

	<b>::आयुक्त (अपील्स) का कार्यालय, वस्तु एवं सेवा कर और केन्द्रीय उत्पाद शुल्क::</b> <b>O/O THE COMMISSIONER (APPEALS), GST &amp; CENTRAL EXCISE</b>	 सत्यमेव जयते
	द्वितीय तल, जी एस टी भवन / 2 <sup>nd</sup> Floor, GST Bhavan रेस कोर्स रिंग रोड / Race Course Ring Road राजकोट / Rajkot - 360 001 Tele Fax No. 0281 - 2477952/2441142 Email: commrapp13-cexamd@nic.in	

DIN20230264SX0000018807

अपील / फाइल संख्या/ Appeal / File No. GAPPL/COM/STP/2830/2022	मूल आदेश सं / O.I.O. No. BHV-EXCUS-000-JC-AP-006- 2022-23	दिनांक/Date 16-08-2022
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अपील आदेश संख्या (Order-In-Appeal No.):

**BHV-EXCUS-000-APP-030-2023**

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 एवं सेवाकर, 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 :

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

**M/s. DAYALJI ENTERPRISE, 579, GAJERA NIWAS, CHAKKAR GADH ROAD, AMRELI-365601**

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 अपील न्यायाधिकरण के प्रांत अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित 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, आर० के० 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 अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टम) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असारवा अहमदाबाद- 380016 को की जानी चाहिए। /

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की माँग, ब्याज की माँग और लगाया गया जुर्माना, रूपये 5 लाख या उससे कम, 5 लाख रूपये या 50 लाख रूपये तक अथवा 50 लाख रूपये से अधिक है तो क्रमशः 1,000/- रूपये, 5,000/- रूपये अथवा 10,000/- रूपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रूपये का निर्धारित शुल्क जमा करना होगा। /

(iii) 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.5000/- 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 the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-

B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में 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 माँग, ब्याज की माँग और लगाया गया जुर्माना, रूपये 5 लाख या उससे कम, 5 लाख रूपये या 50 लाख रूपये तक अथवा 50 लाख रूपये से अधिक है तो क्रमशः 1,000/- रूपये, 5,000/- रूपये अथवा 10,000/- रूपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रूपये 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 is upto 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. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-



- (i) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमावली, 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 अथवा आयुक्त (अपील), 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 अपील की 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 Form 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.
- (ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील प्रथिकरण (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपील प्रथिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जर्माना विवादित है, या जर्माना, जब केवल जर्माना विवादित है, का भुगतान किया जाए, बशर्त कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो।  
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है  
(i) धारा 11 डी के अंतर्गत रकम  
(ii) सेनवेट जमा की ली गई गलत राशि  
(iii) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम  
- बशर्त यह कि इस धारा के प्रावधान वित्तीय (सं 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपील प्रथिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होगे। /  
For an appeal to be filed before the CESTAT, 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, 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, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 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.
- (C) **भारत सरकार को पुनरीक्षण आवेदन :**  
**Revision application to Government of India:**  
इस आदेश को पुनरीक्षणयाविका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी 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:  
(i) 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 माल के नुकसान के मामले में। /  
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  
(ii) 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 an excisable material used in the manufacture of the goods which are exported to any country or territory outside India.  
(iii) 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.  
(iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो ज्यूटी क्रेडीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं 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.  
(v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र 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 अधिनियम, 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.  
(vi) 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 is more than Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.  
(D) यदि इस आदेश में कई मूल आदेशों का सम्मिलित है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखित पढ़ी कार्य से बचने के लिए यथास्थिति अपील प्रथिकरण को एक अपील या केन्द्रीय 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.  
(E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये 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 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.  
(F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील प्रथिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों को 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.  
(G) उच्च अपील प्रथिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट [www.cbec.gov.in](http://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](http://www.cbec.gov.in).



**:: अपील आदेश / ORDER-IN-APPEAL ::**

M/s. Dayalji Enterprise, Amreli (hereinafter referred to as "Appellant") has filed the present Appeal against Order-in-Original No. BHV-EXCUS-000-JC-AP-006-2022-23 dated 16.08.2022 (hereinafter referred to as 'impugned order') passed by the Joint Commissioner, Central GST, HQ, Bhavnagar (hereinafter referred to as 'adjudicating authority').

2. The facts of the case, in brief, are that the Income Tax Department shared the third party information/ data based on Income Tax Returns/ 26AS for the Financial year 2015-16 & 2016-17 of the Appellant. A letter dated 20.04.2021 was issued by the Jurisdictional Range Superintendent requesting the Appellant to provide information/documents for the Financial year 2015-16 & 2016-17. However, no reply was received from the Appellant.

3. In absence of data/information, a Show Cause Notice dated 21.04.2021 was issued to the Appellant demanding Service Tax and cess to the tune of Rs. 1,54,94,295/- under Section 73(1) of the Finance Act, 1994 (hereinafter referred to as 'the Act') alongwith interest under Section 75 of the Act. It was also proposed to impose penalties under Section 77(1)(a), 78, 77(2) and 77(1)(c) of the Act upon the Appellant.

4. The adjudicating authority after analyzing the submissions, documents and records of personal hearing, passed the impugned order confirming Service Tax demand of Rs. 1,54,94,295/- under Section 73(1) along with interest under Section 75 of the Act, imposed penalty of Rs. 1,54,94,295/- under Section 78 of the Act and also imposed penalty of Rs. 10,000/- each under Section 77(1)(a), 77(2) and 77(1)(c) of the Act.

5. Being aggrieved, the Appellant has preferred the present appeal on grounds that the Adjudicating Authority has grossly erred in law as well as on facts in denying the benefit of exemption conferred at Serial Number 30 of Notification Number 25/2012 - Service Tax dated 20.06.2012, even though the nature of activity carried out by them is clearly forthcoming from evidence placed on record and even though the activity of undertaking cutting and polishing of diamonds on job work basis is clearly exempted under the said Notification. The Adjudicating Authority ought to have refrained from confirming the impugned service tax demand solely on the basis of Income Tax Form 26AS.

5.1 They are engaged in the business activity of cutting and polishing of diamonds on job work basis which is squarely covered at Entry 30 of Notification Number 25/2012-Service Tax dated 20.6.2012 and is thus exempted from service tax. Attention is invited at para 3.5 of the impugned order where the Adjudicating Authority has itself recorded a specific finding that the Appellant is



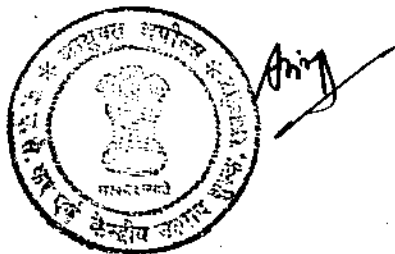
engaged in the activity of Diamond Cutting and Polishing work on job work basis, which were not in negative list of services as defined under Section 66D of the Finance Act, 1994. Having categorically recorded such a finding, the Adjudicating authority has further proceeded to decide upon the eligibility or otherwise of the appellant to exemption conferred at Serial Number 30(b) of the exemption Notification Number : 25/2012 - ST dated : 20.06.2012.

5.3 At para 3.11 of the impugned order, the Adjudicating Authority has noted that the Appellant has not provided any information regarding whether the principal manufacturer has obtained mandatory permission from the Department for enabling them to carry out such job work. However, it is submitted that the principals are manufacturers of diamonds which are exempted commodities under central excise and thus they are not registered under the Central Excise Act, 1944. Further, there is no provision under the Central Excise Act, 1944 which requires a job worker to obtain any mandatory permission before carrying out job work. Thus, mandatory permission from the Department for enabling them to carry out such job work is not at all applicable to the facts of the present case. Even the Adjudicating Authority has not cited any legal provision in this regard/behalf.

5.4 At para 3.12 of the impugned order, the Adjudicating Authority has discussed the definition of "job work" as contained in Rule 2 of Cenvat Credit Rules, 2004. The said definition includes within its ambit even whole process resulting in manufacture or finishing of an article. Thus, as per the said definition, the activity carried out by the appellant amounts to "Job Work". At para 3.13 and para 3.14, the Adjudicating Authority has indulged in speculation regarding nature of business activity carried out by the appellant. The Adjudicating Authority has relied upon whims, fancies, conjectures and surmises, which has distorted the nature of business activity carried out by the appellant.

5.5 During the material period i.e. Financial Years 2015-2016 and 2016-2017, the appellant had undertaken diamond cutting and polishing job work for its principal - clients, namely M/s. Laxmi Diamonds and M/s. Laxmi Diamonds Private Limited. Job Work Income Register as well as contra account confirmation of the said principal-clients, namely M/s. Laxmi Diamonds and M/s. Laxmi Diamonds Private Limited, are furnished with the appeal memorandum. These details were also produced during the course of adjudication proceedings.

5.6 Further, all diamond cutting and polishing job work invoices are also furnished with appeal memorandum which depict carat wise rough diamonds received for job work, polished diamonds returned after job worked, number of pieces and job charges. These details were also produced during the course of adjudication proceedings. On job work charges, income tax is deductible under



section 194C of the Income Tax Act, 1961. Income Tax Form 26AS for the Financial Years 2015-2016 and 2016-2017 are also furnished with appeal memorandum wherein TDS deducted by the principal - clients on job work charges is clearly forthcoming. These details were also produced during the course of adjudication proceedings. Further, profit-loss accounts and balance sheets for the financial years 2015-2016 and 2016-2017 are also furnished with the appeal memorandum. These details were also produced during the course of adjudication proceedings.

5.7 It has been the policy of the Government of India to keep the entire diamond industry, be it principal or a job worker, from outside the service tax and central excise duty net, right from independence. Also, even otherwise, if it is held that the appellant is not a job worker but is undertaking the activity of cutting and polishing of diamonds other than as a job worker, then also their activity is covered under the negative list entry at Section 66D of the Finance Act, 1994. It must be noted that exemption from central excise duty to diamond manufacturing does not amount to diamond becoming non excisable. These goods continue to be excisable under Section 2(d) of the Central Excise Act, 1944 but stand exempted by notification issue under Section 11 of the said Act. On this legal ground also, no service tax can be levied on the appellant.

5.8 That the Adjudicating Authority ought to have determined and ought to have specified the nature of services alleged to have been rendered by the appellant and in respect of which service tax demand is raised in the impugned order and in omitting to do so the Adjudicating Authority has ended up passing a non-speaking order liable to be set aside. It is correct that w.e.f. 01.07.2012, negative list of services was notified vide Section 66D of the Finance Act, 1994 and all the services within the meaning of Section 65B, were made taxable, except those which were specified in the said negative list. However, this does not absolve an Adjudicating Authority from determining and specifying the nature of services rendered by an assessee, in the adjudication order. In the impugned order, although a huge sum of service tax is demanded from the appellant, along with interest and penalty, the adjudicating authority has failed to mention the nature of services alleged to have been rendered by the appellant and on which the said service tax demand is being created.

5.9 The appellant had categorically submitted during the course of adjudication proceedings that it is engaged in the business of diamond cutting and polishing on job work basis and in support of such submission, had submitted invoices, account confirmations, job work register, income tax returns etc.

However, the Adjudicating Authority was pre-occupied with rejecting the claim of the appellant, although such claim was founded on the basis of cogent



*Pring*

evidence on record. When it is the case of the adjudicating authority that the appellant is not engaged in diamond job work, it ought to have determined and specified the nature of services rendered by the appellant. Simply rejecting the claim of the appellant regarding the nature of services and, without finding the nature of services rendered by the appellant, the adjudicating authority has committed an error of law in raising the impugned service tax demand. It is a settled legal position that an adjudication order must be a speaking order. Even the CBIC has mandated passing of a speaking order vide Master Circular Number 1053/02/2017-CX dated 10.03.2017. Thus, the impugned order, being a non-speaking one, is in violation of the settled legal position in the matter as well as the said CBIC Circular.

5.10 That given the undisputed fact that appellant had recorded all the transactions in the books of accounts, extended period of limitation under the proviso to Section 73 of the Finance Act, 1994 is not available to the service tax department as also no penalty is imposable under Section 78 of the Act, more so when there are express legal provisions squarely covering the issue on hand on the basis of which the appellant had formed a reasonable belief that they are not liable to service tax and accordingly had not collected the service tax from it's clients. It is undisputed that all the transactions in respect of which the Adjudicating Authority has confirmed the demand of service tax were duly recorded in the books of accounts maintained by the appellant. Thus, there is no transaction which is unaccounted or concealed or suppressed or mis-stated. Further, it is also undisputed fact that the appellant has not charged or levied or collected any service tax from it's customers since they were under a bonafide belief, which was formed on the basis of express legal provisions as discussed in preceding paras. Thus, given the above undisputed facts, extended period of limitation was not available in the case of the appellant and the Adjudicating Authority ought to have refrained from invoking the same under the proviso the Section 73(1) of the said Act. Also, since there is no malafide intention on the part of the appellant and since they have acted bonafide, the Adjudicating Authority ought to have refrained from imposing any penalty U/s.78 of the said Act.

5.11 Larger period of limitation is not invocable and no penalty under Section 78 is leviable since in the facts of the present case, there was no deliberate intention on the part of the Appellant to either not to disclose correct information or to evade the payment of any tax. There was no positive act on the part of the Appellant to evade the payment of any Service tax nor had any proof towards this end been adduced by the Revenue. Since, the Appellant was under a bonafide belief that no Service Tax is payable on the transaction in



*[Handwritten signature]*

dispute. There was no deliberate intention on their part not to disclose correct information or to evade payment of Service tax and hence there arises no question of willful-misstatement by them. As none of the conditions necessary for invoking the extended period of limitation or imposition of penalty under Section 78, are satisfied in the present case, the invocation of the extended period of limitation by the Adjudicating Authority against them is erroneous and all demands are barred by limitation and therefore not sustainable. In the present case, they have not suppressed any information from the department. They placed reliance on following decisions:

- a) Simplex Infrastructures Ltd. Vs. Commissioner of Service Tax, Kolkata 2016-TIOL-779-HC-KOL-ST
- b) Delhi International Airport Ltd. Vs. Commissioner of CGST- 2019(24)GSTL 403 (T).
- c) Binjrajka Steel Tubes Ltd. Vs. Commissioner of C. Ex., 2016 (342) EL T 302 (T)

5.12 That the Adjudicating Authority has erred in imposing penalty under Section 77(1)(a) of the Act since their activities are exempted from service tax under exemption notification number 25/2012-ST dated 20.06.2012, and thus there is no liability of the appellant to take registration under Section 69 of the Act or the rules made thereunder. The Adjudicating Authority has erred in imposing penalty under Section 77(2) of the Act since they do not have registration with the service tax department, there is no question of filing service tax returns. The Adjudicating Authority has erred in imposing penalty under Section 77(1)(c) of the Act, since the letter number CGST/Amreli/S. Tax/2020-2021 dated 21.07.2021 was never received by them, and as such no penalty can thus be imposed for it's non compliance. Also, the letter number CGST/Amreli/S.Tax/2018-2019 dated 20.04.2021, as referred to in para 1.2 of the impugned O-I-O, which is just one day prior to the date of Show Cause Notice, was never received by the appellant.

6. The matter was posted for hearing on 25.01.2023. CA Shri Purvin Y. Shah appeared for personal hearing and reiterated the submissions in the appeal. He submitted that the appellant is engaged in the job work of cutting/ polishing of diamonds. He drew attention to the job work labour charge invoices enclosed with the appeal. He submitted that the Adjudicating Authority in para 3.5 of the Order-In-Original has acknowledged the appellant as a job worker but has not allowed exemption due to him, merely because of no information given to him of the infrastructural facilities for the job work and the permission being obtained by principal manufacturer from the department as mentioned in para 3.11. He submitted that no such permission is required from the department. Therefore,



*Shri*

he requested to set aside the Order-In-Original and allow the appeal.

7. I have carefully gone through the case records, impugned order and appeal memorandum filed by the Appellant. I find that the issue to be decided in the case on hand is whether the activity carried out by the appellant is liable to Service Tax or otherwise.

8. I find that Show Cause Notice had been issued without verifying nature of services provided by the Appellant only on the basis of data received from the Income Tax department. Though the Appellant provided documents in defense, the Adjudicating Authority confirmed the demand of Service Tax holding the same insufficient. The Adjudicating Authority held that the Appellant had not carried out process which would qualify to be treated as job work service as the Appellant failed to inform the infrastructural facilities available with them to execute the job work entrusted by the principal. The Adjudicating Authority also found that the Appellant has not provided any information regarding whether the principal manufacturer had obtained mandatory permission from the Department enabling them to carry out such job work.

9. I find from the copy of Ledger, Form 26AS, Trading and Profit & Loss account and the sample copy of Invoices issued by the Appellant to M/s. Laxmi Diamond, Mumbai, M/s. Laxmi Diamond, Surat and M/s. Laxmi Diamond Pvt. Ltd., Surat that during the relevant period the Appellant was engaged in job work services of cutting and polishing of diamonds supplied by M/s. Laxmi Diamond, Mumbai, M/s. Laxmi Diamond, Surat and M/s. Laxmi Diamond Pvt. Ltd., Surat. On perusal of copies of the relevant documents, the amount (income) received as consideration by the Appellant for the activity carried out by them is of working upon Rough diamonds/ gemstones supplied by the customers. There is mention of bill date, rough diamond (carat), than pieces, polish diamond (carat), rate per pieces and amount of labour charges etc. in the bill issued by Appellant to their Customer/s. In the books of account, there is mention of plant & machinery, diamond labour income, factory manager salary, factory worker wages, electricity and factory rent etc. All these vital ingredients are enough to set aside the findings recorded by the Adjudicating Authority.

10. The relevant clause 30(ii) (b) of Notification No.25/2012-ST dated 20.06.2012, which exempts certain taxable services from the whole of the service tax leviable thereon under section 66B of the said Act, is reproduced below:

**"30. Services by way of carrying out an intermediate production process as job work in relation to -**

(i) .....



*[Handwritten signature]*



(ii) any intermediate production process as job work not amounting to manufacture or production in relation to -

- (a) .....,
- (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) ..... or
- (d) ....."

11. In view of the above, I find that the Appellant has carried out an activity (service) and has received certain amounts/ income (consideration) by job work of cutting and polishing of Diamonds/ gemstones. The said service provided by the Appellant is fully exempt from Service Tax as the same clearly falls under clause (ii) (b) of Entry No.30 of the Notification No.25/2012-ST dated 20.06.2012. Hence, the Appellant is not liable to pay any service tax for the service rendered by him and I hold accordingly.

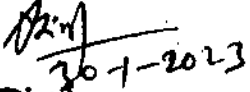
12. In view of discussions and findings, I set aside the impugned order and allow the appeal filed by the Appellant.

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

13. The appeal filed by Appellant is disposed off as above.

सत्यापित / Attested

  
Superintendent  
Central GST (Appeals)  
By R.P.A.D. Rajkot

  
30-1-2023  
(शिव प्रताप सिंह) (Shiv Pratap Singh),  
आयुक्त (अपील)/Commissioner (Appeals)

To, M/s. Dayalji Enterprise, 579, Gajera Niwas, Chakkar Gadh Road, Amreli-365601.	सेवा में, मे. दयालजी एंटरप्राइस, गजेरा निवास, चक्कर गढ़ रोड, अमरेली- 365601।
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प्रतिलिपि :-

- 1) मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद को जानकारी हेतु।
- 2) आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर आयुक्तालय, भावनगर को आवश्यक कार्यवाही हेतु।
- 3) अपर आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर को आवश्यक कार्यवाही हेतु।
- 4) सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर-1 मण्डल को आवश्यक कार्यवाही हेतु।
- 5) गार्ड फाइल।



