



# आयुक्त का कार्यालय, (अपीलस)

Office of the Commissioner,

केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय

Central GST, Appeal Commissionerate- Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

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क फाइल संख्या : File No : **V2(ST)184 /North/Appeals/2018-19 / 10158-10162**

ख अपील आदेश संख्या : Order-In-Appeal No. **AHM-EXCUS-002-APP-209-18-19**

दिनांक Date : **20/03/2019** जारी करने की तारीख Date of Issue **30/04/19**

**श्री उमा शंकर**, आयुक्त (अपील) द्वारा पारित

Passed by **Shri Uma Shanker** Commissioner (Appeals)

ग Arising out of Order-in-OriginalNo**GST/D-VI/O&A/04/Kalandi/AC/RJ/18-19**  
Dated **14/11/2018** Issued by **Assistant Commissioner** , Central GST , Div-VI ,  
Ahmedabad North.

ध अपीलकर्ता का नाम एवं पता  
**Name & Address of The Appellants**

## M/s Kalandi Impex

इस अपील आदेश से असंतुष्ट कोई भी व्यक्ति उचित प्राधिकारी को अपील निम्नलिखित प्रकार से कर सकता है:-

Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way :-

सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण को अपील:-  
Appeal To Customs Central Excise And Service Tax Appellate Tribunal :-

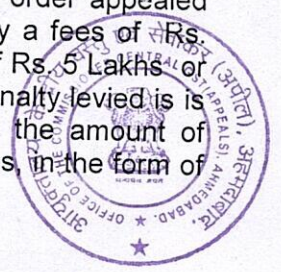
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-  
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेधाणी नगर, अहमदाबाद-380016

The West Regional Bench of Customs, Excise, Service Tax Appellate Tribunal (CESTAT) at O-20, New Mental Hospital Compound, Meghani Nagar, Ahmedabad - 380 016.

(ii) अपीलीय न्यायाधिकरण को वित्तीय अधिनियम, 1994 की धारा 86 (1) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (1) के अंतर्गत निर्धारित फार्म एस.टी- 5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गई हो उसकी प्रतियाँ भेजी जानी चाहिए (उनमें से एक प्रमाणित प्रति होगी) और साथ में जिस स्थान में न्यायाधिकरण का न्यायपीठ स्थित है, वहाँ के नामित सार्वजनिक क्षेत्र बैंक के न्यायपीठ के सहायक रजिस्ट्रार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहाँ रूपए 10000/- फीस भेजनी होगी।

(ii) The appeal under sub section (1) of Section 86 of the Finance Act 1994 to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules 1994 and Shall be accompany ed by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees in the form of



crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated.

(iii) वित्तीय अधिनियम, 1994 की धारा 86 की उप-धाराओं एवं (2ए) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (2ए) के अंतर्गत निर्धारित फार्म एस.टी.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क (अपील) के आदेश की प्रतियाँ (OIA) (उसमें से प्रमाणित प्रति होगी) और अपर

आयुक्त, सहायक / उप आयुक्त अथवा **अधीक्षक** केन्द्रीय उत्पाद शुल्क, अपीलीय न्यायाधिकरण को आवेदन करने के निदेश देते हुए आदेश (OIO) की प्रति भेजनी होगी।

(iii) The appeal under sub section (2A) of the section 86 the Finance Act 1994, shall be filed in Form ST-7 as prescribed under Rule 9 (2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise (Appeals)(OIA)(one of which shall be a certified copy) and copy of the order passed by the Addl. / Joint or Dy. /Asstt. Commissioner or Superintendent of Central Excise & Service Tax (OIO) to apply to the Appellate Tribunal.

2. यथासंशोधित न्यायालय शुल्क अधिनियम, 1975 की शर्तों पर अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार मूल आदेश एवं स्थगन प्राधिकारी के आदेश की प्रति पर रु 6.50/- पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

2. One copy of application or O.I.O. as the case may be, and the order of the adjudication authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.

3. सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्यविधि) नियमावली, 1982 में चर्चित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है।

3. Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

4. सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 39फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1984 की धारा 23 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "माँग किए गए शुल्क" में निम्न शामिल हैं -

- (i) धारा 11 डी के अंतर्गत निर्धारित रकम
- (ii) सेनवैट जमा की ली गई गलत राशि
- (iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

⇒ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होगा।

4. For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores,

Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

⇒ Provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

4(1) इस संदर्भ में, 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।

4(1) 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. Kalindi Impex, Bodakdev, Ahmedabad (*hereinafter referred to as 'appellants'*) have filed the present appeal against the Order-in-Original number GST/ Div-VI/O&A/04/KALINDI/AC/RJ/18-19 dated 14.11.2018 (*hereinafter referred to as 'impugned order'*) passed by the Assistant Commissioner, Central GST & Central Excise, Division-VI, Ahmedabad-North (*hereinafter referred to as 'adjudicating authority'*);

2. The facts of the case, in brief, are that the appellants are engaged in providing/procuring the services under the category of Beauty Parlor/Beauty Treatment, Work Contract Service, Business Auxiliary Service, Maintenance or Repair Service and Other Taxable Services which are taxable under Section 65 and Section 68(2) of the Finance Act, 1994. During the course of audit, it was noticed that the appellants had shown indirect income of ₹ 40,29,939/-, in their Balance Sheet, on profit of relinquishment of right for sale of property/land and did not discharge their Service Tax liability on it. On being asked, the appellants informed the audit team that said land was an agricultural land and that they were not liable to pay any tax on it. It was further observed that the land was owned by three partners namely; Dolabhai Somabhai Senma, Laxmanbhai Somabhai Senma and Chelabhai Somabhai Senma (the original saler and hereinafter referred to as the first party) and the appellants had made an agreement on 20.10.2011 in which the later became a purchaser of the land as the second party. Meanwhile, the land was actually sold to a third party, i.e. M/s. Rajpath Club Ltd., jointly by the first party and the appellants. The appellants became a confirmed party while selling the land to M/s. Rajpath Club Ltd. and received the amount of ₹ 40,29,939/- out of the total sale amount of ₹ 52,39,080/-. Thus, it was assumed that the amount earned by the appellants falls under the category of Section 66E(e) of the Finance Act, 1994 i.e. "agreeing to the obligation to refrain from an act, or to tolerate an act or situation, or to do an act". Accordingly, a show cause notice dated 04.05.2018 was issued to the appellants which was adjudicated by the adjudicating authority. The adjudicating authority, vide the impugned order, confirmed the demand of Service Tax amounting to ₹ 6,04,491/-, under Section 73(1). The adjudicating authority further, demanded interest under Section 75 at appropriate rate and imposed penalty under Section 78 of the Finance Act, 1994 amounting to ₹ 6,04,491/-.

3. Being aggrieved with the impugned order, the appellants preferred the present appeal before me. The appellants argued that the adjudicating authority did not appreciate the fact that Service Tax cannot be levied on transfer of title in immovable property as the process would not be termed as service. They have further quoted the judgment of Hon'ble Bombay High



Court in the case of Chheda Housing Development Corporation vs. Bibijan Shaikh Farid, in support of their claim.

4. Personal hearing in the case was granted on 23.01.2019 wherein Shri Pravin Dhandharia, Chartered Accountant, appeared before me, on behalf of the appellants, and reiterated the contents of the grounds of appeal. He once again quoted the judgment of Hon'ble Bombay High Court in the case of Chheda Housing Development Corporation vs. Bibijan Shaikh Farid and stated that benefit is derived and attached to the land only.

5. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum and oral submissions made by the appellants at the time of personal hearing. I find that the appellants have, in their grounds of appeal, time and again alleged that the adjudicating authority did not consider their submission and the department has grossly erred while concluding the case. In this regard, at the very onset, I would like to see, below, the definition of service as provided under sub-section 44 of Section 65B of the Finance Act, 1994;

**"Section 65B – Interpretations (w.e.f. 1-7-2012)**

(44) "service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include-

(a) an activity which constitutes merely,-

(i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or

(ii).....

(b).....

©....."

Thus, from the above, it can be seen that a transfer of title in goods or immovable property, by way of sale, cannot be treated as a service. Therefore, as per the definition mentioned above, in Section 65B, the activity of sale of agricultural land cannot be treated as a service and hence, demanding Service Tax from the income deriving out of the said activity is not legal in the eyes of law.

6. Further, going through the judgment of Hon'ble Bombay High Court in the case of Chheda Housing Development Corporation vs. Bibijan Shaikh Farid, I find that the Hon'ble Court has very categorically proclaimed that a benefit arising from the land is immovable property.





Out of the total amount received from the transaction of the land, I find that the appellants have received nearly 77% of the income. This shows that the appellants had an active say in the transaction as an owner of the agricultural land. However, as the process of sale of land is not to be treated as service, as discussed in paragraph 5 above, the provisions of Section 66E of the Finance Act, 1994 will not be applicable to the present case.

8. In view of the discussion held above, I allow the appeal filed by the appellants and set aside the impugned order issued by the adjudicating authority.

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

9. The appeals filed by the appellant stand disposed off in above terms.

*उमा शंकर*

(उमा शंकर)

CENTRAL TAX (Appeals),  
AHMEDABAD.

ATTESTED

*S. DUTTA*  
(S. DUTTA) 300419

SUPERINTENDENT,  
CENTRAL TAX (APPEALS),  
AHMEDABAD.



To,  
M/s. Kalindi Impex, 2nd Floor, Mondeal Business Park,  
Bodakdev, S. G. Highway,  
Ahmedabad-380 059.

**Copy to:**

- 1) The Chief Commissioner, Central Tax, Ahmedabad Zone.
- 2) The Commissioner, Central Tax, Ahmedabad (North).
- 3) The Dy./Asst. Commissioner, Central Tax, Div-VI, Ahmedabad (North).
- 4) The Asst. Commissioner (System), Central Tax, Ahmedabad (North).
- 5) Guard File.
- 6) P.A. File.