



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: 20231164SW000072677C

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/2529/2023 12802 - 2806
- ख अपील आदेश संख्या Order-In-Appeal No. **AHM-EXCUS-001-APP-150/2023-24**
दिनांक Date : 25-10-2023 जारी करने की तारीख Date of Issue 02.11.2023
आयुक्त (अपील) द्वारा पारित
Passed by **Shri Gyan Chand Jain**, Commissioner (Appeals)
- ग Arising out of OIO No. WSO7/O&A/OIO-245/AC-KSZ/2022-23 दिनांक: 23.01.2023 passed by Assistant Commissioner, CGST, Division VII, Ahmedabad South.
- घ अपीलकर्ता का नाम एवं पता Name & Address

Appellant

**M/s. Techleap IT Solutions Private Limited,
A-9, Satya Triveni,
B/s. Wide Angle Theatre,
Super Society Lane, Satellite,
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 :

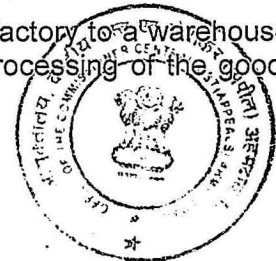
Revision application to Government of India:

(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 प्रकिया 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 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 संलग्नरकम 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.

- 1^प 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.

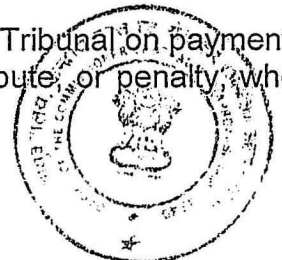
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

- (i) amount determined under Section 11 D;
(ii) amount of erroneous Cenvat Credit taken;
(iii) 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 मांग 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. Techleap IT Solutions Private Limited, A-9, Satya Triveni, B/s Wide Angle Theatre, Super Society Lane, Satellite, Ahmedabad – 380015 (hereinafter referred to as “*the Appellant*”) against Order-in-Original No. WS07/O&A/OIO-245/AC-KSZ/2022-23 dated 23.01.2023 (hereinafter referred to as “*the impugned order*”) passed by the Assistant Commissioner, Central GST, Division VII, Ahmedabad South (hereinafter referred to as “*the adjudicating authority*”).

2. Briefly stated, the facts of the case are that the Appellant are holding PAN No. AAECT8103C. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the FY 2014-15, it was noticed that the Appellant had earned an income of Rs. 27,14,745/- during the FY 2014-15, which was reflected under the heads “sales of services under sales/gross receipt from services (Value from ITR)” filed with Income Tax department. Accordingly, it appeared that the Appellant had earned the said substantial income by way of providing taxable services but had neither obtained Service Tax registration nor paid the applicable service tax thereon. The Appellant were called upon to submit copies of required documents for assessment for the said period. However, the Appellant had not responded to the letters issued by the department.

2.1 Subsequently, the appellant were issued Show Cause Notice No. V/WS07/O&A/SCN-104/AAECT8103C/2020-21 dated 23.09.2020 demanding Service Tax amounting to Rs. 3,35,542/- for the period FY 2014-15, under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994. The SCN also proposed recovery of interest under Section 75 of the Finance Act, 1994; and imposition of penalties under Section 77(1), Section 77(2) and Section 78 of the Finance Act, 1994.



2.2 The Show Cause Notice was adjudicated, ex-parte, vide the impugned order by the adjudicating authority wherein the demand of Service Tax amounting to Rs. 3,35,542/- was confirmed under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994 along with Interest under Section 75 of the Finance Act, 1994 for the period FY 2016-17. Further (i) Penalty of Rs. 3,35,542/- was imposed on the appellant under Section 78 of the Finance Act, 1994; (ii) Penalty of Rs. 10,000/- was imposed on the appellant under Section 77(1) of the Finance Act, 1994; and (iii) Penalty of Rs. 10,000/- was imposed on the appellant under Section 77(2) of the Finance Act, 1994.

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

- The Appellant was engaged in the business of providing Information Technology services to clients outside India and did not obtain service tax registration number being all the services being export of service as per Rule 6A.
- The company was struck off and cease to exist w.e.f. 22/02/2019 by the registrar of companies.
- The directors of the company are staying at Pittsburgh, PA, United States of America from 10/02/2018.
- The letters, the show cause notice & letters of personal hearing as referred to in the order reached the address, but the directors didn't receive any intimation of the same being out of India. Even the current order which was received on 25/01/2023, by the tenant staying at the address, but was sent to a relative of the directors on 28/02/2023 through Whats App.



- The company had provided services to foreign parties during FY 2014-15 amounting to Rs. 27,14,745/-.
- The adjudicating authority has erred law and fact in considering the turnover of Rs. 27,14,745/- as taxable service, which is in fact export of service and the same is not chargeable to tax.
- The Appellant have submitted the following documents:
 - a) Audit Report and Audited Financial Statements for the FY 2014-15,
 - b) Invoices issued by the Appellant during the FY 2014-15,
 - c) Copies of FIRC.

4. Personal hearing in the case was held on 15.09.2023. Shri Shridhar shah, Chartered Accountant, appeared on behalf of the Appellant for personal hearing. He reiterated submissions made in appeal memorandum.

5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum and documents available on record. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority, confirming the demand of service tax against the appellant along with interest and penalty, in the facts and circumstance of the case, is legal and proper or otherwise. The demand pertains to the period FY 2014-15.

6. It is observed that the demand of service tax was raised against the Appellant on the basis of the data received from Income Tax department ex-parte. It is stated in the SCN that the nature of the activities carried out by the Appellant as a service provider appears to be covered under the definition of service; appears to be



not covered under the Negative List of services as per Section 66D of the Act and also declared services given in 66E of the Act, as amended; appears to be not exempted under mega exemption Notification No. 25/2012-ST dated 20.06.2012 as amended. However, nowhere in the SCN it is specified as to what service is provided by the appellant, which is liable to service tax under the Act. No cogent reason or justification is forthcoming for raising the demand against the appellant. It is also not specified as to under which category of service, the non payment of service tax is alleged against the appellant. The demand of service tax has been raised merely on the basis of the data received from the Income Tax. However, the data received from the Income Tax department cannot form the sole ground for raising of demand of service tax.

6.1 I find it pertinent to refer to Instruction dated 26.10.2021 issued by the CBIC, wherein it was directed that:

"It was further reiterated that demand notices may not be issued indiscriminately based on the difference between the ITR-TDS taxable value and the taxable value in Service Tax Returns.

3. *It is once again reiterated that instructions of the Board to issue show cause notices based on the difference in ITR-TDS data and service tax returns only after proper verification of facts, may be followed diligently. Pr. Chief Commissioner/Chief Commissioner(s) may devise a suitable mechanism to monitor and prevent issue of indiscriminate show cause notices. Needless to mention that in all such cases where the notices have already been issued, adjudicating authorities are expected to pass a judicious order after proper appreciation of facts and submission of the noticee."*

6.2 However, in the instant case, I find that no such exercise, as instructed by the Board has been undertaken, and the SCN has been issued only on the basis of the data received from the Income Tax department. Therefore, on this very ground the demand raised vide the impugned SCN is liable to be dropped.



7. Coming to the merit of the case I find that the main contention of the Appellant are that whether the Appellant are liable to pay service tax on income declared by the Appellant in ITR data provided by Income Tax Department, in context of which the Appellant have held that the value over which service tax of Rs. 3,35,542/- was demanded by the adjudicating authority actually pertains to Export of Service which is exempted under Rule 6A of the Service Tax Rule, 1994. For clarification extract of Rule 6A is reproduced as under:

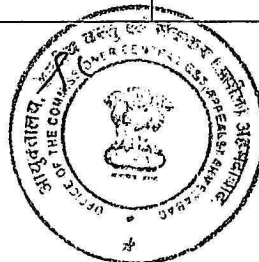
RULE 6A. (1) The provision of any service provided or agreed to be provided shall be treated as export of service when, -

- (a) the provider of service is located in the taxable territory ,*
- (b) the recipient of service is located outside India,*
- (c) the service is not a service specified in the section 66D of the Act,*
- (d) the place of provision of the service is outside India,*
- (e) the payment for such service has been received by the provider of Service in convertible foreign exchange, and*
- (f) the provider of service and recipient of service are not merely establishments of a distinct person in accordance with item (b) of 2 [Explanation 3] of clause (44) of section 65B of the Act*

(2) Where any service is exported, the Central Government may, by notification, grant rebate of service tax or duty paid on input services or inputs, as the case may be, used in providing such service and the rebate shall be allowed subject to such safeguards, conditions and limitations, as may be specified, by the Central Government, by notification.]

8. It is observed that during 2014-15, the Appellant were engaged in the business of providing Information Technology services to its various overseas clients outside India and have received payment in convertible foreign exchange against the same. The details are as under:

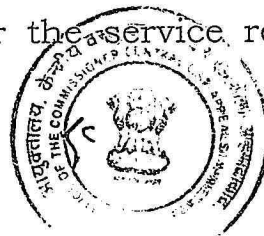
Date	Invoice No.	Name of the party	Amount	Remark
01/04/2014	500001	Tribridge Holdings	2,60,220	US\$ 4675 @ Rs. 59.94
10/04/2014	500002	Tribridge Holdings	1,48,710	US\$ 2475 @ Rs. 60.085



19/05/2014	500003	Tribridge Holdings	1,56,154	US\$ 2675 @ Rs. 58.3755
02/07/2014	500004	MSPProjectNow LLC	3,23,400	US\$ 5416.17@ Rs. 59.71
05/08/2014	500005	Capricon System	45,015	US\$ 750 @ Rs. 60.02
05/08/2014	500006	MSPProjectNow LLC	3,30,820	US\$ 5416.17 @Rs. 61.08
05/09/2014	500007	Capricon System	90,315	US\$ 1500@ Rs. 60.21
08/09/2014	500008	MSPProjectNow LLC	3,26,676	US\$ 5416.17@ Rs. 60.315
24/09/2014	500009	MSPProjectNow LLC	3,30,214	US\$ 5416 @ Rs. 60.97
15/10/2014	500010	Capricon System	46,035	US\$ 750 @ Rs. 61.3805
19/11/2014	500011	Capricon System	46,459	US\$ 750 @ Rs. 61.9455
01/12/2014	500012	Capricon System	46,467	US\$ 750 @ Rs. 61.9555
31/12/2014	500013	MSPProjectNow LLC	1,39,592	US\$ 2210 @ Rs. 63.164
01/02/2015	500014	MSPProjectNow LLC	2,07,870	US\$ 3347.5 @ Rs. 62.07
01/03/2015	500015	MSPProjectNow LLC	1,96,798	US\$ 3192.5 @ Rs. 61.644
		Total	26,94,745	US\$ 44739.34

9. Reading the aforesaid provision and documents viz. all export invoices, copy of Foreign Inward Remittance Certificates (FIRCs) illustrating the amount received from export of service provided by the Appellant, it is very much clear that the value over which service tax was demanded by the adjudicating authority is exempted in terms of service being export of service in view of Rule 6A of the Service Tax Rule, 1994. On verification of documents submitted by the Appellant and demand raised vide the Order-in-Original by the adjudication authority, I find the amount shown in Income Tax Return for F.Y. 2014-15 over which demand of service tax of Rs. 3,35,542/- was raised is nothing but income collected by rendering export of service.

10. Looking to the evidences in support of their submission provided by the Appellant I find that the Appellant, which are located in taxable territory are providing service to the recipient of service located outside India and for the service rendered by the



Appellant they were collecting payment in convertible foreign exchange. Thus I am of the considered view that the Appellant have provided Information Technology services to its various overseas clients outside India i.e. taxable territory and as such they earned income only in convertible foreign exchange in F.Y. 2014-15 from Foreign Service recipients which is exempted in terms of Rule 6A of the Service Tax Rule, 1994 and demand accordingly is legally wrong and not sustainable. Since the demand of service tax is not sustainable on merits, there does not arise any question of interest or penalty in the matter.

11. In view of above, I hold that the impugned order passed by the adjudicating authority confirming demand of Service Tax, in respect of income received by the Appellant during the FY 2014-15, is not legal and proper and deserve to be set aside.

12. Accordingly, I set aside the impugned order and allow the appeal filed by the Appellant.

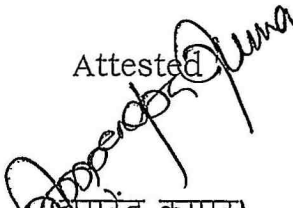
13. अपील कर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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



ज्ञानचंद जैन
आयुक्त (अपील्स)

Date : 25.10.2023

Attested

(अनंद कुमार)
अधीक्षक (अपील्स)
सी.जी.एस.टी, अहमदाबाद



By RPAD / SPEED POST

To,

M/s. Techleap IT Solutions Private Limited,
A-9, Satya Triveni,
B/s Wide Angle Theatre,
Super Society Lane, Satellite,
Ahmedabad – 380015

Appellant

The Assistant Commissioner,
CGST, Division-VII,
Ahmedabad South

Respondent

Copy to:-

1. The Principal Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Ahmedabad South
3. The Assistant Commissioner, CGST, Division VII, Ahmedabad South
4. The Assistant Commissioner (HQ System), CGST, Ahmedabad South (for uploading the OIA)
- ✓ 5. Guard File
6. PA file



