



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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DIN- 20231064SW000000E1DC

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No GAPPL/ADC/GSTP/2547,2550,2577,2575,2579,2581,2582,2583,2584,2586,2587,2588 and 2593/2023 -APPEAL 17248 - 7303

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-JC-128/2023-24**

दिनांक Date : **30.09.2023** जारी करने की तारीख Date of Issue : **13.10.2023**

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 ZF2403230092628 dated 06.03.2023, ZJ2403230092762 dated 06.03.2023, ZK2403230092095 dated 06.03.2023, ZL2403230092451 dated 06.03.2023, ZH2403230092273 dated 06.03.2023, ZJ2403230092384 dated 06.03.2023, ZJ2403230093006 dated 06.03.2023, ZL2403230092928 dated 06.03.2023, ZL2403230092851 dated 06.03.2023, ZK2403230092739 dated 06.03.2023, ZE2403230092328 dated 06.03.2023, ZJ2403230092151 dated 06.03.2023 and ZM2403230092217 dated 06.03.2023 issued by The Assistant Commissioner, CGST, Division-VI, Ahmedabad South

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

Appellant	Respondent
M/s Indian Potash Limited, No. 45, Potash House, Drive In Road, Nr. Vijay Cross Road, Navrangpura, Ahmedabad 380 009 (GSTIN: 24AAACI0888H1ZM)	The Assistant 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) <u>Full amount of Tax, Interest, Fine, Fee and Penalty</u> arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to <u>twenty five per cent</u> 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 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

M/s. Indian Potash Limited, No.45, Potash House, Drive in Road, Near Vijay Cross Road, Navrangpura, Ahmedabad 380009 (hereinafter referred as 'Appellant') has filed the following appeals against the Refund Sanction/Rejection order in the form RFD-06 Orders (hereinafter referred as 'impugned orders') passed by the Assistant Commissioner, CGST, Division - VI, Ahmedabad South (hereinafter referred as 'adjudicating authority').

Sno.	Appeal Nos (all dated 15.06.2023)	RFD-06 Order Nos.(all dated 06.03.2023)	Amount of Refund Claim	Refund claim period
1	GAPPL/ADC/GSTP/2547/2023	ZF2403230092628	8074812	July 2018
2	GAPPL/ADC/GSTP/2550/2023	ZJ2403230092762	7917378	Nov'e'2017
3	GAPPL/ADC/GSTP/2577/2023	ZK2403230092095	4640340	Jan'2018
4	GAPPL/ADC/GSTP/2575/2023	ZL2403230092451	10066301	Aug'2018
5	GAPPL/ADC/GSTP/2579/2023	ZH2403230092273	3020940	Aug'2017
6	GAPPL/ADC/GSTP/2581/2023	ZI2403230092384	7743319	March'2018
7	GAPPL/ADC/GSTP/2582/2023	ZJ2403230093006	5896352	April'2018
8	GAPPL/ADC/GSTP/2583/2023	ZL2403230092928	15398980	May'2018
9	GAPPL/ADC/GSTP/2584/2023	ZI2403230092851	15200138	June'2018
10	GAPPL/ADC/GSTP/2586/2023	ZF2403230092739	10540611	Oct'2017
11	GAPPL/ADC/GSTP/2587/2023	ZE2403230092328	2276839	Feb.'2018
12	GAPPL/ADC/GSTP/2588/2023	ZI2403230092151	6055922	Sept'2017
13	GAPPL/ADC/GSTP/2593/2023	ZM2403230092217	6130341	Dec.'2017

The impugned orders pertaining to the refund claims as tabulated above, being identical, I proceed to decide all the appeals in a common order. Brief facts of the case are the appellant had originally filed refund claims as tabulated above, under 'ANY OTHER (SPECIFY)' category. The adjudicating authority rejected those claims on the ground that the appellant had neither appeared in personal hearing nor submitted his reply in GST-RFD-09, by relying upon the Hon'ble High Court of Kerala in case of S.I. Property Kerala Pvt Ltd., vs. CCE, Thiruvananthapuram. Being aggrieved by the said order, the appellant approached First Appellate for relief. The Additional Commissioner (Appeals), Ahmedabad vide his OIA No.AHD-CGST-001-APP-ADC-147 to 160/22-23 dated 18.11.2022 set aside the refund order without going into the merit of all other aspects and also directed the appellant to submit all relevant documents/submissions before the adjudicating authority.

3. Accordingly, the appellant filed the present refund claims before the jurisdictional officer for refund. On scrutiny of these claims, certain discrepancies were noticed and SCN in Form GST RFD-8 dated 15.02.2023 was issued to the appellant on the following grounds:

- ❖ The appellant's refund claim is filed based on a judgement issued in respect of other tax payer;
- ❖ Based on the judgement of Mohit Minerals Pvt Ltd., vs UOI and Mafatlal Industries Ltd. Vs UOI, when any provision in the statute has been held to be unconstitutional, refund of tax under such statute will be outside the scope and purview of such enactment and under such circumstances, refund can be claimed by way of a suit or by way of writ petition.
- ❖ It is not mentioned in the refund claim that the refund pertains to Ocean Freight of GST, and the reference of the Supreme Court judgement in the case of Mohit Minerals Pvt Ltd.
- ❖ In the case of S.I.Property Kerala Pvt Ltd. Vs. CCE, Thiruvananthapuram, the Hon'ble High Court of Kerala has held that "it is not open to any person to make a refund claim on the basis of a Court/Tribunal decision rendered in the case of another person;
- ❖ The refund claim is time barred as it is not filed within relevant period as per provisions of Section 54 of the CGST Act, 2017;
- ❖ The ITC paid on ocean freight has been availed or not. If availed, the details of credit ledger thereof
- ❖ The appellant had not furnished copies of B/E for ascertaining that import is made on CIF basis.
- ❖ Details of the calculation of ocean freight had not been provided by the appellant

4. The adjudicating authority vide his impugned orders as detailed in table at para 1 above, rejected the refund claims on the grounds:

- Based on the judgement of Mohit Minerals Pvt Ltd., vs UOI and Mafatlal Industries Ltd. Vs UOI, when any provision in the statute has been held to be unconstitutional, refund of tax under such statute will be outside the scope and purview of such enactment and under such circumstances, refund can be claimed by way of a suit or by way of writ petition.'
- It is not clear whether the ITC of GST paid on ocean Freight has been availed or not, if availed details of credit thereof;
- No evidence such as copies of B/E has been provided for ascertaining that import is made on CIF basis;
- No details provided as how refund amount calculated in respect of ocean freight.
- From the available documents furnished by the appellant, such as copy of credit ledger, invoices and GSTR-3B it is found quantum of



refund amount, ocean freight amount and other details could not be ascertained.

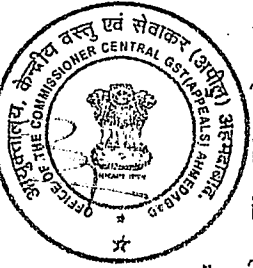
- In the absence of any clarifications/supporting evidence, the genuineness of the claim on said aspects could not be ascertained and hence the refund is rejected.
- Reliance is placed by the department on the Supreme Court judgment in the case of Mafatlal Industries Ltd, wherein it is held that refund of tax under such statute will be outside the scope of and purview of such enactment and under such circumstances, refund can only be claimed by way of a suit or by way of a writ petition.

5. Being aggrieved with the "impugned orders" the 'Appellant' has filed 13 appeals on 14.03.2023 on the following grounds:-

- The show cause notice issued by the jurisdictional officer, lacks authenticity and any proof of being legal and valid and were not uploaded on portal;

The Assistant Commissioner had neither considered the facts submitted by them nor called for any records, from them before deciding the impugned order;

- The appellant has placed reliance on Karnataka High Court in the case of Commissioner of Customs Bangalore vs Merchant Impex [2011(9)TMI 783], Bombay High Court in the case of M/s. Knowledge Capital Services Pvt Ltd. Vs UOI and various case laws, as the SCN was not in the prescribed format and without containing basic details such as date of SCN, Reference No., etc, No opportunity for Personal Hearing was granted to them;
- The reply to SCN was uploaded in proper form RFD-9 however, in the impugned order the Assistant Commissioner has denied it. The SCN and the impugned orders were issued without DIN number, which is mandatory as per CBIC's Circular No.128/47/2019-GST dated 23.12.2019;
- In response to the OIA dated 18.11.2022, they had filed the documents such as (1) BE wise payment details for ocean freight payment, supplier invoices with ocean freight breakup, declaration for non-utilisation of credit availed of GST payment on ocean freight, Extract of Electronic Credit Ledger, DRC-03 challan, relevant High Court rulings etc. for processing their refund claims;
- The GST law specifically provides that the importers are required to discharge IGST at 5% on ocean freight charges under the RCM. However, at the same time, customs duty on the CIF value of the goods imported



into India is also paid by the importer. As a result the tax is paid twice on the ocean freight. The tax payers are aggrieved by the fact that ocean freight is being paid twice, had filed various writ petitions before the Gujarat High Court seeking quashing of the notifications, by declaring that the same is ultra-vires the IGST Act.2017.

- The officer has erred in law and in facts in applying the judgment in the case of Mafatlal Industries Ltd to the refund matter of their Company and stating that refund of tax under such statute will be outside the scope of and purview of such enactment and under such circumstances, refund can only be claimed by way of a suit or by way of a writ petition.
- The Gujarat High Court in the case of Mohit Minerals Pvt. Ltd., & Ors., Vs UOI &Ors., has held that no tax is leviable on the ocean freight for services provided by a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India upto the customs station of clearance in India. The appellant have applied for refund under mistake of law where the levy was made un-constitutional by virtue of High Court Judgement;
- Have relied upon various case laws of Gujarat High Court, Rajasthan High Court, Orissa Highcourt etc., whereby based on the judgement passed in case Mohit Minerals, have held that Entry 10 of the Notification No.10/2017-Integrated Tax (Rate) dated 28.6.2017 as ultra vires Section 5(3) of the IGST Act, 2017 as well as Article 14 of the Constitution of India, and granted refund of the IGST already paid under reverse charge;
- Mainly, the appellant relied upon the judgements of the Hon'ble Gujarat High Court in the case of (i) Bharat Oman Refineries Ltd., vs UOI & I others SCA No.8881/2020 dated 18.08.2020 and Cokul Agro Resources Ltd. Vs UOI SCA 1758/2020 dated 16.02.2020, wherein it has been directed to the Respondents to sanction the refund application and refund the requisite amount of IGST already paid by the Petitioner pursuant to Entry No.10 of RCM Notification declared to be ultra vires.
- That they have rightly claimed their refund claims under Section 54 of the CGST Act 2017. They have relied upon the landmark case of Mafatlal Industries Ltd. Vs UOI [1997(89)ELT 247(SC) which supports the case of the appellant in as much as, when any provision in the statute has been held to be unconstitutional, refund of tax under such statute will be outside the scope and purview of such enactment and under such circumstances.

In light of above submissions the appellant has prayed that -



To consider refund claims filed by them to be in compliance with the provisions of GST Act.

To drop the refund rejection orders passed by the Assistant Commissioner (Div.-VI) and allow for refund of excess tax paid by them as RCM on ocean freight.

6. Personal Hearing in the matter was held on 29.09.2023 wherein Mr. Rahul Kumar, Assistant Manager of the company and Ms. Rakhi Jain, from Deloitte Haskins & Sells, appeared virtually on behalf of the Appellant' as authorized representatives. During personal hearing they reiterated the grounds of appeals filed by them and stated that they are entitled for refund of ocean freight paid on RCM basis in view of Hon'ble Supreme Court judgement. Similar issue of their refund claim has already been sanctioned from Andhra Pradesh and also by Commissioner (Appeals) Ahmedabad.

DISCUSSIONS AND FINDINGS

7. I find that the present appeals are filed within the time limit prescribed under the provisions of Section 107 of the CGST Act, 2017 and I proceed further to decide these appeals. I have carefully gone through the facts of the case available on records, submissions made by the 'Appellant' in the Appeals Memorandum. I find that the appellant had originally claimed refund of IGST paid on ocean freight under reverse charge basis, which has been rejected by the adjudicating authority on the ground that the appellant had neither appeared in personal hearing nor submitted his reply in GST-RFD-09, by relying upon the Hon'ble High Court of Kerala in case of S.I. Property Kerala Pvt Ltd., vs. CCE, Thiruvananthapuram. Being aggrieved by the said order, the appellant approached the First Appellate for relief. The Additional Commissioner (Appeals), Ahmedabad vide his OIA No.AHD-CGST-001-APP-ADC-147 to 160/22-23 dated 18.11.2022 set aside the refund order without going into the merit of all other aspects and also directed the appellant to submit all relevant documents/submissions before the adjudicating authority.

8. The appellant then filed the instant 13 refund claims which were again rejected by the adjudicating authority vide his impugned orders as tabulated at Para 1 above, on the following grounds upon issuance of SCNs 15.02.2023;-

- ❖ The appellant's refund claim is filed based on a judgement issued in respect of other tax payer;
- ❖ Based on the judgement of Mohit Minerals Pvt Ltd., vs UOI and Mafatlal Industries Ltd. Vs UOI, when any provision in the statute has been held to be unconstitutional, refund of tax under such statute will be outside

the scope and purview of such enactment and under such circumstances, refund can be claimed by way of a suit or by way of writ petition.

- ❖ The quantum of refund amount, ocean freight amount could not be ascertained in the absence of proper documents such as credit ledger, B/Es, GSTR-3B, invoices, clarifications and supporting documents submitted by the assessee.

9. All these 13 refund claims have arisen due to the outcome of the Hon'ble Gujarat High Court in the case of M/s. Mohit Minerals Pvt. Ltd.[2020 (33) G.S.T.L. 321'(Guj.)] wherein it is held that "The impugned Notification No.8/2017-Integrated Tax (Rate) dated 28th June 2017 and the Entry 10 of the Notification No.10/2017 -- Integrated Tax (Rate) dated 28th June 2017 are declared as ultra vires the Integrated Goods and Services Tax Act, 2017, as they lack legislative competency. Both the Notifications are hereby declared to be unconstitutional. Civil Application, if any, stands disposed of.

10. I find that the appellant in the present appeals contended that the impugned orders were passed without giving reasonable opportunity of being heard to present the case appropriately, which is gross violation of principle of natural justice. The adjudicating authority in his impugned order has clearly mentioned that personal hearing was granted on 20.02.2023, however the appellant did not appear but filed reply to the SCN issued. Hence, the question of violation of principle of natural justice do not arise in the present case, as the appellant himself opted to stay absent on the day of personal hearing.

11. I find from the impugned order, major ground for rejecting these refund claims by the Adjudicating Authority is that the amount of refund and ocean freight could not be ascertained in the absence of complete documents such as Electronic Credit ledger, GSTR-3B, Bills of Entry, Invoices etc., clarifications and supporting documents which were not furnished by the appellant. I would like to refer Section 54(4) for this purpose.

Section 54(4) Refund of tax.

The application shall be accompanied by-

(a) such documentary evidence as may be prescribed to establish that a refund is due to the applicant; and

(b) such documentary or other evidence (including the documents referred to in section 33) as the applicant may furnish to establish that the amount of tax and interest, if any, paid on such tax or any other amount paid in relation to which such refund is claimed was collected from, or paid by, him

and the incidence of such tax and interest had not been passed on to any other person:

Provided that where the amount claimed as refund is less than two lakh rupees, it shall not be necessary for the applicant to furnish any documentary and other evidences but he may file a declaration, based on the documentary or other evidences available with him, certifying that the incidence of such tax and interest had not been passed on to any other person.

12. From the above provisions, I am of the view that it is the sole responsibility of the appellant to submit entire requisite documents, for getting refund of tax paid on ocean freight under reverse charge mechanism. Hence as per the proviso of Section 54(4), the appellant has not complied with the proper procedure for furnishing of complete documents for obtaining the refund claims.

13. I would like to refer Rule 112(1) of the CGST Rules, 2017 whereby it is clearly specified that the appellant shall not be allowed to produce before the Appellate Authority or the Appellate Tribunal any evidence, whether oral or documentary, other than the evidence produced by him during the course of the proceedings before the adjudicating authority or, as the case may be, the Appellate Authority except in certain given circumstances. For better understanding, I reproduce the Rule 112 of the CGST Rules, 2017 as under:-



Rule 112. Production of additional evidence before the Appellate Authority or the Appellate Tribunal.-

(1) The appellant shall not be allowed to produce before the Appellate Authority or the Appellate Tribunal any evidence, whether oral or documentary, other than the evidence produced by him during the course of the proceedings before the adjudicating authority or, as the case may be, the Appellate Authority except in the following circumstances, namely:-

(a) where the adjudicating authority or, as the case may be, the Appellate Authority has refused to admit evidence which ought to have been admitted; or

(b) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the adjudicating authority or, as the case may be, the Appellate Authority; or

(c) where the appellant was prevented by sufficient cause from producing before the adjudicating authority or, as the case may be, the Appellate Authority any evidence which is relevant to any ground of appeal; or

(d) where the adjudicating authority or, as the case may be, the Appellate Authority has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

In view of the above provisions, the appellant is required to submit entire requisite documents for processing their refund claim only with the Refund Sanctioning authority. As per the impugned order, it is found that the

adjudicating authority rejected the refund claims on grounds that " I find that the said claimant has submitted copy of credit ledger and some invoices. However, said claimant failed to submit copies of B/E for ascertaining that import is made on CIF basis and calculation sheet for refund amount in respect of ocean freight. Further, I have gone through available documents on records i.e. copy of credit ledger, invoices and GSTR3B and found that quantum of refund amount, ocean freight amount and others details could not be ascertained from these documents. Therefore, in absence of any clarifications/supporting evidence regarding above mentioned discrepancies, the genuineness of the claim on said aspects could not be ascertained and hence the refund claim does not seem admissible on that count also."

13. Apart from which, the appellant had earlier approached the First Appellate Authority quoting that the adjudicating authority violated principle of natural justice in their case in respect of these refund claims, by not hearing them in person. The Joint Commissioner (Appeals) in his OIA No.AHD-CGST-001-APP-ADC-147 to 160/22-23 dated 18.11.2022 had already directed the appellant to submit all relevant documents/submissions before the adjudicating authority for processing their refund claims. Thus, the appellant was given an opportunity by the department in their favour. However, the appellant failed to utilise the same, by not providing complete set of documents for processing these refund claims which ultimately got rejected by the adjudicating authority on this sole ground.

14. Further, the appellant have, in their grounds of appeal has stated that they had availed the credit of the ITC on the tax paid on ocean freight on RCM basis, but have not utilised the same. The quantum of ITC availed by the appellant, requires to be verified in the aspects such as whether the goods were imported under CIF or FOB basis. Basically, case of Mohit minerals covers only CIF contract. Whether, the appellant has claimed any refund of accumulated ITC on Export, viz-a-viz the ITC on ocean freight was already included in such refund or otherwise etc. Further, a registered person, who has availed of input tax credit on any inward supply of goods or services or both, but fails to pay to the supplier thereof the value of such supply along with the tax payable thereon within the time limit specified in the second proviso to sub-section (2) of section 16, shall furnish the details of such supply and the amount of input tax credit availed of in FORM GSTR-2 for the month immediately following the period of one hundred and eighty days from the date of issue of invoice. I find that in the instant case, the appellant has availed the ITC of IGST paid on ocean freight and simultaneously claimed the refund of the same, it is not clear whether the ITC availed on ocean freight has been reversed or not. The same is not forthcoming from the documents provided to the Refund sanctioning authority. Therefore the rejection of the claim by the Refund Sanctioning Authority on the grounds non-submission of desired documents is legal and proper.

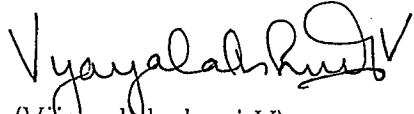


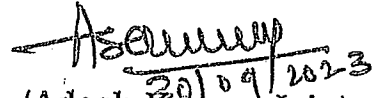
15. In view of the above facts and discussions, I do not find any reasons to interfere with decision taken by the adjudicating authority and I reject all the 13 appeals filed by the appellant and uphold the impugned order passed by the adjudicating authority being legal and proper.

16. अपीलकर्ता 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.

//Attested//


(Vijayalakshmi V)
Superintendent (Appeals)


(Adesh Kumar Jain)
Joint Commissioner (Appeals)

Date: .09.2023

By RPAID
M/s. Indian Potash Limited
No.45, Potash House, Drive-in-Road,
Near Vijay Cross Road, Navrangpura,
Ahmedabad-380009



Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, CGST & C. Ex., Appeals, Ahmedabad.
3. The Commissioner, CGST & C. Ex., Ahmedabad-South.
4. The Dy/Assistant Commissioner, CGST, Division-VI, Ahmedabad South.
5. The Superintendent (Systems), CGST Appeals, Ahmedabad.
- ~~6.~~ Guard File.
7. P.A. File

