



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



केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाडी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
☎ 07926305065- टेलीफैक्स 07926305136

DIN : 20220664SW0000722218

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/1646/2021 / 2121 70 2125
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-001-APP-027/2022-23**
दिनांक Date : **20-06-2022** जारी करने की तारीख Date of Issue 28-06-2022
आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)
- ग Arising out of Order-in-Original Nos. **CGST/WS07/O&A/OIO-06 to 07/MK/DC/2020-21** दिनांक:
28.01.2021 issued by Deputy Commissioner, Central GST, Division -VII, Ahmedabad-South
- घ अपीलकर्ता का नाम एवं पता Name & Address of the **Appellant/ Respondent**

M/s Alchemy Translation
1015, Shivalik Satyamev,
Ambali Bopal Ring Road Junction,
Ambali, Ahmedabad - 380058

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 अतः नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीनसचिव, 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 हानि कारखाने 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 जोड़यूटी के डिटमान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं. 2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(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 ईए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्य शीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

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

The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved is Rupees One Lac or less and Rs. 1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) उक्त लिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर 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 पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

- (4) न्यायालय शुल्क अधिनियम 1970 यथासंशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेशों से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

- (5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित हैं।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

- (18) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण (सिस्टेट) के प्रति अपील के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पादन शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग" (Duty Demanded)-

- (Section) खंड 11D के तहत निर्धारित राशि;
- लिया गलत सेन वैट क्रेडिट की राशि;
- सेन वैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇒ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील दाखिल करने के लिए पूर्व शर्त बना दिया गया है.

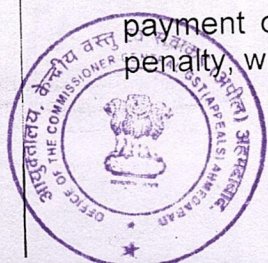
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

Under Central Excise and Service Tax, "Duty demanded" shall include:

- (xxxvii) amount determined under Section 11 D;
- (xxxviii) amount of erroneous Cenvat Credit taken;
- (xxxix) 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 माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."

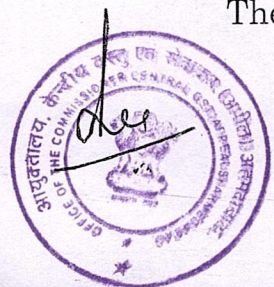


ORDER-IN-APPEAL

The present appeal has been filed by M/s. Alchemy Translation, 406, Parshwanath Business Park, Near Auda Garden, Prahalad Nagar, Ahmedabad – 380 015 (hereinafter referred to as the appellant) against Order in Original No. CGST/WS07/O&A/OIO-06 to 07/MK/DC/2020-21 dated 28.01.2021 [hereinafter referred to as “*impugned order*”] passed by the Deputy Commissioner, Division – VII, CGST, Commissionerate : Ahmedabad South [hereinafter referred to as “*adjudicating authority*”].

2. Briefly stated, the facts of the case is that the appellant were holding Service Tax Registration No. AIDPA9310JSD001 under the categories of Business Support Service and Manpower Recruitment/Supply Agency Service. During the course of audit of the financial records of the appellant for the period from July, 2012 to March, 2017 by the officers of Central Tax, Audit Commissionerate, Ahmedabad, it was observed that the appellant was providing translation service and paying service tax accordingly. In the process of their business, the appellant were also receiving the service of translators inside India as well as from other foreign countries. It was observed that the appellant had incurred expenditure in foreign currency and on being asked, they informed that it pertains to translation activity where they had received translation service from translators located outside India. On being asked regarding payment of service tax under reverse charge, the appellant informed that they are not liable to pay service tax on import of service as the service provider is located in a non-taxable territory. They further submitted that they charged their clients for the service along with service tax and the same included the expenses towards outsourcing. Even it is assumed that service tax is payable on such outsourced activities, the same is cenvatable. However, since the amount of service tax has been paid on the value of service provided by them, the same does not result in any additional benefit to them and it becomes revenue neutral and hence, it is only a matter of accounting adjustment only.

2.1 The submission of the appellant was not accepted by the Audit officers. The appellant was, therefore, issued a Show Cause Notice bearing No. VI/1(b)-



266/C-IV/Audit/AP73/2017-18 dated 19.03.2018 wherein it was proposed to demand and recover service tax amounting to Rs.34,02,704/-, for the period from F.Y.2012-13 (July to March) to F.Y. 2016-17, under the proviso to Section 73 (1) of the Finance Act, 1994 along with Interest under Section 75 of the Finance Act, 1994. Penalty was also proposed to be imposed under Section 76, 77 and 78 of the Finance Act, 1994.

2.2 The appellant was issued another Show Cause Notice bearing No. WS07/AR-II/SCN-01/Alchemy/2019-20 dated 24.09.2019 under Section 73(1A) of the Finance Act, 1994 wherein it was proposed to demand and recover service tax amounting to Rs.1,06,830/-, for the period from April, 2017 to June, 2017, under the proviso to Section 73 (1) of the Finance Act, 1994 along with Interest under Section 75 of the Finance Act, 1994. Penalty was also proposed to be imposed under Section 76 of the Finance Act, 1994.

3. The two SCNs mentioned above were adjudicated vide the impugned order and the demand for service tax was confirmed along with interest. While no penalty was imposed under Section 76, penalty of Rs.10,000/- was imposed under Section 77 and penalty of Rs.35,09,534/- was imposed under Section 78 of the Finance Act, 1994.

4. Being aggrieved with the impugned order, the appellant have filed the instant appeal on the following grounds :

- i. The impugned order is non reasoned and non speaking and passed in gross violation of the principles of natural justice. They had relied upon various case laws which were in their favour. However, none has been considered by the adjudicating authority and the same have not been dealt with.
- ii. Personal hearing was held on 22.11.2019 and the order passed on 01.02.2021 i.e. after a period of more than 15 months. It is settled law that when a matter is heard and reserved for order, the authority has to pronounce order within three months time, else the authority has to re-fix the matter for hearing.

The adjudicating authority has issued letter for personal hearing in the periodical SCN but the same has been returned showing the reasons as



'left'. No effort has been made to serve the PH letter. The inquiry letter of issuance of SCN was served to them by email and all documents and details were submitted by them by email. In such a case, the PH letter too could have been emailed to them. The hearing in the main SCN was attended by their advocate and his communication details were available with the adjudicating authority. Further, they are registered with the adjudicating authority under GST. However, the adjudicating authority has not bothered to give them personal hearing as prescribed under Section 37C. Hence, the order is passed without affording the opportunity of personal hearing.

- iv. The adjudicating authority could not find them while fixing the hearing but easily traced them while serving the order. This proves that the adjudicating authority has no regard for law or procedures and has acted in gross violation of the procedures of adjudication.
- v. Certain facts are not disputed and even admitted in the SCN. They have provided translation service and paying service tax on the entire value received towards provision of service. They had outsourced part of the activity to translators situated outside India. In such cases, the expense towards such translation is recorded in the books of accounts and payment towards such outsourced activity is done through regular banking channels. Hence, entire expense towards outsourcing is booked in the accounts and entire demand is raised on the basis of the books of accounts. It is a settled law that extended period cannot be invoked when demand is worked out from the statutory accounts and records maintained by the assessee. Hence, the demand is barred by limitation.
- vi. They bonafidely believed that the translators are situated in foreign countries and hence, the services are provided outside the territory of India. Hence, no service tax is payable on such services. Under this belief, they had not paid service tax as recipient of service.
- vii. Rule 3 of the Place of Provision of Service Rules does not apply in the present case. These are performance based service provided by individuals and hence, as per Rule 4 (a) of the said Rules, the place of provision of service shall be the location where the services are actually performed i.e. location of the service provider. Entire translation activity is performed in foreign country by individual translators and as the same is performed outside the territory of India, service tax is not attracted.



- viii. The adjudicating authority has noted the above contention but has not bothered to clarify how service tax is leviable on such services provided in foreign countries or how provisions of Rule 4(a) are not applicable.
- ix. As per Rule 4(a), where the services are produced in respect of goods that are required to be made physically available to the provider of service, the place of provision of service shall be the location where the service are actually performed. In the present case, the services are concerning translation of various printed matters in foreign languages. For provision of the said services, various literature are made available to the foreign personnel at his place of business situated in foreign countries.
- x. As per Chapter 49 of the Central Excise Tariff Act, this printed books, literature etc. are goods and these goods or copies thereof are physically made available to the foreign personnel. Hence, the services are performed on goods that are made available to the foreign personnel situated in foreign countries.
- xi. The activity on which service tax is not demanded, stand paid. The outsourced activity is an expense in their book of accounts. They had raised invoices towards such services to their clients and had charged service tax on such services. The service tax stands deposited on services includes the outsourced activity on which present demand is made.
- xii. The outsourced activity is also translation activity and the service provided by them is also the same i.e. translation service. If they had charged Rs.10000/- towards provision of service, then they had also charged and deposited service tax on such service from their clients. If the entire activity is outsourced and they had paid Rs.5000/- towards translation to foreign personnel, as per notice the service tax as recipient is not paid. It is submitted that both the services fall under the same service category. In such facts, if at all service tax was required to be paid on the expense of Rs.5000/-, the same would have be adjusted as Cenvat and after deducting service tax on outsourced activity, service tax on the remaining amount of Rs.5000/- was to be paid. Instead of the same, entire service tax on Rs.10000/- is paid directly by them.
- xiii. Assuming without admitting of the department's view is correct, then also no additional amount becomes payable under any other head as whatever amount was payable, stands paid during the relevant period.



Even the payment is not required to be made by separate challans as the head of service is common. Hence, it is submitted that the service tax demanded is already paid and it is at the max only a mistake in furnishing the details in the service tax returns, which can be considered a clerical error in showing the details in service tax returns.

- xiv. They explain the above by way of example in a tabular form from which it can be seen that no extra tax is payable. As per the above example, the corrected returns were also furnished to the adjudicating authority. However, he has not bothered to comment on the same.
- xv. It is settled law that in cases of revenue neutrality, demand for extended period cannot be invoked. They had deposited more tax during the period of dispute and there cannot be any malafide intention of not paying tax when the same is cenvatable. Hence, the impugned order is not sustainable on the ground of revenue neutrality. The impugned order relies upon orders of the Hon'ble Tribunal for invoking extended period of limitation which are clearly distinguishable and do not apply to the facts of the present case.
- xvi. The judgment in the case of Mahindra and Mahindra supports their view that the plea of revenue neutrality would depend upon the facts of each case.
- xvii. It is settled law that in revenue neutral situations, no notice for recovery shall be issued. Hence, the SCN itself ought not to have been issued. They rely upon the judgment in the following cases : 2019(368) ELT 105 (Tri.-Mumbai) which was confirmed by 2019 (368) ELT A41 (SC); 2010 (254) ELT 628 (Guj.); 2013 (290) ELT 638 (Guj.); 2016 (44) STR (Tri.-Mumbai); 2016 (42) STR 772 (Tri.-Mumbai) and 2016 (339) ELT 467 (Tri.-Ahmd).

5. Personal Hearing in the case was held on 14.06.2022. Shri Nirav Shah, Advocate, and Shri Tarun Agrawal, Proprietor, appeared on behalf of appellant for the hearing. Shri Nirav Shah, Advocate reiterated the submissions made in appeal memorandum and submitted copies of judicial pronouncements during the course of hearing.

6. I have gone through the facts of the case, submissions made in the Appeal Memorandum, the submissions made at the time of personal hearing



as well as the material available on records. I find that the issue to be decided in the case is whether the appellant is liable to pay service tax in respect of the Translation services received by them from persons situated in foreign countries or otherwise. The demand pertains to the period from F.Y.2012-13 (July to March) to F.Y. 2017-18 (upto June, 2017).

7. I find that the demand has been raised against appellant on the grounds that the appellant are liable to pay service tax, under reverse charge, in respect of the services received from persons situated in foreign countries. The appellant have in their appeal memorandum contended that the impugned order has been passed in violation of the principles of natural justice as the various case laws relied upon by them have not been considered or dealt with by the adjudicating authority. They appellant have further contended that the impugned order was passed after 15 months from the date of hearing and that they were not granted the opportunity of personal hearing in respect of the SCN dated 24.09.2019.

8. I have gone through the impugned order and find that while the personal hearing in respect of SCN dated 19.03.2018 was held on 15.11.2019, the impugned order was passed on 28.01.2021 i.e. after a substantial delay. Further, the appellant have not been granted personal hearing in respect of the SCN dated 24.09.2019.

8.1 As per Section 83 of the Finance Act, 1994, the provisions of the Section 33A of the Central Excise Act, 1944 are made applicable to service tax. In terms of Section 33A (1) of the Central Excise Act, 1944 the adjudicating authority shall give an opportunity of being heard. In terms of sub-section (2) of Section 33A, the adjudicating authority may adjourn the case, if sufficient cause is shown. In terms of the proviso to Section 33A (2), no adjournment shall be granted more than three times. In the instant case, I find that the adjudicating authority has not granted the appellant the three adjournments as envisaged in the said Section 33A (2) of the Central Excise Act, 1944. In view of the above, I am of the considered view that in the interest of the principles of natural justice, the matter is required to be remanded back for *denovo* adjudication after affording the appellant the opportunity of personal hearing.



8.2 Therefore, I am constrained to remand the case back to the adjudicating authority to decide the case afresh after granting the opportunity of personal hearing to the appellant and also after considering the submissions of the appellant and pass a speaking order dealing with all the issues contended by the appellant.

9. In view of the facts as discussed hereinabove, the impugned order is set aside and the case remanded back to the adjudicating authority to decide the cases afresh in terms of the directions contained hereinabove at Para 8. Accordingly, the appeal filed by the appellant is allowed by way of remand.

10. 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
(Akhilesh Kumar)
Commissioner (Appeals)
Date: .06.2022.

Attested:

(N.Suryanarayanan. Iyer)
Superintendent(Appeals),
CGST, Ahmedabad.



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Appellant

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

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.