



सत्यमेव जयते

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)198 /North/Appeals/2018-19** /10521 to 10585

ख अपील आदेश संख्या : Order-In-Appeal No. **AHM-EXCUS-002-APP-221-18-19**

दिनांक Date : **28/03/2019** जारी करने की तारीख Date of Issue **15/05/2019**

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No. **GST/D-VI/O&A/05/Safal/AC/RJ/18-19** Dated **03/12/2018** Issued by **Assistant Commissioner** , Central GST , Div-VI , Ahmedabad North.

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

M/s Safal Constructions Private Limited

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 मेंटल 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 (सीस्टेट) 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 होंगे।

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

This order arises out of an appeal filed by M/s. Safal Construction Pvt. Ltd., 1, B Safal House, Behind Mirch Masala Restaurant, Off S.G. Highway, Ahmedabad (in short '*appellant*') against Order-in-Original No.GST/D-VI/O&A/05/Safal/AC/RJ/18-19 dated 03.12.2018 (in short '*impugned order*') passed by the Assistant Commissioner, CGST & C.Ex, Division- VI, Ahmedabad North (in short '*adjudicating authority*').

2. Briefly stated that adjudicating authority confirmed demand of service tax of Rs.23,72,238/- alongwith interest under proviso to Section 73(1) and 75 of the Finance Act, 1994 respectively; imposed penalty of Rs.23,72,238/- under Section 78 *ibid*; and also imposed penalty of Rs.10,000/- each under section 77 and 78A*ibid* respectively for providing taxable services like compound wall, roads, restaurant cum club, garden etc. by the appellant.

3. Being aggrieved with the impugned order, the appellant filed the present appeal wherein, inter alia, stated that:

- Service tax is not leviable on sale of plot of land.
- Easemantory requirements put by the appellant are not for the usage of any specific member. It is not possible to identify/bifurcate the usage of such facilities by any specific member. In absence of a direct nexus between provider and recipient, there can be no element of "service".
- It must be at a consideration. The appellant has received amount only towards sale of plot of land as is evident from sale deed.
- The sub-clause (a) of definition of "service" excludes the activities in the form of transfer of title in immovable property by way of sale, gift or in any other manner.
- The appellant only demarcated every plot sold to various purchaser. The appellant never constructed any complex or part thereof.
- There is not element of service involved in the transaction since stamp duty is paid on the entire value of consideration received from the purchaser.
- Looking to the duration of project and its size, it was very difficult to estimate the correct amount of expenditure and sale price of plots from time to time. Even after putting easemantory requirements, response from the buyers may be very poor depending upon the situation of real estate market, which may be higher or lower. Thus, it was uncertain and undetermined and therefore, involved risks which could not be termed as "service" and rely upon case laws viz. Lakheni Builders Vs. CST, Ahmedabad[2016(9)TMI 845-CESTAT Ahmedabad]
- The appellant has not transferred the ownership of the restaurant to the members. The usage of the restaurant is not restricted only to the members but is open to the public at large.
- The appellant were under bonafide belief that the amount received by them was not liable to service tax and therefore extended period cannot be invoked and no penalty can be imposed as there was no intention to evade payment of service tax.



4. A personal hearing in the matter was held on 05.03.2019. Shri Parag Shah, Chartered Accountant, appeared before me on behalf of the appellant and reiterated the grounds of appeal; cited case laws viz. Lekheni Builders-2016(9) TMI 845; that no case of residential construction service; that only land has been sold after plotting and no construction of any nature undertaken; relied upon case laws viz. Alokik Township Corpn-2016(1) TMI 771(S.C.).

5. I have carefully gone through the appeal memorandum, submissions made at the time of personal hearing and evidences available on records. I find that limited issue to be decided is whether the sale of plot amounts to service provided or otherwise and accordingly liable to service tax or otherwise. Accordingly, I proceed to decide the case on merits.

6. I find that the appellants have mainly argued that sale of plot of land do not involve any service and alleged that the adjudicating authority did not consider their submission and has grossly erred while concluding the case. In this regard, at the very outset, I would like to see 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).....

(c)....."

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 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. However, I find from the sample photocopy of conveyance deed dtd.18.05.2018 entered into between the appellant and Ms. Vaishali Pranjal Trivedi & Mr. Pranjal Rajnikant Trivedi which envisages that though the appellant has sold a plot of land admeasuring gross 503 sq. yards for Rs.7,54,500/-, the actual net plot area of 352 sq. yards is in possession of the said buyer and rest 151 sq. yards is for providing common infrastructure facilities in the scheme. This also implies that the appellant is getting proportionate

extra consideration for this 151 sq. yards without transfer of land to the said buyer but for providing common infrastructure facilities.

6A. Further, I find that the appellant vide letter dtd.12.11.2018 in reply to the SCN dated 09.02.2018 had quoted relevant para 2.6.3 of An Education Guide dtd.20.06.2012 issued by the CBIC which deals with the manner of dealing with composite transaction which in addition to a transfer of title in goods involve an element of provision of service. I find that this is very crucial issue to be examined by the adjudicating authority in terms of findings as stated in para 6 supra. I also find that there is no findings on this aspect by the adjudicating authority. Hence, the case is remanded to the adjudicating authority to decide afresh within 30 days of communication of this order after following the principle of natural justice.

7. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant stand disposed off in above terms.

उमा शंकर

(उमा शंकर)
Principal Commissioner(Appeals)

Attested:

(B.A. Patel)
Superintendent(Appeals),
CGST, Ahmedabad.

BY SPEED POST TO:

M/s Safal Construction Pvt. Ltd.,
1, B Safal House, Behind Mirch Masala Restaurant,
Off S.G. Highway, Ahmedabad

Copy to:-

1. The Chief Commissioner, Central Tax Zone, Ahmedabad.
2. The Commissioner, CGST, Ahmedabad North.
3. The Asstt. Commissioner, CGST Division-VI, Ahmedabad North.
4. The Asstt. Commissioner, CGST (System), HQ, Ahmedabad North.
5. Guard file.
6. P.A file.

