



सत्यमेव जयते

आयुक्त(अपील) का कार्यालय,
Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्वमार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
07926305065 - टेलिफैक्स 07926305136



DIN : 20230364SW0000999C35

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/2684/2022 / 969h - 98
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-189/2022-23
दिनांक Date : 17-03-2023 जारी करने की तारीख Date of Issue 21.03.2023
आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)
- ग Arising out of OIO No. WS07/O&A/OIO-23/AC-RAG/2022-23 दिनांक: 15.06.2022 passed by
Assistant Commissioner, CGST, Division-VII, Ahmedabad South
- घ अपीलकर्ता का नाम एवं पता Name & Address

Appellant

M/s Satyajeet S. Deshpande
17, Saumitrya Society,
Jodhpur Gam Road,
Satellite, Ahmedabad

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर 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 :

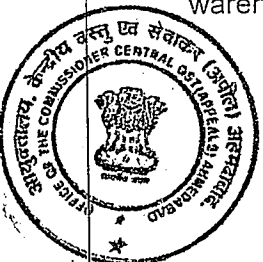
Revision application to Government of India:

(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।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th 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 :

(ii) 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।

(ii) 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.



(क) 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।

(A) 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.

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

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

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 हों।

(c) 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.

(1) 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 भीतर—आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ जाता इका मुख्य शीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 आदान 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.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- 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 :-

(क) उक्तलिखित परिच्छेद 2 (1) क 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 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd Floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.



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 पत्र कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आदेश दिया 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 Appellate 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 शुल्कअधिनियम 1970 यथासंशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक के प्रतिपर रु.6.50 पैसे कान्यायालय 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.

24^प सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट),के प्रतिअपीलो के मामले में कर्तव्यमांग(Demand) एवं दंड(Penalty) 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 Demand) :-

- a. (Section) खंड 11D के तहत निर्धारित राशि;
इण लिया गलत सेनवैट क्रेडिट की राशि;
बण 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.

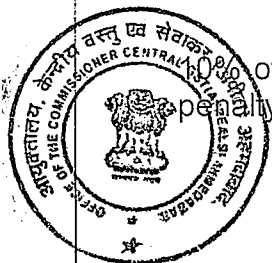
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 F 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:

- (lxxxviii) amount determined under Section 11 D;
(lxxxix) amount of erroneous Cenvat Credit taken;
(xc) amount payable under Rule 6 of the Cenvat Credit Rules.

इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो सीमा के लिए 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 the duty demanded where duty or duty and penalty are in dispute or penalty, where penalty alone is in dispute."



ORDER-IN-APPEAL

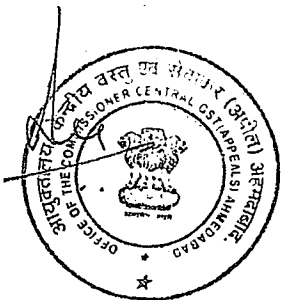
The present appeal has been filed by M/s. Satyajeet S. Deshpande, 17, Saumitrya Society, Jodhpur Gam Road, Satellite, Ahmedabad (hereinafter referred to as the "appellant") against Order in Original No. WS07/O&A/OIO-23/AC-RAG/2022-23 dated 15.06.2022 [hereinafter referred to as "*impugned order*"] passed by the Assistant Commissioner, Division-VII, CGST, Commissionerate : Ahmedabad South [hereinafter referred to as "*adjudicating authority*"].

2. Briefly stated, the facts of the case are that the appellant were not registered with the Service Tax department. They are holding PAN No. AELPD5693M. As per the information received from the Income Tax Department, the appellant had earned income from services amounting to Rs.10,73,273/- during F.Y. 2014-15, Rs.10,19,200/- during F.Y. 2015-16 and Rs.19,21,839/- during F.Y. 2016-17. However, they did not obtain service tax registration and did not pay service tax on such income from service. Therefore, the appellant were issued Show Cause Notice bearing No. V/WS07/O&A/SCN-336/AELPD5693M/2020-21 dated 29.09.2020 wherein it was proposed to :

- a) Demand and recover the service tax amounting to Rs.5,73,812/- under the proviso to Section 73 (1) of the Finance Act, 1994 along with interest under Section 75 of the Finance Act, 1994.
- b) Impose penalty under Sections 77(1) and 78 of the Finance Act, 1994.
- c) Recover late fee under Rule 7C of the Service Tax Rules, 1994 read with Section 70 of the Finance Act, 1994.

3. The SCN was adjudicated vide the impugned order wherein :

- I. The demand of service tax amounting to Rs.4,02,534/- was confirmed along with interest.
- II. Penalty amounting to Rs.10,000/- was imposed under Section 77(1)(a) of the Finance Act, 1994.
- III. Penalty amounting to Rs.4,02,534/- was imposed under Section 78 (1) of the Finance Act, 1994.



IV. Penalty amounting to Rs.1,20,000/- was imposed under Section 70 of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules, 1994.

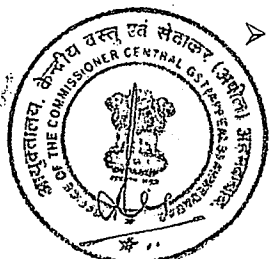
V. The demand amounting to Rs.1,71,278/- was dropped:

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

- i. The adjudicating authority has erred in law and facts by confirming demand as the period of limitation under Section 73(1) of the Finance Act, 1994 is already expired considering the fact that there was no fraud, collusion, wilful misstatement, suppression of facts or contravention of the provisions with intent to evade payment of service tax.
- ii. The adjudicating authority has erred in law on facts by applying valuation under Section 67(2) of the Finance Act, 1994 for determination of service tax, ignoring the provisions of Rule 5(2) of the Service Tax (Determination of Value) Rules, 2016.
- iii. The adjudicating authority has erred in imposing penalty under Section 70 of the Finance Act, 1994 where the maximum amount specified is Rs.20,000/-.
- iv. The adjudicating authority has erred in law on facts in imposing penalty under Section 77(1)(a) ignoring the fact that they are eligible for exemption under Notification No.33/2012-ST dated 20.06.2012.
- v. The adjudicating authority has erred in law on facts in imposing penalty under Section 78 ignoring the fact that they are eligible for exemption under Notification No.33/2012-ST dated 20.06.2012.

5. The appellant have also filed an application on 14.09.2022 for condonation of delay in filing appeal, wherein it was submitted that :

- In the impugned order, it is clearly mentioned that the appeal can be filed till three months from the date of order. They had gone to the Appeal office for submission of appeal on 13.09.2022 when they were told that they are required to file request for condonation of delay of 28 days.
- Based upon the totality of circumstances, the delay of 28 days in filing appeal be condoned for justice and equity.



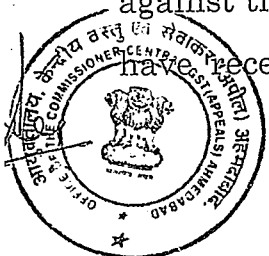
6. Personal Hearing in the case was held on 09.02.2023. Shri Arpit Shah, Chartered Accountant, appeared on behalf of appellant for the hearing. He reiterated the submissions made in the application for condonation of delay in filing appeal. He stated that the appellant is a professor and had to complete the formalities to make pre-deposit. He reiterated the submissions made in appeal memorandum. He submitted a written submission during hearing along with documents relevant for assessment.

7. In the written submission filed during course of the personal hearing, the appellant contended that :

- They are neither required to obtain service tax registration nor required to collect and pay service tax as the income from Business and Profession has always been lower than threshold limit.
- He is a professor and is involved in teaching profession and teaching in various institutes who are having presence at different cities. He has been travelling for teaching and the institute was bound to reimburse the expenses incurred while travelling.
- The professional income, after deducting the reimbursement of expenses, has always been lower than the threshold limit prescribed under Notification No.33/2012-ST dated 20.06.2012.
- Reimbursement of expenses will not form part of the taxable value as he had acted as Pure Agent as per Rule 5(2) of the Service Tax (Determination of Value) Rules, 2006.

8. I have gone through the facts of the case, submissions made in the Appeal Memorandum, the additional written submissions, the submissions made during the personal hearing and the materials available on records. The dispute involved in the present appeal relates to the confirmation of demand for service tax amounting to Rs.4,02,534/-. The demand pertains to the period F.Y. 2014-15 to F.Y. 2016-17.

9. Before dealing with the merits of the case, I proceed to take up the matter of condonation of delay in filing the appeal by the appellant. It is observed from the records that the present appeal was filed by the appellant on 13.09.2022 against the impugned order dated 15.06.2022, which the appellant claimed to have received on 22.06.2022. It is also observed that the preamble to the



impugned order states that the appeal is to be filed within three months from the date of its communication. From the materials available on record, it is observed that the appellant is not registered with the Service Tax department and, therefore, their plea that the appeal was filed by them in terms of what has been stated in the preamble to the impugned order appears to be justified.

9.1 It is observed that the Appeals preferred before the Commissioner (Appeals) are governed by the provisions of Section 85 of the Finance Act, 1994. The relevant part of the said section is reproduced below :

“(3A) An appeal shall be presented within two months from the date of receipt of the decision or order of such adjudicating authority, made on and after the Finance Bill, 2012 received the assent of the President, relating to service tax, interest or penalty under this Chapter:

Provided that the Commissioner of Central Excise (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of two months, allow it to be presented within a further period of one month.”

9.2 In the instant case, the impugned order is dated 15.06.2022 and the appellant have received it on 22.06.2022. Therefore, the period of two months for filing the appeal before the Commissioner (Appeals) ended on 22.08.2022. The further period of one month, which the Commissioner (Appeals) is empowered to allow for filing appeal, also ends on 22.09.2022.

9.3 In terms of Section 85 of the Finance Act, 1994, an appeal before the Commissioner (Appeals) is to be filed within a period of two months from the receipt of the order being appealed. Further, the proviso to Section 85 (3A) of the Finance Act, 1994 allows the Commissioner (Appeals) to condone delay and allow a further period of one month, beyond the two month allowed for filing of appeal in terms of Section 85 (3A) of the Finance Act, 1994.

9.4 The appellant was required to file the appeal on or before 22.08.2022 i.e. two months computed from 22.06.2022. Further, the condonable period of one month, in terms of Section 85 (3A) of the Finance Act, 1994 ends on 22.09.2022. The present appeal filed on 13.09.2022, is, therefore, within the condonable period. Keeping in view the fact that the appellant is not registered with service tax department, that the preamble to the impugned order states that the appeal is to be filed within three months as well as the fact that as

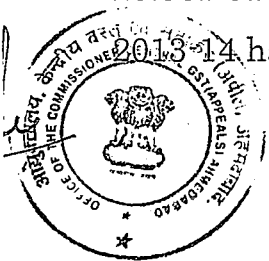


unregistered person the appellant had to complete formalities for payment of pre-deposit, I am of the considered view that the appellant have shown sufficient cause for condonation of delay in filing appeal. Accordingly, the delay of 21 days in filing the appeal by the appellant is condoned.

10. Coming to the merits of the present appeal, I find that the appellant were issued SCN on the basis of the data received from the Income Tax Department. As part of their written reply to the SCN, the appellant submitted copies of ITR and Form 26AS for the period under dispute as well as copy of appointment letter from College. The appellant have submitted before the adjudicating authority that the payment received by them from various Coaching Classes is a combination of reimbursement of expenses and lecture fees. The appellant had also claimed that they were eligible for exemption under Notification No. 33/2012-ST dated 20.06.2012. It is observed that the adjudicating authority has rejected the claim for exemption under the said Notification on the ground that they had not submitted copies of Balance Sheet, ITD and Form 26AS for F.Y. 2013-14. Further, the contention of the appellant that the income received by them also included reimbursement of expenses was also rejected by the adjudicating authority by applying the provision of Section 67 (1) of the Finance Act, 1994.

10.1 It is observed that Explanation (a) to Section 67 of the Finance Act, 1994 was inserted w.e.f 14.05.2015. Therefore, its applicability is for the period from 14.05.2015 and would not apply to the period prior to 14.05.2015. The adjudicating authority has, therefore, clearly erred in applying the said provisions for the period from F.Y. 2014-15 to 13.5.2015. The period prior to 14.05.2015 would be governed by the provisions of Section 67 as it existed prior to its amendment. Therefore, I am of the considered view that matter is required to be remanded back to the adjudicating authority to decide the case afresh in light of the provisions of Section 67 of the Finance Act, 1994 as it stood at the relevant point of time.

10.2 It is further observed that the adjudicating authority has rejected the claim of the appellant for exemption under Notification No. 33/2012-ST dated 20.06.2012 on the grounds that the Balance Sheet, ITR and Form 26AS for F.Y. 2013-14 has not been submitted by the appellant. In this regard, it is observed



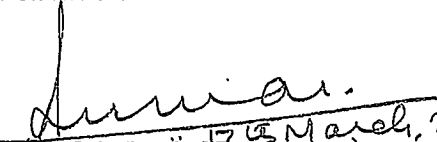
that being an individual, the appellant is not required to file Balance Sheet. Therefore, the relevant documents i.e. Computation of Income, ITR, Form 26AS etc. are required to be examined to determine the eligibility of the appellant for exemption under the said Notification.

10.3 I am of the considered view that the matter is required to be remanded back to the adjudicating authority for fresh adjudication. The appellant are directed to submit before the adjudicating authority all the relevant documents in support of their claim for exemption as well as for deduction of reimbursable expenses within 15 days of the receipt of this order. The adjudicating authority shall decide the case by considering the submissions of the appellant and by following the principles of natural justice. Consequently, I set aside the impugned order and allow the appeal filed by the appellant by way of remand.

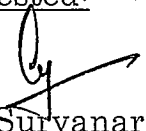
11. In view of the above, I set aside the impugned order and allow the appeal filed by the appellant by way of remand.

12. 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.


(Akhilesh Kumar)
Commissioner (Appeals)
Date: 17.03.2023

Attested:


(N.Suryanarayanan. Iyer)
Assistant Commissioner (In situ),
CGST Appeals, Ahmedabad.

BY RPAD / SPEED POST

To

M/s. Satyajeet S. Deshpande,
17, Saumitreya Society,
Jodhpur Gam Road,
Satellite, Ahmedabad

The Assistant Commissioner,
Division- VII, CGST,
Commissionerate : Ahmedabad South.



Appellant

Respondent

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Principal Commissioner, CGST, Ahmedabad South.
3. The Assistant Commissioner (HQ System), CGST, Ahmedabad South.
(for uploading the OIA)
4. Guard File.
5. P.A. File.

