

: : आयुक्त (अपील्स) का कार्यालय , वस्तु एवं सेवा करऔर केन्द्रीय उत्पाद शुल्कः: O/O THE COMMISSIONER (APPEALS), GST & CENTRAL EXCISE,

द्वितीय तल, जी एस टी भवन / 2nd Floor, GST Bhavan, रेस कोर्स रिंग रोड, / Race Course Ring Road, राजकोट / Rajkot — 360 001

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सत्यमेव जयते

रजिस्टर्डडाकए.डी. द्वारा :-

DIN-20230264SX0000000DFC

क अपील / फाइलसंख्या/ . Appeal /File No.

विवत

केन्द्रीय

मूलवादेशसं /

दिनांक/ Date

V2/3/RAJ/2022

137/ST/2020-21

11-10-2021

ख अपील आदेश संख्या(Order-In-Appeal No.):

RAJ-EXCUS-000-APP-00822023

आदेश का दिनांक / Date of Order:

30.01.2023

जारी करने की तारीख /

Date of issue:

02.02.2023

श्री शिव प्रताप सिंह, आयुक्त (अपील्स), राजकोट द्वारा पारित /

Passed by Shri Shiv Pratap Singh, Commissioner (Appeals), Rajkot.

ग अपर आयुक्त / संयुक्त आयुक्त / उपायुक्त / सहायक आयुक्त , केन्द्रीय उत्पाद शुल्क / सेवाकर / वस्तु एवंसेवाकर , राजकोट / जामनगर / गांधीधाम। द्वारा उपरलिखित जारी मूल आदेश से सृजित : / Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise/ST / GST, Rajkot/Jamnagar / Gandhidham :

अपीलकर्ता & प्रतिवादी का नाम एवं पता / Name & Address of the Appellant & Respondent:-

M/s. Kunal Structure (I) Pvt Ltd., Ganga Park, Plot no. 1, Kunal House, Panchvati Raod, Opp. Sanskruti Apartment, Rajkot-360005.

इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है।/ Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way:

(A) सीमा शुल्क , केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील,केन्द्रीय उत्पाद शुल्क अधिनियम , 1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम , 1994 की धारा 86 के अंतर्गत निम्नलिखि+त जगह की जा सकती है।/

Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-

(i) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर॰ के॰ पुरम, नई दिल्ली, को की जानी चाहिए।/

The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.

(ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलें सीमा शुल्क,केंद्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका,,द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- ३८००१६को की जानी चाहिए।/

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016in case of appeals other than as mentioned in para-1(a) above

(iii) अपीलीय न्यायाधिकरण के समझ अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्त EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम एक प्रति के साथ, जहां उत्पाद शुल्क की माँग , ज्याज की माँग , ग्याज की माँग , ज्याज की माँग

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. 10,000/- where amount of duty demand/interest/penalty/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 Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of stay shall be accompanied by a fee of Rs. 500/-.

(B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम,1994की धारा 86(1) के अंतर्गत सेवाकर नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की मौग की लगाया गया जुमाने वाल या उससे कम,5 लाख रुपए यो 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो कमश: 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रिजस्टार के नाम से किसी भी सार्वजिनक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑडर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा।/

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 accompanied 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 satuated. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-.

- वित्त अधिनियम,1994की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी। / The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in For ST.7 as prescribed under Rule 9 (2) &9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal. (i)
- (ii)

- भारत सरकार कीपूनरीक्षण व्यवेदन :
 Revision application to Government of India:
 इस आदेश की पूनरीक्षण व्यवेदन :
 इस आदेश की पूनरीक्षण व्यवेदन ईकाई,वित्त मंत्रालय, राजस्व विभाग, वीथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए।
 A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid: (C)
- यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी पाट के प्रशंह के पाट के किसी कारखाने या किसी In case of any loss of goods, where the loss occurs 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 (i).
- भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छुट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। / 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. (ii)
- यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। / . In case of goods exported outside India export to Nepal or Bhutan, without payment of duty. (iii)
- सुनिश्चित उत्पाद के उत्पादन शुल्क के भगतान के लिए जो इयूटी केडीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (न॰ 2),1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायाविधि पर या बाद में पारित किए गए हैं।/
 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 such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998. (iv)
- उपरोक्त आवेदन की दो प्रतियां प्रपत्न संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमावली,2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनयम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी 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. (v)
- पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए। जहाँ संलग्न रकम एक लाख रूपये या उससे कम हो तो रूपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रूपये से ज्यादा हो तो रूपये 1000 -/ का भुगतान किया जाए। The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac. (vi)
- यदि इस आदेश में कई मूल आदेशों का समावेश हैं तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पढ़ी कार्य से बचने के लिए यथास्थित अपीलीय नयाधिकरण को एक अपील या केदीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers various numbers 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 lakh fee of Rs. 100/- for each. (D)
- यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-I के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट लगा होना चौहिए। / One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs.6.50 as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended. (E)
- सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित मामलों को सिम्मलित करने वाले नियमों की और भी ध्यान आकर्षित किया जाता है। / 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. (F)
- उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbec.gov.in को देख सकते हैं। / For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website www.cbec.gov.in (G)



अपील आदेश /ORDER-IN-APPEAL

M/s Kunal Structure (I) Pvt Ltd, Ganga Park, Plot No.1, Kunal House, Panchvati Road, Opp. Sanskruti Apartment, Rajkot-360 005 (hereinafter referred to as appellant) has filed appeal Nol.V2/3/RAJ/2022 against Refund (Rebate) Order No. 137/ST/2020-21 dated 11.10.2021 (hereinafter referred to as 'impugned order') passed by the Assistant Commissioner, Central GST Division, Rajkot-I (hereinafter referred to as 'adjudicating authority').

- 2. Briefly stated, the facts of the case are that the appellant had filed a claim for refund of service tax of Rs.45,55,566/- on the ground that they had erroneously paid service tax on the construction of low cost housing services provided to Bhavnagar Municipal Corporation (BMC for brevity). The refund was sanctioned by the Assistant Commissioner vide order-in-original dated 30.05.2016. The department filed appeal against the said order and vide Order-in-Appeal dated 28.03.2017, the Commissioner (Appeals) has remanded back the matter to the adjudicating authority for fresh consideration. In the remand proceedings, the adjudicating authority has rejected the refund claim by the impugned order.
- 3. The appellant filed appeal wherein they submitted that the impugned order has overlooked the submissions and documents submitted in support of the claim made by them. The refund order did not appreciate the fact that no proceedings have been initiated by the department to recover any amount on grounds of violation of rule 6(3)(1) of Cenvat Credit Rules, 2004.
- 3.1 The appellant submitted that the matter is pending decision before CESTAT, Ahmedabad and the adjudication process should be kept in abeyance till the time CESTAT decides the matter.
- 3.2 The appellant contended that the impugned order has mechanically confirmed the demand without considering various factual and legal aspects. The impugned order failed to appreciate the fact that Assistant Commissioner has already examined various documents placed on record and rightly sanctioned refund.
- 3.3 The appellant submitted that they have produced copy of agreement entered with BMC along with the copies of RA bills which clearly reflected the value of services rendered to the service recipient. Along with these, the appellants have produced copies of challans reflecting the exact amount of service tax paid of the service rendered to BMC. There is no dispute that the services rendered to BMC are exempted under Notification No.25/2012-ST.

The appellant submitted that the allegation of the department that lation of ST-3 returns with gross total income of the appellants was incumbent

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to sanction refund is completely erroneous as the ST-3 returns reflect the entire amount of service tax paid by the appellant during the financial year on all the activities carried out by the appellant including the service tax of Rs.45,55,566/-paid on services rendered to BMC.

- 3.5 The appellant contended that allegations that in Form R they have not provided any details regarding their total gross income and actual service tax payable and also not specified the gross income in which they have made excess payment of service tax are not sustainable as Form R prescribed for claiming refund provided only for the amount of refund claimed along with reasons and supporting documents. The department cannot insist on providing the entire gross total income of the appellants which is not even relevant for the purpose of granting refund.
- 3.6 The appellant submitted that they have paid service tax under works contract service, as is evident from the service tax payment challans, after claiming abatement. The same is also reflected in the ST-3 returns and they have claimed refund only of that amount of service tax which was paid after claiming abatement. The total value of services is already reflected in contract agreement and RA bills submitted to the adjudicating authority.
- 3.7 Further, the appellant submitted that, the value of taxable services and the amount received by the service recipient, on which service tax has been paid, has been duly ascertained by the Assistant Commissioner via order dated 30.05.2016.
- 3.8 The appellant submitted that since the services provided by the appellant to BMC involve supply of goods, the same are classified under 'works contract' services. The construction of low cost houses upto a carpet area of 60 square meters are eligible for exemption under Sl. No.14(c) of Mega Exemption Notification.
- 3.9 The appellant submitted that they have not availed any CENVAT credit pertaining exclusively to the exempted services rendered to BMC. Further, there are no proceedings initiated by the department against the appellant proposing to recover any amount on the ground of alleged violation of rule 6(3)(1) of the Cenvat Credit Rules, 2004. Any alleged violation of the Cenvat Credit Rules 2004 cannot be a ground for denial of the refund claim filed by the appellant. Cenvat Credit Rules, 2004 prescribes its own mechanism for wrongly availed credit and has no application to the facts of the present case.
- 3.10 The appellant submitted that in the order dated 30.05.2016, the Assistant Commissioner has examined the application of the principles of unjust enrichment as is clear from para 6 of the order wherein certain queries were made before sanctioning of refund claim which included passing of burden of tax to any other person. The Assistant Commissioner, at paragraph 12 of the order dated

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30.05.2016, has concluded that the refund amount has not been collected by the appellants from BMC. The appellants have also submitted a CA certificate stating that the incidence of service tax has not been passed on. The department has not challenged the authenticity of the CA certificate.

- 4. Opportunities for personal hearing were granted to the appellant on 01.11.2022, 09.11.2022, 29.11.2022 and on 22.12.2022 but the appellant failed to avail any of the opportunity and did not appear for personal hearing. Therefore, I proceed to decide the appeal on the basis of facts available on record.
- 5. I have carefully gone through the facts of the case, the impugned order and the submissions made in the appeal memorandum by the Appellant. The matter to be decided is whether the impugned order confirming the demand of service tax from the appellant is proper and legal.
- Refund of service tax of Rs.45,55,566/- was sanctioned to the appellant on the ground that they had erroneously paid service tax on the construction of low cost housing services provided to BMC. The department filed appeal against the said order and vide Order-in-Appeal dated 28.03.2017, the Commissioner (Appeals) has remanded back the matter to the adjudicating authority for fresh consideration. In the remand proceedings, the adjudicating authority has rejected the refund claim by the impugned order on the ground that the appellant has not produced any reconciliation to establish that the value of services provided by them to BMC is included in the value shown in ST-3 returns on which service tax is payable. In the grounds of appeal also, the appellant has not submitted any such reconciliation. Thus the appellant, at the first hand, failed to establish that there had been excess payment of service tax so as to claim refund. The adjudicating authority also mentioned in the impugned order that during the course of personal hearing held on 08.09.2021, the appellant sought 10 days' time to submit reconciliation sheet, but they had not submitted the same even after passing 30 days. The appellant has not submitted the reconciliation with this appeal also. Thus, the appellant has failed to establish that they are eligible for refund and hence the refund has been correctly rejected by the adjudicating authority.
- 7. Regarding the observation of the adjudicating authority that it was incumbent upon the appellant to follow rule 6 of Cenvat Credit Rules, 2004 before applying for refund, the appellant submitted that they have not availed any CENVAT credit pertaining exclusively to the exempted services rendered to BMC. Further, the appellant contended that, there are no proceedings initiated by the department proposing to recover any amount on the ground of alleged violation of of the Cenvat Credit Rules, 2004. In this regard, I agree with the findings of the Cenvat Credit Rules, 2004. In this regard, I agree with the findings

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appellant firstly by availment of Cenvat credit and secondly though the claim of refund on the ground of exemption. As per provisions of rule 6(3) of Cenvat Credit Rules, 2004 when a service provider provided taxable as well as exempted services simultaneously, they were required to follow the procedure laid down under the rules by reversing the cenvat credit proportionate to the value of exempted services. In the present case, the appellant has claimed exemption and at the same time did not follow the provisions of rule 6(3) of Cenvat Credit Rules, 2004. Thus the adjudicating authority correctly rejected the refund on this count also. Since the refund is found not maintainable, I do not find it necessary to discuss the aspect of the of unjust enrichment.

- 8. In view of above, I uphold the impugned order and reject the appeal.
- 9. अपीलकरता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
- 9. The appeal filed by the Appellant is disposed off as above. सत्यापित / Attested

Superintendent Central GST (Appeals)

Rajkot

(शिव प्रताप सिंह/ SHIV PRATAP SINGH) आयुक्त (अपील)/Commissioner (Appeals)

By R.P.A.D.

सेवा में मेस्सेर्स कुणालस्ट्रक्वर (ई) प्राइवेट लिमिटेड गंगा पार्क, प्लॉट 1, कुणाल हाउस, पंचवटी रोड, राजकोट-360 005। To M/s Kunal Structure (I) Pvt Ltd, Ganga Park, Plot No.1, Kunal House, Panchvati Road, Opp. Sanskruti Apartment, Rajkot-360 005

प्रतिलिपि :-

- 1) मुख्य अध्यक्त,वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र,अहमदाबाद ।
- 2) प्रधान आयुक्त,वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट आयुक्तालय, राजकोट ।
- 3) सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क मण्डल राजकोट-। ।
- 4) ग्रार्ड फ़ाइल।

