



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

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

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सत्यमेव जयते

रजिस्टर्ड डाक ए.डी. द्वारा :- DIN- 20230764SX0000410331

क	अपील / फाइल संख्या/ Appeal / File No.	मूल आदेश / OIONo.	दिनांक / Date
	GAPPL/COM/STP/937/2023	443/DC/RD/2022-23	27-12-2022

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

RAJ-EXCUS-000-APP-169-2023

आदेश का दिनांक / Date of Order:	22.06.2023	जारी करने की तारीख / Date of issue:	14.07.2023
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श्रीशिवप्रतापसिंह, आयुक्त (अपील्स), राजकोटद्वारा पारित /

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

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ महायुक्त आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/ वस्तु एवं सेवाकर, राजकोट / जामनगर / गांधीधामा द्वारा उपरलिखित जारी मूल आदेश से मूजित: /
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. Rajeshbhai Lalajibhai Kariyani, Address:- Laxman Nagar-2, Chitliya Road, Jasdhan-360050

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 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 में सम्बन्धित सभी मामलों में सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर.के. पुरम, नई दिल्ली, को जाननी 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 ब्रताए गए अपीलों के अलावा शेष सभी अपीलों में सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन अमरावा अहमदाबाद- 360016 को जाननी चाहिए। /

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

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमवली, 2001, के नियम 6 के अंतर्गत निर्धारित किंग 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 मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपय 5 लाख या उससे कम 5 लाख रुपय या 50 लाख रुपय तक अथवा 50 लाख रुपय से अधिक है तो क्रमशः 1,000/- रुपय, 5,000/- रुपय अथवा 10,000/- रुपय का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के महायुक्त रजिस्ट्रार 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/- रुपय का निर्धारित शुल्क जमा करना होगा। /

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 नियमवली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिन 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 मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपय 5 लाख या उससे कम 5 लाख रुपय या 50 लाख रुपय तक अथवा 50 लाख रुपय से अधिक है तो क्रमशः 1,000/- रुपय, 5,000/- रुपय अथवा 10,000/- रुपय का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के महायुक्त रजिस्ट्रार 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/- रुपय 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 fee of Rs. 1000/- 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/-.



:: अपील आदेश ::

:: ORDER-IN-APPEAL ::

Rajeshbhai Laljihai Kariyani, Laxman Nagar, 2- Chitaliya Road, Jasdan 360 050 (hereinafter referred to as "Appellant") has filed the present Appeal against Order-in-Original No. 443/DC/RD/2022-23 dated 27.12.2022 (hereinafter referred to as 'impugned order') passed by the Deputy Commissioner, Central GST Division-II, Rajkot (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 2016-17 of the Appellant. Based on these information, Certain documents viz. Copies of Income Tax Returns, Form No. 26 AS, Balance Sheet (incl. P & L Account), VAT/ Sales Tax Returns, Annual Bank Statements, Contracts / Agreements entered with the persons to whom the services provided etc. for the F.Y. 2016-17 were called for from Appellant, however, no reply was received from the Appellant.

3. In absence of data/information, a show cause notice dated 07.10.2021 was issued to the Appellant demanding Service Tax and cesses to the tune of Rs. 21,12,170/- 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 vide the impugned order confirmed Service Tax demand of Rs. 3,16,826/- under Section 73(1) along with interest under Section 75 of the Act, imposed penalty of Rs.21,12,170/- 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 they are a proprietor engaged in business activity of diamond cutting and polishing job intermediary service. The Adjudicating Authority ought to have taken into consideration the facts, legal position and documents on records produced by them during the course of assessment. The service of diamond job work is exempted from the Service Tax vide Notification No. 25/2012-Service Tax dated 20.06.2012 entry No. 30(ii)(b). The action of the Adjudicating Authority is illegal, unfair and against the facts of the case.

6. The matter was posted for hearing on 22.06.2023 and Chartered Accountant Dhaval S. Gandhi appeared for personal hearing and reiterated the submissions in the appeal and those in the additional written submissions submitted on 22nd June, 2023 with supporting documents. He submitted that the



Dhaval S. Gandhi

Appellant provided job work service for polishing of diamond. The same is exempted under the mega exemption notification 25/2012-ST. Therefore, he requested to set aside the Order-in-Original and to allow the appeal.

7. I have carefully gone through the case records, impugned order and appeal memorandum filed by the Appellant. I find that Show Cause Notice had been issued without verifying any data or nature of services provided by the Appellant as the same had been issued only on the basis of data received from the Income Tax department and the Adjudicating Authority has confirmed the demand of Service Tax vide impugned order.

8. I find that the main issue to be decided in the instant case is whether the service provided by the Appellant is taxable under Service Tax or otherwise. Ongoing through the impugned order, it has been held by the Adjudicating Authority that the service provided by the Appellant is a taxable service in absence of information/ documents which were neither submitted by the Appellant nor they had filed any defense submission and had not appeared for personal hearing also. The Appellant on the other hand has stated their service is exempt under Sr. No. 30(ii)(b) of the Notification No. 25/2012-Service Tax dated 20.06.2012.

9. Now, as per the contention of the Appellant, it is to be decided whether activity carried out by them is covered under Notification No.25/2012-Service Tax dated 20.06.2012 and as to whether the amount received for providing the services is taxable, or otherwise.

10. I find from the copy of labour bills issued by the Appellant to Laxmanbhai Mohanbhai Jinzuvadaya, Dipakbhai Keshubhai Mekhaya, Ravirajbhai Bhukhubhai Dhandhal etc. that during the relevant period the Appellant was engaged in job work services of cutting and polishing of diamonds supplied by above said supplier. On perusal of copies of the relevant documents i.e. Diamond job work income ledger, invoices, 26 AS etc., the amount (income) received as consideration by the Appellant for the activity carried out by them is of working upon Rough diamonds supplied by the customers. There is mention of date, quantity of cut & polished diamonds in nos., rate per nos. and labour amount in the diamond job work invoice issued by Appellant to their Customers.

11. 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:



M.V.

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

(i)

(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)"

12. In view of the above discussion, I find that the Appellant has carried out an activity (service) and has received certain amounts/ income (consideration) by providing services by way of carrying out services of job work of cutting and polishing of Diamonds. The said service provided by the Appellant though a taxable service, 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.

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

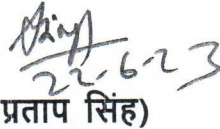
14. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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

सत्यापित / Attested



बी. एस. राणा / B. S. RANA
अधीक्षक / Superintendent
के. व. एवं सेवा कर अपील, राजकोट
CGST Appeals, Rajkot



(शिव प्रताप सिंह)
(Shiv Pratap Singh)
आयुक्त (अपील)
Commissioner (Appeals)

By R.P.A.D.

To, Rajeshbhai Laljihai Kariyani Laxman Nagar, 2 - Chitaliya Road, Jasdan 360 050	सेवा में, राजेशभाई लालजिहाई करियानी लक्ष्मण नगर, 2 - चितलिया रोड, जसदान 360 050
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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, राजकोट आयुक्तालय, राजकोट को आवश्यक कार्यवाही हेतु।
- 3) अपर आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट को आवश्यक कार्यवाही हेतु।
- 4) सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क मण्डल-II, राजकोट- को आवश्यक कार्यवाही हेतु।
- 5) बार्ड फाइल।

