



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: 20230864SW0000999F90

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/2570/2023 / 5010 - 15
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-98/2023-24
दिनांक Date : 28-08-2023 जारी करने की तारीख Date of Issue 29.08.2023
आयुक्त (अपील) द्वारा पारित
Passed by Shri Shiv Pratap Singh, Commissioner (Appeals)
- ग Arising out of OIO No. 172/DC/Suket/Div-6/A'bad-South/PMT/2022-23 दिनांक: 30.12.2022
passed by Deputy Commissioner (Tech.), CGST, Ahmedabad South.
- घ अपीलकर्ता का नाम एवं पता Name & Address

Appellant

M/s. Suket Rajnikant Divetia,
324, Platinum Plaza,
Opp. IOC Petrol Pump,
Near Judges Bungalow Road,
Bodakdev, 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 :

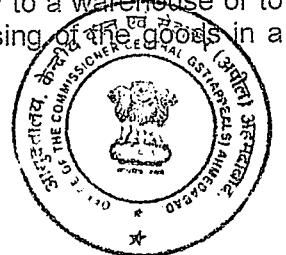
Revision application to Government of India:

(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 प्रक्रिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.



- (फ) 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 इका 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 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 का न्यायालय शुल्क टिकट लगा होना चाहिए।

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

- (5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं 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.

17 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)-

- (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.

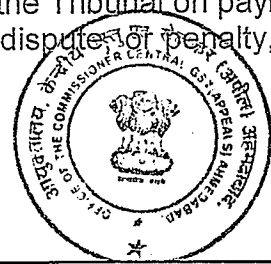
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

- amount determined under Section 11 D;
- amount of erroneous Cenvat Credit taken;
- 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. Suket Rajnikant Divetia, 324, Platinum Plaza, Opp. IOC Petrol Pump, Near Judges Bunglow Road, Bodakdev, Ahmedabad (hereinafter referred to as "the appellant") against Order-in-Original No. 172/DC/SUKET/DIV-6/A'BAD SOUTH/PMT/2022-23 dated 30.12.2022. (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner (Technical), Central GST, 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. AKHPD3711A. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the FY 2014-15 to FY 2016-17, it was noticed that the appellant had earned an income of Rs. 22,31,266/- during the FY 2014-15, Rs. 20,99,542/- during the FY 2015-16, Rs. 29,05,723/- during the FY 2016-17, 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 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/WS06/O&A/SCN-46/2020-21 dated 28.09.2020 demanding Service Tax amounting to Rs. 10,26,575/- for the period FY 2014-15 to FY 2016-17, 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 as per 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 Subsequently, the appellant were issued another Show Cause Notice No. V/WS06/O&A/SCN-378/2020-21 dated 24.12.2020 demanding Service Tax amounting to Rs. 3,14,931/- for the period FY 2015-16, 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 as per 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.



2.3 The aforesaid both Show Cause Notices were adjudicated vide the Order-in-Original No. CGST-VI/Dem-181-182/SUKET/AC/DAP/2022-23 dated 03.01.2023 by the Assistant Commissioner, CGST, Division-VI, Ahmedabad South, wherein with regard to SCN No. V/WS06/O&A/SCN-46/2020-21 dated 28.09.2020, the demand of Service Tax amounting to Rs. 68,496/- out of Rs. 10,26,575/- 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 2014-15. The Assistant Commissioner, CGST, Division-VI, Ahmedabad South has dropped the remaining demand of Service Tax. Further (i) Penalty of Rs. 68,496/- 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. 40,000/- was imposed on the appellant under Rule 7C of the Service Tax Rules, 1994 read with Section 70 of the Finance Act, 1994. The Assistant Commissioner, CGST, Division-VI, Ahmedabad South has dropped the proceeding initiated vide Show Cause Notice No. V/WS06/O&A/SCN-378/2020-21 dated 24.12.2020 as the demand for the same period already covered under SCN No. V/WS06/O&A/SCN-46/2020-21 dated 28.09.2020.

2.4 Subsequently, Show Cause Notice No. V/WS06/O&A/SCN-378/2020-21 dated 24.12.2020 was again adjudicated vide the impugned order wherein the demand of Service Tax amounting to Rs. 3,14,931/- 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 2015-16. Further (i) Penalty of Rs. 3,14,931/- 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) Order for recovery of late fees from the appellant under Rule 7C of the Service Tax Rules, 1994 read with Section 70 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 is engaged in the business of providing Man Power Supply to various industries.
- The adjudicating authority has grievously erred in law and or on facts in not considering the Order-in-Original No. CGST-VI/Dem-181-182/SUKET/AC/DAP/2022-23 dated 03.01.2023 passed by the Assistant Commissioner, Central GST, Division-VI, Ahmedabad South.



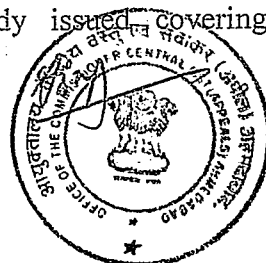
- The adjudicating authority has overruled the Order-in-Original No. CGST-VI/Dem-181-182/SUKET/AC/DAP/2022-23 dated 03.01.2023 passed by the Assistant Commissioner, Central GST, Division-VI, Ahmedabad South.
- The Assistant Commissioner, CGST, Ahmedabad South has mentioned wrong PAN of the appellant at the time of issuing Original SCN i.e. SCN No. F. No. V/WS06/O&A/SCN-46/2020-21/5250 and mentioned PAN as AAPPM4998Q. All other details i.e. Turnover, Name, Address for the FY 2014-15, FY 2015-16 and FY 2016-17 is belongs to the appellant only. Hence, due to typographically mistakes taken placed by the Department in mentioning the PAN of the appellant is not the only reason for not to accept the Order-in-Original No. CGST-VI/Dem-181-182/SUKET/AC/DAP/2022-23 dated 03.01.2023 issued by the Assistant Commissioner, CGST, Ahmedabad south stating the both the PAN is different.

4. Personal hearing in the case was held on 21.08.2023. Shri Sandip Kothari, Chartered Accountant, appeared on behalf of the appellant for personal hearing and handed over additional written submissions. He reiterated submissions made in appeal memorandum and additional written submission. He submitted that the show cause notice covered by the impugned order has been adjudicated twice and has been dropped vide Order-in-Original dated 03.01.2023. Even, otherwise the appellant provided service for Manpower Supply and Recruiting Services, which is chargeable to tax in the hand of recipient on RCM basis. Therefore, he requested to set aside the impugned order.

4.1 The appellant have in their additional written submission, inter alia, reiterated the submission made in the appeal memorandum.

5. I have carefully gone through the facts of the case, submissions made in the Appeal Memorandum & additional written submission; submission 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 FY 2015-16.

6. It is observed that the main contentions of the appellant are that (i) the Order-in-Original No. CGST-VI/Dem-181-182/SUKET/AC/DAP/2022-23 dated 03.01.2023 passed by the Assistant Commissioner, Central GST, Division-VI, Ahmedabad South is already covered the period FY 2015-16 and the said OIO already issued covering the SCN No.



V/WS06/O&A/SCN-378/2020-21 dated 24.12.2020 on which the impugned order passed by the adjudicating authority; and (ii) The Assistant Commissioner, CGST, Ahmedabad South has mentioned wrong PAN of the appellant at the time of issuing Original SCN i.e. SCN No. F. No. V/WS06/O&A/SCN-46/2020-21/5250 and mentioned PAN as AAPPM4998Q. All other details i.e. Turnover, Name, Address for the FY 2014-15, FY 2015-16 and FY 2016-17 is belongs to the appellant only. Hence, due to typographically mistakes taken placed by the Department in mentioning the PAN of the appellant is not the only reason for not to accept the Order-in-Original No. CGST-VI/Dem-181-182/SUKET/AC/DAP/2022-23 dated 03.01.2023 issued by the Assistant Commissioner, CGST, Ahmedabad south stating the both the PAN is different.

6.1 It is also observed that the adjudicating authority has confirmed the demand of service tax vide the impugned order observing as under:

"8. On going through submission of the noticee dated 23.12.2022 it is learnt that a SCN dated 28.09.2020 bearing DIN Number-20200964WS06001YB1CD covering the period 2014-15, 2015-16 and 2016-17 has been Issued to M/s. Suket Rajnikant Divetia and PAN Number mentioned on SCN is AAPPM4998Q.

However, on perusal of the present SCN which is issued from F. No. V/WS06/O&A/SCN-378/2020-21 on 24.12.2020 and bearing DIN-20201264WS060000B12, I find that PAN number mentioned on this SCN is AKHPD3711A.

As PAN Numbers involved in both SCNs are not same, this is not matter of duplication of process as claimed by the noticee. Therefore, the issue involved in SCN F. No. V/WS06/O&A/SCN-378/2020-21 dated 24.12.2020 is liable for confirmation and recovery thereof."

7. I find that the SCN No. V/WS06/O&A/SCN-46/2020-21/5250 dated 28.09.2020 issued to the appellant mentioned PAN as AAPPM4998Q, however, all other details i.e. Name, Address and Turnover for the FY 2014-15, FY 2015-16 and FY 2016-17 is belongs to the appellant only, thus it seems that the PAN was wrongly mentioned in the SCN. I also find that the Assistant Commissioner, CGST, Ahmedabad south, while deciding the said SCN dated 28.09.2020, vide the Order-in-Original No. CGST-VI/Dem-181-182/SUKET/AC/DAP/2022-23 dated 03.01.2023 mentioned correct PAN of the appellant i.e. AKHPD3711A. Thus, I find that the mistake done at the time of issuance of the SCN was corrected at the time of issuance of OIO.



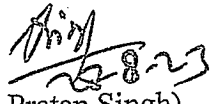
8. I find that even otherwise, when the Order-in-Original No. CGST-VI/Dem-181-182/SUKET/AC/DAP/2022-23 dated 03.01.2023 issued and the SCN No. V/WS06/O&A/SCN-378/2020-21 dated 24.12.2020 also decided by the Assistant Commissioner, Central GST, Division-VI, Ahmedabad South and again the same SCN dated 24.12.2020 decided by the adjudicating authority vide the impugned order is not correct, proper and legal.

9. In view of the above discussion, I am of the considered view that the impugned order issued by the adjudicating authority is not correct, proper and legal and deserved to be set aside. Since the demand of Service Tax is not sustainable, there does not arise any question of charging interest or imposing penalties in the case.

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


11. 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)

Date: 28.08.2023

Attested

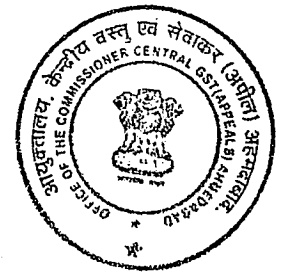

(R. C. Maniyar)
Superintendent(Appeals),
CGST, Ahmedabad

By RPAD / SPEED POST

To,
M/s. Suket Rajnikant Divetia,
324, Platinum Plaza,
Opp. IOC Petrol Pump,
Near Judges Bungalow Road,
Bodakdev, Ahmedabad

The Assistant Commissioner (Technical),
Central GST,
Ahmedabad South

Copy to :



Appellant

Respondent

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Commissioner, CGST, Ahmedabad South
- 3) The Assistant Commissioner (Technical), CGST, Ahmedabad South
- 4) The Assistant Commissioner, CGST, Division VI, Ahmedabad South
- 5) The Assistant Commissioner (HQ System), CGST, Ahmedabad South
(for uploading the OIA)

- 6) Guard File
- 7) PA file



