



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: 20231164SW000000EE84

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/3176/2023 / ३३७ - ५५
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-156/2023-24
दिनांक Date : 30-10-2023 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. 67/CGST/Ahmd-South/JC/MT/2022-23 दिनांक: 30.12.2022 passed by
The Joint Commissioner, CGST, Ahmedabad South.
- घ अपीलकर्ता का नाम एवं पता Name & Address

Appellant
M/s. Amar Roadlines,
Plot No.11 & 12, Opp.
Water Tank, Transport Nagar,
Narol, 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 :

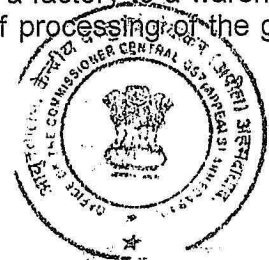
Revision application to Government of India:

(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।

(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 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 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 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;
- इए लिया गलत सेनवैट क्रेडिट की राशि;
- बए 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 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. Amar Roadlines, Plot No. 11 & 12, Opp. Water Tank, Transport Nagar, Narol, Ahmedabad (hereinafter referred to as "the Appellant") against Order-in-Original No. 67/CGST/Ahmd-South/JC/MT/22-13 dated 30.12.2022 (hereinafter referred to as "the impugned order") passed by the Joint Commissioner, Central GST & Excise, Ahmedabad South (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, the facts of the case are that the appellant were holding Service Tax Registration No. ABBFA9097KSD001. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT), it was noticed that the appellant had declared less gross value in their Service Tax Returns (ST-3) for the F.Y. 2015-16 & 2016-17 as compared to the gross value declared by them in their Income Tax Return (ITR)/TDS Returns. Accordingly, it appeared that the appellant had mis-declared the gross value of sales of service in the service tax returns and short paid /not paid the applicable service tax. The appellant were called upon to submit copies of relevant documents for assessment for the said period. However, the appellant neither submitted any required details/documents explaining the reason for the difference raised between gross value declared in ST-3 Returns and Income Tax Return (ITR)/TDS nor responded to the letter in any manner.

2.1. Subsequently, the appellant were issued Show Cause Notice No. STC/04-10/O & A/Amar/21-22 dated 21.04.2021 wherein it was proposed to:

a) Demand and recover an amount of Rs. 1,01,24,345/- for F.Y. 2015-16 and 2016-17 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 (hereinafter referred to as 'the Act').



b) Impose penalty under the provisions of Section 70, 77 and 78 of the Act.

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

a) The demand of service tax amounting to Rs. 9,77,420/- was confirmed under proviso to Sub-Section (1) of Section 73 of the Act along with interest under Section 75 of the Act for the period from FY 2015-16 (period upto September, 2015).

b) Penalty amounting to Rs. 2,09,000/- was imposed under section 77(1) of the Act as they failed to produce the documents as asked by the department.

c) Penalty under section 70 of the Act was dropped in as much as they have filed ST-3 returns within prescribed time frame.

d) Penalty amounting to Rs. 9,77,420/- was imposed under section 78 of the Act.

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

➤ Impugned order is incorrect and not tenable. The detail of demand raised vide the impugned order is demonstrated as under:

Sr. No.	Period	Differential value (Taxable value after abatement @ 30% - Value as per ST-3 Return)	Service Tax liability
1	01 st April to 31 st May, 2015	19,98,281	2,46,987
2	01 st June, 2015 to 30 th September, 2015	33,67,985	4,71,518
3.	Subtotal	53,66,266	7,18,505
4.	Value not shown in freight ledger	18,49,395	2,18,915
Total (01 st April to 30 th September, 2015)		72,15,661	9,77,420



- As regard to the demand of Rs. 7,18,505 for the period 01st April, 2015 to 30th September, 2015 raised due to differential income between ledger and ST-3 return for the said period SCN can be issued within 30 months from the relevant period in normal case and in case the activity involves intention to evade the payment of tax then SCN can be issued within 5 years from the relevant date. In the instant case the date of filing of ST-3 return is 21st October, 2015. For the period April to September 2015 the relevant date as per first proviso to Section 73(1) of the Act would be 30th December 2020 vide Notification No. 450/61/2020-Cus.IV (part-I) dated 30.09.2020. However the date of issue of SCN was 21.04.2021 even beyond the period of 5 years. As such the demand in respect of 7,18,505/- for the period April to September 2015 was time barred and therefore the said demand is not sustainable and required to be dropped.
- As regard to the demand of Rs. 2,58,915/- for the period 2015-16 raised due to reconciliation difference on value of Rs. 18,49,395/- it is submitted that the service in relation to transport of goods by road has been provided by GTA then service tax is to be payable by recipient of service and there is no liability to pay service tax by provider of service. Demand of Rs. 2,58,915 raised on value Rs. 18,49,395/- includes demand over amount received for the both period April to September 2015 and October to March 2016. Demand for the period April to September is not sustainable as the demand is time barred. For the demand raised for the period October to March 2016 it is submitted that the Appellant's firm were audited vide Final Audit Report No. CE/ST-1146/2020-21 dated 21.04.2021 and it is mentioned para 21 in the impugned Order-in Original issued by the adjudicating authority. Therefore the demand for the period October to March 2016 is



not sustainable as the adjudicating authority has already accepted the same in para-21 of OIO. Accordingly no demand for the entire F.Y. 2015-16 is sustainable and required to be dropped.

5. Personal hearing in the case was held on 18.09.2023. Sh. Meet Jadawal, C.A. appeared on behalf of the Appellant for personal hearing and reiterated the submission in the appeal. He requested to allow the appeal. He submitted that the demand is time barred as the Show Cause Notice was issued in 2021. He further submitted that the Appellant provided GTA service where the liability to pay service tax was on the recipient.

6. I have carefully gone through the facts of the case, the impugned order passed by the adjudicating authority, submissions made in the Appeal Memorandum as well as those made during the course of personal hearing 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 01st April, 2015 to 30th September, 2015.

7. On the basis of above submission I find a demand of Rs. **9,77,420/-** for the period April-2015 to September-2015, raised vide SCN (supra) is challenged by the Appellant mainly on the ground of limitation. The Appellant has vehemently contended that the demand for the half year of the impugned period is time barred and above all, the demand of the impugned period is hit by the provision of limitation and as such the entire demand is time barred in terms of Section 73(1) of the Act.

8. 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. It is nowhere specified in the SCN 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. 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 the demand of service tax.

8.1 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."*

8.2 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.

9. The Appellant submitted that Central Goods and Service Tax department, Ahmedabad has already conducted audit under EA-2000 for the period October' 2015 to June' 2017, wherein objection were taken by the auditor for F.Y. 2016-17 in respect of differential income as a result of reconciliation of value booked in ledger/books of account and value over which service tax was already paid by the Appellant. The service tax liability raised by the auditor for F.Y.



2016-17 was paid by the Appellant. In respect to the same issue for the prior period October' 2015 to March' 2016, no objection was taken by the audit officers vide the Final Audit Report CE/ST-1146/2021-21 dated 21.04.2021. Looking to the above contention of the Appellant, I have the considered view that the invocation of extended period for the demand raised for April to September 2015 is not legal and hence the demand and recovery of service tax along with interest and penalty for the impugned period is not sustainable.

10. Now I am going through period wise demand raised by the adjudicating authority in the impugned order. I find that the Appellant submitted that the demand of Rs. 7,18,505/- for the period 01st April, 2015 to 30th September, 2015 raised due to differential income between ledger and ST-3 return is not sustainable as it is time barred. The details in respect of time limit for issuance of SCN for the demand raised for the period 01st April to 30th September, 2015 are shown as under:

Sr. No.	Period	Demand of S.Tax	Date of filing of ST-3 Return	Date of SCN issued
1.	01 st April to 30 th September, 2015	7,18,505/-	21.10.2015	21.04.2021

10.1 In view of the above shown table it is clear that the SCN is issued after the last date of issuance of SCN which should be 30.12.2020 in view of the Notification No. 450/61/2020-Cus.IV (part-I) dated 30.09.2020 which reads as under:-

In exercise of the powers conferred by section 6 of The Taxation and Other Laws (Relaxation and amendment of Certain Provisions) Act, 2020 (No. 38 of 2020), the Central Government hereby specifies that, -

*(i) the 30th day of December, 2020 shall be the end date of the period during which the time limit specified in, or prescribed or notified under, the Central Excise Act, 1944 (1 of 1944), the Customs Act, 1962 (52 of 1962) (except sections 30, 30A, 41, 41A, 46 and 47), the Customs Tariff Act, 1975 (51 of 1975) or **Chapter V of the Finance Act, 1994** (32 of 1994) falls for the completion or compliance of such action as specified under clause (a) or (b) of the said section, and*



(ii) the 31st day of December, 2020 shall be the end date to which the time limit for completion or compliance of such action shall stand extended.

10.2. In view of the above provision I find that the SCN for the period April to September' 2015 were issued even beyond 5 years. I also find that the Appellant firm were audited and in that case the auditor were supposed to verify all records of the firm hence the intention to evade the payment of service tax is not proved at the end of the Appellant and hence the invocation of extended period of 5 years for the issuance is not legal and accordingly, the demand of Rs. 7,18,505/- is dropped for the period April' 2015 to September' 2015.

11. As regard to the demand of Rs. 2,18,915 raised in the impugned order on the value Rs. 18,49,395 by the adjudicating authority on the basis of belief that the income was not shown in the freight ledger, the summary is described in table form as under:

Period	Turnover	Tax demanded
April-September 2015	6,94,079	97,1711
October-March 2016	11,55,316	1,61,744
Total	18,49,395	2,58,915

11.1 In view of the table I agree with the Appellant submission that demands for the period April-September 2015 is not sustainable due to barred by time limitation and demand for the period October-March 2016 is not sustainable due to issue already taken up during departmental Audit. Reading para 21 of the impugned order it is evident that the demand for the period October to March 2016 is not sustainable. Relevant portion of para 21 of the impugned order is reproduced as under:




"I also find that demand of service tax not paid/ short paid for the period from October 2015 to March 2017 as demanded in the show cause notice is not sustainable in view of Final Audit Report No. CE/ST-1146/2 020-21 dated 21.04.2021 as the issue involved in the show cause notice as already been taken up during audit."

12. In view of the above discussion, I am of the considered opinion that the activity carried out by the Appellant is not liable to pay Service Tax. Since the demand of Service Tax is not sustainable on merits, there does not arise any question of charging interest or imposing penalties in the case.

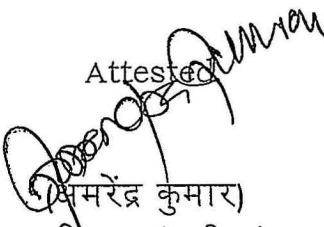
13. Accordingly, in view of my foregoing discussions and finding, I set aside the impugned order passed by the adjudicating authority for being not legal and proper and allow the appeal filed by the Appellant.

14. अपीलकर्ता द्वारा दायर अपील का निपटान उपरोक्त तरीके से किया जाता है।

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


ज्ञानचंद जैन
आयुक्त (अपील्स)

Date : 30.10.2023

Attested

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



By RPAD / SPEED POST

To,
M/s. Amar Roadlines,
Plot No. 11 & 12,
Opp. Water Tank,
Transport Nagar, Narol, Ahmedabad

Appellant

The Joint Commissioner,
CGST & Excise, Ahmedabad South

Respondent

Copy to:-

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

