



**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- टेलिफैक्स 07926305136



DIN: 20230964SW000000A814

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/1499/2023-APPEAL / 51166

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-90/2023-24  
 दिनांक Date : 28-08-2023 जारी करने की तारीख Date of Issue 04.09.2023

आयुक्त (अपील) द्वारा पारित  
 Passed by Shri Shiv Pratap Singh, Commissioner (Appeals)

ग Arising out of Order-in-Original No. 302/AC/DEMAND/22-23 दिनांक:16.12.2022 , issued  
 by The Assistant Commissioner, CGST Division-I, Ahmedabad North

घ अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant  
 Pareshbhai Devrajbhai Dhamelia,8/A, Near Parth Flat,Nrojyoti Jagruti Society,  
 Thakkarnagar, NP,Ahmedabad - 382350

2. Respondent  
 The Assistant Commissioner, CGST Division-I, Ahmedabad North,Ground Floor,  
 Jivabhai Mansion, Ashram Road, Ahmedabad-380009

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, 4<sup>th</sup> 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 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 मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित हैं।
- (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 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद -380004
- (a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> 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 पढी 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-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.

- (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. Pareshbhai Devrajbhai Dhamelia, 8/A, Near Parth Flat, Nrojyoti Jagruti Society, Thakkar Nagar, Ahmedabad-382350 (hereinafter referred to as '*the appellant*') have filed the present appeal against the Order-in-Original No. 302/AC/Demand/2022-23 dated 16.12.2022, (in short '*impugned order*') passed by the Assistant Commissioner, Central GST, Division-I, Ahmedabad North (hereinafter referred to as '*the adjudicating authority*'). The appellant were engaged in providing taxable service but were not registered with the department.

2. The facts of the case, in brief, are that on the basis of the data received from the Central Board of Direct Taxes (CBDT) for the F.Y. 2015-16, it was noticed that the appellant in the ITR/Form-26 AS has earned taxable income on which no service tax was discharged. Letters were, therefore, issued to the appellant to explain the reasons for non-payment of tax and to provide certified documentary evidences for said period. The appellant neither provided any documents nor submitted any reply justifying the non-payment of service tax on such receipts. The detail of the income is as under;

**Table-A**

<i>F.Y.</i>	<i>Value as per ITR</i>	<i>Service tax rate</i>	<i>Service Tax liability</i>
2015-16	19,31,620/-	14.5%	2,80,085/-

2.1 A Show Cause Notice (SCN) No.AR-II/Pareshbhai Devrajbhai Dhameliya/Un-Reg/2015-16 dated 09.06.2021 was, therefore, issued to the appellant proposing recovery of service tax amount of Rs.2,80,085/- along with interest under Section 73(1) and Section 75 of the Finance Act, 1994, respectively. Imposition of penalties under Section 77(1)(a) & 77(1)(c), 77(2) and Section 78 of the Finance Act, 1994 were also proposed.

2.2 The said SCN was adjudicated vide the impugned order, wherein the service tax demand of Rs.2,80,085/- was confirmed alongwith interest. Penalty of Rs. 10,000/- each under Section 77(1)(a) & 77(1)(c) and penalty of Rs.2,80,085/- was also imposed under Section 78 of the F.A., 1994. Penalty under Section 77(2) was however dropped.

3. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant preferred the present appeal on the grounds elaborated below:-

- The appellant is a proprietor engaged in business of diamond job work intermediary service. This fact and the documents on records produced by the appellant were not taken into consideration during adjudication.
- The appellant has regularly filing of income-tax return and assessed to income tax in respect of his business income of job work of diamond cutting and polishing. The appellant has earned diamond job work income of Rs. 28,00,85/- during FY 2015-16 as per the return filed of the Income-tax and the same has been shown and reflected in its statement of Profit and Loss A/c and 26AS.



Income Tax. The appellant has not been carried out any other business activity other than the diamond job work during the year. The aforesaid fact has been duly proved from the available records including its Form 26AS.

- On verification of the form and records, the diamond job work income earned by appellant is Rs. 17,98,545/- and TDS has been deducted of Rs.17,985/- under Section 194C of the Income Tax Act.
- The service of diamond job work is exempted from the service tax vide Notification No.25/2012-Service Tax dated- 20th June, 2012 reproduced as under:-

**30. Services by way of carrying out,-**

*(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 the Central Excise Tariff Act, 1985 (5 of 1986);*

Considering the above, the appellant was not required to comply with any provisions under the Service Tax for the year under consideration.

- Relief may please be granted by deleting the addition made of service tax and penalty amount stated as above.

4. Personal hearing in the matter was held on 11.08.2023. Shri Pravin M. Bhayani, Chartered Accountant, appeared on behalf of the appellant. He reiterated the submissions made in the Appeal Memorandum. He submitted that the appellant was providing job-work for polishing of diamonds. However, the adjudicating authority without verifying the nature of service decided the demand based on the ITR data. He submitted copies of job-work, labour invoices, profit & Loss account, bank statement, job work, ledgers alongwith the appeal. He, therefore, requested to set-aside the impugned order.

5. 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 and those made during personal hearing. The issue to be decided in the present case is as to whether the service tax demand of Rs.2,80,085/- 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. 2015-2016.



It is observed that the entire demand has been raised in the SCN based on the income data shared by the CBDT and on the differential income on which no service tax was paid by the appellant. They did not file any reply to the SCN nor did they appear for hearing before the adjudicating authority, therefore the case was decided ex-

parte. However, the appellant before the Appellate Authority has submitted the copy of invoices demonstrating the nature of job-work provided, Profit & Loss Account, Ledger Account, ITR, Form-26AS.

6.1 On scrutiny of the documents submitted by the appellant, I find that the appellant has raised invoices for labour charges in respect of cutting and polishing of diamonds. As per the P&L A/c they have shown Labour Income of Rs.19,31,620/-. Out of this income, on the income of Rs.17,98,545/- M/s. Jignesh Moradiya has deducted TDS and same is reflected in Form-26AS. They also submitted a C.A. certificate to this effect.

6.2 The appellant have claimed that the job work of cutting and polishing of diamonds is exempted vide Sr. No. 30 (b) of the mega Notification No.25/2012-ST dated 20.6.2012. This entry was however omitted vide F.A., 2017 w.e.f. 31.03.2017. Relevant entry is re-produced below;

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);

6.3 The appellant in their ITR have shown nature of business as Diamond Cutting. Since cutting and polishing of diamond is an intermediate production process and exempted vide above notification. Considering the period of dispute involved, I find that the service tax demand on the income earned from said activity shall not be taxable as is exempted in terms of clause (b) of the notification. I, therefore, find the demand of Rs.2,80,085/- confirmed alongwith interest and penalties is not sustainable in the eyes of law.

7. In light of above discussion and findings, I set-aside the impugned order confirming the service tax demand of Rs.2,80,085/- alongwith interest and penalties and allow the appeal filed by the appellant.

8. 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)*

(शिव प्रताप सिंह)  
आयुक्त (अपील्स)

Date: 28.8.2023

Attested

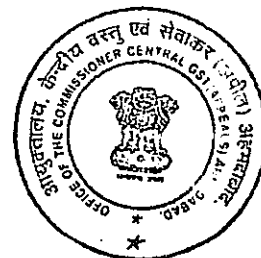
*(Signature)*

(Rekha A. Nair)

Superintendent (Appeals)

CGST, Ahmedabad

By RPAD/SPEED POST



To,  
M/s. Pareshbhai Devrajbhai Dhamelia,  
8/A, Near Parth Flat, Nrojyoti Jagruti Society,  
Thakkar Nagar,  
Ahmedabad-382350

Appellant

The Assistant Commissioner,  
CGST, Division-I,  
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.



