

आयुक्त (अपील - II) का कार्यालय केन्द्रीय उत्पाद शुल्क  
सैन्टल एक्साइज भवन, सातवीं मंजिल, पौलिटैक्नीक के पास,  
आंबावाडी, अहमदाबाद— 380015.

क फाइल संख्या : File No : V2(ST)032/A-II/2016-17/4729-34  
ख अपील आदेश संख्या : Order-In-Appeal No. AHM-SVTAX-000-APP-209-16-17  
दिनांक Date : 24.01.2017 जारी करने की तारीख Date of Issue 02/02/17

श्री उमा शंकर, आयुक्त (अपील-II) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals-II)

ग \_\_\_\_\_ आयुक्त सेवाकर अहमदाबाद : आयुक्तालय द्वारा जारी मूल आदेश सं  
\_\_\_\_\_ दिनांक : \_\_\_\_\_ से सृजित

Arising out of Order-in-Original No STC/04/HCV/DC/Div-III/15-16 Dated 08.02.2016 Issued  
by Assistant Commr STC, Service Tax, Ahmedabad

घ अपीलकर्ता का नाम एवं पता Name & Address of The Appellants  
M/s. Respite Hotels Pvt Ltd Ahmedabad

इस अपील आदेश से असंतुष्ट कोई भी व्यक्ति उचित प्राधिकारी को अपील निम्नलिखित प्रकार से कर सकता है:-

Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way :-

सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण को अपील:-

Appeal To Customs Central Excise And Service Tax Appellate Tribunal :-

वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-

Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेधाणी नगर, अहमदाबाद-380016

The West Regional Bench of Customs, Excise, Service Tax Appellate Tribunal (CESTAT) at O-20, New Mental Hospital Compound, Meghani Nagar, Ahmedabad - 380 016.

(ii) अपीलीय न्यायाधिकरण को वित्तीय अधिनियम, 1994 की धारा 86 (1) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (1) के अंतर्गत निर्धारित फार्म एस.टी- 5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गई हो उसकी प्रतियाँ भेजी जानी चाहिए (उनमें से एक प्रमाणित प्रति होगी) और साथ में जिस स्थान में न्यायाधिकरण का न्यायपीठ स्थित है, वहाँ के नामित सार्वजनिक क्षेत्र बैंक के न्यायपीठ के सहायक रजिस्ट्रार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहाँ रूपए 10000/- फीस भेजनी होगी।

(ii) The appeal under sub section (1) of Section 86 of the Finance Act 1994 to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules 1994 and Shall be accompany ed by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated.



(iii) वित्तीय अधिनियम, 1994 की धारा 86 की उप-धाराओं एवं (2ए) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (2ए) के अंतर्गत निर्धारित फार्म एस.टी.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क (अपील) के आदेश की प्रतियाँ (OIA) (उसमें से प्रमाणित प्रति होगी) और अपर आयुक्त, सहायक / उप आयुक्त अथवा A219K केन्द्रीय उत्पाद शुल्क, अपीलीय न्यायाधिकरण को आवेदन करने के निदेश देते हुए आदेश (OIO) की प्रति भेजनी होगी।

(iii) The appeal under sub section (2A) of the section 86 the Finance Act 1994, shall be filed in Form ST-7 as prescribed under Rule 9 (2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise (Appeals)(OIA)(one of which shall be a certified copy) and copy of the order passed by the Addl. / Joint or Dy. /Asstt. Commissioner or Superintendent of Central Excise & Service Tax (OIO) to apply to the Appellate Tribunal.

2. यथासंशोधित न्यायालय शुल्क अधिनियम, 1975 की शर्तों पर अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार मूल आदेश एवं स्थगन प्राधिकारी के आदेश की प्रति पर रु 6.50/- पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

2. One copy of application or O.I.O. as the case may be, and the order of the adjudication authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.

3. सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्यविधि) नियमावली, 1982 में चर्चित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है।

3. Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

4. सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्टैट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 25) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 23 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत " माँग किए गए शुल्क " में निम्न शामिल हैं -

- (i) धारा 11 डी के अंतर्गत निर्धारित रकम
- (ii) सेनवैट जमा की ली गई गलत राशि
- (iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

⇒ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होगा।

4. For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores,

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.

⇒ Provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

4(1) इस संदर्भ में, 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।

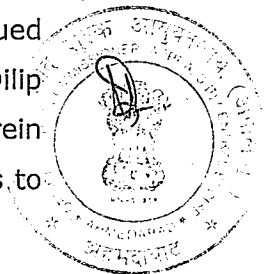
4(1) In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.



**ORDER-IN- APPEAL**

This order arises on account of an appeal filed by M/s. Respite Hotels Pvt. Ltd., Shop No. 1, Favourite Plaza, Opp. Town Hall, Ellisbridge, Ahmedabad-380 006 (here-in-after referred to as "*the appellants*" for the sake of brevity) against the Order-In-Original number STC/04/HCV/DC/D-III/2015-16 dated 08.02.2016 ( herein after referred to as the "*impugned order*" for sake of brevity), passed by the Deputy Commissioner, Service Tax, Division-III, Ahmedabad (herein after referred to as the "*Adjudicating Authority*" for sake of brevity).

2. Briefly stated the facts of the case are that the appellants were engaged in providing of services classified under the category of 'Manpower Recruitment Agency Service [Section 65(105)(k)], Cleaning/ House Keeping Service [Section 65(105)(zzzd)] and Outdoor Catering Service [Section 65(105)(zzt)]' and were holding the Service Tax Registration number AABCR6437NST001 for the same. During the course of audit, it was observed that the appellants had provided 'Cleaning / Housekeeping Service' to M/s. Reliance Industries Limited, Jamnagar (herein after referred to as "*RIL*" for sake of brevity) and at Ankleshwar in their Dhirubhai Ambani Occupational Health Center /DAOHC & FWC (herein after referred to as "*DAOHC*" for sake of brevity). It was informed by the appellants that DAOHC provides medical services free of cost to the employees of RIL. The appellants had provided Cleaning / Housekeeping Service under the work orders issued by RIL. It was further observed that the appellants had not paid Service Tax on such services provided to RIL. Accordingly, a show cause notice for the periods 2008-09 to 2011-12 were issued. As the issue was of periodical nature, the information for the further period 2012-13 was called for. The appellants submitted the required data and vide their letter dated 23.07.2014, they informed that they had already started charging, collecting and paying Service Tax on the value of services provided to DAOHC from 2012-13. However, on verification of ST-3 returns filed for the period 2012-13, it was found that the appellants had claimed exemption from payment of Service Tax on an amount of ₹6,70,372/- for the period April 2012 to June 2012. On being asked regarding availment of the said exemption, the appellants stated that they had claimed exemption for cleaning services provided to DAOHC during the period April 2012 to June 2012. They further submitted that the said exemption was on the same grounds and submissions as mentioned in the earlier show cause notice issued to them for the periods 2008-09 to 2011-12. A statement of Shri Dilip Thakkar, Director of the appellants unit was recorded on 28.01.2015, wherein he inter alia confirmed that the appellants had provided exempted services to



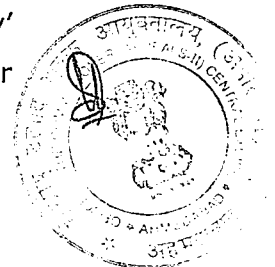
DAOHC for the period April 2012 to June 2012. Accordingly, a show cause notice dated 29.01.2015 was issued to the appellants which was adjudicated by the adjudicating authority vide the impugned order. The adjudicating authority, under the impugned order, held the amount of ₹ 6,70,372/- as taxable and confirmed the demand of ₹ 82,858/- under Section 73 of the Finance Act, 1994 along with interest under Section 75 and also imposed penalty under Section 77 and 78 of the Finance Act, 1994.

3. Being aggrieved, the appellants filed the present appeal. They argued that the adjudicating authority has erred in law as well as in facts in contending the value of ₹ 6,70,372/- as taxable service and classifying under Cleaning/Housekeeping services. They stated that DAOHC is not a commercial entity as the health care centres were indeed charitable entity. They further contended that the adjudicating authority has erred in invoking larger period of limitation to demand Service Tax of ₹ 82,858/- as the show cause notice itself was barred by limitation. They also requested to grant consequential relief against demand of interest and penalties under Sections 75, 77 and 78 respectively of the Finance Act, 1994.

4. Personal hearing was granted on 06.01.2017, wherein Shri Rahul Patel, representative of the appellants, appeared on behalf of the appellants and reiterated the contents of appeal memorandum.

5. I have gone through the appeal memorandum, stay application as well as the oral submission made during personal hearing. Looking to the facts of the case, I proceed to decide the case on merits without insisting for pre-deposit.

6. I find that that the appellants have provided the cleaning services on which no Service Tax has been paid by the appellants for the period from April 2012 to June 2012. The main contention of the appellants is that the above service does not fall in the category of Cleaning Service as the said services were not provided in the commercial buildings or premise. Therefore, in the present case, the main issue is whether the service in question provided by the appellants is falling in the definition of the cleaning activity as per the definition given under Section 65(24b) of the Finance Act, 1994 or otherwise. According to Section 65(105)(zzzd) of the Finance Act, 1994, taxable service means any service provided or to be provided to any person, by any other person, in relation to cleaning activity. The definition of, 'Cleaning activity' given under Section 65(24b) of the Finance Act, 1994 is reproduced as under for ease of reference:



"Cleaning activity" means cleaning, including specialized cleaning services such as disinfecting, exterminating or sterilizing of objects or premises, of –

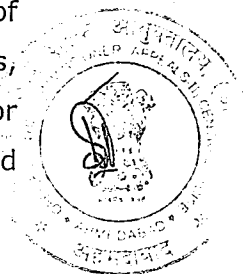
- (i) **Commercial or industrial buildings, and premises thereof;** or  
 (ii) *Factory, plant or machinery, tank or reservoir of such commercial or industrial buildings and premises thereof, but does not include such services in relation to agriculture, horticulture, animal husbandry or dairying."*

(Emphasis Supplied)

**6.1.** There is no dispute in the case regarding the nature of the activity such as disinfecting, exterminating or sterilizing. From the scope of work order it is also evident that the nature of the activity is cleaning activity. Further, there is no dispute that that the appellants had provided 'Cleaning / Housekeeping Service' to the employees and their relatives of RIL at Jamnagar and at Ankleshwar in the DAOHC. Further, there is no dispute that the appellants had provided Cleaning / Housekeeping Service under the work orders issued by RIL for which the payments had been made by RIL to the extent of ₹ 6,70,372/- on which the appellants had not paid Service Tax of ₹ 82,858/- during the period from April 2012 to June 2012. However, as per the above definition, the cleaning activity is only taxable if the same is provided at Commercial or industrial building and premises thereof or for factory, plant or machinery, tank or reservoir of such commercial or industrial buildings and premises thereof. The appellants have contended that they have provided the cleaning services at DAOHC which are not commercial or industrial building.

**6.2.** Now, issue to be determined herein this appeal is that whether the said cleaning services provided by the appellants at DAOHC can be considered as services provided at non-commercial or non-industrial building or otherwise. The Adjudicating Authority has concluded that the cleaning activity provided at DAOHC was commercial on the ground that DAOHC cannot be separated from RIL. The adjudicating authority, in paragraph 26 of the impugned order, has claimed that the registration of the DAOHC/ DAOHC & FWC, under the Bombay Shop and Establishment Act, 1948, also fails to prove that the same is non-commercial in nature.

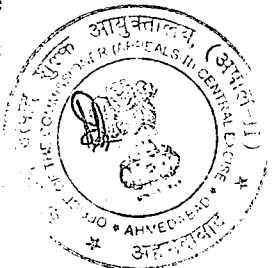
**6.3** It is further verified from the impugned order that the work orders to the appellants had been issued by RIL and not by DAOHC and the appellants were being paid by RIL for providing the said service and there was no role of DAOHC either in issuing the work order or making the payment thereof. Thus, from the facts stated in foregoing Para, the role of RIL was not restricted for Admin purpose as contended by the appellants. Further, DAOHC had provided



the free medical services only to the employees of RIL and their relatives and the said medical services were not open to all. Thus, from above, it is clear that the appellants had provided the said service in the building/premises of RIL and the said medical services were provided exclusively to the employees of RIL and their relatives which is with all reasons to believe a part of legal requirement on part of RIL to be complied under various labour laws and hence, the said building/premises can be considered as commercial/Industrial building in view of the above facts.

**6.4.** Further, according to the adjudicating authority, the ledger of the appellants depicts that the appellants were being paid by RIL for providing the said service to RIL and there was no role of DAOHC either in issuing the work order or making the payment thereof. Further, the appellants have submitted that although, DAOHC was located within the commercial or industrial building of M/s. RIL, it was a non-commercial or non-industrial in nature. The appellants further submitted that they did not have any Certificate or License or Authority exhibiting that the DAOHC was non-commercial or non-industrial organization. In his statement dated 28.01.2015, Shri Dilip Thakkar, Director of the appellants, *inter alia* deposed that the appellants had provided "Cleaning / Housekeeping Services" to RIL in their DAOHC; that in case of DAOHC, bills were raised in the name of Reliance Industries Ltd. mentioning the site as DAOHC, Jamnagar and in case of "Ankleshwar Dispensary", bills were raised in the name of Reliance Industries Ltd. mentioning the site as "Ankleshwar Dispensary"; that they were not in possession of any Certificate or License or Authority exhibiting to the effect that the DAOHC was non-commercial or non-Industrial organization.

**6.5.** Further, the appellants had contended that from the CMO Certificate, it is clear that the intention of DAOHC is of welfare and for charitable cause and not to earn profit on the services provided and hence, services given to non-commercial building/premises cannot be made taxable. This contention of the appellants is not sustainable in as much as the deciding criteria for taxability under this category of cleaning service is not the 'Non-commercial Entity' but the 'Non-commercial Building/Premises' only. Whether DAOHC is a welfare and charitable entity or not is not important but the medical services provided at the premises of RIL is to be considered while deciding the taxability under this category of cleaning services. And as discussed in detail in the foregoing paragraphs, the building/premises where DAOHC has provided free medical services to the employees and their relatives of RIL is commercial/industrial building/premises only. Dependence is placed on the Board's Circular No.B1/6/2005-TRU dated 27.07.2005 wherein it is very categorically clarified that "*such cleaning services in respect of non-commercial buildings and premises thereof would not be*

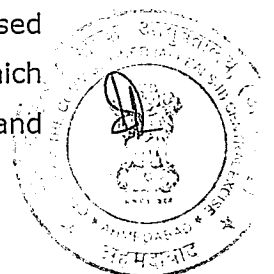


*covered within the perview of service tax under this category".*

**6.6.** Thus, from the above facts, the recipient of the service is M/s. Reliance Industries Ltd. as the work order is issued by RIL, invoices issued to RIL and Payment is also made by RIL. The services are provided to RIL at Dhirubhai Ambani Occupational Health Centre ('DAOHC') Located as Jamnagar and Ankleshwar. The Medical Facilities provided by the above DAOHC is only for the employees of RIL, their family members and dependents. DAOHC are owned by RIL. Both the DAOHC/DAOHC & FWC situated at Jamnagar and Ankleshwar are owned and run by RIL are providing welfare services to the employees of RIL and their relatives, as a part of the perks or under legal obligation to the employees of RIL and therefore it cannot be separated from RIL while considering its nature of commercial or non-commercial. The appellants have received the work order from RIL which is a commercial entity and the service is provided to RIL and payment is also made by RIL and RIL is a commercial and industrial organization. Though, the DAOHC/DAOHC & FWC is situated at Reliance Greens, the same is part of RIL. In view of the above, I find that DAOHC /DAOHC & FWC both at the Jamnagar and Ankleshwar have provided medical services in the premises of Commercial and Industrial Building of RIL.

**6.7.** Therefore, I find that the service provided by the appellants is covered under the Definition of "Cleaning Activity" stipulated under Section 65(24b) of the Finance Act, 1994 as the medical services provided by DAOHC/DAOHC & FWC in a commercial/industrial building of RIL and thus the services provided by the appellants is taxable Service under Section 65(105)(zzzd) of the Finance Act, 1994. Therefore, the income received for providing the above service is taxable income. Thus, on merits, I uphold the impugned order holding the amount of ₹6,70,372/- as taxable and confirming the demand of ₹82,858/- under the category of "Cleaning / Housekeeping Service" along with interest.

**7.** With regard to the extended period of limitation, the appellants have contended that invoking extended period of limitation is erroneous and the show cause notice is itself barred by limitation. However, from the records I find that the appellants, being registered with the Service Tax Department, were well conversant with the Service Tax law. In case of any confusion on taxability, it was open to them to approach the department for necessary clarification. No such efforts have been put by the appellants. The appellants had suppressed the facts that the service provided at the building/premises is of RIL for which they entered into agreement with RIL and invoice was raised on RIL and



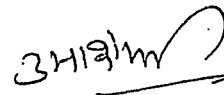
payment thereto was being made by RIL. Further, had the Audit been not carried out, these facts would have not been unearthed. Further, the appellants were very much aware that the premises at which services are being provided is owned by RIL and the same is being used for free medical services exclusively for the employees of RIL. In spite of these facts, the appellants intentionally considered the said building as being used as non-commercial building. Thus, it is amply clear that the appellants deliberately not paid the Service Tax. The omission on the part of the appellants is nothing but suppression of the material facts on their part. I find that the larger period of limitation has been correctly invoked under the proviso to Section 73 of the Finance Act, 1994. The appellants have suppressed the taxable value from the department by not showing the same in their ST-3 Returns. They knew the facts that Service Tax is leviable and payable on the service in question provided by them. It is clear intention on their part. Hence I hold that the Service Tax amount of ₹82,858/- has been correctly demanded from them under proviso to Section 73 of the Finance Act, 1994 along with interest under Section 75 and penalty under Sections 77 and 78 of the Finance Act, 1994.

8. In view of above facts, I uphold the impugned order holding the amount of ₹6,70,372/- as taxable and confirming the demand of ₹82,858/- under the category of "Cleaning / Housekeeping Service" along with interest and also imposing penalty under Sections 77 and 78 of the Finance Act, 1994.

9. The appeal filed by the appellants is thus rejected.

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

10. The appeals filed by the appellant stand disposed off in above terms.



(उमा शंकर)

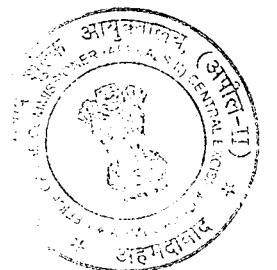
आयुक्त (अपील्स - II)

CENTRAL EXCISE, AHMEDABAD.

**ATTESTED**

  
(S. DUTTA)

SUPERINTENDENT (APPEAL-II),  
CENTRAL EXCISE, AHMEDABAD.





**BY R.P.A.D.**

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**Copy To:-**

1. The Chief Commissioner, Central Excise, Ahmedabad zone, Ahmedabad.
2. The Commissioner, Service Tax, Ahmedabad.
3. The Additional Commissioner, Service Tax, Ahmedabad.
4. The Deputy/Asstt. Commissioner, Service Tax, Div.III, Ahmedabad.
5. The Assistant Commissioner, Systems-Ahmedabad
6. P.A. File.
7. Guard File.

