



सत्यमेव जयते

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- टेलीफैक्स 07926305136



DIN-202203645W000000D5FC

रजिस्टर्ड डाक/ए.डी. द्वारा

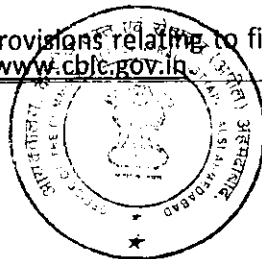
क फाइल संख्या : File No : GAPPL/ADC/GSTD/3/2021-APPEAL / 6563-88
 ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-130/2021-22**
 दिनांक Date : **02-03-2022** जारी करने की तारीख Date of Issue : **02-03-2022**
 श्री मिहिर रायका अपर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Mihir Rayka, Additional Commissioner (Appeals)

ग Arising out of Order-in-Original No. **WS06/Ref-195/SNL/MK/2019-20 DT. 09.12.2019**
 issued by Assistant Commissioner, CGST, Division VI, Ahmedabad South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Deputy Commissioner, CGST Division VI, Ahmedabad South

(A)	इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है। Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.
(i)	National Bench or Regional Bench of Appellate Tribunal framed under GST Act/CGST Act in the cases where one of the issues involved relates to place of supply as per Section 109(5) of CGST Act, 2017.
(ii)	State Bench or Area Bench of Appellate Tribunal framed under GST Act/CGST Act other than as mentioned in para- (A)(i) above in terms of Section 109(7) of CGST Act, 2017
(iii)	Appeal to the Appellate Tribunal shall be filed as prescribed under Rule 110 of CGST Rules, 2017 and shall be accompanied with a fee of Rs. One Thousand for every Rs. One Lakh of Tax or Input Tax Credit involved or the difference in Tax or Input Tax Credit involved or the amount of fine, fee or penalty determined in the order appealed against, subject to a maximum of Rs. Twenty-Five Thousand.
(B)	Appeal under Section 112(1) of CGST Act, 2017 to Appellate Tribunal shall be filed along with relevant documents either electronically or as may be notified by the Registrar, Appellate Tribunal in FORM GST APL-05, on common portal as prescribed under Rule 110 of CGST Rules, 2017, and shall be accompanied by a copy of the order appealed against within seven days of filing FORM GST APL-05 online.
(i)	Appeal to be filed before Appellate Tribunal under Section 112(8) of the CGST Act, 2017 after paying - (i) Full amount of Tax, Interest, Fine, Fee and Penalty arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to twenty five per cent of the remaining amount of Tax in dispute, in addition to the amount paid under Section 107(6) of CGST Act, 2017, arising from the said order, in relation to which the appeal has been filed.
(ii)	The Central Goods & Service Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019 has provided that the appeal to tribunal can be made within three months from the date of communication of Order or date on which the President or the State President, as the case may be, of the Appellate Tribunal enters office, whichever is later.
(C)	उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbic.gov.in को देख सकते हैं। For elaborate, detailed and latest provisions relating to filing of appeal to the appellate authority, the appellant may refer to the website www.cbic.gov.in



ORDER IN APPEAL

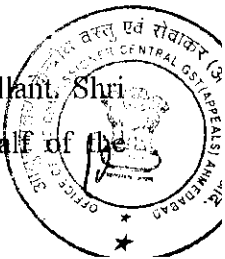
The Deputy Commissioner, CGST Division VI, Ahmedabad South (hereinafter referred to as 'the appellant') has filed present appeal on dated 13-1-2021 against OIO No.WS06/Ref-195/SNL/MK/2019-2020 dated 9-12-2019 (hereinafter referred to as 'the impugned order') passed by the Assistant Commissioner, CGST, Division VI, Ahmedabad South sanctioning refund of Rs.1,51,59,169/- to M/s.SNL Financial India Pvt.Ltd, SNL House, 5, Sunrise Park Society, Drive in road, Ahmedabad 380 054. (hereinafter referred to as 'the respondent').

2. Briefly stated the fact of the case is that the respondent filed refund claim for refund of Rs.1,51,59,169/- on account of 'export of services without payment of tax for the period July 2017 to December 2017. The respondent has determined the claim amount taking into account the turnover of zero rated supply of services and adjusted total turnover at Rs.24,28,56,722/- and net ITC at Rs.1,51,59,169/-. The adjudicating authority vide impugned order sanctioned refund to the respondent. During post audit it was observed that the adjudicating authority has considered the adjusted total turnover as Rs.24,28,56,722/- instead of Rs.74,18,58,188/- as per GSTR1 and GSTR3B returns and export turnover as Rs.24,28,56,722/- instead of Rs.24,14,91,506/- as per Statement 3 submitted by the appellant. Therefore the total refund amount should be Rs.49,34,650/- in place of refund of Rs.1,51,69,169/- sanctioned by the adjudicating authority and hence the adjudicating authority has wrongly sanctioned excess refund of Rs.1,02,24,519/- to the respondent, which is liable to recovered from the appellant.

3. In view of above, as authorized by the Principal Commissioner, CGST, Ahmedabad South the appellant filed the present appeal on the following grounds :

- i. That the adjudicating authority has wrongly taken an adjusted total turnover of Rs.24,28,56,722/- instead of Rs.74,18,58,188/- and export turnover as Rs.24,28,56,722/- instead of Rs.24,14,91,506/- as per reconciliation of GSTR3B and GSTR1 along with Statement 3 ;
- ii. The adjudicating authority has sanctioned excess refund of Rs.1,02,24,519/- which is liable to be recovered under Section 73 and 74 of CGST Act, 2017 ;
- iii. The adjudicating has erred in calculation of adjusted total turnover as per GSTR1 and GSTR3B and export turnover as per Statement 3 of CGST Rules 2017 for refund. The adjusted turnover calculated and submitted by the appellant is not admissible ;
- iv. The adjudicating authority has sanctioned excess refund of Rs.1,02,24,519/- which is not eligible to the appellant ;
- v. The adjudicating authority has erred in sanctioning excess refund to the respondent but not considering the adjusted turnover under Section 54 (1) of CGST Act, 2017 ;
- vi. In view of above the appellant prayed to set aside the impugned OIOs and to pass order directing the original authority to recover the amount erroneously refunded in excess to the respondent with interest.

4. Personal hearing was held on 13-1-2022. No one appeared on behalf of the appellant. Shri Arihant Sipani and Shri Ishant Jain from M/s.Ernst and Young LLP appeared on behalf of the



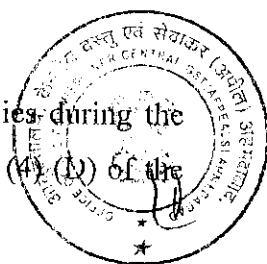
respondent. They have asked for adjournment after 24th January 2021 to file reply along with authority letter to appear. Accordingly via email dated 13-1-2022 filed additional submissions as under :

A) Zero rated turnover is correctly calculated :

- i. It has been alleged that in the captioned refund application, INR 24,28,56,722/- was considered as zero rated turnover instead of INR 24,14,91,506/- per reconciliation of GSTR3B and GSTR1 along with Statement 3 ;
- ii. At the outset it is submitted that in terms of Rule 89 (4) (D) of the CGST Rules, 2017 zero rated supply of service inter alia means the aggregate of the payments received during the relevant period. As per said Rule, it is amply clear that for the purpose of computing zero rated turnover for arriving at the refund amount in terms of Rule 89 (4) (D) of the CGST Rules, the aggregate of the payment received during the relevant period is to be considered. Further as there is no mention of date of issue of invoice, hence the invoice date is of no relevance in the formula for calculating the refund amount. Accordingly the Company has rightly considered zero rated supply of service as the aggregate of the payments received during the relevant period.
- iii. In this regard, as against invoice value of Rs.24,14,91,506/-, they had received payment of Rs.24,28,56,722/- (FIRC amount) during the claim period, July 2017 to December 2017.
- iv. Relying on the decision in the case of M/s.Relationship Science India Pvt.ltd Vs Assistant Commissioner, CGST, Perungudi Division 2021 (7) TMI 1115, they contended that basis of above legal provisions and juris prudence it is clear that the Company has rightly calculated the zero rated turnover as per the payment received during the relevant period of refund claim in terms of Rule 89 (4) (D) of CGST Rules, 2017.

B) Adjusted total turnover is calculated correctly :

- i. The Company has rightly calculated adjusted total turnover in accordance with Rule 89 (4) (E) of CGST Rules, 2017.
 - a. (E) Adjusted total turnover means the sum total of the value of –
 - b. a.....
 - c. b the turnover of zero rated supply of services determined in terms of clause (D) above and non zero rated supply of services...”
- ii. In view of above it is clear that the adjusted total turnover inter alia include the zero rated turnover as determined in terms of clause D of Rule 89 (4) of the CGST Rules and shall not be considered as per GSTR1 or GSTR3B.
- iii. Further the Company does not have any supplies other than zero rated supplies during the relevant period. Thus the value of zero rated turnover as computed in Rule 89 (4) (D) of the CGST Rules shall be considered as adjusted total turnover.

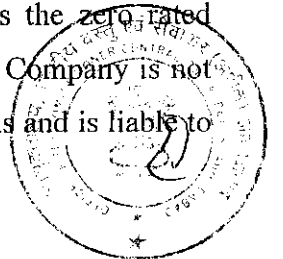


- iv. In view of above it is clear that the values considered in the refund computation are correct and within the realms of the GST Law. Accordingly in the instant case the adjusted total turnover is Rs.24,28,56,722/- and the zero rated turnover is also Rs.24,28,56,722/-.
- v. Hence the Company has rightly calculated adjusted total turnover by including the export proceeds realized during the relevant period. Accordingly the allegation that the adjusted total turnover is to be computed basis from GSTR3B and GSTR1 is without any basis and is liable to be set aside.
- vi. On the basis of above submissions it is clear that the refund claim sanctioned to the Company is within the realm of the GST Law and the allegation raised in the appeal does not have any basis and is liable to be set aside.
- vii. They also requested for another personal hearing.

5. Another personal hearing was held on dated 18-2-2022. No one appeared on behalf of the appellant. Shri Ishant Jain and Shri Arihand Sipani appeared on behalf of the respondent on virtual mode. They stated that they want to make additional submission and therefore three working days are given to do to.

6. Accordingly, via email dated 21-2-2022 the respondent made additional submission as under :

- i. That they had made detailed submission vide letter dated 13-1-2022, wherein it was explained that the refund claim has been correctly sanctioned to the Company. Further during the personal hearing held on dated 18-2-2022, the Company has reiterated their earlier submission and made the following additional submission as provided in the ensuing paragraph which is independent and without prejudice to the earlier submission made by the Company.
- ii. That the Company has made only zero rated supply of services and does not have any non zero rated supplies (domestic supplies) during the relevant period ;
- iii. Assuming without admitting that the calculation of zero rated supplies made by the appellant is correct, it is submitted that then also as per Rule 89 (4) (E) of CGST Rules, the adjusted total turnover shall be equal to the zero rated supplies as the Company has made only export of services during the refund period. Accordingly the refund amount in respect to the net ITC considered in the refund application shall not be affected as per definition of adjusted turnover provided under Rule 89 (4) (E) of CGST Rules, 2017. On comparing the turnover of zero rated supply of services and adjusted total turnover as per original refund application and revised considering zero rated supplies as per the appellant the refund amount comes to Rs.1,51,51,969/-. Therefore it is clear that even if the Company considers the zero rated turnover as per the appellant, then also the refund amount sanctioned to the Company is not affected. Therefore, the allegation raised in the appeal does not have any basis and is liable to



be set aside. The Company further requested your goodself to take the instant submission on record and grant them an opportunity of being heard before passing any adverse order.

7. I have carefully gone through the facts of the case, grounds of appeal, submissions made by the respondent and documents available on record. I find that subject appeal was filed to set aside the impugned order and for recovery of excess refund of Rs.1,02,24,519/- sanctioned to the respondent on the ground that refund was erroneously sanctioned to the respondent. The ground taken in appeal is mainly disputing turnover of zero rated supply of services and total adjusted turnover taken by the adjudicating authority for calculation of claim amount. The adjudicating authority has taken the turnover of zero rated supply of services at Rs.24,28,56,722/-, whereas the appellant has taken the invoice value of Rs.24,14,9,506/- issued for zero rated supply made during the claim period as per Statement 3 submitted with the refund claim. Similarly the adjudicating authority has taken adjusted turnover value of Rs.24,28,56,722/- whereas the appellant has considered value of Rs.74,18,58,188/- as per value of supplies shown in GSTR1 and GSTR3B returns. However there is no dispute with regard to Net ITC which is taken by both the adjudicating authority and appellant at Rs.1,51,59,169/-. Taking into account the value of above, the admissible refund is arrived at Rs.49,34,650/- instead of Rs.1,51,59,169/- claimed and sanctioned to the respondent and accordingly the subject appeal was filed for recovery of excess refund of Rs.1,02,24,519/- sanctioned to the respondent along with interest.

8. In this case refund was claimed for refund of ITC on account of export of services without payment of tax for the period July 2017 to December 2017. As per Section 16 of IGST Act, 2017 such supplies are termed as 'zero rated supply'. The refund in such cases are governed under Rule 89 (4) of CGST Rules, 2017 as per which the admissible refund is to be determined by applying the following formula :

$$\frac{\text{Turnover of zero rated supply of goods} + \text{Turnover of zero rated supply of service} \times \text{Net ITC}}{\text{Adjusted total turnover}}$$

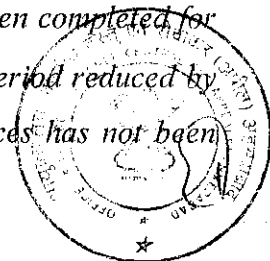
9. Before proceedings on merit of the case, for correct appreciation of facts, I refer to the definition of terms related to the issue given under Rule 89 (4) as under :

The turnover of zero rated supply of services is defined under clause (D)

"Turnover of zero-rated supply of services" means the value of zero-rated supply of services made without payment of tax under bond or letter of undertaking, calculated in the following manner, namely:-

Zero-rated supply of services is the aggregate of the payments received during the relevant period for zero-rated supply of services and zero-rated supply of services where supply has been completed for which payment had been received in advance in any period prior to the relevant period reduced by advances received for zero-rated supply of services for which the supply of services has not been completed during the relevant period;

Net ITC is defined under clause (B):



"Net ITC" means input tax credit availed on inputs and input services during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both;

Adjusted total turnover is defined under clause (E)

"Adjusted Total Turnover" means the sum total of the value of-

(a) the turnover in a State or a Union territory, as defined under clause (112) of section 2, excluding the turnover of services; and

(b) the turnover of zero-rated supply of services determined in terms of clause (D) above and non-zero-rated supply of services, excluding-

(i) the value of exempt supplies other than zero-rated supplies; and

(ii) the turnover of supplies in respect of which refund is claimed under sub-rule (4A) or sub-rule (4B) or both, if any, during the relevant period.'

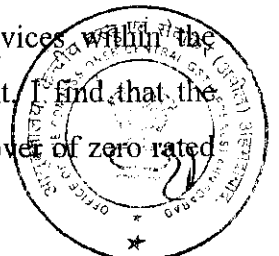
"Relevant period" is defined under clause (F)

The period for which the claim has been filed.

Turnover in State or turnover in Union territory defined under sub-section (112) of Section 2 of CGST Act 2017:

"Turnover in State or turnover in Union territory" means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis) and exempt supplies made within a State or Union territory by a taxable person, exports of goods or services or both and inter State supplies of goods or services or both made from the State or Union territory by the said taxable person but excludes central tax, State tax, Union territory tax, integrated tax and cess"

10. I, find that dispute in this case is mainly disputing the value of turnover of zero rated supply of services and adjusted total turnover. At the outset I take up the issue of value of turnover of zero rated supply of services. As per definition given under clause (D) above, the turnover of zero rated supply of services is the aggregate of payment, including advances, received during the relevant period for zero rated supply of services. Thus the decision factor is the receipt of payment received during the claim period for zero rated supply of services. In the subject case, refund claim was filed for the period July 2017 to December 2017 and hence as per definition of turnover of zero rated supply given under clause (D) the payment received during the claim period for zero rated supply is to be considered. The respondent has claimed refund taking into account the turnover of zero rated supply at Rs.24,28,56,722/- which was accepted by the adjudicating authority for sanction of refund. However the appellant in their ground of appeal stated the value of invoices issued during the claim period which comes to Rs.24,14,91,506/- should only be considered for calculation of refund claim. Countering the same, the respondent in their submission contended that during the claim period they had received payment of Rs.24,28,56,722/- against zero rated supply made during the claim period and hence this amount should be taken as turnover of zero rated supply of services within the definition given under clause (D). I find force in the contention of the respondent. I find that the invoice value taken by the appellant is factually wrong inasmuch definition of turnover of zero rated

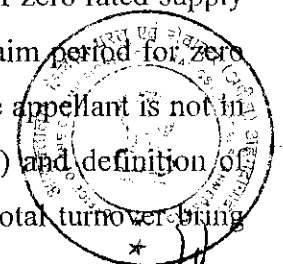


supply envisage aggregate of payment received during the claim period against zero rated supply and not the value of invoice issued during the claim period. Therefore, I find that the interpretation of the appellant is factually wrong and hence the ground made by the appellant in this regard is not tenable and acceptable.

11. Regarding adjusted total turnover value, as per definition given under clause (E), "Adjusted Total Turnover" is the aggregate value of "Turnover in a State or Union Territory", as defined in Section 2(112) of CGST Act and turnover of zero-rated supply of services determined in terms of clause (D) and non-zero rated supply of services excluding turnover value services and value of supplies under clause (b) (i) and (ii). The "Turnover in a State or Union Territory" defined in Section 2(112) of CGST Act, covers aggregate value of all interstate and intra state supply of taxable/exempt goods and services and also exports goods and services. Among them, the value of services and value of supplies under clause (b) (i) and (ii) are excluded in the definition of adjusted total turnover. The net effect is that the adjusted total turnover will cover only the aggregate of value of all kind of supply of goods plus value of zero rated supply determined in terms of clause (D) and value of non zero rated supply of services. Therefore so far as supply of zero rated supply of services is concerned only the value of zero rated supply determined in terms of clause (D) of Rule 89 (4) will count and not the entire value of zero rated supply.

12. I have verified GSTR3B returns filed by the respondent for the period July 2017 to December 2017 (hereinafter referred as claim period) and find that during claim period, the entire supply was made under zero rated outward supply and no non zero rated supply was made by the respondent. The total value of zero rated supply made by the respondent was Rs.74,18,58,185/-. I further notice that the respondent is registered under GST for supply of services as service provider only. Besides nothing is bought on record indicating that the respondent has made either zero rated supply of goods or non zero rated supply of services. Since there was no supply of goods or non zero rated supply of services made during the claim period, the turnover of zero rated supply determined as per clause (D) only will form part of adjusted turnover. Obviously, in such instance both the turnover value of zero rated supply of services and adjusted total turnover will be same.

13. I find that in the subject appeal the appellant has arrived the admissible refund at Rs.49,34,650/- taking into account the adjusted total turnover as Rs.74,18,58,188/- which is the value of zero rated supply made by the appellant during the claim period as per GSTR3B and GSTR 1 returns. Apparently this value represent the total value of zero rated supply made during the claim period. Similarly turnover of zero rated supply of services was taken by the appellant at Rs.24,14,91,506/- as invoice value. Countering the same, the respondent made submission that only the value of zero rated supply determined in terms of clause (D) of Rule 89 (4) only need to be taken towards adjusted turnover which in their case is Rs.24,28,56,722/- and turnover of zero rated supply is to be taken at Rs.24,28,56,722/- which is the total payment received during claim period for zero rated supply. In this regard I find that this adoption of respective turnover by the appellant is not in consonance with the definition of adjusted total turnover given under clause (E) and definition of turnover of zero rated supply given under clause (D) inasmuch as the adjusted total turnover being

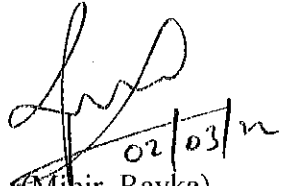


into its fold only the turnover of zero rated supply of services determined in terms of clause (D) of Rule 89 (4) and not the entire value of zero rated supply made during the claim period and turnover of zero rated supply is defined to mean the aggregated of payment received for zero rated supply and not the invoice value. Therefore, I find force in the submission made by the respondent that both the turnover of zero rated supply and adjusted turnover will be turnover of zero rated supply determined as per clause (D) and will remain same in their case. Accordingly, I find that admissible refund amount arrived by the appellant at Rs.49,34,650/- taking into account turnover of zero rated supply of services at Rs.24,14,91,506/- and adjusted total turnover at Rs. 74,18,58,188/- is not in line with the statutory provisions and hence legally untenable and unsustainable on merit. The respondent in their additional submission also put forth the submission that even by considering the turnover of zero rated supply at Rs.24,14,91,506/- it will not affect the quantum of refund sanctioned to them. I also notice that since there is no supply of goods or non zero rated supply of services made in the claim period and the net ITC is taken at Rs.1,51,51,169/-, the turnover of zero rated supply of services determined as per clause (D) by the appellant at Rs.24,14,91,506/- will only come into the formula towards turnover of zero rated supply of services and adjusted total turnover and in such instance the admissible refund will not get affected and remain at Rs.1,51,51,169/-.

14. In view of above discussion I find that the prayer made in appeal to set aside the impugned order and order recovery of excess refund sanction to the respondent on the ground that the adjudicating authority has erroneously sanctioned refund of Rs.1,02,24,519/- to the respondent is devoid of any merit and hence the appeal filed by the appellant is not legally sustainable. I further hold that the adjudicating authority has correctly sanctioned refund of Rs.1,51,51,169/- to the respondent taking into account the turnover of zero rated supply of services and adjusted total turnover at Rs.24,28,56,722/- which is in consonance with the definition of turnover of zero rated supply of services and adjusted total turnover given under clause (D) and (E) of Rule 89 (4). Therefore, I do not find any infirmity in the order passed by the adjudicating authority to set aside the same. I further hold that since the refund was correctly sanctioned to the respondent no recovery is required in this case. Accordingly, I upheld the impugned order and reject the appeal filed by the appellant.

अपील कर्थाद्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।


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

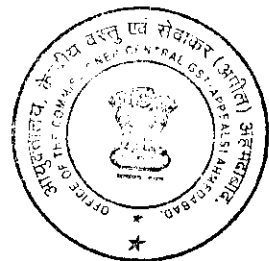

(Mihir Rayka)

Additional Commissioner (Appeals)

Date :

Attested


(Sankara Raman B.P.)
Superintendent
Central Tax (Appeals),
Ahmedabad



By RPAD,

To,
Deputy Commissioner,
CGST, Div-VI, 3rd Floor, APM Mall,
Near Seema Hall, Ananad Nagar Road,
Satellite, Ahmedabad-380015

Copy to :

- 1) The Principal Chief Commissioner, Central tax, Ahmedabad Zone
- 2) The Commissioner, CGST & Central Excise (Appeals), Ahmedabad
- 3) The Commissioner, CGST, Ahmedabad South
- 4) The Additional Commissioner, Central Tax (Systems), Ahmedabad South
- 5) SNL Financial India Pvt. Ltd. SNL House, 5, Sunrise Park Society, Drive in Road,
Ahmedabad-380054
- ~~6)~~ Guard File
- 7) PA file