आयुक्त(अपील)का कार्यालय,
Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय,अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्वमार्ग, अम्बावाड़ीअहमदाबाद३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
07926305065 – टेलेफैक्स07926305136

DIN : **20221264SW000000B183**

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STD/218/2022 /6001 – 6005

ख अपील आदेश संख्या Order-In-Appeal No. **AHM-EXCUS-001-APP-100/2022-23**
दिनाँक Date : **15-12-2022** जारी करने की तारीख Date of Issue 16.12.2022

आयुक्त (अपील) द्वारापारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)

ग Arising out of OIO No. **03/CGST/Ahmd-South/AC/PMC/2022-23** दिनाँक: **22.04.2022** passed by Assistant Commissioner, CGST, Division V, Ahmedabad South

ध अपीलकर्ता का नाम एवं पता Name & Address

Appellant

1. **The Assistant Commissioner**
   CGST, Division V, Ahmedabad South
   CGST Bhavan, 1st Floor, Revenue Marg,
   Ambawadi, Ahmedabad - 380015

Respondent

1. **M/s Rajeshbhai Dhanjibhai Gajera**
   C5, Shanti Nagar Society, Nikol Gam Road,
   T.B. Nagar, Bapunagar, Ahmedabad - 380024

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 पूवोक्त 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 मे हो माल की प्रकिया के दौरान हुई हो।

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

(क) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलें 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 डयूटी केडिट 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 दिनाँक से तीन मास के भीतरमूल–आदेश एवं अपील आदेश की दो–दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए।उसके साथ खाता इ.का मुख्य शीर्ष के अंतर्गत धारा 35–इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर–6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रूपये या उससे कम होतो रूपये 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 अपीलः–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35–बी/35–इ के अंतर्गतः–

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. Registar 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 ओदश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होत हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता हैं।

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 not withstanding 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 अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रू.6.50 पैसे कान्यायालय शुल्क टिकट लगा होना चाहिए।

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

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(71) 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)-

(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:

(ccxvii) amount determined under Section 11 D;
(ccxviii) amount of erroneous Cenvat Credit taken;
(ccxix) 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 the Assistant Commissioner, CGST, Division-V, Commissionerate- Ahmedabad South (hereinafter referred to as the appellant), on the basis of Review Order No. 33/2022-23 dated 20.07.2022 passed by the Principal Commissioner, Central GST, Ahmedabad South Commissionerate in terms of Section 84 (1) of the Finance Act, 1994, against Order in Original No. 03/CGST/Ahmd-South/AC/PMC/2022-23 dated 22.04.2022 [hereinafter referred to as "*impugned order*"] passed by the Assistant Commissioner, CGST, Division-V, Commissionerate- Ahmedabad South [hereinafter referred to as "*adjudicating authority*"] in the case of M/s. Rajeshbhai Dhanjibhai Gajera, C5, Shanti Nagar Society, Nikol Gam Road, T.B. Nagar, Bapunagar, Ahmedabad [hereinafter referred to as the respondent].

2. Briefly stated, the facts of the case is that as per the information received from the Income Tax Department, the respondent had earned substantial income from services amounting to Rs.85,66,000/- during F.Y. 2014-15. However, the respondent did not obtain service tax registration and did not pay service tax on the service income. The respondent was requested vide letters on different dates to submit the documentary evidence in respect of their income. However, the respondent failed to submit the required details/documents and neither was any explanation/clarification submitted regarding the income earned. Therefore, the service income earned by the respondent was considered as taxable value and it appeared that the respondent had failed to pay the service tax amounting to Rs.10,58,757/- on the said amount. Therefore, the respondent was issued Show Cause Notice bearing No. CGST/WS05/TPD-2014-15/2020-21 dated 28.12.2020 wherein it was proposed to :

A. Demand and recover the service tax amounting to Rs.10,58,757/- under the proviso to Section 73 (1) of the Finance Act, 1994 along with interest under Section 75 of the Finance Act, 1994.

B. Impose penalty under Sections 77(1) and 78 of the Finance Act, 1994.

C. Recover late fee in terms of Rule 7C of the Service Tax Rules, 1994 read with Section 70 of the Finance Act, 1994.

2. The SCN was adjudicated vide the impugned order and the proceedings initiated against the respondent were dropped.

3. Being aggrieved with the impugned order, the appellant department have filed the present appeal on the following grounds :

i. The adjudicating authority has erred in dropping the demand without recording any finding on the merits of the case.

ii. On the basis of statement of bills, the adjudicating authority has concluded that the respondent is doing job work in relation to cutting and polishing of diamonds. The adjudicating authority has failed to bring on record the mandatory statutory documents like invoices, job work challans, bank statements etc. which should be examined before concluding that the respondent is providing exempted services.

iii. Reliance is placed upon Board's Circular No.1053/02/2017-CX dated 10.03.2017 wherein it was laid down that adjudication order must be a speaking order. However, the adjudicating authority has failed to give clear and proper findings and, therefore, the impugned order is vague, cryptic and non speaking.

4. Personal Hearing in the case was held on 09.12.2022. Shri Akshat Vithlani and Shri Harsh B. Patel, Chartered Accountants, appeared on behalf of the respondent for the hearing. They submitted a written submission during hearing as cross-objection to appeal.

5. In the written submission filed on 09.12.2022, the respondent, contended, inter alia, that :

- The reasons for granting exemption along with the proper Notification number has been categorically mentioned in the impugned order. The Department has not stated as to what merits have not been mentioned in the impugned order. The grounds mentioned in the appeal memorandum are general and ambiguous.

- It is a general rule that the burden of proof lies with the person making the allegation. The department has made the allegation without any supporting evidence.
- The department has not considered that the adjudicating authority had verified the ledgers, bills and 26AS during adjudication of the case. It is on the best judgment of the authority as to the documents he wants to rely on. The department does not have the right to interfere in adjudication. Review of the impugned order is to be restricted to the legality and propriety.
- The adjudicating authority has satisfied himself on the basis of required evidences that they are engaged in job work activity.

6. I have gone through the facts of the case, submissions made in the Appeal Memorandum, the written submissions filed by the respondent and the material available on records. The issue before me for decision is whether the impugned order dropping the demand of service tax amounting to Rs.10,58,757/-, in the facts and circumstances of the case, is legal and proper. The demand pertains to F.Y. 2014-15.

7. I find that the respondent was issued SCN on the basis of the data received from the Income Tax Department. It is stated at Para 3 of the SCN that the respondent was called upon to submit documents/details in respect of the service income earned by them, however, the respondent failed to submit the same. It is observed that in the SCN except for stating that "*the nature of activities carried out by the said Service Provider appears to be covered under the definition of service and appears that not covered under the Negative List as given in the Section 66D of the Finance Act, 1994 and also declared services given in Section 66E of the Finance Act, 1994*", no other cogent reason or justification is forthcoming in the SCN for raising the demand against the respondent. It is also not specified as to under which category of service, the non payment of service tax is alleged against the respondent. The demand of service tax has been raised merely on the basis of the data received from the Income Tax, which indicated that the respondent had reported income from sale of services in their ITR. However, the data received from the Income Tax department cannot form the sole ground for raising of demand of service tax.

7.1. I find in pertinent to refer to Instruction dated 26.10.2021 issued by the CBIC, wherein it was directed that :

> "It was further reiterated that demand notices may not be issued indiscriminately based on the difference between the ITR-TDS taxable value and the taxable value in Service Tax Returns.
>
> 3. It is once again reiterated that instructions of the Board to issue show cause notices based on the difference in ITR-TDS data and service tax returns only after proper verification of facts, may be followed diligently. Pr. Chief Commissioner/Chief Commissioner(s) may devise a suitable mechanism to monitor and prevent issue of indiscriminate show cause notices. Needless to mention that in all such cases where the notices have already been issued, adjudicating authorities are expected to pass a judicious order after proper appreciation of facts and submission of the noticee."

7.2 However, in the instant case, I find that no such exercise, as instructed by the Board has been undertaken, and the SCN has been issued only on the basis of the data received from the Income Tax department. Therefore, on this very ground the demand raised vide the impugned SCN is liable to be dropped.

8. Coming to the merits of the case, it is observed that the adjudicating authority has at Para 23.2 of the impugned order mentioned that the Statement of Bills for diamonds received for polishing as well as the ledger account of K Star Manufacturing Co. as well as the general ledger were verified. Thereafter, the adjudicating authority has concluded at Para 23.3 of the impugned order that the respondent had undertaken job work of cutting and polishing of diamonds, which is exempted under Notification No.25/2012-ST dated 20.06.2012.

9. It is pertinent to refer to Sr. No. 30 (ii) (b) of Notification No.25/2012-ST dated 20.06.2012, which is reproduced below :

> "(ii) any intermediate production process as job work not amounting to manufacture or production in relation to-
>
> (b) cut and polished diamonds and gemstones; or plain and studded jewellery of gold and other precious metals, falling under Chapter 71 of Central Excise Tariff Act, 1985 (5 of 1986);"

9.1 The respondent have along with their written submissions, submitted copies of the invoices relating to diamond polishing carried out by them and on perusing the same, it is observed that the respondent are engaged in polishing of diamonds on job work basis for which they are paid labour charges. The activity of diamond polishing on job work basis is exempted in terms of Sr.No. 30 (ii) (b) of Notification No. 25/2012-ST dated 20.06.2012. Consequently, I am

of the considered view that the appeal filed by the appellant department is devoid of merits.

10. In view of the facts discussed hereinabove, I uphold the impugned order and reject the appeal filed by the appellant department.

11. अपीलकर्ता 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.

15th December, 2022.

(Akhilesh Kumar)
Commissioner (Appeals)
Date: 15.12.2022.

Attested:

(N.Suryanarayanan. Iyer)
Superintendent(Appeals),
CGST, Ahmedabad.

OFFICE OF THE COMMISSIONER CENTRAL GST (APPEALS) AHMEDABAD

BY RPAD / SPEED POST

To

The Assistant Commissioner,
CGST, Division- V,
Commissionerate : Ahmedabad South. — Appellant

M/s. Rajeshbhai Dhanjibhai Gajera,
C5, Shanti Nagar Society,
Nikol Gam Road, T.B. Nagar,
Bapunagar, Ahmedabad — Respondent

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Principal Commissioner, CGST, Ahmedabad South.
3. The Assistant Commissioner (HQ System), CGST, Ahmedabad South. (for uploading the OIA)
4. Guard File.
5. P.A. File.