

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
MUMBAI**

REGIONAL BENCH - COURT NO. 01

**Service Tax Appeal No. 86090 of 2016**

(Arising out of Order-in-Original No. 46-47/STC-IV/MRRR/2015-16 dated 27.11.2015 passed by Commissioner of Service Tax-IV, Mumbai)

**M Suresh Company Pvt Ltd**  
BC/BW-6010, Bharat Diamond Bourse,  
Bandra Kurla Complex, Mumbai-400 051.

**.....Appellant**

*VERSUS*

**Commissioner of Service Tax-IV,  
Mumbai**  
12<sup>th</sup> Floor, Lotus Infocenter, Parel (E),  
Mumbai-400 012.

**.....Respondent**

**Appearance:**

Ms Virangana Wadhwa a/w Disha Shah, Advocates for the Appellant  
Shri Vinod Kumar Authorized Representative for the Respondent

**CORAM:**

**HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)**  
**HON'BLE MR. M.M.PARTHIBAN, MEMBER (TECHNICAL)**

**FINAL ORDER NO. A/85673/2023**

Date of Hearing: 25.04.2023  
Date of Decision: 25.04.2023

**PER : S. K. MOHANTY**

Briefly stated, the facts of the case are that the appellant is engaged in the business of manufacture and sale of cut and polished diamonds. The appellant procures the rough diamonds from the overseas supplier M/s. Diamond Trading Company Ltd. (DTC), a De-Beers Group Company, London. For procuring the said goods from the overseas entity, the appellant also availed the

services of M/s H. Goldie & Co. Ltd., United Kingdom, who assists the appellant in procurement of the goods on commission basis. Apart from supplying the rough diamonds, M/s DTC has also provided the other Value Added Services (VAS) to the appellant. The department interpreting that such value added services provided by the overseas entity should be taxable under the category of "Business Support Service" (BSS) and since appellant is the recipient of such service in India, it should be liable for payment of Service Tax, under Section 66A of the Finance Act, 1994. Similarly, the department has also interpreted that the services provided by M/s. H. Goldie & Co. Ltd. and the commission charged by them from the appellant should be considered as a taxable service under the category of "Business Auxiliary Service". On the basis of investigation, the department initiated show cause proceedings against the appellant, seeking confirmation of service tax demand on the provision of both the category services namely "Business Support Service" and "Business Auxiliary Service". The matter arising out of the show cause notices was adjudicated vide the impugned order dated 27.11.2015, wherein the learned Commissioner of Service Tax-IV, Mumbai had confirmed the service tax demand of Rs.83,58,374/- for the period 2011-12 and Rs.54,07,332/- for the period 2012-13 along with interest. Feeling aggrieved with the impugned order, the appellant has preferred this appeal before the Tribunal.

2. Learned Advocate appearing for the appellant submitted that the appellant is not contesting the service tax demand confirmed under the taxable category of "Business Auxiliary Service". In this context, she fairly concedes that the issue regarding payment of service tax under the "Business Auxiliary Service" has been settled

by this Tribunal in the case of Interjewel Pvt. Ltd. Vs. Commissioner of Service Tax, Mumbai - 2015 (40) STR 759 (Tri.-Mumbai). With regard to the service tax demand confirmed on Business Support Service, she submitted that the alleged services were not outsourced by the appellant and since availment of the value added services is a condition precedent for supply of the rough diamonds by the overseas entity, the same should not be subjected to levy of service tax under the Business Support Service. In this context, she has relied upon the Circular dated 28.02.2006 issued by the CBEC, clarifying the scope and ambit of the taxable service under the category of Business Support Service. She has also referred to the contents of the minutes of meeting recorded from the leading manufacturer of rough diamonds M/s. De-Beers for the value added services. She has referred to such interviewed statement of the Managing Director of DTC to strengthen the stand of the appellant that availment of the value added services are linked to the supply of goods and there is no choice left with the appellant in not availing those services from the overseas entity.

3. On the other hand, learned Authorized Representative appearing for the Revenue reiterated the findings recorded in the impugned order. He further submitted that since the value added services were provided in relation to sale of cut and polished diamonds by the appellant to its customers in India, such services are to be considered as support services of the business activities undertaken by the appellant and should be taxed under the category of Business of Support Service.

4. Heard both sides and examined the case records.

5. On perusal of the case records, we find that apart from supplying the rough diamonds to the appellants, the overseas entity had supplied the value added service to the appellant, which were levied with the service tax demand by the department confirming those services to fall under the scope and ambit of the taxable service namely Business Support Service. The VAS services include supply of planning tools services which include continuity of supply, Intention to offer, Consistency of Boxes, sight holder Extranet services, SOC integrity (3<sup>rd</sup> party verification) provision of key Account Manager provided by them, as also Business sustainability services like consumer demand, consumer confidence, Best practice principles (BPP) (given at no additional cost along with supply of planning of tools services) which include creating consumer confidence for natural diamond, certification process to ensure that the diamond are mined from conflict-free zones and are not involved into illegal or illegitimate activities.

6. We find that the value added services provided by the overseas entity are part and parcel of the rough diamond supplied by them and considering the commission amount on such services, the Customs Department had assessed the bills of entry by including such value in the transaction value for the purpose of levy of Customs duty. It is not the case of Revenue that the value added services were otherwise can be arranged or provided by the appellant in furtherance to their business activities; rather availment of the said services were condition precedent, meaning thereby that, those services have to be compulsorily availed from the overseas entity and there is no choice for not availing those services. Insofar as Business Support Service is concerned the

basic element to be looked into is that it is only on the outsourced services, the tax can be imposed and not otherwise. Considering the true scope and purpose of the definition of Business Support Service, the Tax Research Unit in the Department of Revenue vide D.O.F. No.334/4/2006-TRU dated 28.02.2006 has clarified as under. Such clarification was furnished pursuant to the changes made in the Finance Act, 1994 with regard to introduction of the new levy under the category of Business Support Service as a part of Finance Bill, 2006.

**“3.13. BUSINESS SUPPORT SERVICES :** Business entities outsource a number of services for use in business or commerce. These services include transaction processing, routine administration or accountancy, customer relationship management and tele-marketing. There are also business entities which provide infrastructural support such as providing instant offices along with secretarial assistance known as “Business Centre Services”. It is proposed to tax all such outsourced services. If these services are provided on behalf of a person, they are already taxed under Business Auxiliary Service. Definition of support services of business or commerce gives indicative list of outsourced services.”

From the above clarification issued by the TRU, it is observed that the intention of the legislature was to collect service tax on the outsourced services only. In the present case, since for provision of the value added services, the appellant had not outsourced services to the overseas entity, it cannot be said that such services provided by the overseas entity should be taxed under the category of Business Support Service. Thus, we are of the considered view that confirmation of the service tax demand in the adjudication order on Business Support Service will not stand in judicial scrutiny.

7. With regard to the Business Auxiliary Services provided by M/s. H Goldie & Co. Ltd. to the appellant, we find that in an identical situation, Tribunal has dismissed the appeal in favour of the importer holding that the activity provided as a commission agent should fall under the category of Business Auxiliary Service. Further, the appellant has also conceded the fact that it is not contesting the demand confirmed under Business Auxiliary Service. Therefore, we are of the view that the appellant is liable to pay service tax confirmed in the adjudication order with regard to that category of service. Hence, we do not find any infirmity in the impugned order insofar as it has confirmed the adjudged demands under the Business Auxiliary Service. However, since the adjudicating authority has not segregated the demand in respect of the two category of services confirmed in the impugned order, we are of the view that the matter should go back to the original authority for the limited purpose of quantifying the service tax demand with regard to the Business Auxiliary Service, which should be paid for the units by the appellant. It is expected that while computing the service tax liability to be confirmed under such service, the adjudicating authority should observe the process of law, natural justice and should grant an opportunity of personal hearing to the appellant to present their case before him.

8. In the result, the appeal is partly allowed.

(Dictated and pronounced in the open court)

**(S.K. Mohanty)**  
**Member (Judicial)**

**(M.M Parthiban)**  
**Member (Technical)**