



सत्यमेव जयते

आयुक्त (अपील) का कार्यालय,
Office of the Commissioner (Appeal),
 केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
 जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
 CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
 07926305065- टेलीफैक्स 07926305136



DIN:20230764SW000000E070

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/3305/2022-APPEAL / 3421 - 28
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-53/2023-24
 दिनांक Date : 21-07-2023 जारी करने की तारीख Date of Issue 25.07.2023
 आयुक्त (अपील) द्वारा पारित
 Passed by Shri Shiv Pratap Singh, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. CGST/WT07/HG/328/2022-23 दिनांक: 17.08.2022,
 issued by Deputy/Assistant Commissioner, CGST, Division-VII, Ahmedabad-North
- ध अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

M/s Indravardhan Haribhai Soni,
 A/1- 401, Arya Villa Apartment,
 Anand Party plot Road, New Ranip,
 Ahmedabad-382470

2. Respondent

The Deputy/ Assistant Commissioner, CGST, Division-VII, Ahmedabad
 North, Ground Floor, Jivabhai Mansion Building, Aashram Road,
 Ahmedabad - 380052

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 :

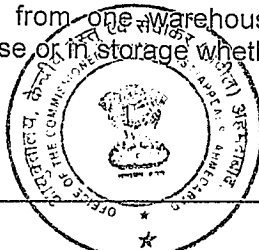
भारत सरकार का पुनरीक्षण आवेदन :
 Revision application to Government of India :

(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 हानि कारखाने 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.



(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 भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष 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 हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर 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 पढ़ी 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 शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.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 item of the court fee Act, 1975 as amended.

- (5) इन और 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.

- (7) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामले में कर्तव्य मांग (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 सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग" (Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇒ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील दाखिल करने के लिए पूर्व शर्त बना दिया गया है।

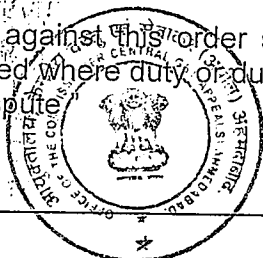
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

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



ORDER IN APPEAL

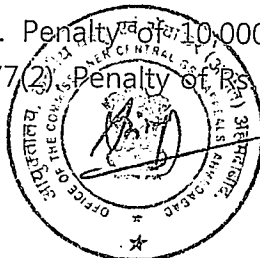
M/s. Indravardhan Haribhai Soni, A/1-401, Arya Villa Apartment, Anand Party Plot Road, New Ranip, Ahmedabad -382470 (hereinafter referred to as '*the appellant*') have filed the present appeal against the Order-in-Original No. CGST/WT07/HG/328/2022-23 dated 17.08.2022, (in short '*impugned order*') passed by the Assistant Commissioner, Central GST, Division-VII, Ahmedabad North Commissionerate (hereinafter referred to as '*the adjudicating authority*'). The appellant were engaged in providing taxable services and were not registered with the Service Tax Department. They are holding PAN No. BDDPS1636M.

2. The facts of the case, in brief, are that based on the data received from the Central Board of Direct Taxes (CBDT) for the F.Y. 2015-16, it was noticed that the appellant had earned substantial income by providing taxable services. They neither obtained Service Tax Registration nor paid service tax on such income. Letters were, therefore, issued to the appellant to provide the details of the services provided during the F.Y. 2015-16 and explain the reasons for non-payment of tax and provide the certified documentary evidences for the same. The appellant neither provided the documents nor submitted any reply justifying the non-payment of service tax on such receipts. After the negative list regime, all services are taxable except those covered under negative list. Therefore, the figure provided by the CBDT was considered as the total taxable value in order to ascertain the tax liability under Section 67 of the F.A., 1994. The service tax was calculated on the income reflected under the heads "Sales / Gross Receipts from Services (Value from ITR)" or "Total Amount paid / credited under Section 194C, 194I, 194H, 194J (Value from Form 26AS)" of the Income Tax Act, 1961, on which no tax was paid.

<i>Sr. No.</i>	<i>F.Y.</i>	<i>Value from ITR or Value of Form 26AS</i>	<i>Service Tax rate</i>	<i>Service Tax Payable</i>
01	2015-16	24,33,956	14.50%	3,52,924/-

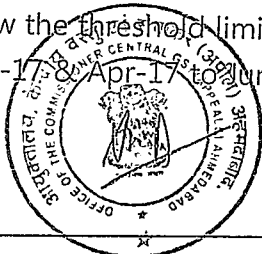
2.1 A Show Cause Notices (SCN) bearing No. CGST/A'bad North/ Div-VII/AR-III/TPD/Unreg/2015-16/2020-21 dated 27.09.2020 was issued to the appellant proposing recovery of service tax amount of Rs. 3,52,924/- on the value of income received during the F.Y. 2015-16 along with interest; under Section 73(1) and Section 75 of the Finance Act, 1994. Imposition of penalties under Section 77 (1) & 77(2) and under Section 78 of the Finance Act, 1994 were also proposed. The service tax liability for the F.Y. 2016-17 to 2017-18 (up to June, 2017) ascertained in future was also proposed to be recovered under provisions of Section 73 of the F.A., 1994.

3. The said SCN was adjudicated vide the impugned order wherein the service tax demand of Rs. 3,52,924/- was confirmed along with interest on the income received during the F.Y. 2015-16. Penalty of Rs. 10,000/- was imposed under Section 77(1) and Rs.5000/- was imposed under Section 77(2). Penalty of Rs. 3,52,924/- was also imposed under Section 78 of the Finance Act.



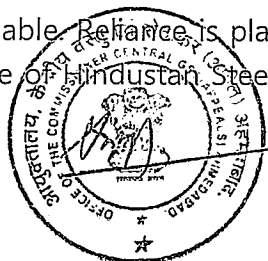
4. Being aggrieved with the impugned order passed by the adjudicating authority, the appellants have preferred the present appeal alongwith condonation of delay, on the grounds elaborated below:-

- The show cause notice is vague as it nowhere discusses the nature of activities being carried out by the appellants and assumed that whatever income they have earned is taxable service income liable to tax under the provisions of Finance Act 1994 and Rules made therein. In support of their contention, they drew attention on the decision in the case of;
 - SBQ Steels Ltd. – 2014 (300) ELT 185 (AP)
 - Shemco India Transport 2011 (24) STR 409 (Tri-Del.)
 - Amrit Food vs. CC 2005 (190) ELT 433 (SC)
- Impugned order is a non-speaking order as was confirmed without considering the facts of the case and applying to the provisions and rules discussed in OIO itself. The OIO has not considered the exemption from service tax claimed by them as the Ld. Assistant Commissioner has not given any cogent findings. Hence the impugned order is passed in gross violation of principles of natural justice. Reliance placed on following case laws:-
 - Cyril Lasardo (Dead) V/s Juliana Maria Lasarado-2004 (7) SCC 431
 - Sukkla & Brothers - 2010 (254) ELT 6 (SC)=2011 (22) STR 105 (SC)
- Services alleged to be provided by appellants are covered under negative list of services. They are engaged in the business of carrying out intermediate production process as job worker amounting to manufacture or production in relation to cut and polished diamonds and gemstones; or plain and studded jewelry of gold and other precious metals falling under Chapter 71 of the Central Excise Tariff Act, 1985 (5 of 1986). These activities are covered under clause (e) of the negative list hence in terms of Section 66B these activities not leviable to service tax.
- Mega Exemption Notification No. 25/2012-ST dated 20.06.2012 provides for exemption from service tax in respect of various services and one of those includes the services by way of carrying out any intermediate production process as job work not amounting to manufacture or production in relation to cut and polished diamonds and gemstones; or plain and studded jewellery of gold and other precious metals, falling under Chapter 71 of the Central Excise Tariff Act, 1985 (5 of 1986). Thus the activity of job work provided by them are either falling under Negative List or Mega Exemption List and hence no service tax is payable on the same.
- They are eligible for Small Scale Service provider exemption under Notification No. 33/2012-ST dated 20.06.2012 as the income on account of taxable services is below the threshold limit of Rs. 10 Lacs exemption for the Financial Year 2015-16, 2016-17 & Apr-17 to Jun-17 and they are very well eligible to claim the same and



hence they are not liable to pay any service tax on the alleged income as referred in the subject Notice.

- The amount received by the Appellants from its service receivers has to be treated as inclusive of the amount of service tax payable. In the case of excise duty also, it has been held that the amount received should be taken as cum-duty price and the value should be derived there from, by excluding the duty. Reliance placed on following citations;
 - Rajmahal Hotel v CCE 2006 (4) STR 370 (Tri-Del)
 - Gem Star Enterprises (P) Ltd. v. CCE 2007 (7) STR 342
 - Panther Detective Services v. CCE 2006 (4) STR 116 (Tri.-Del.)
 - Advantage Media Consultant (10) STR 0449(Tri-Cal), Hon'ble
- Extended period of limitation is inapplicable in the present case as there was no Suppression of facts with intent to evade payment of service tax. Therefore, the entire demand is barred by limitation. The appellants were under a bonafide belief that they are not liable to pay service tax for the reasons stated hereinabove. Hence, there can be no suppression of facts. Then the normal period of limitation shall be thirty months and hence the SCN seeking to demand the tax for FY 2015-16, FY 2016-17 & F.Y. 2017-18 (upto June-17) issued in September 2020 will be considered to have been issued beyond the normal period of limitation and hence the same shall not be valid. The figures reflected in Form 26AS are already available with the department from the concerned year itself as the same is based on the filings done under Income Tax Act by the deductor. Therefore the said information has never been suppressed by the appellants from the department. Reliance placed on
 - Cosmic Dye Chemicals- 1995 (75) E.L.T. 721 (S.C.)
 - Tamil Nadu Housing Board- 1994 (74) E.L.T. 9 (S.C.)
 - Cadila Laboratories Pvt. Ltd.-2003 (152) E.L.T. 262 (S.C.)
 - Pushpam Pharmaceuticals Company -1995 (78) E.L.T. 401 (S.C.)
- The SCN also presumes that the differential amount of income is towards the provision of taxable services but does not identify the relevant taxable services in question. Such approach may not be in accordance with law. They placed reliance on following;
 - Shubham Electricals
 - Kush Constructions v. CGST NACIN 2019 (24) G.S.T.L. 606 (Tri. - All.)
 - Quest Engineering & Consultants Pvt. Ltd- 2022(58) STL 345 (Tri-All)
- Where there is no demand of duty, penalty cannot be imposed. They relied on the judgment in case of Coolade Beverages Limited Vs. Commissioner of Central Excise (2004) 172 ELT 451 (All). The Appellants had no intention to evade payment of service tax hence penalty is not imposable. Reliance is placed on the decision of the Hon'ble Supreme Court in the case of Hindustan Steel Ltd. v The State of Orissa reported in AIR 1970 (SC) 253.



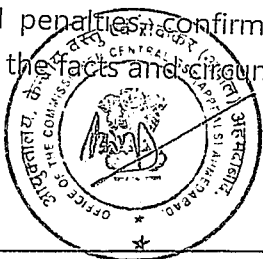
- Interest is also not payable in case where the demand itself is not payable. Hon'ble Apex Court in the case of Pratibha Processors-1996 (88) E.L.T. 12 (SC), held that interest payable is a mere accessory of the principal and if the principal is not recoverable or payable, so is the interest on it.
- Section 80 of the Act provides that no penalty shall be imposed on the assessee for any failure referred to in sections 76, 77 or 78 of the Act, if the assessee proves that there was reasonable cause for the said failure. Thus, the Act statutorily provides for waiver of penalty.

4.1 On going through the appeal memorandum, it is noticed that the impugned order was issued on 17.08.2022 and the same was received by the appellant on 26.08.2022. However, the present appeal, in terms of Section 85 of the Finance Act, 1994, was filed on 24.11.2022 i.e. after a delay of 29 days from the last date of filing appeal. Therefore, the appellant have filed a Miscellaneous Application seeking condonation of delay on the grounds that the person dealing with legal matters proceeded on leave from 20.10.2022 on health grounds and as he was facing some domestic issues he extended his leave till 20.11.2022 by that time the appeal period was over. Hence, they could not file the appeal in time, hence requested to condone the delay which was within the condonable period.

5. Personal hearing in the matter was held on 26.06.2023. Shri Pratik Trivedi, Chartered Accountant, appeared on behalf of the appellant. He reiterated the submissions made in the Miscellaneous Application seeking condonation of delay in filing the appeal. He submitted that the appellant provided jewellery making job work basis, as the same amounts to manufacture and is covered under negative list. He therefore requested to set-aside the order in original. He undertook to submit a copy of Form-26AS, ITR, Profit & Loss Account, Ledger and job work invoices within a week.

6. Before taking up the issue on merits, I will first decide the Miscellaneous Application filed seeking condonation of delay. As per Section 85 of the Finance Act, 1994, an appeal should be filed within a period of 2 months from the date of receipt of the decision or order passed by the adjudicating authority. Under the proviso appended to sub-section (3A) of Section 85 of the Act, the Commissioner (Appeals) is empowered to condone the delay or to allow the filing of an appeal within a further period of one month thereafter if, he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the period of two months. Considering the cause of delay as genuine, I condone the delay of 29 days and take up the appeal for decision on merits.

7. I have carefully gone through the facts of the case, the impugned order passed by the adjudicating authority, submissions made by the appellant in the appeal memorandum as well as those made during personal hearing. The issue to be decided in the present case is as to whether the service tax demand of Rs. 3,52,924/- alongwith interest and penalties confirmed in the impugned order passed by the adjudicating authority, in the facts and circumstances of the case, is legal and proper or otherwise.



The demand pertains to the period F.Y. 2015-16.

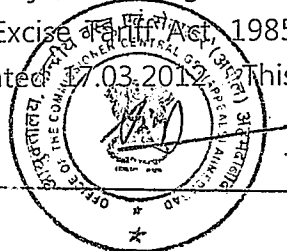
7.1 It is observed that the entire demand has been raised in the SCN based on the income data shared by the CBDT, on which no service tax was paid by the appellant. As the appellant was not registered with the department, they were requested to submit the documentary evidence in respect of their income. They however not only failed to submit the required details /documents called for but also failed to offer any explanation before the adjudicating authority either by filing a defense reply or appearing for the personal hearing. The case was therefore decided ex-parte. However, now before the appellate authority, the appellant have submitted copy of Forem-26 AS, ITR-Return, Balance Sheet, Profit & Loss Account, Sample Sale Invoices for the F.Y. 2015-16 to support their contention that the differential income earned was pertaining to job work.

7.2 I have gone through the above documents submitted by the appellant vide letter dated 30.6.2023. On going through the documents, I find that the appellant in the ITR have shown the income of Rs.24,33,956/- from sale of services. This amount is also reflected as job-work income in their Balance Sheet of F.Y. 2015-16. They also submitted sample invoices raised in the name of M/s. Arihant Designer Jewelers Pvt. Ltd and M/s. Kantilal Shivilal Shah. In the invoices the appellant have charged job work charges for carrying out the some process on gold jewelry provided to above mentioned jewelers. They in their ITR have also mentioned the nature of business as Gold Job Work business. Considering the above facts, I find that the appellant are engaged in the business of carrying out job work process on gold jewelry.

7.3 The SCN alleges that the income earned by the appellant is a taxable income. However, the nature of service rendered by the appellant and the reasons to levy of service tax on such service is not discussed in the impugned order. Thus, to that extent I find that the impugned order is a non-speaking order and the demand was confirmed without appreciation of above facts.

8. It is observed that the appellant are engaged in the job-work of carrying out intermediate production process on various gold jewelry. Prior, to Finance Act, 2017, under **Clause (f)** of the Negative List "*services by way of carrying out any process amounting to manufacture or production of goods excluding alcohol liquor for human consumption*". The phrase 'processes amounting to manufacture or production of goods' has been defined in **Clause (40)** of Section 65B of the Act as a process on which duties of excise are leviable under section 3 of the Central Excise Act, 1944 (1 of 1944) or any process amounting to manufacture of alcoholic liquors for human consumption, opium, Indian hemp and other narcotic drugs and narcotics on which duties of excise are leviable under any State Act for the time being in force. Thus, the process which amounts to manufacture was not considered as a taxable service as was included in the negative list. However, Clause (f) & Clause (40) were omitted vide Finance Act, 2017 with effect from 31.03.2017.

8.1 However, the process of carrying out job work in relation to cut and polished diamonds and gemstones; or plain and studded jewelry of gold and other precious metals falling under Chapter 71 of the Central Excise Act, 1985 (5 of 1986) was exempted under Notification no. 12/2012-ST dated 17.03.2012. This notification was



further amended vide Mega Notification No. 25/2012-ST dated 20.06.2012. Relevant text of Clause (30) of Notification No. 25/2012-ST is re-produced below for reference;

30. Carrying out an intermediate production process as job work in relation to -

- (a) *agriculture, printing or textile processing;*
- (b) *cut and polished diamonds and gemstones; or plain and studded jewellery of gold and other precious metals, falling under Chapter 71 of the Central Excise Tariff Act, 1985 (5 of 1986);*
- (c) *any goods on which appropriate duty is payable by the principal manufacturer; or*
- (d) *processes of electroplating, zinc plating, anodizing, heat treatment, powder coating, painting including spray painting or auto black, during the course of manufacture of parts of cycles or sewing machines upto an aggregate value of taxable service of the specified processes of one hundred and fifty lakh rupees in a financial year subject to the condition that such aggregate value had not exceeded one hundred and fifty lakh rupees during the preceding financial year;*

As the appellant were engaged in the business of carrying out an intermediate production process as job work in relation to gold jewelry, they fall under Clause 30(b) of the above notification. Hence, I find that they are eligible for the above exemption. Considering the nature of job-work and the period involved, I find that intermediate process carried out by the appellant is squarely covered under Clause (30) (b) of the mega notification. I therefore do not find any reason as to why the benefit of above exemption cannot be extended to the appellant. Considering the invoices, balance Sheet and ITR submitted by the appellant, I find the demand of Rs.3,52,924/- confirmed alongwith interest and penalties is not sustainable in the eyes of law.

9. In light of above discussion and findings, I set-aside the impugned order confirming the service tax demand of Rs.3,52,924/- alongwith interest and penalties and allow the appeal filed by the appellant.

10. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant stands disposed off in above terms.

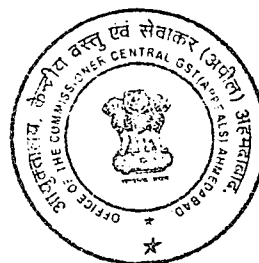
(Signature)
21-7-23
(शिव प्रताप सिंह)
आयुक्त (अपील्स)

Date: 21-7-23

Attested

(Signature)
(Rekha A. Nair)

Superintendent (Appeals)
CGST, Ahmedabad



By RPAD/SPEED POST

To,

M/s. Indravardhan Haribhai Soni,
A/1-401, Arya Villa Apartment,
Anand Party Plot Road, New Ranip,
Ahmedabad -382470

Appellant

The Assistant Commissioner,
CGST, Division-VII,
Ahmedabad North
Ahmedabad

Respondent

Copy to:

1. The Principal Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Ahmedabad North.
3. The Assistant Commissioner (H.Q. System), CGST, Ahmedabad North.
(For uploading the OIA)
4. Guard File.

