



प्रधान आयुक्त का कार्यालय,
Office of the Principal Commissioner,
केंद्रीय जीएसटी अहमदाबाद दक्षिण आयुक्तालय
Central GST, Commissionerate- Ahmedabad South,
चौथी मंजिल, अम्बावाड़ी अहमदाबाद ३८००१५.
4th Floor, GST Bhavan, 380015



फा.सं. STC/4-17/Shri Hari/O&A/2020-21

DIN- 20230264WS0000424274

आदेश की तारीख: Date of Order: 24.02.2023

जारी करने की तारीख: Date of Issue : 24.02.2023

द्वारा पारित /Passed by: Shri Shravan Ram , JOINT COMMISSIONER

मूल आदेश सं./Order-In-Original No.: 84/CGST/Ahmd-South/JC/SR/2022-23

यह प्रति उस व्यक्ति लिए (जिनके) जिसके ,को (यों) यह आदेश जारी किया गया है ,उसके व्यक्तिगत (उनके) उपयोग के लिए निःशुल्क प्रदान की जाती है।

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यदि कोई व्यक्ति इस आदेश से स्वयं को असंतुष्ट अनुभव करता है, तो वह इस आदेश के विरुद्ध आयुक्त , (अपील) केन्द्रीय जीएसटी , केन्द्रीय जीएसटी भवन अहमदाबाद , अम्बावाड़ी , -को प्रारूप 15 एस.टी.-4 में अपील कर सकता है। उक्त अपील पक्षकार पर आदेश तामील होने अथवा अथवा उसे डाक द्वारा प्राप्त करने की तारीख से दो माह के भीतर दाखिल की जानी चाहिए। इसपर रुपए -/2.00केवल का न्यायालय शुल्क टिकट लगा होना चाहिए।

Any person deeming himself aggrieved by this Order may appeal against this order in Form **S.T.4** to Commissioner (Appeals), Central GST, Central GST Bhavan, Near Government Polytechnic, Ambawadi, Ahmedabad -15 within sixty days from date of its communication. The appeal should bear a court fee stamp of Rs.2.00/- only.

उक्त अपील दो प्रतियों में प्रारूप सं . एस.टी.-4 में दाखिल की जानी चाहिए। उसपर केन्द्रीय उत्पाद शुल्क (अपील) 2001 , नियमावलीके नियम के 3उपबंधों के अनुसार अपीलकर्ताओं जद्वारा हस्ताक्षर किए जाने चाहिए। इसकेसाथ निम्नलिखित को संलग्न किया जाए :

The Appeal should be filed in form No. S.T.4 in duplicate. It should be filed by the appellants in accordance with provisions of Rule 3 of the Central Excise (Appeals) Rules, 2001. It shall be accompanied with the following:

उक्त अपील की प्रति।

Copy of the aforesaid appeal.

निर्णय की दो प्रतियाँ उसमें से एक उस आदेश की प्रमाणित प्रतिलिपि होनी चाहिए) जिसके विरुद्ध अपील की गई है (-/2.00 अथवा उक्त आदेश की अन्य प्रति जिसपर रुका न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।

Two copies of the Decision (one of which at least shall be certified copy of the order appealed against) or copy of the said Order bearing a court fee stamp of Rs. 2.00/-.

इस आदेश के विरुद्ध आयुक्त में शुल्क के (अपील) 7.5% जहां शुल्क एवं जुर्माना का विवाद है अथवा जुर्माना जहां शिर्फ जुर्माना के बारे में विवाद है उसका भुक्तान करके अपील की जा सकती है।

An appeal against this order shall lie before the Commissioner (Appeal) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."

संदर्भ/Reference : कारण बताओ सूचना फा.सं. STC/04-17/Shri Hari/O&A/2020-21 dated 16.07.2020 M/s Shri haridarshan Jewellers, 33, Swati Society, Opp. Sharda School, Naranpura, Ahmedabad.

BRIEF FACTS OF THE CASE:-

1. M/s Shri Haridarshan Jewellers, 1, 2 &3, 3rd Floor, Navneet Plaza, Nr Municipal Market, C. G. Road, Navrangpura, Ahmedabad-380009, (*herein after referred to as 'the assessee'*) was engaged in manufacturing of articles of jewelry falling under CETH 7113 of Central Excise Tariff Act, 1985 and having Central Excise Registration No. AGAPP0526CEM002. The assessee was a proprietorship concern and Shri Kaushik Vrajlal Patadia was the proprietor of the said concern, residing at 33, Swati Society, Opp. Sharda School, Naranpura, Ahmedabad. Consequent to the issue of the Notification No.12/2017 Central Excise (NT) to 14/2017 Central Excise (NT) all dated 09.06.2017, appointing the officers of various ranks as Central Excise officers reallocating the jurisdiction of the Central Excise Officers and Trade Notice No. 001/2017 dated 16.06.2017 issued by the Chief Commissioner, Central Excise & Service Tax, Ahmedabad Zone, the assessee was now registered under the Jurisdiction of the Ahmedabad South Commissionerate, Central Goods and Service Tax Division-VI, Range-IV, CGST, Ahmedabad-South. The said assessee was also engaged in trading of goods viz. bullion gold & silver etc.

2. Whereas information was received that the said assessee had short paid/not paid the excise duty amount to the government exchequer. Based on the information received, an inquiry was initiated to verify the financial records of the assessee. Summons dated 25.06.2018, 10.09.2018, 08.10.2018 & 29.10.2018 were issued to the assessee to submit the required documents. However, there was no response from the assessee. Further, it was inquired and information was gathered that there was no such office at the registered address of the assessee i.e 3rd Floor, Navneet Plaza, Nr Municipal Market, C. G. Road, Navrangpura, Ahmedabad-380009, as declared in the Central Excise registration certificate. Whereas, based on the above, residential address of the assessee was obtained from the registration certificate and a search was conducted on 22.11.2019 at the residence of the assessee i.e. 33, Swati Society, Opp Sharda School, Naranpura, Ahmedabad. During the course of the search, it was found that there was no one available at the residential premises and it was found locked. The officers conducted a NIL Panchnama and pasted it at the boundary wall of the said premises. Consequent to the search, Shri Kaushik Vrajlal Patadia, Proprietor of M/s Shri Haridarshan Jewellers visited this office on 25.11.2019 and submitted only Balance sheet and sales ledger for the year F.Y. 2015-16 & F.Y. 2016-17 and assured to submit the remaining required documents in 2-3 days. Further, no documents were submitted by the assessee and hence again summons dated 03.02.2020 was also issued to the assessee to submit the required documents. Neither the assessee had appeared on the date mentioned in the Summon dtd. 03-02-2020 nor they had provided requisite remaining documents for investigation.

3. OBSERVATIONS

3.1 During the course of investigation on the basis of available records, it had been observed that M/s Shri Haridarshan Jewelers was engaged in manufacture of articles of gold and jewelry and trading of bullion gold and silver. Consequent to the notification No. 5/2016 - Central Excise (N.T.) dated 01/03/2016, the assessee had obtained Central Excise registration on 17/06/2016. Further, the assessee had filed their first ER-8 return for the period Apr-Jun 2016-17 & onwards from time to time. The details of clearance of excisable goods as per Central Excise Returns filed by the said assessee were as under.

Financial Year	Home	Export under LUT	Total Clearance
2016-17	10,82,15,276/-	8,15,97,361/-	18,98,12,637 /-
2017-18 (Apr-Jun)	NIL	NIL	NIL

4. LEGAL PROVISION

4.1 Whereas on going through the excise returns filed by the assessee, it was observed that the assessee had also declared export supplies under LUT and availed the benefit of non-payment of excise duty under Notification No.42/2001-CE(NT), dt. 26/06/2001. However, during the course of investigation, the assessee had failed to submit any documentary evidence in respect of the export benefit claimed in the excise returns. Notification No.42/2001-CE(NT), dt. 26/06/2001 provides for procedure to be followed for removal of excisable goods without payment of duty. As per the said notification, the manufacturer-exporter may remove the goods without payment of duty after furnishing the Letter of Undertaking. The manufacturer exporter was required to present the goods along with four copies of application in the Form A.R.E.-1 to the Superintendent or Inspector of Central Excise who will verify the identity of goods mentioned in the application and the particulars of the duty paid or payable. The manufacturer-exporter was required to submit the copies of proof of export including the A.R.E.-1 attested by the officers, bank realization certificate indicating payment receipt in foreign currency within stipulated time in order to establish that the goods had been exported and the assessee had availed correct benefit of removal of goods without payment of excise duty under Notification No.42/2001-CE(NT), dt. 26/06/2001. In the instant case the assessee had failed to provide the export invoice, packing list, ARE-1, copy of LUT, proof of export, Bank Realization Certificate etc for the exports claimed in the excise returns. It appeared that the assessee had failed to

follow the procedure as per Notification No.42/2001- CE(NT), dt. 26/06/2001. Thus, it was not forthcoming that they made export of excisable goods i.e. articles of jewelry of gold manufactured in their factory and thus they failed to establish that excisable goods of Rs. 8,15,97,361/- shown as export without payment of excise duty in their ER-8 were actually exported from their factory premises. Accordingly, excise duty on the excisable goods of Rs. 8,15,97,361/- shown as export under Notification No.42/2001-CE(NT), dt. 26/06/2001 was required to be recovered from them under Section 11 A of the Central Excise Act, 1944. Hence, excise duty liability on the clearances shown as export was calculated as under:

(Amount in Rs.)

Financial Year	Value of Export claimed under LUT	Excise Duty Applicable @1%
2016-17	8,15,97,361/-	8,15,974/-
2017-18 (Apr-Jun)	-	-

4.2 Whereas on going through the sales register submitted by the assessee, it was seen that the assessee had done sales of Gold of various purity viz. 18 CT, 22 CT & 24 CT by means of trading and manufacturing. It appeared that in case of trading sales, the assessee had not added labor amount and the same could be seen from the sales ledger. Further, it was seen that in case of sales of manufactured goods, the assessee has added the labor amount to the metal amount.

4.3 From the sales ledger, it appeared that the assessee adds the labour amount in the cases where the articles of jewelry were manufactured by the assessee. The labor amount added to the metal appeared to be the value addition done by the assessee for conversion of gold into articles of jewelry for the purpose of sales. Further, on going through the contents of sales ledger, it was seen that there were sales wherein the assessee charged labor from the customer, which indicate the said sales were of manufactured articles of jewelry, but it appeared that the same had not been accounted for when paying the excise duty liability. The list of all such domestic sales invoices on which labor amount was charged by the assessee was reproduced in the TABLE below:

TABLE

Amt in (Rs) Weight in grams

Inv No	Date	Party Name	Gross Wt	Net Wt	Metal Amount	Labour	Diami nd Wt	Diamond Amt	Ot Amt	Total Amt
TI/1	05-Apr-	JAYDEEP ART AND	1730.94	1730.9	4537947	412548				4950495
RI/1	14-Apr-	ALANKRUTI	99.01	99.01	268986	23390				292376
TI/2	25-Apr-	ABDHI JEWELS PVT LTD	478.47	478.47	1399046	85603				1484649
TI/3	20-	JAYDEEP ART AND	2349.55	2349.5	6506374	424319				6930693
TI/8	02-	D. KHUSHALBHAI	3540.29	3540.2	8241795	885073	354.02	12391015		21517883
RI/2	01-Sep-	VIBHABEN S. PATEL	40.28	40.28	121847	10876				132723
TI/37	22-Sep-	D. KHUSHALBHAI	5420.87	5420.8	15763890	029965				16793855
TI/38	24-Sep-	ABDHI JEWELS PVT LTD	1055.38	1055.3	3071156	211076				3282232
TI/39	26-Sep-	D. KHUSHALBHAI	3760.94	3760.9	10951857	714579				11666436
TI/40	03-Oct-	RADHA KRISHNA GOLD	1060.69	1060.6	3064121	212138				3276259
TI/41	03-Oct-	RAD HA KRISHNA	1676.69	1676.6	4843622	335338				5178960
RI/4	04-Oct-	MADHAVBHAI G PATEL	40.28	40.28	123740	10072				133812
RI/5	05-Oct-	MALTIBEN BHUPESHBHAI	10.62	10.62	31902	2751				34653
RI/6	12-Oct-	SONALBEN JAYESHBHAI	40.29	40.29	121716	10073				131789
RI/7	22-Oct-	MINAKSHIBEN V ZALA	39.59	39.59	117186	10294				127480
RI/9	22-Oct-	RAJENDRABHAI S SONI	47.21	47.21	139742	12278				152020
RI/10	22-Oct-	JAGRUTIBEN R KAPADIA	30.28	30.28	89629	7876				97505
RI/11	22-Oct-	FALGUNKUMAR B PATEL	41.49	41.49	122810	10794				133604
RI/12	22-Oct-	SACHIN NAVINBHAI SONI	22.41	22.41	66334	5824				72158
RI/13	22-Oct-	PRAKASH ZAVERI LAL	59.69	59.69	176682	15516				192198
TI/47	25-Oct-	D. KHUSHALBHAI	720.48	720.48	2018353	144096				2162449
RI/14	28-Oct-	ASKA K PATEL	45.91	45.91	136995	11936				148931
RI/15	28-Oct-	PRADIPKUMAR D	41.39	41.39	123508	10759				134267
RI/16	28-Oct-16	VAIBHAVBHAI KANUBHAI	40.98	40.98	122079	10654				132733
RI/18	28-Oct-	MEERA SACHINBHAI	41.09	41.09	122613	10674				133287
RI/19	28-Oct-	PRAHLADBHAI	69.04	69.04	206015	17945				223960
RI/20	28-Oct-	TAN MAY	58.69	58.69	175131	15245				190376
RI/21	28-Oct-	JANMEJAY ARVINDBHAI	29.03	29.03	86626	7532				94158
RI/22	28-Oct-	HARSHALARVINDBHAI	28.95	28.95	86387	7514				93901
TI/49	14-Nov-	D. KHUSHALBHAI	3797.5	3797.5	10672874	835450				11508324
RI/24	18-Nov-	SHAILESHBHAI	30.61	30.61	92993	7948				100941
RI/25	21-Nov-	SANTOSH BSA HOO	55.54	55.54	168731	14437				183168
TI/SO	21-Nov-	ABDHI JEWELS PVT LTD	1059.55	1059.55	3052564	185431				3237995
RI/30	02-Dec-15	SHAILESHBHAI	27.05	27.05	76552	7181				83733
RI/31	10-Dec-16	KALPESH	46.01	46.01	118422	15050				133472
TI/66	02-Jan-17	ABDHI JEWELS PVT LTD	510.39	510.39	1324462	107182				1431644
TI/70	09-Jan-17	ABDHI JEWELS PVT LTD	495.28	495.28	1307589	104010				1411599
TI/71	16-Jan-17	D. KHUSHALBHAI	980.79	980.79	2638855	176542				2815397
TI/73	18-Jan-17	D. KHUSHALBHAI	2379.19	2379.19	6401306	428254				6829560
TI/74	19-Jan-17	D. KHUSHALBHAI	510.94	510.94	1374705	91969				1466674
TI/77	02-Feb-17	D. KHUSHALBHAI	5470.96	5470.96	14924779	1258321				16183100
TI/79	03-Feb-17	D. KHUSHALBHAI	4530.04	4530.04	12357949	1041909				13399858
TI/80	03-Feb-17	D. KHUSHALBHAI	810.27	810.27	1924391	413238				2337629
TI/86	08-Feb-17	D. KHUSHALBHAI	510.29	510.29	1387989	117367				1505356
TI/89	13-Feb-17	D. KHUSHALBHAI	6140.75	6140.75	16702840	1412373				18115213
TI/118	25-Mar-	D. KHUSHALBHAI	3043.72	3043.72	8190651	700056				8890707
									Total	169530212

4.4 Whereas on the basis of above table at para 4.3, it appeared that the total domestic sales of articles of jewelry done by the assessee was to the tune of Rs.16,95,30,212/-. On going through the ER-8 filed by the assessee the amount of home clearances declared by the assessee and duty paid was as under:

Details of home clearances as declared by the assessee in ER-8 Returns		
Period	Assessable Value (Rs)	Duty paid (Rs)
2016-17	10,82,15,276	10,82,152
2017-18 (Apr-June)	--	--

4.5 Whereas, on comparison of the assessable value of clearance as declared by the assessee in the ER-8 returns filed by them (as indicated in Para 6.1) with the assessable value of clearance as obtained from the sales ledger submitted by the assessee (as indicated in Para 6), it appeared that the assessee had done short declaration of assessable value in their ER-8 returns and done short payment of excise duty accordingly. The details of short payment made by the assessee were as under:

(Amount in
Rs.)

Reconciliation of Sales Ledger (Manufactured goods) with ER-8 returns filed by the assessee				
Period	Assessable manufactured as per Sales	Assessable declared as per filed by the	Difference	Applicable Excise Duty payable
2016-17	16,95,30,212/-	10,82,15,276/-	6,13,14,936/-	6,13,149/-
2017-18 (Apr-June)	--	--	--	--

4.6. Whereas during the course of investigation, on going through the sales ledger submitted by the assessee, for the period Apr-2016 till Jun-17, it was seen that the assessee has registered sales under the head "Gold-24 Trading A/c", "Gold-22 Trading A/c" & "Gold-18 Trading A/c", "Pure Silver Trading A/c" other than manufacturing items such as 18 CT Gold manufacturing, Diamond manufacturing & 22CT Gold manufacturing. The definition of traded articles covered under the notification no. 34/2016-CE (NT) dated 26. 07.2016, which was reproduced as under:

"

....

(l) "traded articles" means articles, on which appropriate duty (including nil duty) has already been paid at the time of their sale for the first time.

"

.....

4.7 Whereas the above definition provides that in case of the sales of traded articles of jewelry, the duty on the same should had been paid at the time of their first sale. The assessee had declared and registered sale of traded articles of 18CT, 22CT 24Ct gold and pure silver in their books of accounts. From the said traded articles sales, in case of sale of traded articles registered under 18CT & 22CT traded sales, it appeared that the same were sale of articles of jewelry on which the excise duty was applicable but the assessee had failed to provide any documentary evidence as to whether appropriate duty (including nil duty) was paid on the same at the time of their first sale. The assessee had been given ample opportunities to allow them to provide the required documents to the department but time and again, the assessee had

shown non-compliance and utter disregard to the communications of the department. Since the assessee had not submitted any documents to prove that the appropriate duty had been paid in case of sale of traded articles, it appeared that the said sale of traded articles was not as per the law and it appeared that said sale was subject to excise duty and the assessee had failed to declare the same and pay the excise duty on such sale. The detail of such clearance is as under:

Particulars	2016-17	2017-18 (Apr-
Total Sales as per Sales register	74,65,43,647 /-	7,92,86,375/-
Less		
Sale of Export goods covered at para 4	8,15,97,361/-	0
Sales of Manufactured goods covered at para 6	16,95,30,212/-	0
Sale registered under "Pure Silver Trading A/c"	1, 13,42,700/-	0
Sale registered under "Gold-24 Trading A/c"	3,60,77,449/-	5,38,14,341/-
Net Sale of Traded articles of 22CT and 18 CT gold	44,79,95,925/-	2,54, 72,034/-

4.8 Whereas it appeared that the assessee had done short declaration of excisable goods in their ER-8 returns as detailed above and availed benefit under trading of goods without having any proper documents. The excise duty payable on such sale declared as sale of traded articles is as under:

Year	Assessable Value (Rs)	Excise Duty (Rs)
2016-17	44,79,95,925/-	44,79,959/-
2017-18 (Apr-	2,54,72,034/-	2,54,720/-
Total	47,34,67,959/-	47,34,679/-

4.9 Whereas during the course of investigation, on going through the balance sheet/trial balance for the F.Y. 2015-16, F.Y. 2016-17 and Apr-17 to Jun-17, it had been found that the assessee had registered income under various taxable services as detailed below:

(Amount in Rs.)

Financial Year	Design Income	Rent Income	Freight Income	Total Service Income
2015-16	8,98,990/-	1,68,000/-	NIL	10,66,990/-
2016-17	4,26,500/-	1,68,000/-	1,53,435/-	7,47,935/-
2017-18 (Apr-Jun)	NIL	NIL	NIL	NIL

4.10 Whereas the income of the assessee by way of providing design services, freight services and income by way of rent are subject to service tax as they didn't fall under negative list of services under Section 66D of the

Finance Act, 2012. Hence, it appeared that the assessee was required to pay the service tax on the above income generated by providing taxable services. However, during the course of investigation, it had been found that the assessee did not get themselves registered under the service tax act and had not paid the applicable service tax on the income received by providing taxable services. It appeared that the assessee had crossed the threshold limit for obtaining service tax registration during the year F.Y. 2015-16 but the assessee did not obtain the service tax registration and failed to deposit the service tax to the government. Consequent to the notification no. 08/2008-ST dated 01.03.2008, the assessee was required to obtain service tax registration after reaching the threshold limit of Rs.10 lakhs in F.Y. 2015-16.

4.11 Whereas on going through the financial documents of the assessee for the period F.Y. 2015-16 to Jun-17, it was seen that the assessee had registered income under the head "Miscellaneous Income" as detailed below:

Financial Year	Miscellaneous Income (Rs)
2015-16	1,440/-
2016-17	81,606/-
2017-18 (Apr-Jun)	NIL

4.12 Whereas the assessee had failed to provide documentary evidence regarding the above miscellaneous income, so as to indicate that the said income as declared in the financial records was taxable or otherwise. The assessee had been given ample opportunities to allow them to provide the required documents to the department but time and again, the assessee had shown non-compliance and utter disregard to the communications of the department. Since the assessee has not submitted any documents to justify their income, it appeared that the said income was taxable income and the assessee had failed to pay the service tax on the said income.

4.13 Whereas, in view of the above, the taxable income of the assessee was calculated as under:

Financial Year	Design Income	Rent Income	Freight Income	Miscellaneous Income (Rs)	Total Service Income
2015-16	8,98,990/-	1,68,000/-	NIL	1,440/-	10,68,430/-
2016-17	4,26,500/-	1,68,000/-	1,53,435/-	81,606/-	8,29,541/-
2017-18 (Apr-Jun)	NIL	NIL	NIL	NIL	NIL

4.14 The service tax liability of the assessee on the above taxable income generated from service income was as under:

Period	Tot Service Income (Rs)	Exemption of Threshold limit (Rs)	Taxable (Rs)	Servic Tax (Rs)
2015-16	10,68,430/-	10,00,000/-	68,430/-	9,922/-
2016-17	8,29,541/-	0	8,29,541/-	1,24,431/-
2017-18 Jun)	NIL	NIL	NIL	NIL
			Total	1,34,354/-

4.15 Whereas during the course of investigation, on going through the balance sheet for the F.Y. 2015-16 & F.Y. 2016-17, it had been found that the assessee had availed the services of Advocates during the F.Y. 2015-16 for certain legal work for which they had made the payment and registered the said expense of Rs.17,000/- under the head "Vakil Fees". Further, ongoing through the balance sheet for the period F.Y. 2016-17, it was seen that the assessee had booked expense of Rs.39, 500/- under "Consultancy Fees" head. However, on going through the balance sheet for the period F.Y. 2016-17, it was seen that the balance sheet for the said period provides comparison of the income/expenses with that of the previous year i.e. F.Y. 2015-16. It was observed that in the expenses registered in balance sheet for F.Y. 2016-17, there was no expense head as "Vakil Fees", which was present in the expenses in the balance sheet for the period F.Y. 2015-16 and expense of Rs.17,000/- was booked under the head "Vakil Fees" in the year F.Y. 2015-16. Further, it appeared that the assessee had changed the nomenclature and booked the expenses incurred on availment of services of advocates under the head "Consultancy Fees" in the year F .Y. 2016-17. This was also evident from the fact that the expense of Rs.17000/- registered under the head "Vakil Fees" in F.Y. 2015-16 was now reflecting in the expense head "Consultancy Fees" in the F.Y. 2016-17 and there was no separate expense head as "Vakil Fees" in the balance sheet for the said period. From the above, it appeared that the assessee had deliberately changed the nomenclature in the balance sheet for the period F.Y. 2016- 17 so as to evade the service tax payment on the legal services availed by them. It appeared that the assessee was well aware of the fact that service tax was applicable on the legal service availed by them on reverse charge basis and hence in order to avoid the payment of service tax, the assessee changed the nomenclature of the expense head in the balance sheet so that the accurate description of the expense couldn't be identified and the tax could be evaded. This clearly shows the malafide intention of the assessee to evade the payment of service tax to the government.

4.16. It appeared that in light of the Notification no. 30/2012-ST dated 20.06.2012, the assessee was liable to pay service tax under Reverse Charge Mechanism on the value of services they received from the advocates mentioned in Para above. The value of legal services provided to the assessee, as recorded in the books of accounts and balance sheet of the assessee, for the period April 2015 to June 2017 and the service tax liability on the assessee in terms of Notification no. 30/2012 Service Tax dated 20.06.2012, was as given below:

Year	Value of service taken from Lawyers liable to Reverse	Service Tax liability Reverse charge
2015-16	17000	2465
2016-17	39500	5925
2017-18 (Apr-	0	0
	Total	8,390

5. From the above, it appeared that the total excise duty and service tax liability of the assessee is as under:

S.No	Particulars	Amount (Rs)
1	Excise duty on goods claimed under Export for F. Y. 2016-17	8,15,974/-
2	Excise Duty on reconciliation with sales ledger for F.Y. Jun-17	6,13,149/-
3	Excise Duty on sale of excisable goods declared as traded goods from Apr-16 till Jun-17	47,34,679/-
4	Service Tax on Taxable service provided for F.Y. 2015-16 till Jun-17	1,34,354/-
5	Service Tax on RCM on legal service availed for F.Y. Jun-17	8,390/-
	TOTAL	63,06,546/-

6. Whereas from the facts mentioned in the foregoing paras, it appeared that the said manufacturer and service provider had contravened the provisions of:

(a) Section 3 of the Central Excise Act, 1944, in as much as they failed to levy and collect duty;

(b) Rule 4, 5, 6 of the Central Excise Rules, 2002, in as much as they have failed to determine/discharge/assess the Central Excise duty on the goods;

(c) Rule 8 of the Central Excise Rules, 2002, in as much as they failed to make the payment of duty within due date;

(d) Notification No.42/2001-CE(NT), dt. 26/06/2001, in as much as they failed to follow the export procedures;

(e) Notification No. 6/2005-ST dtd. 01-03-2005 read with Notification No.

8/2008-ST dtd. 01-03-2008, in as much as they failed to follow the conditions stipulated therein;

(f) Notification no. 34/2016-CE (NT) dated 26.07.2016, in as much as they failed to follow the conditions stipulated therein; --

(g) Section 69 of Finance Act 1994 read with Rule 4 of Service Tax Rules, 1994, in as much as they failed to obtain service tax registration;

(h) Section 66B and 68 of Finance Act 1994 read with Rule 6 of Service Tax Rules, 1994, in as much as they knowingly failed to pay the service tax; and

(i) Section 70 of Finance Act 1994 read with Rule 7 of Service Tax Rules, 1994, in as much as they failed to self-assess the tax due properly on the services provided and for non filing of ST-3 returns.

7. From the Final Accounts of the relevant period, it appeared that the said assessee had availed benefit of Notification No.42/2001-CE(NT), dt. 26/06/2001 and cleared goods without payment of duty without following the procedure mentioned therein and failed to assess and pay the central excise duty liability. Further, investigation also revealed that they had declared less home clearances of articles of gold & jewelry in their ER-8 Returns filed during 2016-17. Thus, they suppressed the sales of excisable goods i.e. articles of gold & jewelry and deliberately not declared the entire production of excisable goods in ER-8 Returns filed by them with intend to evade payment of Central Excise duty. Further, the investigation also revealed that the assessee had registered the sale of articles of jewelry as traded goods in the books of accounts but had failed to produce any documentary evidence which indicate the excise duty was paid on such traded goods at the time of their first sale as per notification no. 34/2016-CE (NT) dated 01.03.2016. Thus they had deliberately suppressed the sales of excisable goods under the guise of traded goods and failed to declare the same in the ER-8 returns with intent to evade the payment of excise duty. It also appeared that the assessee had suppressed the transactions pertaining to service income received by them and not obtain the service tax registration and deliberately not taken into account properly the Assessable value for payment of service tax. The deliberate efforts leading to non-payment of the correct amount of Central Excise & Service tax in utter disregard to the requirements of law and breach of trust deposited on them. The said noticee was liable to pay the total Central Excise duty of **Rs.61,63,802/-** for the period from April, 2016 to June 2017, on the assessable value of excisable Goods manufactured by the said assessee in accordance with the provisions of Central Excise Act, 1994. The said assessee was also liable to pay the service tax of **Rs.1,42,744/-** for the period from F.Y. 2015-16 to Jun-17, in accordance with the provisions of Finance Act, 1994.

8. It is needless to emphasize that the Central Excise Act and Rules have been rationalized over a period of time and Self Removal Procedure; Self-assessments etc. had been introduced by the Government. Even the clearance limit of filing the declaration for exemption from registration had been increased from time to time with a clear expectation by the govt. that manufacturers honestly follow the same and comply with the requirement of law. Therefore, Central Excise Act/Rules create an absolute liability when any provision was contravened or there was a breach of trust placed on the manufacturer. Further it was well settled law that the onus to avail the correct benefits of any exemption notification lies with the unit itself. All these acts of contravention on the part of the said unit appeared to have been committed by reason of wilful misstatement, suppression of facts and contraventions of the provisions of Central Excise Act, 1944 and rules framed there under with an intent to evade the payment of Central Excise duty and therefore, the said duty not paid, appeared to be recoverable from them under the provisions of Section 11A(4) of the Central Excise Act, 1944, by invoking the extended period of five years. It also appeared that the assessee was liable for mandatory penalty under the provisions of Section 11 AC (1) (c) of the Central Excise Act, 1944, read with Rule 25(1) of the Central Excise Rules, 2002. Also interest at the prescribed rate under the provisions of Section 11AA of the Central Excise Act, 1944 for the period appeared to be recoverable from the said unit.

9. The government had, from the very beginning, placed full trust on the assessee so far service tax was concerned and accordingly measures like self-assessments etc., based on mutual trust and confidence were in place. Further, a taxable assessee was not required to maintain any statutory or separate records under the provisions of Service Tax Rules as considerable amount of trust was placed on the service provider and private records maintained by him for normal business purposes were accepted, practically for all the purpose of Service Tax. All these operate on the basis of honesty of the service provider, therefore, the governing statutory provisions create an absolute liability when any provision was contravened or there was a breach of trust placed on the service provider. The assessee chose not to pay the Service Tax collected by them to the government account, which clearly reflects the mala-fide intent of the assessee. Their malafide intent to evade the payment of duty was also evident from the fact that the assessee failed to honor any summons issued by the department and failed to furnish the required documents. From the evidences available on records, it appeared that the assessee had not obtained service tax registration to discharge their Service Tax liability on the taxable services from the period F.Y. 2015-16 to Jun-17. It further appeared that they had also failed to assess/declare the correct taxable value for the said taxable services in periodical ST-3 Returns by not filing the periodical ST-3 Returns for the F.Y.

2015-16 to Jun-17. It further appeared that they failed to assess/declare the correct taxable value in periodical ST-3 Returns for the said taxable services and have also failed to discharge the service tax liability at appropriate time. Therefore, they have disregarded the requirements of law and breach of trust deposited on them. Such outright act of defiance of law appears to have rendered themselves liable for stringent penal action as per the provisions of Section 78 of the Finance Act 1994 for suppression or concealment of taxable value with intent to evade payment of Service Tax. Further, since, the assessee had willfully suppressed the aforesaid facts with intent to evade payment of Service Tax leviable thereon and as such it appeared that the extended period specified in the proviso to sub-section (1) of Section 73 of the Finance Act, 1994 was invokable to demand & recover the amount of Service Tax due from them. Further, it appeared that the assessee had not paid the Service Tax on the amount of service income received against the services they had provided to their clients. In other words, they had failed to fulfill the provisions of Service Tax Rules framed under the Finance Act, 1994 as amended, when payable by them. Whereas it appeared that the assessee intentionally did not file ST-3 returns, and accordingly failed to determine and discharge the service tax liability. This fact of non-payment of service tax would have remained unearthed if service tax officers had not visited the premises of the assessee and initiated investigation in the matter. Therefore, the said service tax not paid by the assessee was required to be demanded and recovered along with interest at the applicable rate from them under the proviso to Section 73 (1) of the Finance Act, 1994 by invoking extended period of five years.

10 PENAL PROVISION

10.1 Whereas, it appeared that on account of all the above narrated acts of commission and omissions on the part of the assessee, they had rendered themselves liable for penalty under the following provisions of the Central Excise Act, 1944, Central Excise Rules, 2002 and Finance Act, 1994 and Service Tax Rules, as amended:

- I. Section 11 AC of Central Excise Act, 1944 read with Rule 25 of the Central Excise Rules, 2002, for failure to pay due central excise duty, with intent to evade the same.
- II. Section 78 of the Finance Act, 1994, for failure to pay due service tax, with intent to evade the same.
- III. Section 77(1)(a) of the Finance Act, 1994 for failure to obtain service tax registration.
- IV. Section 77(2) of the Finance Act, 1994 for failure to file service tax

returns for the period from the financial year 2015-16 to June, 2017.

10.2. The above provisions have been kept in force in the GST era vide Sections 142 & 174 of the Central Goods and Service Tax Act, 2017. Relevant provisions under 'The Central Goods and Service Tax Act, 2017:

Section 174.

(1) -----;

(2) *The repeal of the said Acts and the amendment of the Finance Act, 1994 (hereafter referred to as "such amendment" or "amended Act", as the case may be) to the extent mentioned in the sub-section (1) or section 173 shall not-*

(a) revive anything not in force or existing at the time of such amendment or repeal; or

(b) affect the previous operation of the amended Act or repealed Acts and orders or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation, or liability acquired, accrued or incurred under the amended Act or repealed Acts or orders under such repealed or amended

Acts:

Provided that any tax exemption granted as an incentive against investment through a notification shall not continue as privilege if the said notification is rescinded on or after the appointed day; or

(d) affect any duty, tax, surcharge, fine, penalty, interest as are due or may become due or any forfeiture or punishment incurred or inflicted in respect of any offence or violation committed against the provisions of the amended Act or repealed Acts; or

(e) affect any investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and any other legal proceedings or recovery of arrears or remedy in respect of any such duty, tax, surcharge, penalty, fine, interest, right, privilege, obligation, liability, forfeiture or punishment, as aforesaid, and any such investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and other legal proceedings or recovery of arrears or remedy may be instituted, continued or enforced, and any such tax, surcharge, penalty, fine, interest, forfeiture or punishment may be levied or imposed as if these Acts had not been so amended

or repealed;

(f) affect any proceedings including that relating to an appeal, review or reference, instituted before on, or after the appointed day under the said amended Act or repealed Acts and such proceedings shall be continued under the said amended Act or repealed Acts as if this Act had not come into force and the said Acts had not been amended or repealed.

(3) The mention of the particular matters referred to in sub-sections (1) and (2) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 with regard to the effect of repeal.

Section 142 (8) (a) *where in pursuance of an assessment or adjudication proceedings instituted, whether before, on or after the appointed day, under the existing law, any amount of tax, interest, fine or penalty becomes recoverable from the person, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act;*

11. Hence, M/s Shri Haridarshan Jewellers, 3rd Floor, Navneet Plaza, Nr Municipal Market, C. G. Road, Navrangpura, Ahmedabad-380009 currently operating from, the residence of proprietor, Shri Kaushik Vrajlal Patadia, residing at 33, Swati Society, Opp. Sharda School, Naranpura, Ahmedabad, were called upon to show cause to the Joint/Additional Commissioner, CGST, Ahmedabad South, having office at 6th Floor, GST Bhavan, Nr Government Polytechnic, Ambawadi, Ahmedabad-380015, as to why:-

- (i) Central Excise duty amounting to Rs.61,63,802/- (Sixty One Lakhs Sixty Three Thousand and Eight Hundred and Two only) should not be demanded and recovered from them under the provisions of Section 11 A of the Central Excise Act, 1944.
- (ii) Penalty in terms of the provisions of Section 11 AC of Central Excise Act, 1944, read with Rule 25 of the Central Excise Rules, 2002 should not be imposed on them.
- (iii) The interest at the applicable rate in force from time to time should not be demanded and recovered from them on the Central Excise duty amount mentioned at (i) above from the due date of its payment till the actual date of payment of duty under Section 11 AA of the Central Excise Act, 1944.
- (iv) Service Tax amount of Rs.1,34,354/- (Rupees One Lakh Thirty Four Thousand Three Hundred and Fifty Four only) calculated on the basis of taxable value shown in Financial records for

various taxable services for the period F.Y. 2015-16 to 2017-18 (April-17 to Jun-17) should not be demanded and recovered from them under the proviso of section 73 (1) of Finance Act, 1994, by invoking extended period of five year.

- (v) Service Tax amount of Rs.8,390/- (Rupees Eight Thousand Ninety only) on receipt of legal service during the period F.Y. 2015-16 to Jun-17 & payable under Reverse Charge Mechanism should not be demanded and recovered from them under the proviso of section 73(1) of Finance Act, 1994 read with Notification no. 30/2012-ST dated 20.06.2012, by invoking extended period of five year
- (vi) Interest at the prescribed rate should not be charged on the service tax liability mentioned at para (iv) & para (v) above, under Section 75 of the Finance Act, 1994 as amended from time to time;
- (vii) Penalty under Section 77(l)(a) of the Finance Act, as amended, should not be imposed upon them, as they have failed to obtain service tax registration;
- (viii) Penalty under Section 77(2) of the Finance Act, as amended, should not be imposed upon them, as they have failed to file statutory Service Tax Returns during the financial year April 2015 to June 2017;
- (ix) Penalty under Section 78(1) of the Finance Act, 1994 should not be imposed on them in respect of service tax liability mentioned at para (iv) above, for suppressing and not disclosing the income from the said taxable service provided by them before the department with an intention to evade payment of service tax as mentioned above.

12. DEFENCE REPLY: -

12.1 The said assessee vide their letter dated 23.09.2020 submitted that they had received the Show Cause Notice and reply which were supposed to be given within 30 days, couldn't be reply and had requested to give more 15 days to submit their defence reply. However, till date of this order the said assessee didn't submit their defence reply.

13. RECORD OF PERSONAL HEARING: -

The Personal Hearings have been given on different dates to said assessee. The details of personal hearings are as under:

S.No.	Scheduled Date of Personal Hearing	Mode of Hearing	Remarks
01	08.10.2020	Virtual	No one appeared on scheduled date
02	25.10.2022	Virtual/ Physical	Letter of Personal Hearing returned from Postal Authority with the remarks "LEFT".
03	27.10.2020	Virtual	The said assessee Vide letter dated 23.10.2020, requested for adjournment of personal hearing till 25.11.2020
04	22.12.2022	Virtual/ Physical	The Letter of Personal Hearing was sent via Speed Post and also emailed on registered Email ID of the said assessee. However, No one appeared on scheduled date.
05	29.12.2022	Virtual/ Physical	The Letter of Personal Hearing was sent via Speed Post. However, No one appeared on scheduled date.

14. DISCUSSION AND FINDINGS: -

14.1 I have gone through the facts of the case, contents of the Show Cause Noticee and other relevant records available on the file.

14.2.1 I find that the assessee was a proprietorship concern. The said assessee was engaged in manufacture of articles of gold and jewelry and also trading of bullion gold and silver. Consequent to the notification No. 5/2016 - Central Excise (N.T.) dated 01/03/2016, the assessee has obtained Central Excise registration on 17/06/2016. Further, the assessee has filed their first ER-8 return for the period Apr-Jun 2016-17 & onwards from time to time. Further, the said assessee was registered with GST department vide Registration Number 24AGAPP0526C1Z3 wherein the State GST was their administration office and their GST Registration Number was suo-moto cancelled with effective from 31.07.2020.

14.2.2 It is admitted facts that Central Excise duty was levied on clearance of manufacturing of gold and jewelry and the said assessee has already discharged their Central Excise Duty on clearance of manufacturing articles of gold and jewelry. Further, the said assessee has also obtained various incomes i.e. Design Income, Rent Income, Freight Income and miscellaneous Income.

Now, the issues to be decided before me are whether (i) The said assessee discharged their total Central Excise liability for the period involved

in the Show Cause Notice, against manufacturing of gold and jewelry? (ii) Trading of bullion gold and silver for the period involved in the Show Cause Notice ,comes under the purview of Central Excise Duty? (iii) The income earned by the said noticee for the period involved in the Show Cause Notice is liable to Service Tax or otherwise?.

14.3.1 The said assessee was offered an opportunity of personal hearing on the following dates.

S.No.	Scheduled Date of Personal Hearing	Mode of Hearing	Remarks
01	08.10.2020	Virtual	No one appeared on scheduled date
02	25.10.2022	Virtual/ Physical	Letter of Personal Hearing returned from Postal Authority with the remarks " LEFT".
03	27.10.2020	Virtual	The said assessee Vide letter dated 23.10.2020, requested for adjournment of personal hearing till 25.11.2020
04	22.12.2022	Virtual/ Physical	The Letter of Personal Hearing was sent via Speed Post and also emailed on registered Email ID of the said assessee. However, No one appeared on scheduled date.
05	29.12.2022	Virtual/ Physical	The Letter of Personal Hearing was sent via Speed Post. However, No one appeared on scheduled date.

14.3.2 Thus, on receipt of PH intimation fixed on 27.10.2020, they requested vide their letter dated 23.10.2020 for the adjournment of the same. It means that the said assessee acknowledged the letter of Personal Hearing. After that this office has given ample opportunity to hear before adjudication authority. However, the said assessee neither submitted any defence reply nor attended the personal hearing. Therefore, I find that the assessee is not interested to attend the personal hearing inspite of acknowledged. Further, the said assessee has also acknowledged the said SCN, as admitted vide their letter dated 23.09.2020 and requested to give extension of 15 days more for submission of defence reply. However, two and half years have been lapse, yet the said assessee has not submitted their defence reply. Hence, I take up the matter for adjudication ex-parte.

14.4.1 As per facts available on said SCN, the details of clearance of excisable goods as per Central Excise Returns (ER-8) filed by the said assessee are as under.

Financial Year	Home Clearance	Export under LUT	Total Clearance
2016-17	10,82,15,276/-	8, 15,97 ,361/-	18,98,12,637 /-
2017-18	NIL	NIL	NIL

14.4.2. The said assessee declared export supplies under LUT is Rs. 8,15,97,361/- and availed the benefit of non-payment of excise duty under Notification No 42/2001-CE(NT) dated 26.06.2001. As per the said notification, the manufacturer-exporter may remove the goods without payment of duty after furnishing the Letter of Undertaking. The manufacturer exporter was required to present the goods along with four copies of application in the Form A.R.E.-1 to the Superintendent or Inspector of Central Excise who will verify the identity of goods mentioned in the application and the particulars of the duty paid or payable. The manufacturer-exporter was required to submit the copies of proof of export including the A.R.E.-1 attested by the officers, bank realization certificate indicating payment receipt in foreign currency within stipulated time in order to establish that the goods had been exported and the assessee had availed correct benefit of removal of goods without payment of excise duty under Notification No.42/2001-CE(NT), dt. 26/06/2001. In the instant case the assessee had failed to provide the export invoice, packing list, ARE-1, copy of LUT, proof of export, Bank Realization Certificate etc for the exports claimed in the excise returns. Therefore, I find that the assessee has failed to follow the procedure as per Notification No.42/2001- CE(NT), dt. 26/06/2001. Further, I find that excisable goods of Rs. 8,15,97,361/- shown as export without payment of excise duty in their ER-8 are actually clearance of articles as Home Clearance from their factory premises. From the above facts, it is clear that there is malafide intention of the said assessee and the said assessee is willful suppressed the facts with the intention to evade of C. Excise Duty as the levying of C. Excise duty on clearance of manufacturing articles of gold and jewelry from factory premises has already been admitted by the said assessee. Accordingly, excise duty on the excisable goods of Rs. 8,15,97,361/- shown as export under Notification No.42/2001-CE(NT), dt. 26/06/2001 are required to be recovered from them under Section 11 A of the Central Excise Act, 1944.

The Section 11A of the Central Excise Act, 1944 is reproduced as below:

Section 11A. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded.-

(1) ...

(2) ...

(3)

(4) *Where any duty of excise has not been levied or paid or has been shortlevied or short-paid or erroneously refunded, by the reason of-*

(a) *fraud; or*

(b) *collusion; or*

(c) *any wilful mis-statement; or*

(d) suppression of facts; or

(e) contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade

payment of duty,

Hence, I find that excise duty liability on the clearances shown as export is calculated as under: (Amount in Rs.)

Financial Year	Value of Export claimed under LUT	Excise Duty Applicable @1%
2016-17	8,15,97,361/-	8,15,974/-
2017-18 (Apr-Jun)	-	-

14.5. Further, as per facts available on the said SCN, I find that the said assessee has done sales of Gold of various purity viz. 18 CT, 22 CT & 24 CT by means of trading and manufacturing and in case of trading sales, the assessee has not added labor amount and in case of sales of manufactured goods, the assessee has added the labor amount to the metal amount.

14.6. Further, as per facts available on the said SCN, I find that the assessee adds the labour amount in the cases where the articles of jewelry is manufactured by the assessee. The labor amount added to the metal is the value addition done by the assessee for conversion of gold into articles of jewelry for the purpose of sales. Further, I find that there are sales wherein the assessee charged labor from the customer, which indicate the said sales are of manufactured articles of jewelry and the same has not been accounted for when paying the excise duty liability. The list of all such domestic sales invoices on which labor amount is charged by the assessee is seen at para no 06 wherein total domestic sales of jewelry for the F.Y. 2016-17, wherein labour amount is added, is amount of Rs. 16,95,30,212/-. Now, it is evident from the above facts that the total value of manufacturing of articles of jewelry for the F.Y. 2016-17 is Rs. 16,95,30,212/-.

14.7. Further, I find that the amount of home clearances declared by the assessee is Rs. 10,82,15,276/- and against the said assessable value, Central Excise duty amounting of Rs. 10,82,152/- has already been paid. As already discussed in para no 26 that total value of manufacturing of articles of jewelry in the F.Y. 2016-17 is Rs. 16,95,30,212/-. It means that the said assessee deliberately made mis-assessment of the value of manufacturing of articles of jewelry in the F.Y. 2016-17 and it should be Rs. 16,95,30,212/- instead of Rs. 10,82,15,276/-. Therefore, there is short paid made by the said assessee. The details of short payment made by the assessee are as under:

Reconciliation of Sales Ledger (Manufactured goods) with ER-8 returns filed by the assessee				
Period	Assessable Value of manufactured goods as per Sales ledger	Assessable Value declared as per ER-8 filed by the assessee	Difference	Applicable Excise Duty payable
2016-17	16,95,30,212/-	10,82,15,276/-	6,13,14,936/-	6,13,149/-
2017-18	--	--	--	--

14.8. Now, we will discuss here whether Trading of bullion gold and silver comes under the purview of Central Excise Duty for the period involved in the Show Cause Notice ?. As per available records on SCN, I find that for the period Apr-2016 till Jun-17, the assessee has registered sales under the head "Gold-24 Trading A/c", "Gold-22 Trading A/c" & "Gold-18 Trading A/c", "Pure Silver Trading A/c" other than manufacturing items such as 18 CT Gold manufacturing, Diamond manufacturing & 22CT Gold manufacturing. The definition of traded articles covered under the notification no. 34/2016-CE (NT) dated 26.07.2016, which was reproduced as under:

"

....

(l) "traded articles" means articles, on which appropriate duty (including nil duty) has already been paid at the time of their sale for the first time.

"

.....

14.9 Whereas the above definition provides that in case of the sales of traded articles of jewelry, the duty on the same should have been paid at the time of their first sale. The assessee has declared and registered sale of traded articles of 18CT, 22CT 24Ct gold and pure silver in their books of accounts. From the said traded articles sales, in case of sale of traded articles registered under 18CT & 22CT traded sales, I find that the same are sale of articles of jewelry on which the excise duty is applicable and the said assessee have not paid appropriate duty at the time of sale of traded articles, Therefore, I find that the said sale of traded articles is not as per the law the said sale is subject to excise duty and the assessee has failed to declare the same and pay the excise duty on such sale. The detail of such clearance is as under:

Particulars	2016-17	2017-18
Total Sales as per Sales register	74,65,43,647 /-	7,92,86,375/-
Less		
Sale of Export goods covered at para 4	8,15,97,361/-	0
Sales of Manufactured goods covered at para 6	16,95,30,212/-	0
Sale registered under "Pure Silver Trading A/c"	1, 13,42,700/-	0
Sale registered under "Gold-24 Trading A/c"	3,60,77,449/-	5,38,14,341/-
Net Sale of Traded articles of 22CT and 18 CT gold	44,79,95,925/-	2,54, 72,034/-

On the basis of above facts, the excise duty payable on such sale declared as sale of traded articles is as under:

Year	Assessable Value (Rs)	Excise Duty (Rs)
2016-17	44,79,95,925/-	44,79,959/-
2017-18 (Apr-Jun)	2,54,72,034/-	2,54,720/-
Total	47,34,67,959/-	47,34,679/-

14.10.1 Now, we will move to the point wherein issue involving of other incomes earned by the said noticee for the period involved in the Show Cause Notice and will discuss whether the said other incomes are liable to Service Tax or otherwise?

14.10.2 Further, on the basis of available records on SCN, I find that the assessee has registered income under various taxable services as detailed mentioned in para no 08, 8.1 and 8.2 and 8.3 ; that the income of the assessee by way of providing design services, Rent Service ,freight Service and Miscellaneous Services are subject to service tax as they didn't fall under negative list of services under Section 66D of the Finance Act, 2012;that the said assessee failed to provide documentary evidence regarding the miscellaneous income; that the said assessee was required to pay the service tax on the above income generated by providing taxable services. Further I find that the assessee did not get themselves registered under the service tax act and has not paid the applicable service tax on the income received by providing taxable services; that the assessee has crossed the threshold limit for obtaining service tax registration during the year F.Y. 2015-16 but the assessee did not obtain the service tax registration and failed to deposit the service tax to the government. Consequent to the notification no. 08/2008-ST dated 01.03.2008, the assessee is required to obtain service tax registration after reaching the threshold limit of Rs.10 lakhs in F.Y. 2015-16.

14.10.3 On the basis of above facts, the taxable income of the assessee is calculated as under:

Financial Year	Design Income	Rent Income	Freight Income	Miscellaneous Income (Rs)	Total Service Income
2015-16	8,98,990	1,68,000/	NIL	1,440/-	10,68,430/-
2016-17	4,26,500	1,68,000	1,53,435/-	81,606/-	8,29,541/-
2017-18 (April-June)	NIL	NIL	NIL	NIL	NIL

14.10.4 The service tax liability of the assessee on the above taxable income generated from service income is as under:

Period	Total Service Income (Rs)	Exemption Threshold (Rs)	of limit	Taxable Value (Rs)	Service Tax (Rs)
2015-16	10,68,430/-	10,00,000/-		68,430/-	9,922/-
2016-17	8,29,541/-	0		8,29,541/-	1,24,431/-
2017-18 (Apr-Jun)	NIL	NIL		NIL	NIL
				Total	1,34,354/-

14.11. Further, as per Show Cause Notice, I found that the assessee has availed the services of Advocates during the F.Y. 2015-16 for certain legal work for which they have made the payment and registered the said expense of Rs. 17,000/- under the head "Vakil Fees". Further, I find that the assessee has booked expense of Rs.39,500/- under "Consultancy Fees" head. However, as per Show Cause Notice, no expense head as "Vakil Fees", for the period F.Y. 2015-16 and expense of Rs.17,000/- is booked under the head "Vakil Fees" in the year F.Y. 2015-16. Further, I find that the assessee has changed the nomenclature and booked the expenses incurred on availment of services of advocates under the head "Consultancy Fees" in the year F .Y. 2016-17.

14.11.2 It is also evident from the fact that the expense of Rs.17000/- registered under the head "Vakil Fees" in F.Y. 2015-16 was now reflecting in the expense head "Consultancy Fees" in the F.Y. 2016-17 and the said assessee has deliberately changed the nomenclature in the balance sheet for the period F.Y. 2016- 17 so as to evade the service tax payment on the legal services availed by them; that the assessee was well aware of the fact that service tax was applicable on the legal service availed by them on reverse charge basis and hence in order to avoid the payment of service tax, the assessee changed the nomenclature of the expense head in the balance sheet so that the accurate description of the expense couldn't be identified and the tax could be evaded. This clearly shows the malafide intention of the assessee to evade the payment of service tax to the government.

14.11.3 Further, I find that in light of the Notification no. 30/2012-ST dated 20.06.2012, the assessee is liable to pay service tax under Reverse Charge Mechanism on the value of services they received from the advocates mentioned in Para above. The value of legal services provided to the assessee for the period April 2015 to June 2017 and the service tax liability on the assessee in terms of Notification no. 30/2012 Service Tax dated 20.06.2012, is as given below:

Year	Value of service taken from Lawyers liable to Reverse	Service Tax liability under Reverse charge
2015-16	17000 /-	2465/-
2016-17	39500 /-	5925 /-
2017-18 (Apr-	0	0
	Total	8,390 /-

14.12. On the basis of paras no 14.4, 14.7, 14.9, 14.10 and 14.11, the consolidate liability of C. Excise and S. Tax duty are calculated which are as under:

S.No	Particulars	Amount (Rs)
1	Excise duty on goods claimed under Export for F. Y. 2016-17	8,15,974/-
2	Excise Duty on reconciliation with sales ledger for Jun-17	6,13,149/-
3	Excise Duty on sale of excisable goods declared from Apr-16 till	47,34,679/-
4	Service Tax on Taxable service provided for F.Y. 2015-16 till Jun-17	1,34,354/-
5	Service Tax on RCM on legal service availed for F.Y. 2015-16 till Jun-17	8,390/-
Total		63,06,546/-

15. Further, I find that the said assessee failed to assess and pay the central excise duty liability; that they had declared less home clearances of articles of gold & jewelry in their ER-8 Returns filed during 2016-17. Thus, they suppressed the sales of excisable goods i.e. articles of gold & jewelry and deliberately not declared the entire production of excisable goods in ER-8 Returns filed by them with intend to evade payment of Central Excise duty. Further, I find that the assessee has registered the sale of articles of jewelry as traded goods in the books of accounts but has failed to produce any documentary evidence which indicate the excise duty was paid on such traded goods at the time of their first sale as per notification no. 34/2016-CE (NT) dated 01.03.2016. Thus they had deliberately suppressed the sales of excisable goods under the guise of traded goods and failed

to declare the same in the ER-8 returns with intent to evade the payment of excise duty. Further, I find that the assessee has suppressed the transactions pertaining to service income received by them and not obtain the service tax registration and deliberately not taken into account properly the Assessable value for payment of service tax. The deliberate efforts leading to non-payment of the correct amount of Central Excise & Service tax in utter disregard to the requirements of law and breach of trust deposited on them. The said assessee is liable to pay the total Central Excise duty of **Rs.61,63,802/-** for the period from April, 2016 to June 2017, on the assessable value of excisable Goods manufactured by the said assessee in accordance with the provisions of Central Excise Act, 1994. The said assessee is also liable to pay the service tax of **Rs.1,42,744/-** for the period from F.Y. 2015-16 to Jun-17, in accordance with the provisions of Finance Act, 1994.

16. In view of the above, the assessee is liable to pay Central Excise Duty of **Rs. 61,63,802/-** for the period from April, 2016 to June 2017 along with applicable interest and Service Tax of Rs. **1,42,744/-** for the period from F.Y. 2015-16 to June 2017 along with along with applicable interest.

PENAL ACTION

17. As regard penal action under Section 11 AC of Central Excise Act, 1944, read with Rule 25 of the Central Excise Rules, 2002 and Section 78 of the Finance Act, 1994, there is much clear from the para 37 that the said assessee deliberately suppressed the material facts with the intention to evade of Central Excise Duty and Service Tax. Hence, the said assessee is liable to penalty under Section 11 AC of Central Excise Act, 1944, read with Rule 25 of the Central Excise Rules, 2002 and Section 78 of the Finance Act, 1994.

18. As regards to penal action under Section 77(1)(a) and Section 77(2) of the Finance Act, 1994, it is clear from the above facts that the said assessee is failed to obtain Service Tax Registration, Hence, the said assessee is liable to penalty under Section 77(1)(a) of the Finance Act, 1994. Further, The said assessee is failed to file service tax return for the period from the Financial Year 2015-16 to June 2017, Hence, the said assessee is liable for penalty under section 77(2) of the Finance Act, 1994.

19. Further, the then effective provisions of the Central Excise Act, 1944 and the Central Excise Tariff Act, 1985, as repealed vide Section 174(1) of the CGST Act, 2017 and the then effective provisions of the Chapter V of the Finance Act, 1994, as omitted vide Section 173 of the CGST Act, 2017, and the then effective provisions of

the Cenvat Credit Rules, 2004, as superseded vide notification No.20/2017-CE (NT) dated 30.06.2017, have been saved vide Section 174(2) of the CGST Act, 2017 and Notification No.20/2017-CE (NT) dated 30.06.2017. Therefore, the provisions of the said repealed/amended Acts and Rules made there under are rightly enforceable for the purpose of demand of duty, interest, etc. and imposition of penalty under this notice. **As per Section 142(8)(a)** of the CGST Act, 2017, where in pursuance of an assessment or adjudication proceedings instituted, whether before, on or after the appointed day, under the existing law, any amount of tax, interest, fine or penalty becomes recoverable from the person, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under this Act.

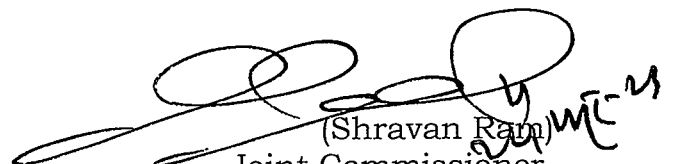
20. In above view, I pass the following order

ORDER

- (i) I order to recover Central Excise duty amounting to **Rs.61,63,802/-** (Sixty One Lakhs Sixty Three Thousand and Eight Hundred and Two only) from them under the provisions of Section 11 A of the Central Excise Act, 1944.
- (ii) I order to impose Penalty in terms of the provisions of sub section(1)(C) of Section 11 AC of Central Excise Act, 1944, read with Rule 25 of the Central Excise Rules, 2002, by reason of suppression of facts or wilful mis-statement with intent to evade payment of duty. However, in terms of Sub Section (1) (e) of Section 11AC of Central Excise Act, 1944, if amount of C. Excise duty as determined in para no (i) and the interest payable thereon as per para no (iii) is paid within thirty days of the date of communication of this order, the amount of penalty liable to be paid by such person shall be twenty-five per cent of the duty so determined, subject to the condition that such reduced penalty is also paid within the period so specified.
- (iii) I order to recover the interest at the applicable rate in force from them on the Central Excise duty amount mentioned at (i) above from the due date of its payment till the actual date of payment of duty under Section 11 AA of the Central Excise Act, 1944.
- (iv) I order to recover Service Tax amount of **Rs.1,34,354/-** (Rupees One Lakh Thirty Four Thousand Three Hundred and Fifty Four only) calculated on the basis of taxable value shown in Financial records for various taxable services for the period F.Y. 2015-16 to 2017-18 (April-17 to Jun-17), from them under the proviso of section 73 (1) of Finance Act, 1994, by invoking extended period

of five year.

- (v) I order to recover Service Tax amount of **Rs.8,390/-** (Rupees Eight Thousand Ninety only) on receipt of legal service during the period F.Y. 2015-16 to Jun-17 & payable under Reverse Charge Mechanism, from them under the proviso of section 73(1) of Finance Act, 1994 read with Notification no. 30/2012-ST dated 20.06.2012, by invoking extended period of five year
- (vi) I order to recover Interest at the prescribed rate on the service tax liability mentioned at para (iv) & para (v) above, under Section 75 of the Finance Act, 1994 as amended from time to time;
- (vii) I order to impose Penalty of Rs.10,000/- (Rupees Ten Thousand Only) under Section 77(1)(a) of the Finance Act, as amended, as they have failed to obtain service tax registration;
- (viii) I order to impose Penalty of Rs.10,000/- (Rupees Ten Thousand Only) under Section 77(2) of the Finance Act, as amended, as they have failed to file statutory Service Tax Returns during the financial year April 2015 to June 2017;
- (ix) I order to impose Penalty under Section 78(1) of the Finance Act, 1994 on them in respect of service tax liability mentioned at para (iv) & (v) above, for suppressing and not disclosing the income from the said taxable service provided by them before the department with an intention to evade payment of service tax as mentioned above. However, in view of clause (ii) of the second proviso to Section 78(1), if the amount of Service Tax confirmed and Interest thereon is paid within period of thirty days from the date of receipt of this order, the penalty shall be twenty-five percent of the said amount, subject to the condition that the amount of such reduced penalty is also paid within the period of thirty days.


(Shravan Ram)
Joint Commissioner,
Central GST-Ahmedabad South

BY Registered Post A.D./Email

F.No.

Date:- 24.02.2023

To,
M/s Shri Haridarshan Jewellers,
33, Swati Society, Opp. Sharda School,
Naranpura, Ahmedabad

Copy to:

- 1) The Commissioner, CGST, Ahmedabad South.
- 2) The Assistant Commissioner, CGST, Div-VI, Ahmedabad South.
- 3) The Superintendent, CGST, AR-IV, Division-VI, Ahmedabad-South.
- 4) The Assistant Commissioner, CGST, TAR Section, HQ, Ahmedabad South.
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