orchid Centre, Opp. Safal Parisar 1 & 2, Bopal, Ahmedabad - 380058(hereinafter referred to as "the appellant") against Order-in-Original No. GST-06/D-VI/O&A/497/YALAN/AM/2022-23 dated 20.01.2023(hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, CGST Division-VI, 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. AABFY3428K. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the Financial Year 2016-17, it was noticed that the appellant had earned an income of Rs. 18,86,741/- during the FY 2016-17, which was reflected under the heads "Sales / Gross Receipts from 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 were called upon to submit copies of Balance Sheet, Profit & Loss Account, Income Tax Return, Form 26AS, for the said period. However, the appellant had not responded to the letters issued by the department.

2.1 Subsequently, the appellant were issued Show Cause Notice No. CGST-06/04-1470/O&A/Yalan Salon/2020-21 dated 18.10.2021 demanding Service Tax amounting to Rs. 2,83,011/- for the period FY 2016-17, 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; recovery of late fees under Rule 7C of the Service Tax Rules, 1994; and imposition of penalties under Section 77 & Section 78 of the Finance Act, 1994.

2.2 In response of the SCN they filed their submission vide letter dated 27.11.2021 wherein they submitted that they are engaged in the business of providing beauty care services at his salon they are also trading of salon products. Considering the submission not sufficient. the Show Cause Notice was adjudicated vide the impugned order by the adjudicating authority wherein the demand of Service Tax amounting to Rs. 2,83,011/- was confirmed under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994 along with Interest under Section 75 of the Finance Act, 1994 for the period from FY 2016-17. Further (i) Penalty of Rs. 2,83,011/- 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)(a) of the Finance Act, 1994 for failure to taking Service Tax Registration; and (iii)



Penalty of Rs. 40,000/- was imposed on the appellant under Section 70(1) of the Finance Act, 1994 for not furnishing service tax returns.

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

- The appellant submitted that they are professional Hairdresser and engaged in the business of providing salon service and also in trading of beauty & spa products. They also procured the material from outside vendors and earned the income tabulated as under:

| Sr. No. | Particulars            | Description      | 2015-16    | 2016-17     |
|---------|------------------------|------------------|------------|-------------|
| 1       | Sale of Salon products | Trading of goods | 2,89,366/- | 10,37,191/- |
| 2       | Salon Services         | Services         | 5,54,240/- | 8,49,550/-  |
|         | Total income           |                  | 8,43,606/- | 18,86,741/- |

They have furnished the sample copies of invoices. During the F.Y 2016-17, they have earned Rs. 10,37,191/- by trading of goods and the same is covered under Entry(e) of Negative list of service tax i.e. section 66D of the Finance Act,1994. For the remaining amount Rs. 8,49,550/-, the benefit of SSI exemption is available with them in terms of Noti. No 33/2012-ST dated 20.06.2012. Therefore, they are not liable to pay service tax. Further they submitted that at the time of filing ITR for the F.Y. 2016-17 , by mistake they have filled the whole amount in "Sale of Services".

- They submitted that the SCN is vague and cryptic and the adjudicating authority confirmed the demand in the impugned OIO which was not the part of the SCN. Therefore the same is not legally sustainable. They place reliance on the following case law:
  - Syndicate Bank Vs. Commissioner of Central Excise [2022] 137 taxmann.com 302 (Bangalore CESTAT)
  - M/s. Jeevan Diesels & Electricals Limited V. Commissioner of Central Excise, Customs & Service Tax, Bengaluru- III' - 2017 (2) TMI 58- KARNATAKA HIGH COURT,
- The SCN is issued barely on the basis of assumption without any verification of the actual facts of the appellant and position in the law. The demand raised in the SCN is factually wrong and legally incorrect. This is the violation of the CBIC Instructions



dated October 26, 2021. They contended that determining the service tax liability without establishing the nature of business activity and only on the basis of data received from Income tax department is not proper as per law. The adjudicating authority decided the matter without providing opportunity to explain the nature of service provided and without considering the submission made by them.

- The appellant submitted that demand raised on the basis of difference of data shared by the CBDT/income tax department and service tax returns, is not sustainable. They have place the reliance on the under case law:

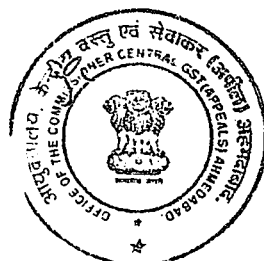
- (i) Faquir Chand Gulati vs. Uppal Agencies Pvt. Ltd. 2008 (12) S.T.R. 401 (S.C.),
- (ii) Kush Constructions Vs. CGST NACIN 2019 (24) GSTL 606 (Tri - All) ;

The appellant submitted that the demand confirmed without proper verification is not legal as per law and prayed that the appeal may be accepted and the OIO may be set aside in light of the above

4. Personal hearing in the case was held on 15.09.2023. Miss Madhu Jain, Advocate, appeared on behalf of the appellant for personal hearing. She reiterated submissions made in appeal memorandum and also submitted that the appellant deals in sale of salon products apart from salon services. She also furnished copy of sample invoices and requested to set aside the Impugned order.

Further, due to change in the appellate authority, Personal hearing in the case was again held on 05.12.2023. Miss Madhu Jain, Advocate, appeared on behalf of the appellant for personal hearing. She reiterated submissions made in appeal memorandum and also submitted the CA certificate that the total turnover of the services was less than the threshold limit, therefore the service tax is not applicable and requested to allow the appeal.

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 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 2016-17 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 reason or justification is seen 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 2016-17 and failed to get registered with the service tax department and filing ST-3 returns, the demand was raised. The same was also confirmed as the appellant couldn't submit the relevant document, the adjudicating authority confirmed the demand.

7. As per the appellant's submission for the F.Y 2016-17, they have earned Rs. 10,37,191/- by trading of goods and the same is covered under Entry(e) of Negative list of service tax i.e. section 66D of the Finance Act,1994. For the confirmation of the same the appellant has submitted the copies of sample sales bills of purchase/sale from/to its various vendors/customers. In favour their submission, the appellant has also submitted the copies 26AS from for F.Y 2016-17 in which it can be seen that no TDS has been deducted. From the above It appears that they are engaged in sale of sale/trading activity . Being trader, the appellant has not taken service tax registration. Trading goods is the activity of buying, selling, or exchanging goods or services between people, firms, or countries. It can also mean the sale of goods by way of business to buyers, traders, or processors and the same is exempted from the service tax as per the Clause (e) of the Section 66D of Finance Act, 1994 specifies the Negative list of services i.e. the Services on which Service Tax is not applicable. Section 66D is been inserted in Finance Act, 1994 by Finance Act, 2012 and been notified to be effective from 1st July 2012 vide Notification No. 19/2012-ST dated 5 June 2012.Relevant portion of the above is re-produced as under:

**66D. Negative list of services.** - *The negative list shall comprise of the following services, namely: -*

(a) *services by Government or a local authority excluding the following services to the extent they are not covered elsewhere -*

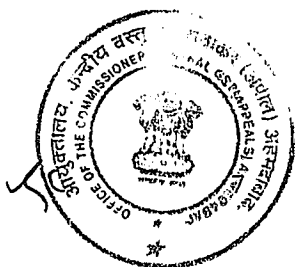
(b).....,

(c).....,

(d).....,

(e) *trading of goods;*

So once the activity falls within the meaning of any service provided in service tax negative list, the activity is out of service tax applicability. As they are engaged in sale/purchase i.e. trading activity, As per negative list [section 66D(e) ] of Finance Act,1994, service tax is not applicable.



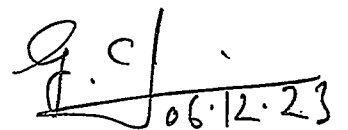
7.1 Further, As per the appellant's submission they have earned amount Rs. 8,49,550/- from the beauty service for which they have claimed the benefit of SSI exemption in terms of Noti. No 33/2012-ST dated 20.06.2012. They have submitted copy of "sales of service" Income Ledger & Invoices in support of their claim. As the total income from this taxable service is Rs. 8,49,550/- which is less than 10 lakhs threshold limit. The turnover in the preceding year was also below 10 lakhs. They have furnished the CA certificate in this regard also in support of their claim. Hence, the appellant appears to be eligible for small service provider exemption for the F.Y. 2016-17 as per Notification No. 33/2012-ST dated 20/06/2012. After considering the facts & submissions, I am of the considered opinion that, the contention of the appellant are sustainable.

8. 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 2016-17. 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.

9. 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 2016-17, 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.

10. अपील कर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

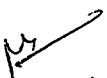
The appeal filed by the appellant stands disposed of in above terms.



(ज्ञानचंद जैन)

आयुक्त (अपील्स)

Attested

  
Manish Kumar  
Superintendent(Appeals),  
CGST, Ahmedabad

Date:





**By RPAD / SPEED POST**

To,

M/s. Yalan Salon,  
126, Orchid Centre,  
Opp. Safal Parisar 1 & 2, Bopal,  
Ahmedabad - 380058

Appellant

The Assistant Commissioner,  
CGST Division-VI,  
Ahmedabad North

Respondent

Copy to :

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Commissioner, CGST, Ahmedabad North
- 3) The Assistant Commissioner, CGST Division-VI, Ahmedabad North
- 4) The Assistant Commissioner (HQ System), CGST, Ahmedabad North

(for uploading the OIA)

- ✓ 5) Guard File
- 6) PAfile



