



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 : 20230564SW0000555F24

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/2740/2022 / 1087 - 1102
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-14/2023-24
दिनांक Date : 03-05-2023 जारी करने की तारीख Date of Issue 04.05.2023
- आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of OIO No. 61/WS08/AC/HKB/2022-23 दिनांक: 01.07.2022 passed by Assistant Commissioner, CGST, TRC, Ahmedabad South
- घ अपीलकर्ता का नाम एवं पता Name & Address

Appellant

- M/s Suman Infrastructure
207/N, Shrinandnagar Part-I,
Vejalpur Gam, Ahmedabad

Repondent

- The Assistant Commissioner(TRC)
CGST, Ahmedabad South
3rd Floor, GST Bhawan, Near Govt. Polytechnic,
Ambawadi, Ahmedabad - 380015

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 :

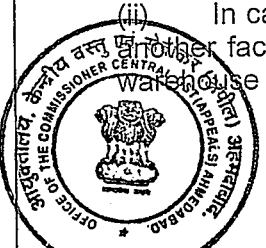
Revision application to Government of India:

(i) 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 प्रकिया के दौरान हुई हो।

(iii) 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 कट्टे 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 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 इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतरमूल-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 रकम एक लाख रुपये या उससे कम होतो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम 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) 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 पढी 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 शुल्कअधिनियम 1970 यथासंशोधित की अनुसूचि-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक 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.

22प सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट),के प्रतिअपीलो के मामले में कर्तव्यमांग(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 उत्पाद शुल्क और सेवाकर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded)-

- 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.

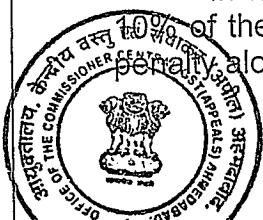
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

- (clxxv) amount determined under Section 11 D;
- (clxxvi) amount of erroneous Cenvat Credit taken;
- (clxxvii) 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 of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



ORDER IN APPEAL

M/s. Suman Infrastructure, 207/N, Shrinandnagar Part-I, Vejalpur Gam, Ahmedabad (hereinafter referred to as '*the appellant*') have filed the present appeal against the Order-in-Original No. 61/WS08/AC/HKB/2022-23, dated 01.07.2022, (in short '*impugned order*') passed by the Assistant Commissioner (TRC), Central GST, Ahmedabad South Commissionerate (hereinafter referred to as '*the adjudicating authority*'). The appellant were engaged in providing taxable services and were holding Service Tax Registration No. ACIFS9592HSD001.

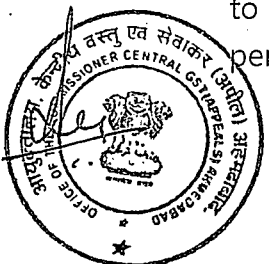
2. The facts of the case, in brief, are that on the basis of the data received from the Central Board of Direct Taxes (CBDT) for the F.Y. 2015-16 & F.Y. 2016-17, it was noticed that the gross value of sale of services declared in the ST-3 Returns was less than the gross value of sale of service declared in Income Tax Return/TDS filed by the appellant with the Income Tax Department. As no service tax was paid on such differential income, letters were, therefore, issued to the appellant to explain the reasons for non-payment of tax and to provide certified documentary evidences for the F.Y. 2015-16 & F.Y. 2016-17. The appellant neither provided any documents nor submitted any reply justifying the non-payment of service tax on such receipts. The service tax liability of Rs. 11,49,881/- was, therefore, quantified considering the differential income of Rs. 77,54,192/- as taxable income, based on the data provided by the Income Tax Department.

2.1 Show Cause Notice (SCN) No. CGST/WS0802/O&A/TPD(15-16)/ACIFS9592HSD001/2020-21/5588 dated 21.12.2020 was issued to the appellant proposing recovery of service tax amount of Rs. 11,49,881/- not paid on the value of differential income received during the F.Y. 2015-16 & F.Y. 2016-17 along with interest under Section 73(1) and Section 75 of the Finance Act, 1994, respectively. Imposition of penalties under Section 77 and under Section 78 of the Finance Act, 1994 were also proposed.

3. The said SCN was adjudicated vide the impugned order, wherein out of the total service tax demand of Rs. 11,49,881/-, the service tax liability of Rs. 4,09,864/- was confirmed alongwith interest and the service tax demand of Rs. 7,40,017/- was dropped. Penalty of Rs. 10,000/- under Section 77(1) and penalty of Rs. 4,09,864/- under Section 78 were also imposed.

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

- The SCN proposing demand based on the differential value noticed in ITR & ST-3 Returns without conducting any inquiry is not sustainable in the eyes of law. They placed reliance on Alpa Management Consultants Pvt. Ltd- 2007 (6) STR 181; Amrish Ramchandran Shah- 2021 (2) TMI 160-Bom HC.
- The ST-3 Return for F.Y. 2015-16 (April to September) was filed on 26.10.2015 and for the Half Year (October to March) was filed on 07.05.2016. The ST-3 return for F.Y. 2016-17 (April to September) was filed on 24.10.2016 and for period (October to March) was filed on 29.04.2017. The SCN was issued on 21.12.2020. Even if the period from 16.03.2020 to 21.12.2020 is excluded as per Apex Court's decision, all



the demand issued prior to March, 2017 and before, stands time barred. Hence, the demand for the period F.Y. 2015-16 and F.Y. 2016-17 is not sustainable in law on limitation.

- The appellant provided Manpower Supply Services to various business entities. The said service is chargeable to service tax under Reverse Charge Mechanism in terms of Notification No. 30/2012-ST. In terms of Sl. No. 8 of Notification No. 07/2015 dated 01.03.2015 (amending Notification No. 30/2012-ST), 100% liability to pay tax shall be on the service recipient. The adjudicating authority, while confirming the demand, considered clause A (v) of Notification No. 30/2012-ST, and grossly missed the valuation part of the service. He did not consider the threshold exemption and exclusions from gross value while confirming the demand. Cum tax benefit was also not considered while quantifying the demand. Thus, considering these, the service tax payable shall not be more than Rs. 1,38,373/-.
- Manpower Supply services are labour oriented services and there are various decision wherein it is held that the mandatory expenses like Salary, Provident Fund, Workmen Insurance has to be deducted from the total consideration as the same is not includible in the taxable value. Thus, the demand confirmed was without calculating correct taxable value. They placed reliance on Gurbani Security Pvt. Ltd- 2021 (51) GSTL 404 (Tri-Del); M.P.Security Force – 2020 (43) GSTL 253 (Tri-Del).
- When demand is not sustainable on merits, interest and penalties are also not sustainable. When there is no intention to evade the service tax, imposition of penalty may also be set-aside.

5. Personal hearing in the matter was held on 19.04.2023. Shri Subramanya V. Rayaprol, Advocate, appeared on behalf of the appellant. He reiterated the submissions made in the appeal memorandum.

6. I have carefully gone through the facts of the case, the impugned order passed by the adjudicating authority, submissions made by the appellant in the appeal memorandum as well as those made during personal hearing. The issues to be decided in the present case are;

- a) Whether the service tax demand of Rs. 4,09,864/- alongwith interest and penalties, confirmed in the impugned order passed by the adjudicating authority, in the facts and circumstances of the case, is legal and proper or otherwise ?
- b) Whether the demand raised vide SCN dated 21.12.2020, is barred by limitation ?

The demand pertains to the period F.Y. 2015-16 and F.Y. 2016-17.

7. It is observed that the adjudicating authority has, out of the total demand of Rs. 11,49,881/-, dropped demand of Rs. 7,40,017/- and confirmed the demand of Rs. 4,09,864/-. He has observed that in terms of Sr. No. B (II) (8) of Notification No. 30/2012-ST, in respect of the services rendered to Body Corporates, the service provider has 25% liability, whereas 75% tax liability is on the service recipient. Thereafter, in terms of Notification No. 07/2015 dated 01.03.2015, 100% liability to pay tax was shifted on the



service recipient. He, however, held that 100% abatement cannot be extended to the appellant as some of the services were rendered to M/s. Dharmeshbhai Premchanbhai Shah, which is not a Body Corporate. The appellant, on the other hand, have contended that the adjudicating authority has not considered clause A (v) of Notification No. 30/2012-ST, and grossly missed the valuation aspect of the service. He did not consider the threshold exemption and exclusions from gross value while confirming the demand. Cum tax benefit was also not considered while quantifying the demand. Considering these, they claim the service tax payable shall not be more than Rs. 1,38,373/-.

7.1 To examine the claim of abatement, clause A (v) of Notification No. 30/2012-ST, is re-produced below;

(v) provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers to any person who is not in the similar line of business or supply of manpower for any purpose or service portion in execution of works-contract by any individual, Hindu Undivided Family or partnership firm, whether registered or not, including association of persons, located in the taxable territory to a business entity registered as body corporate, located in the taxable territory;

From the text of legal provisions above, it is clear that the supply of manpower for any purpose, by any individual, Hindu Undivided Family or partnership firm, whether registered or not, including association of persons, located in the taxable territory, to a business entity registered as body corporate, located in the taxable territory, is considered as a taxable service for availing abatement under the said notification. The appellant is engaged in Manpower Supply Service. As the appellant could not adduce any evidence to prove that the services rendered to M/s. Dharmeshbhai Premchanbhai Shah was an entity covered under Body Corporate, I find that the abatement has been rightly denied by the adjudicating authority.

7.2 Another, contention put forth by the appellant is that as Manpower Supply Services are labour oriented services, mandatory expenses like Salary, Provident Fund, Workmen Insurance has to be deducted from the total consideration. They placed reliance on Gurbani Security Pvt. Ltd- 2021 (51) GSTL 404 (Tri-Del); M.P.Security Force – 2020 (43) GSTL 253 (Tri-Del). I find merit in their above contention. It is observed that the issue is settled in favour of appellant by the decision of Hon'ble Punjab & Haryana High Court in the case of *Ajay Kumar Gupta 2015 (39) S.T.R. 736 (P & H)* and in the decision of Hon'ble Delhi High Court in case of *Intercontinental Consultants 2013 (29) S.T.R. 9 (Del.)* wherein it has been held that for arriving at the gross amount to be charged under Section 67 of the Act, only such amount is required to be included which is attributable towards the services rendered by the appellant, any other element, which is reimbursable in nature, is not required to be included for the purpose of computation of assessable value under Section 67 of the Act. Thus, in view of various statutory deductions, the payment made towards salary /wages, Provident Fund, Employees Insurance etc are, therefore, required to be deducted from the total amount charged by the appellant from the service recipient for the rendition of the service as these are statutory contributions. The charges attributable to the service element can only be considered in the gross amount charged. It was also observed that after introduction of negative list based service tax regime, under the Act with effect from 1.7.2012, a specified provision has been made in Section 65B(44) where amount towards the service of employee to the employer in or in relation to employment are not includible towards the consideration. This



aspect was not raised before the adjudicating authority, hence, was not examined. Further, the threshold exemption and cum tax benefit was also not considered by the adjudicating authority while quantifying the demand. Accordingly, I find that the demand needs to be re-examined in terms of the observations made above.

8. On the second issue, the appellant have contended that the demand for the period F.Y. 2015-16 and F.Y. 2016-17 is not sustainable in law on limitation. The appellant have claimed that the ST-3 Return for [April, 2015 to September, 2015] was filed on 26.10.2015 and return for [October, 2015 to March, 2016] was filed on 07.05.2016. Also, the ST-3 Return for [April, 2016 to September, 2016] was filed on 24.10.2016 and for [October, 2016 to March, 2017] was filed on 29.04.2017, whereas the SCN was issued on 21.12.2020 which stands time barred. I find that the appellant, to substantiate their above claim, have not submitted respective ST-3 Return to ascertain the actual date of filing. It is observed that the date of filing ST-3 Return for [April, 2015 to September, 2015] was 25th October, 2015 and due date for filing return for [October, 2015 to March, 2016] was extended from 25th April, 2016 to 29th April, 2016. Whereas the appellant have claimed that these returns were filed on 26.10.2015 and 07.05.2016 respectively. As the proof establishing the actual date of filing of ST-3 return is not submitted, the issue of time bar cannot be examined. I, therefore, find that the adjudicating authority also needs to re-examine the aspect of time bar, as contended by the appellant.

9. I, therefore, find that in the interest of natural justice, it would be proper that the matter is remanded back to the adjudicating authority, who shall decide the case afresh on the findings recorded at Para 7.3 & 8 supra. The appellant is also directed to submit the relevant documents/details to the adjudicating authority, including those submitted in the appeal proceedings, in support of their contentions, within 15 days to the adjudicating authority. The adjudicating authority shall decide the case afresh on merits and accordingly pass a reasoned order, following the principles of natural justice.

10. In view of above discussions and findings, I remand the matter back to the adjudicating authority to pass an order after examination of the documents and verification of the claim of the appellant.

11. Accordingly, the impugned order is set-aside and appeal filed by the appellant is allowed by way of remand to the adjudicating authority for decision of the case afresh.

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

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

Arunima
3rd May, 2023.
(अखिलेश कुमार)
आयुक्त (अपील्स)

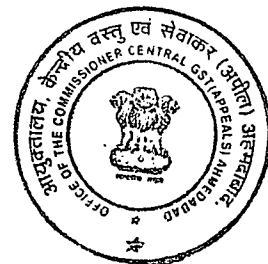
Date: 03.05.2023

Attested

Rekha A. Nair
(Rekha A. Nair)

Superintendent (Appeals)

CGST, Ahmedabad



By RPAD/SPEED POST

To,
M/s. Suman Infrastructure,
207/N, Shrinandnagar Part-I,
Vejalpur Gam,
Ahmedabad

-
Appellant

The Assistant Commissioner (TRC),
CGST, Ahmedabad South
Ahmedabad

-
Respondent

Copy to:

1. The Principal Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Ahmedabad South.
3. The Deputy Commissioner, CGST, Division-VIII, Ahmedabad South.
4. The Assistant Commissioner (H.Q. System), CGST, Ahmedabad South.
(For uploading the OIA)
- ✓ 5. Guard File.

