



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

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टेलीफैक्स 07926305136



DIN-20230964SW0000000F98

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/1704-1707/2021 -APPEAL /5523- 28

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-JC-110/2023-24
दिनांक Date : 31.08.2023 जारी करने की तारीख Date of Issue : 11.09.2023

श्री आदेश कुमार जैन संयुक्त आयुक्त (अपील) द्वारा पारित

Passed by Shri Adesh Kumar Jain, Joint Commissioner (Appeals)

ग Arising out of Order-in-Original No ZJ2404230177852 dated 13.04.2023, ZH2401230270415 dated 22.01.2023, ZG2403230140795 dated 09.03.2023 and ZM2403230140873 dated 09.03.2023 issued by The Assistant Commissioner, CGST, Division-VIII, Ahmedabad South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

Appellant	Respondent
Malti Tarunkumar Shah of M/s. Maxim Exports, 708, Mauryansh Elanza, Nr. Parekhs Hospital, Shyamal Cross road, Satellite, Ahmedabad-380015 (GSTIN 24AKQPS8709Q1Z1)	The Assistant Commissioner of CGST, Division-VIII, Ahmedabad South

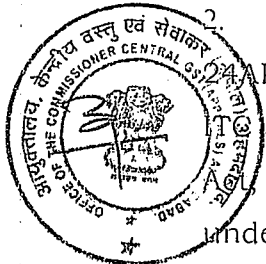
(A)	इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है। Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.
(i)	National Bench or Regional Bench of Appellate Tribunal framed 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 following appeals have been filed by Shri Malti Tarunkumar Shah of M/s. Maxim Expo rts, 708, Mauryansh Elanza Near Parekhs Hospital, Shyamal Cross Road, Satellite, Ahmedabad 380015 (hereinafter referred to as the appellant) against Refund Sanction/Rejection order in the form RFD-06 Orders (hereinafter referred as 'impugned orders') passed by the Assistant Commissioner, CGST & C. Ex., Division - VIII (Vejalpur), Ahmedabad South (hereinafter referred as 'Adjudicating Authority').

Sr. No.	Appeal No. & Date	RFD-06 Order No. & Date	ARN No. & Date	Turnover as per Invoice	Turnover as per SB	Difference Amount of Refund Rejected Rs.
1	2	3	4	5	6	7
1	GAPPL/ADC/GSTD/1704/2021-Appeal	ZJ2404230177852 13.04.2023	AD2405230154687 27.05.2023	77184713	68338338	311153
2	GAPPL/ADC/GSTD/1705/2021-Appeal	ZH2401230270415 22.01.2023	AD2405230118089 22.05.2023	98762144	98210596	501572
3	GAPPL/ADC/GSTD/1706/2021-Appeal	ZG2403230140795 09.03.2023	AD240523015444H 27.05.2023	37844635	32293878	230171
4	GAPPL/ADC/GSTD/1707/2021-Appeal	ZM2403230140873 09.03.2023	AD240523015455E 27.05.2023	28967886	22262154	265302



Briefly stated the facts of the case is the appellant registered under GSTN KQPS8709Q1Z1 has filed the above tabulated refund claims on account of accumulated due to export of goods/services under Section 54(3) of CGST Act, 2017. The appellant was issued SCNs in all the above four refund claims under reference no. and date (i) ZF2404230002407 - 01.04.2023 (ii) ZM2401230007204 - 02.01.2023 (iii) ZH2402230295016 - 21.02.2023 and (iv) ZL2402230295027 - 21.02.2023 respectively, for rejection of claims on the following grounds:

As per para 47 of Circular No.125/44/2019-GST dated 18.09.2019 it was clarified that on verification of refund claim it has been observed that the appellant has taken zero rated value as the value of Invoice value of the amounts shown at col.5 instead of lower of the two values between shipping bill value as per Icegate site which is as shown in at col.6 above and accordingly, the maximum admissible refund in respect of all the four refund claims comes to Rs.24,03,662/-, Rs.15,39,019, Rs.13,39,119 and Rs.8,44,912 respectively, and hence the appellant has claimed excess refund of Rs. 3,11,153/-, Rs. 5,01,572, Rs.2,30,171 and Rs.2,65,302/- respectively.

3. The appellant has filed reply to show cause notice in Form RFD 09

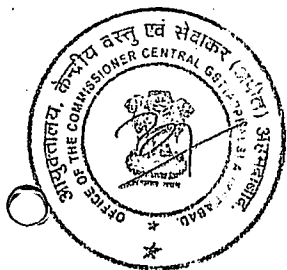
reference No. (i) ZF2404230002407 dated 10.04.2023, (ii) ZM2401230007204 dated 6.03.2023 (iii) ZM2401230007204 dated 18.01.2023 respectively. The adjudicating authority vide impugned order held that refund amounting to as per column 5 of the tabulation is inadmissible and sanctioned refund amounting to as per column 6 above in all the four appeals filed by the appellant, on the grounds mentioned in respective show cause notices.

4. Being aggrieved with rejection of claim amounts as at column 7 of the tabulation at para 1 above, the appellant filed the present appeal on the following grounds:

- i. As the export transactions being zero rated supplies under LUT, they are entitled to receive the refund. Further, the adjudicating authority had not considered various submissions made by the appellant and overlooked them.
- ii. They relied upon the case law of Cyril Lasardo (Dead) V/s Juliana Maria Lasarado 2004(7) SCC 431 whereby the Hon'ble Apex Court has held as under;
"11. Reasons introduce clarity in an order. On plainest reading and consideration of justice, the High Court ought to have set forth its reasons, howsoever brief, in its order indicative of an application of its mind, all the more when its order is amendable to further avenue of challenge. The absence of reasons has rendered the High Court's judgement not sustainable"

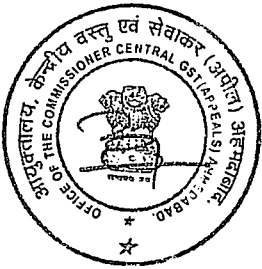
Also the appellant has relied upon the recent decision of the Supreme Court in the case of Assistant Commissioner, Commercial Tax Department Vs Shukla & Brothers reported at 2010 (254) ELT 6 (SC)-2011 (22) STR 105 (SC) wherein the court observed as under:

"9..... In our view, it would neither be permissible nor possible to state as a principle of law, that while exercising power of judicial review on administrative action and more particularly judgement of courts in appeal before the higher court, providing of reasons can never be dispensed with. The doctrine of audi alteram partem has three basic essentials. Firstly, a person against whom an order is required to be



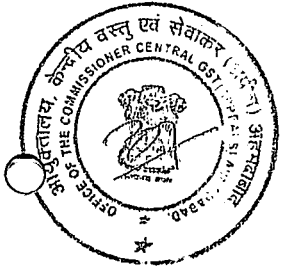
passed or whose rights are likely to be affected adversely must be granted an opportunity to being heard. Secondly, the concerned authority should provide a fair and transparent procedure and lastly, the authority concerned must apply its mind and dispose of the matter by a reasoned or speaking order. This has never been uniformly applied by courts in India and Abroad.”

- iii. The appellant submit that since, the impugned order, being a non-speaking order, has been passed in gross violation of principles of equity, fair play and natural justice and needs to be set aside on this ground alone.
- iv. By relying on the para 47 of circular no. 125/44/2019-GST dated 18.11.2019 and notification no.14/22 dated 05.07.2022, the Adjudicating authority had denied the partial refund amounts as in col.7 of the tabulation as in para 1 above. As per para 47 of circular no.125/44/2019-GST dated 18.11.2019 is concerned that the export of goods or services, i.e., zero-rated supplies are to be effected under GST laws, and thereby the value of supply shall be the invoice value (transaction value). Further submitted that in the said refund circular, nowhere it refers to FOB value to be compared with taxable value mentioned in export invoice for sanction of refund claim. As far as expenditure incurred to the extent of Freight shall be part of value of supply in terms of Section 15 of CGST Act, 2019.
- v. The value of goods and services were determined under Section 15 of the CGST Act, 2017 which is even made applicable to IGST Act vide Section 20 of IGST Act 2017 deals with valuation.
- vi. As per Section 15 of CGST Act, 2017, it is evident that the value of supply of goods or services is the transaction value, which is defined under the statute itself. It is clear from the above that in case of export of goods under C&F contracts the actual price paid by the recipient to the suppliers (exporter) for the said supply is the transaction value, which is nothing other than the value of the supply. Since Section 7 of IGST Act, 2017 treats exports and importers as inter-state supplies, the value should be strictly made as per the provisions of GST.
- vii. Further, Free on Board means the value of goods at the time of Board, and C & F means Cost & Freight, ie. value of goods at the time of delivery to receiptent's port, which includes the cost of transportation. As per the agreements entered with the customers,



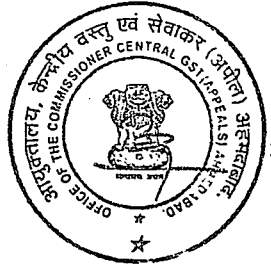
different exporters (suppliers) adopt different transactions and raise invoices for agreed transaction. As far as C&F contracts are concerned, the recipient pays the price mentioned in the invoice including sea, freight charges to his exporter for the supply of goods.

- viii. In some instances, exporter raised invoices in advance and export the goods at a later period. In such cases the value declared in (he invoices and in shipping bill may vary due to change in exchange rates. For the purpose of refund lower of (he value ie value mentioned in the GST invoice and invoice value mentioned in the shipping *bill shall* be taken into account. In any case FOB value shall not be taken as the value of supply in respect of CIF contracts. They are engaged in FOB transactions as well as GIF transactions.
- ix. The value mentioned in the shipping bill is derived from export invoice only. The values shall always match what is mentioned in the shipping bill and export invoice therefore the aggregated turnover shall be value reported in the shipping bill and export invoice.
- x. The adjudicating authority has considered the zero rated value as referred at the ICEGATE website for ascertaining the refund claim. There is no provision under GST Law for referring value appearing in the website for purpose of assessment of refund claim. The verification of ICEGATE website for the purpose of ascertaining authenticity of shipping bill pertaining to refund not considering the zero rated value for assessment of refund.
- xi. As far as GST law is concerned valuation of a supply, both DTA sales (supply within India) and Expot of goods is governed under Section 15 of the CGST Act, 2017 only. In other words, there is no separate legal provision for valuation with regard to export of goods. As per clause © of section 15(2) of CGST Act, 2017 incidental expenses before deliver of goods shall form part of value of such supply.
- xii. In the shipping bills two values have to be declared by the exporter ie FOB value and invoice value. The exporter needs to declare the value of goods at the time of export in FOB column and the actual transaction value (the amount that is actually going to be received from his customer) in invoice value column.



xiii. The Department of Delhi Customs has issued a FAQ on refund of IGST on goods export out of India, wherein in answer to question No. 16 it was stated that after the implementation of GST, it was explained in the advisories that the details an exporter is required to enter in the invoice column while filing the SB pertains to the invoice issued by him compliant to GST Invoice Rules. The invoice number shall be matched with GSTIN to validate exports and IGST payment. It was conveyed and reiterated that there should not be any difference between commercial invoice and GST invoice after implementation of GST since as per GST Law, IGST is to be paid on the actual transaction value of the supply between the exporter and consignee which should be the same as the one declared in the commercial invoice.

xiv. The appellant relied upon the judgment in the case of M/s.Ashapura Overseas Pvt.ltd ; wherein it was held that value of supply of goods shall be transaction value as per Section 15 of CGST Act, 2017. Further it was held that pursuant to Rule 89 of CGST Rules, 2017 provision of refund of unutilized ITC envisage value of the goods and not FOB.



xv. That they are entitled to full refund amount of as per column 6 tabulated under para 1 above in respect of all the four claims, in accordance of GST Law as claimed in application.

xvi. In view of above submission the appellant requested to accept their submission ; to quash the impugned order to the extent of rejection of refund as per column 7 tabulated under para 1.

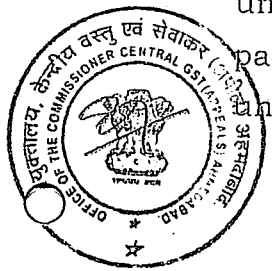
5. Personal hearing was held on 28.07.2023, whereby Mr. Ranjeet Gehlot, C.A. and authorized representative of the appellant appeared on behalf of them and reiterated the written submission. He further submitted that two different values for export have been taken by the Ld. Assistant Commissioner which is not in conformity to definition of Export values under rule 89(4) of CGST Rules. He further submitted that two different values of export in the formula for numerator and denominator cannot be adopted. Value of export

should be taken as per rule 89(4) only and requested to allow appeal in all the four refund claims, which are tabulated at para 1 above.

6. I have carefully gone through the facts of the case, grounds of appeal, submissions made by the appellant and documents available on record. I find that the present appeal was filed to set aside the impugned order on the ground that the adjudicating authority has wrongly considered FOB value as per shipping bill for turnover of zero rated supply of goods instead of transaction value and thereby wrongly rejected refund to the extent of Rs. 3,11,153/-, Rs. 5,01,572/-, Rs.2,30,171/- and Rs.2,65,302/- respectively to the appellant in respect of all the four claims filed by them.

7. As per Section 15 of CGST Act, 2017 the value of taxable supply of goods is transaction value which is actually paid or payable and includes all related expenses, ie any amount charged by the supplier on supply of goods form part of transaction value. Under Section 7 of IGST Act, 2017 export of goods is considered as inter-state supply and as per Section 20 of IGST Act, 2017, the provisions of CGST Act, 2017 relating to time and value of supply is also made applicable to integrated tax under IGST Act, 2017. Concurrent reading of above statutory provisions leads that in case of export of goods the value of goods charged in the invoices and paid by the recipient of goods is the transaction value of export goods and hence this value needs to be taken towards turnover of zero rated supply of goods in the formula prescribed under Rule 89 (4) of CGST Rules, 2017. However, I find that CBIC in para 47 of Circular No. 125/44/2019-GST 18-11 -2019 has clarified as under:

47. It has also been brought to the notice of the Board that in certain cases, where the refund of unutilized input tax credit on account of export of goods is claimed and the value declared in the tax invoice is different from the export value declared in the corresponding shipping bill under the Customs Act, refund claims are not being processed. The matter has been examined and it is clarified that the zero-rated supply of goods is effected under the provisions of the GST laws. An exporter, at the time of supply of goods declares that the goods are meant for export and the same is done under an invoice issued under rule 46 of the CGST Rules. The value recorded in the GST invoice should normally be the transaction value as determined under section 15 of the CGST Act read with the rules made there under. The same transaction value should normally be recorded in the corresponding shipping bill/bill of export. During the processing of the refund claim, the value of the



goods declared in the GST invoice and the value in the corresponding shipping bill/bill of export should be examined and (he lower of the two values should be taken into account while calculating the eligible amount of refund.

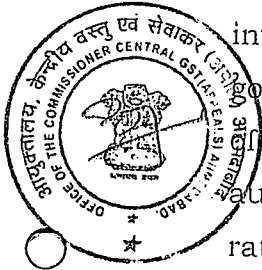
8. The aforesaid Circular clarifies that in case of claim made for refund of unutilized ITC on account of export of goods where there is difference in value declared in tax invoice i.e between transaction value under Section 15 of CGST Act, 2017 and export value declared in corresponding shipping bill, the lower of the two value should be taken into account while calculating the eligible amount of refund. The Circular further clarifies that in normal cases the transaction value (invoice value) should also be recorded in shipping bills, but only in case of any difference in value declared in shipping bill with invoice value, the lower value should be taken for calculating the eligible amount of refund. Thus, the Circular envisage a situation where value of goods as per invoice was less than value as per shipping bill and vice versa. In the subject case the appellant has taken invoice value towards turnover of zero rated supply of goods whereas the adjudicating authority has taken FOB shipping bill which was lower than the goods. In this regard, on scrutiny of sample copy of invoices and corresponding shipping bills submitted in appeal, I find that in some of invoices the appellant has supplied goods on cost basis and under some of invoices supplied the goods charging cost and freight in USD/INR terms. On correlating the invoices with corresponding shipping bills I find that cost and freight as per invoices and FOB and freight in shipping bill are same in USD and more or less same in INR as under:

Invoice Number and date	Cost as per invoice USD/INR	Freight as per Invoice	Total as per Invoice USD/INR	Shipping Bill No. and date	FOB value as per shipping Bill taken in
MA/SA/420 02-01-2023	14037/ 1148251	0	14037/ 1148251	6638187/ 02-01-2023	14037/ 1148251
MA/SA/421 02-01-2023	13729.50/ 1123073	0	13729.50/ 1123073	6644810/ 02-01-2023	13729.50/ 1123073
MA/SA/344 06-10-2022	8689.20/ 683840	3200/ 251840	11889.20/ 935680	4656231/ 06-10-2022	8689.2/ 683840
MA/SA/341 05-10-2022	7813/ 614881	3200/ 251840	11013/ 866721	4645277/ 06-10-2022	7813/ 614881

MA/SA/367	7782/ 02-11-2022	2550/ 639680	10332/ 209610	5209344/ 849267	7782/ 02-11-2022	639680
MA/SA/368	10072/ 02-11-2022	2250/ 827918	12622/ 209610	5216668/ 1037496	10072/ 03-11-2022	827918
MA/SA/397	7480/ 10-12-2022	2350/ 600644	9830/ 188705	6067920/ 789362	7480/ 10-12-2022	600644
MA/SA/399	46032/ 10-12-2022	11750/ 3696370	57782/ 943525	6067927/ 4639907	46032/ 10-12-2022	3696370

9. In view of above I find that there is no difference in value of goods as per export Invoices and FOB value as per shipping bills. I further find that in the impugned order FOB value was taken on verifying shipping bills in Icegate portal. However no data showing FOB value of shipping bill as per Icegate portal and no data comparing the value as per invoices and FOB value as per shipping bill was given either in the show cause notice or in the impugned order. However, on the basis of documents made available to me, I am of the view that neither the situation envisaged in the aforesaid Circular exist in this case nor the value declared in shipping bill was lower than the value declared in invoice so as to consider the FOB as per shipping bills towards turnover of zero rated supply of goods.

10. I further find that in the refund application the appellant has shown value of zero rated supply of goods and adjusted total turnover as per invoices which indicate that during the claim period except zero rated supply of goods no other outward supply was made by the appellant which will form part of adjusted total turnover. However, in the impugned order the adjudicating authority has taken FOB value as per shipping bill towards turnover of zero rated supply of goods but taken adjusted total turnover, which is the invoice value. Apparently, this results in adopting two different values for same zero rated supply of goods, which I find is not a rational and logical method and not in consonance with statutory provisions. Therefore, I find that the same value of zero rated supply of goods taken for turnover of zero rated supply of goods need to be taken in adjusted total turnover also for arriving admissible refund. In other words in cases where there is only zero rated supply of goods, the turnover of zero rated supply of goods and adjusted total turnover will remain the same in the formula prescribed under Rule 89 (4) of CGST Rules, 2017. In the subject case the claim was filed taking into account Net ITC which is not disputed in all the four claims filed by the appellant. Accordingly, even if the shipping value (FOB value) is taken as turnover of zero rated supply of goods, the same value should be taken in adjusted total turnover towards value of



zero rated supply of goods for determining the admissible refund and in such instance the appellant will be entitled to refund of rupees amounting to as in col.5 of the tabulation at para 1 above as claimed by them. The above view was also mandated in CBIC Circular No. 147/03/2021 -GST dated 12-3-2021 wherein it was clarified that for (the purpose of Rule 89 (4) the value of export/zero rated supply of goods to be considered to be included while calculating adjusted total turnover will be the same as being determined as per the amended definition of turnover of zero rated supply of goods in the said sub rule.

11. Also, as per Board's latest Circular No.197/09/2023-GST dated 17.07.2023, it has been clarified that consequent to Explanation having been inserted in sub-rule (4) of rule 89 of CGST Rules vide Notification No. 14/2022-CT dated 05.07.2022, the value of the goods exported out of India to be included while calculating "adjusted total turnover" will be same as being determined as per the Explanation inserted in the said sub-rule

12. In view of above, I find that impugned order passed by the adjudicating authority rejecting refund of Rs. 3,11,153/-, Rs. 5,01,572/-, Rs.2,30,171/- and Rs.2,65,302/- respectively to the appellant in respect of all the four claims filed by them on the grounds mentioned therein is not proper and legal and deserve to be modified. In view of above discussions, I hereby modify the *impugned order* to the above extant and allow the appeal filed by the *appellant*. The '*Appellant*' is also directed to submit all relevant documents/submission before the Refund sanctioning authority, who shall grant the refund accordingly.

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

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

Asaram
(Adesh Kumar Jain)

Joint Commissioner (Appeals)
Date : 31.08.2023

Attested

Vijayalakshmi V
(Vijayalakshmi V)
Superintendent
Central Tax (Appeals),
Ahmedabad



By RPAD

To,

M/s. Maxim Exports
708, Mauryansh Elanza
Shyamal Cross 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 Assistant Commissioner, CGST, Division VIII, Ahmedabad South
- 5) The Additional Commissioner, Central Tax (Systems), Ahmedabad South
- ✓ 6) Guard File
- 7) PA file

