



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 : 20230764SW000051565B

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/1304/2023/ 1029 - 33
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-72/2023-24
दिनांक Date : 24-07-2023 जारी करने की तारीख Date of Issue 31.07.2023
आयुक्त (अपील) द्वारा पारित
Passed by **Shri Shiv Pratap Singh**, Commissioner (Appeals)
- ग Arising out of OIO No. WS07/O&A/OIO-147/AC-RAG/2022-23 दिनांक: 07.10.2022 passed by
Assistant Commissioner, CGST, Division-VII, Ahmedabad South
- ध अपीलकर्ता का नाम एवं पता Name & Address

Appellant

M/s Snehal Shailesh Shah
A-101, 1st Floor, Ratnakar,
Opp. IOC Petrol Pump,
Shivranjani Char Rasta, Satellite,
Ahmedabad

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

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

- भारत सरकार का पुनरीक्षण आवेदन :

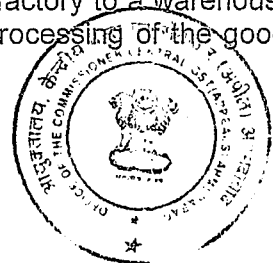
Revision application to Government of India:

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानिकार खाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की 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 Appellate Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

- (4) न्यायालय शुल्कअधिनियम 1970 यथासंशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रू.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.

70प 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.

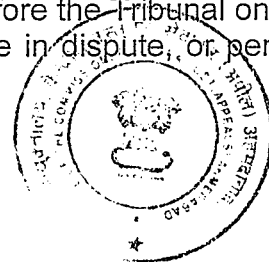
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

- (lxxvi) amount determined under Section 11 D;
(lxxvii) amount of erroneous Cenvat Credit taken;
(lxxviii) 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

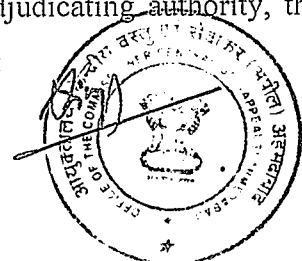
The present appeal has been filed by M/s. Snehal Shailesh Shah, A-101, 1st Floor, Ratnakar, Opp. IOC Petrol Pump, Shivranjani Char Rasta, Satellite, Ahmedabad (hereinafter referred to as "the appellant") against Order-in-Original No. WS07/O&A/OIO-147/AC-RAG/2022-23 dated 07.10.2022 and corrigendum dated 16.12.2022 (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. ABIPS3335F. 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. 26,15,000/- during the FY 2014-15, which was reflected under the heads "Sales / Gross Receipts from Services (Value from ITR)" filed with the Income Tax department. Accordingly, it appeared that the appellant had earned the said substantial income by way of providing taxable services but have neither obtained Service Tax registration nor paid the applicable service tax thereon. The appellant were called upon to submit copies of relevant 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-163/ABIPS3335F/2020-21 dated 23.09.2020 demanding Service Tax amounting to Rs. 3,23,214/- 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; recovery of late fees under Rule 7C of the Service Tax Rules, 1994 read with Section 70 of the Finance Act, 1994; and imposition of penalties under Section 77(1) and Section 78 of the Finance Act, 1994.

2.2 The Show Cause Notice was adjudicated vide the impugned order by the adjudicating authority wherein the demand of Service Tax amounting to Rs. 3,23,214/- 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 from FY 2014-15. Further (i) Penalty of Rs. 3,23,214/- 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)(a) of the Finance Act, 1994; and (iii) Penalty of Rs. 40,000/- was imposed on the appellant under Section 70 of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules, 1994.

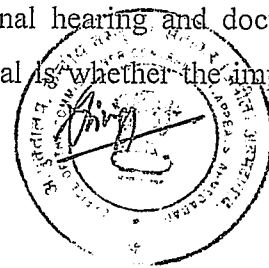
3. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal on the following grounds:



- The appellant is engaged in engaged in the profession of provision of information technology software services.
- The adjudicating authority has not considered the service tax registration certificate provided by the appellant vide reply dated 02-01-2021.
- The adjudicating authority has not considered the service tax return filed by the appellant which has been duly submitted vide reply dated 29-08-2022.
- The adjudicating authority has failed to appreciate that the appellant has submitted copy of rules wherein the assessee can opt for payment of service tax on receipt basis and the copy of challans for the payment of Service Tax Liability as per Service tax rules & regulation and has not failed to pay the amount of service tax due.
- As the service tax has already been paid, hence, the appellant is not liable for the payment of service tax liability of Rs. 3,23,214/- and interest thereon is also not leviable.
- The appellant submitted that imposition of penalty under proviso of Section 78(1) of the Act is not valid as they have not failed to pay the liability.
- The appellant submitted that imposition of penalty under Section 77(1)(a) of the Act is not valid as they possess the Service tax registration.
- The appellant submitted that imposition of penalty under Section 70(1) of the Act read with Rule 7C of Service Tax Rules is not valid as they have filed all the due service tax returns on time.

4. Personal hearing in the case was held on 30.06.2023. Shri Sandip Gupta, Chartered Accountant, appeared for personal hearing and reiterated the submission made in the appeal. He submitted that the appellant had discharged tax liability on the basis of receipt based accounts maintained by them, as permitted under Section 6 of the Finance Act. However, the lower authority has confirmed the demand on the basis of TDS shown in the IT Form 26AS. Therefore, he requested to set aside the impugned order.

5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum, 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 FY 2014-15.

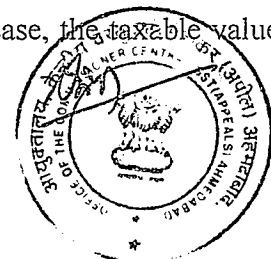
6. It is observed that the main contentions of the appellant is that they have registered with service tax and filed their ST-3 Returns in time; they have opted for receipt basis payment of service tax as per clause (1) of the Rule 6 of the Service Tax Rules, 1994 and they have also paid due service tax for the income of FY 2014-15 in respective financial year in which the amount received, however, the adjudicating authority not taken the consideration the same.

7. It is also observed that the adjudicating authority has confirmed the demand of Service tax of Rs. 3,23,214/- on the income of Rs. 26,15,000/- shown in Form 26AS for the FY 2014-15. The adjudicating authority has in the impugned order observed as under:

“5.2 The noticee has put forth the argument that they have paid the amount in the respective financial year in which the amount of service were received. In this regard, I find from the Profit and Loss Account of 2014-15 that the noticee have booked an amount of Rs. 26,15,000/- as income in 2014-15 and they have not shown any amount as receivables in their ITR of 2014-15. Further the noticee has submitted copy of 26AS of 2014-15 in which he has received amount of Rs. 25,00,000/- from M/s. H & K Solutions Private Limited and Rs. 1,15,000/- from M/s. Pankaj J. Shah and Associates and TDS under head 194J have been deducted which is a proof that the noticee have received the amount in 2014-15 itself, therefore, the argument of the noticee that they have received the payment in the subsequent period is baseless ad cannot be accepted.”

8. On verification of the documents submitted by the appellant, I find that they have booked total income of Rs. 26,15,000/- during the FY 2014-15 in their books of account and the said income shown in the Profit & Loss Account and ITR as sale of service. On verification of the column 3(ii) of Part A of the ITR for the FY 2014-15, I find that the appellant have shown Rs. 25,91,012/- as Sundry Debtors, which was also reflected in Balance Sheet of the FY 2014-15. Thus, I find that the findings of the adjudicating authority that the appellant has not shown any amount as receivables in their ITR of 2014-15 is not correct and without verification of the documents.

9. In view of the third proviso to Rule 6 of the Service Tax Rules, 1994, the assessee can pay the service tax on the receipt basis if their aggregate value of taxable services in the previous financial year is less than fifty lakh rupees. In the present case, the taxable value of



the appellant in the FY 2013-14 is Rs. 9,13,639/- as per ITR submitted by the appellant, therefore, the appellant was eligible for payment of service tax on the receipt basis in the FY 2014-15. The relevant provisions of the Rule 6 of the Service Tax Rules, 1994, is as under:

"Rule 6. Payment of service tax

Provided also that in case of such individuals, partnership firms and one person companies whose aggregate value of taxable services provided from one or more premises is fifty lakh rupees or less in the previous financial year, the service provider shall have the option to pay tax on taxable services provided or agreed to be provided by him up to a total of rupees fifty lakhs in the current financial year, by the dates specified in this sub-rule with respect to the month or quarter, as the case may be, in which payment is received."

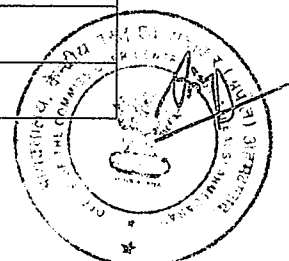
10. On verification of the ITR for the FY 2013-14 and FY 2014-15; and Balance Sheet and Profit & Loss Account for the FY 2014-15, I find that the appellant received total Rs. 4,73,988/- only in the FY 2014-15, which was below the threshold limit of exemption of Rs. 10,00,000/- as per Notification No. 33/2012-ST dated 20.06.2012. Therefore, I find that the appellant are not required to pay any service tax in the FY 2014-15. The calculation of the receipt during the FY 2014-15 is as under:

Amount shown as Sundry Creditor in the ITR of FY 2013-14	-	Rs. 4,50,000/-
Amount booked as Income from service in the ITR of FY 2014-15	-	Rs. 26,15,000/-
Amount shown as Sundry Creditor in the ITR of FY 2014-15	-	Rs. 25,91,012/-
Total amount received in FY 2014-15	-	Rs. 4,73,988/-

11. I also find that as per the details submitted by the appellant they have paid applicable service tax on the amount of Rs. 26,15,000/- after taking benefit of threshold exemption in the respective period as and when the amount received. The details of the receipt of the same and payment of the service tax are as under:

Details of the Date wise Receipt of Rs. 26,15,000/-

Date of Receipt	Amount (in Rs.)	Name of the party
02.07.2014	25,000/-	Pankaj R. Shah & Associates
03.07.2014	15,000/-	Pankaj R. Shah & Associates
11.09.2014	25,000/-	Pankaj R. Shah & Associates
01.01.2015	25,000/-	Pankaj R. Shah & Associates
31.03.2015	25,000/-	Pankaj R. Shah & Associates
31.03.2015	2,50,000/-	H & K Solutions Private Limited
03.03.2016	5,00,000/-	H & K Solutions Private Limited



28.03.2016	10,00,000/-	H & K Solutions Private Limited
12.05.2016	7,50,000/-	H & K Solutions Private Limited
Total	26,15,000/-	

Details of the Service Tax payments

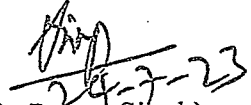
Sr. No.	Particular	Amount (in Rs.)
1	Total Income	26,15,000/-
2	Less: Basic Exemption of Rs. 10 lakh	10,00,000/-
3	Taxable Value	16,15,000/-
4	S.Tax paid vide GAR-7 dated 05.05.2016	8,50,000/- (Taxable Value)
5	S.Tax paid vide GAR-7 dated 29.08.2016	7,65,000/- (Taxable Value)

12. In view of above, I hold that the impugned order passed by the adjudicating authority, confirming demand of Service Tax from the appellant for the FY 2014-15, is not legal and proper and deserves to be set aside. Since the demand of Service Tax fails, there does not arise any question of charging interest or imposing penalties in the case.


13. Accordingly, I set aside the impugned order and allow the appeal filed by the appellant.

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

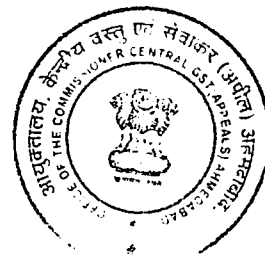
The appeal filed by the appellant stands disposed of in above terms.


(Shiv Pratap Singh)
Commissioner (Appeals)

Attested


(R. C. Maniyar)
Superintendent(Appeals),
CGST, Ahmedabad

Date :



By RPAD / SPEED POST

To,
M/s. Snehal Shailesh Shah,
A-101, 1st Floor, Ratnakar,
Opp. IOC Petrol Pump,
Shivranjani Char Rasta, Satellite,

Appellant

Ahmedabad

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

