



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)



**By SPEED POST**

DIN:- 20240564SW00007707C4

(क)	फाइल संख्या / File No.	GAPPL/COM/STP/5161/2023 / ५१६१-२०२३
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-002-APP-08/2024-25 dated 24.04.2024
(ग)	पारित किया गया / Passed By	श्री ज्ञानचंद जैन, आयुक्त (अपील) Shri Gyan Chand Jain, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of Issue	02.05.2024
(ङ)	Arising out of Order-In-Original No. CGST/WT07/HG/1022/2022-23 dated 6.6.2023 passed by The Assistant Commissioner, CGST Division-VII, Ahmedabad North	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	Darshan Bakul & Associates 303, 3rd Floor, Narayan Complex Opp. Havmor Restaurant, Navrangpura Ahmedabad-380009

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:**

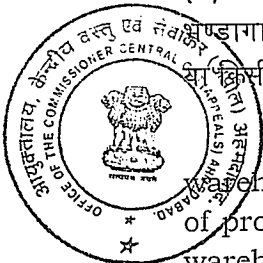
(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली: 110001 को की जानी चाहिए :-

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 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-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 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।

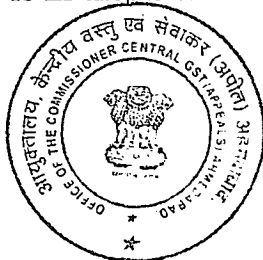
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

M/s. Darshan Bakul Associates, 303, 3<sup>rd</sup> Floor, Narayan Complex, Opp. Havmor Restaurant, Navrangpura, Ahmedabad-380009 (hereinafter referred to as '*the appellant*') have filed the present appeal against the Order-in-Original No. CGST/WT07/HG/1022/ 2022-23 dated 28.03.2023 (referred in short as '*impugned order*') passed by the Assistant Commissioner, Central GST, Division-VII, Ahmedabad North (hereinafter referred to as '*the adjudicating authority*'). The appellant is having Service Tax Registration No. AAGFD8757PSD001.

2. The facts of the case are that on the basis of the data received from the Central Board of Direct Taxes (CBDT) for the F.Y. 2015-16 & F.Y. 2016-17, it was noticed that the appellant has declared less taxable value in their ST-3 Return compared to the Sales / Gross Receipts from services shown in their ITR. Letters were issued seeking clarification and to produce evidences for the same. However, the appellant did not respond, therefore, the service tax liability of ₹2,06,965/- was quantified considering the differential income of ₹13,96,921/- as taxable income.

**Table-A**

F.Y.	Value shown in STR	Value shown in ITR	Value Difference in ITR & STR	S.Tax	Service tax payable
2015-16	21,10,940	26,25,508	5,14,568/-	14.5%	74,612/-
2016-17	27,21,832	36,04,185	8,82,353/-	15%	1,32,353/-
<b>TOTAL</b>	<b>48,32,772/-</b>	<b>62,29,693/-</b>	<b>13,96,921/-</b>		<b>2,06,965/-</b>

2.1 A Show Cause Notice (SCN) No. CGST/AR-I/Div-VII/A'bad North/TPDreg/66/2020-2021 dated 23.10.2020 was issued to the appellant proposing recovery of service tax amount of ₹2,06,965/-not paid on the differential income received during the F.Y. 2015-16 & F.Y. 2016-17 along with interest under Section 73(1) and Section 75 of the Finance Act, 1994, respectively. Penalties under Section 77 (1) (c) & 77(2) and Section 78 of the Finance Act, 1994 were also proposed.

3. The said SCN was adjudicated vide the impugned order, wherein the service tax demand of ₹2,06,965/- was confirmed alongwith interest. Penalty of ₹1000/-was imposed under Section 77(1)(a) & 77(1)(c) and also under Section 77(2). Penalty of ₹2,06,965/-was also imposed under Section 78.

4. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal, on the grounds elaborated below;

- The appellant is a Chartered Account by profession and is registered with the department. However, they have not ever received any Show Cause Notice at registered office address till date for which a notices for the personal hearing was been served to Appellant on 07-12-2022, 15-12-2022 and 29-12-2022.



- The adjudicating authority vide the impugned order has confirmed the demand of Service Tax amounting to ₹ 2,06,965/- on total income shown in ITR filed by the appellant towards providing service of "CHARTERED ACCOUNTANTS". However, the fact is that the show cause notice has never been served to Appellant within the stipulated period of time as mentioned in the law which is 18 months from the date of return filed which can be extended up to 5 year.
- All the three personal hearings were fixed within the time span of 14 days without considering any of our applications for providing the letter of show cause notice. The copy of SCN has not been provided to Appellant till date and therefore the demand of Service Tax amounting to ₹2,06,965/- itself is not maintainable, the demand of applicable interest and penalty imposed by the adjudicating authority amounting to ₹1,000/- under Section 77 (1) (a) & 77(1)(c) and ₹1,000/- under Section 77(2) of the Finance Act, 1994 is not sustainable and hence, required to be set aside for violation of natural justice.

5. Personal Hearing in the case was held on 12.03.2024. The appellant Shri Darshan B. Parikh, Chartered Accountant, appeared for personal hearing. He reiterated the contents of the written submission. Further, he requested for 10 days' time to submit additional submission.

5.1 The additional submission was filed on 21.03.2024 wherein following submissions were made;

- Before the issuance of SCN, they claim they have already made the payment of ₹50,000/- vide Challan No.03.08.2016. Therefore, such payment should be considered against duty payment and no interest should be charged.
- They provided a re-conciliation statement according to which the tax liability shall be ₹1173/- only. The details of income is as under;

**Table-B**

<i>Description</i>	<i>2015-16</i>	<i>2016-17</i>
<b>Gross Income as per ITR</b>	26,25,508/-	35,98,791/-
Reimbursement of ROC Fees paid on behalf of clients	1,40,470/-	1,31,410/-
<b>Net Income inclusive of S.Tax.</b>	24,85,038/-	34,67,651/-
<b>Income as per P&amp;L Account</b>	21,70,339/-	30,15,349/-
Add Service Tax	3,14,699/-	4,52,302/-
Total Income	24,85,038/-	34,67,651/-
Income as per P&L	21,70,339/-	30,15,349/-
Income as per STR	21,10,940/-	27,21,832/-
Short income as per STR	59,399/-	2,93,517/-
S.Tax payable	8,613/-	42,560/-
Total Tax payable for 2015-16 & 2016-17	51,173/-	
Unconsumed challan	50,000/-	
<b>Net tax payable</b>	<b>1,173/-</b>	

6. I have carefully gone through the facts of the case available on record, grounds of appeal in the appeal memorandum, oral submissions made during personal hearing, the impugned order passed by the adjudicating authority and other case records. The issue before me for decision in the present appeal is whether the demand of service tax



amounting to ₹2,06,965/- confirmed alongwith interest, and penalties vide the impugned order passed by the adjudicating authority in the facts and circumstances of the case is legal and proper or otherwise. The demand pertains to the period **F.Y. 2015-16 & 2016-17.**

**6.1** The appellant have claimed that as per their re-conciliation statement, in the ITR the gross income of ₹26,25,508/- & ₹35,98,791/- was shown in the F.Y. 2015-16 & F.Y. 2016-17 respectively. Further, they also claimed that out of the said incomes, ₹1,40,470/- & ₹1,31,410/- was reimbursement of ROC fees paid on behalf of their client hence needs to be deducted. Accordingly, they the net taxable income after said deduction shall come to ₹24,85,038/- & ₹34,67,651/-. They produced ledger of their client evidencing the above reimbursement. They also claim that as per P&L account their actual income is ₹21,70,339/- and ₹27,21,832/- only. The main contention of the appellant is that as per the re-conciliation statement provided the tax liability on differential income would be ₹51,173/-, out of which they have already made the payment of ₹50,000/-which needs to be adjusted against the said tax liability and thereafter the net tax required to be paid comes to ₹1,173/- only.

**6.2** It is observed that the entire demand of ₹2,06,965/- has been raised on the differential income noticed on re-conciliation of ITR and STR made by the department. On going through the ITR, it is observed that the appellant has shown following incomes;

**Table-C**

F.Y.	ITR	STR	Difference
2015-16	26,25,508 *	21,10,940	5,24,568
2016-17	36,04,185	27,21,832	8,82,353
		<b>TOTAL</b>	<b>13,96,921</b>

Thus, from the above, it appears that the appellant has shown different income in ITR and in P&L Account for the F.Y. 2015-16. For which they could not give any justification. Further, their contention that income for the F.Y. 2015-16 as per P&L account is ₹21,70,339/- is also misleading. The income shown in P&L account is ₹26,28,602/- and not ₹21,70,339/-, as is evident from the P&L account submitted by the appellant.

**6.3** As regards the contention that the income of ₹1,40,470/- & ₹1,31,410/- was reimbursement of ROC fees paid on behalf of their client hence needs to be deducted, appears to be justifiable. The appellant has submitted the ledgers showing the ROC Fees expenses incurred on behalf of their client. I, find that the said income ₹1,40,470/- & ₹1,31,410/- being reimbursed by their client, the same needs to be deducted.

**6.4** Further, the appellant have also claimed that they have made the payment of ₹50,000/- based on the overall re-conciliation conducted while undergoing tax audit as required under Income Tax provision, hence, the said payment should be adjusted against the present tax liability. I find that the payment of Rs.50,000/- made vide Challan No.50893 is not reflected in the ST-3 Returns filed for the F.Y. 2015-16 & 2016-17 hence the claim made by the appellant can be considered favourably.



Details are furnished below;

**TABLE-D**

	2015-16	Amount	2016-17	Amount
		t		t
A	Value as per ITR	2625508	Value as per ITR	3604185
B	Reimbursement Expenses	140470	Reimbursement Expenses	131410
C	Gross ITR Value after deduction	2485038	ITR Value after deduction	3472775
D	Service Tax included in the ITR value	314699	Service Tax included in the ITR value	452971
E	Net Taxable Value as per ITR	2170339	Net Taxable Value as per ITR	3019804
F	Taxable value declared in STR	2110940	Taxable value declared in STR	2721832
G	Differential Income liable for S.tax	59399	Differential Income liable for S.tax	297972
H	Service tax short paid	8613	Service tax short paid	44696
I	Total short payment for both the years			53309
J	Payment already made			50000
K	<b>Net Tax Liability</b>			<b>3309</b>

**6.5** Considering the above claims of the appellant and after granting cum tax benefit to them, I find that the net tax liability after adjusting the above payment shall arrive at ₹3,309/-. Accordingly, I find that the service tax demand of only ₹3,309/- is sustainable on merits. When the demand sustains there is no escape from the interest liability and the same is also recoverable.

**7.** The appellant has not declared the correct taxable value/income in the ST-3 return nor did they produce any evidence for such act. These acts thereby led to suppression of the value of taxable service and non-payment of service tax. All these acts undoubtedly bring out the will-ful mis-statement and fraud with intent to evade payment of service tax. Hence, I find that the extended period of limitation has been rightly invoked. If any of the circumstances referred to in Section 73(1) are established, the person liable to pay tax would also be liable to pay a penalty equal to the tax so determined above. Therefore, the appellant is also liable for equivalent penalty of ₹3,309/- under Section 78.

**8.** As regards, the penalty of Rs.1000/- imposed under Section 77 (1)(a) and Section 77(1)(c) is concerned; I find that the appellant is registered so Section 77(1)(a) shall not be applicable here but penalty under Section 77(1)(c) is imposable as the appellant had not provided the information sought by the proper officer. Hence shall be liable for penalty of Rs.1000/- under Section 77(1)(c). Likewise appellant is also liable for penalty of Rs.1000/- under Section 77(2) of the Finance Act, 1994.

**9.** In view of the above discussion and findings, I partially uphold the service tax demand of ₹3,309/- under proviso to Section 73(1) of the F.A., 1994 interest under



Section 75 of the F.A., 1994; penalties under Section 77(1)(c) & 77(2) and penalty of ₹3,309/- under Section 78 of the F.A., 1994.

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

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

*G.C.*  
24.04.24  
(मानचंदजेन)

आयुक्त(अपील्स)

Date: 24.4.2024

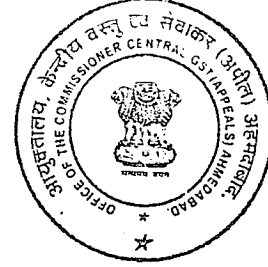
Attested

*रेखा*

(रेखा नायर)

अधीक्षक (अपील्स)

केंद्रीय जी. एस. टी, अहमदाबाद



**By RPAD/SPEED POST**

To,

M/s. Darshan Bakul Associates,  
303, 3<sup>rd</sup> Floor, Narayan Complex,  
Opp. Havmor Restaurant, Navrangpura,  
Ahmedabad-380009

**Appellant**

The Deputy/Assistant Commissioner  
CGST & Central Excise,  
Division-VII, Ahmedabad North

**Respondent**

**Copy to:**

1. The Principal Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Ahmedabad North.
3. The Assistant Commissioner (System), CGST, Appeals, Ahmedabad.

(For uploading the OIA)

4. Guard File.

