



सत्यमेव जयते

## केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,  
केंद्रीय कर शुल्क भवन, 7<sup>th</sup> Floor, Central Excise Building,  
सातवीं मंजिल, पोलिटेकनिक के पास, Near Polytechnic,  
आम्बावाडी, अहमदाबाद-380015 Ambavadi, Ahmedabad-380015

☎ : 079-26305065

टेलीफैक्स : 079 - 26305136



क फाइल संख्या : File No : V2(ST)036/A-II/2017-18

ख अपील आदेश संख्या : Order-In-Appeal No..AHM-EXCUS-001-APP-222-17-18

दिनांक Date : 13-12-2017 जारी करने की तारीख Date of Issue \_\_\_\_\_

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals)

ग Arising out of Order-in-Original No STC/23/KM/AC/D-III/16-17 Dated 27.02.2017

Issued by Assistant Commr STC, Service Tax, Ahmedabad

घ अपीलकर्ता का नाम एवं पता

Name & Address of The Appellants

**M/s. Safal Real Estate**

**Ahmedabad**

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:-

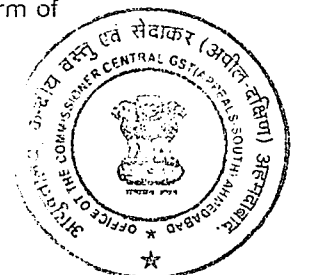
Under Section 86 of the Finance Act 1994 an appeal lies to :-

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 वहा 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 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 A219k केन्द्रीय उत्पाद शुल्क, अपीलीय न्यायाधिकरण को आवेदन करने के निदेश दते 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,

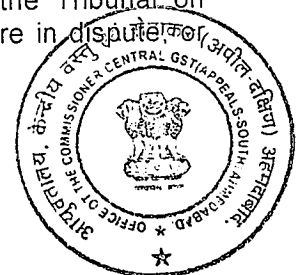
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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, where penalty alone is in dispute.



## ORDER IN APPEAL

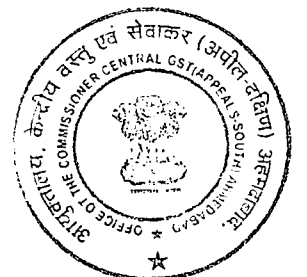
M/s. Safal Real Estate, 10<sup>th</sup> floor, Safal Profitaire, Corporate Road, Prahlad Nagar, Ahmedabad 380 015- (STR No. ABRF S1049K SD 001) (*hereinafter referred to as 'appellants'*) have filed the present appeals against the Order-in-Original number STC/23/KM/AC/D-III/16-17 dated 27.02.2017 (*hereinafter referred to as 'impugned orders'*) passed by the Asst. Commissioner, Service Tax Div-III, APM Mall, Sattellite, Ahmedabad (*hereinafter referred to as 'adjudicating authority'*).

2.1 The facts of the case, in brief, are that, appellant is engaged in providing construction of commercial and industrial construction and civil structure service [ 105(zzq) and 105(zzh)]. Appellant had stopped paying service tax on income received towards new booking after they had received "Building Completion certificate- BU permission" on 07.08.2013. But they have continued to availed and utilized Cenvat credit of service tax paid on various input service received after 07.08.2013. Department was of view that since they have stopped providing output service after receipt of BU permission, they are not eligible for taking credit. SCN dt. 22.07.2016 was issued to recover such wrongly availed credit amounting to Rs. 18,83,284/- during 2013-14 to 2015-16.

2.2 Personal hearing granted by the adjudicating authority on 24.01.2017, 02.02.2017, 09.02.2017, 20.02.2017 and 23.02.2017 was attended by the appellant as they have not received any intimation/letter from the department. Ex-parte order was issued whereby it was ordered to recover with interest u/s 75, wrongly availed cenvat credit of Rs. 18,83,284/- u/r 14 of CCR, 2004 r/w Section 73(1) of FA, 1994 along with imposition of penalty Rs. Rs. 18,83,284/- u/r 15(4) of CCR, 2004 r/w Section 78 of FA, 1994.

3. Being aggrieved with the impugned order, the appellants preferred an appeal on 28.04.2017 before the Commissioner (Ahmadabad) wherein it is contended that order is issued without affording personal hearing and services were availed prior to receipt of BU permission but invoices are of date subsequent to BU date. Services being utilized before BU permission, there is no wrong availment of cenvat credit.

4. Personal hearing in the case was granted on 15.11.2017. Shree Amit Laddha Advocate and Shri Arjun Akruwala, CA, appeared before me and reiterated the grounds of appeal. They stated that they would submit all



purchase invoice and operational/installation certificate of lift by concerned authorities within 15 days.

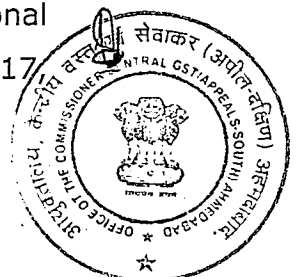
Appellant submitted additional submission dated 13.12.2017 wherein it is stated that –

- a. The appellant availed various input services from various service provider for the period prior to the date of "BU permission" i.e. 07.08.2013 for their scheme namely "Sumel Business Park-IV", located at Ahmedabad. Services were utilized prior to "BU permission".
- b. SCN is factually wrong in allegation that credit is availed and utilized post "BU permission" i.e. 07.08.2013.
- c. Appellant availed input services like "Painting Service", Erecting, Commissioning and Installation Service", " Consulting Service" etc which were basic to construction activities without which even BU permission can not be granted by Ahmedabad Municipal Corporation-AMC.
- d. Appellant submitted six lift installation certificates issued by Chief Inspector of Lifts & Escalators, Udhog Bhavan, Gandhinagar from period commencing prior to "BU permission" i.e. 07.08.2013.
- e. Appellant submitted work order of Consulting Electric work, painting work, CCTV installation, interior carpentry work and aluminum Section work. All work order are issued during period prior to "BU permission" i.e. 07.08.2013.

#### DISCUSSION AND FINDINGS

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 have also perused additional submission dated 13.12.2017 along with enclosed lift installation certificates and input service work order. I find that six lift installation certificates shows commencement of lift working for period prior to BU Permission. Further, I find that work orders are issued during period prior to BU permission but invoices were raised after BU permission. I find that adjudicating authority has disallowed the credit as input invoices bears post BU permission period.

6. Appellant had submitted notarized Affidavit dated 27.04.2017 wherein it is stated under oath that they had not received any notice for personal hearing scheduling personal hearing on 24.01.2017, 02.02.2017

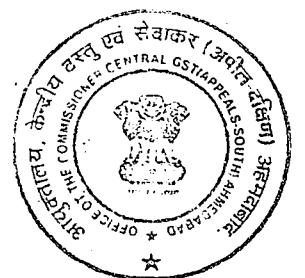


09.02.2017, 20.02.2017 and 23.02.201. To ascertain whether or not appellant had received said PH letters, a letter F. No. V2(ST036/A-II/2017-18 dated 23.11.2017 followed by reminder 30.11.2017 was written by The Superintendent, Commissioner Appeals Office, Ahmadabad, to The Asst. Commissioner of Service Tax, Division -VIII, 1<sup>ST</sup> floor, APM Mall, Anandnagar Road, Satellite, Ahmadabad. The Asst. Commissioner of Service Tax had not replied. Further it was directed to revenue department to remain present during course of hearing on 10.10.2017 and 17.10.2017 but opportunity granted has not been availed by the department. I conclude that the case is decided without affording opportunity of personal hearing. In the interest of natural justice, without going into merits of case, the case needs to be remanded back to adjudicating authority and I do so.

7. Further I find that facts whether services were actually utilized pre-BU period or post- BU permission period, has not been ascertained by adjudicating authority in impugned OIO, therefore same needs to be examined in remand proceedings. Adjudicating authority shall critically examine and answer in cases where services are established to be utilized before BU and invoice are issued after BU, then how and why cenvat credit is not allowable. Adjudicating authority has taken invoice date as date of receipt of service but has not stated with authority, ruling, circular etc as to how invoice date is considered as receipt date of service. Same needs to be answered in remand proceedings.

8. In view of facts and discussion herein above, the Adjudicating Authority is directed to decide the case afresh, for which case is remanded back to the Adjudicating Authority, after due compliance of the principles of natural justice and after proper appreciation of the evidences that may be put forth by the appellant before him. The appellant is also directed to put all the evidences before the Adjudicating Authority in support of their contention as well as any other details/documents etc. that may be asked for by the Adjudicating Authority when the matter is heard in remand proceedings before the Adjudicating Authority. These findings of mine are supported by the decision/order dated 03.04.2014 of the Hon'ble High Court, Gujarat in the Tax appeal No.276//2014 in the case of Commissioner, Service Tax, Ahmedabad V/s Associated Hotels Ltd. and also by the decision of the Hon'ble CESTAT, WZB Mumbai in case of Commissioner of Central Excise, Pune-I Vs. Sai Advantium Ltd and reported in 2012 (27) STR 46 (Tri. - Mumbai).

*(Signature)*



9. In view of above discussion and findings, I remand back the case to original adjudicating authority to decide the case afresh.

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

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

*अशोक*

(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

ATTESTED

*R.R. Patel*  
(R.R. PATEL)

SUPERINTENDENT (APPEAL),

CENTRAL TAX, AHMEDABAD

To,

M/s. Safal Real Estate,

10<sup>th</sup> floor, Safal Profitaire,

Corporate Road, Prahlad Nagar,

Ahmedabad 380 015

Copy to:

- 1) The Chief Commissioner, Central Tax, Ahmedabad.
- 2) The Commissioner Central Tax, GST South,,Ahmedabad-.
- 3) The Additional Commissioner, Central Tax , GST South, Ahmedabad
- 4) The Asst. Commissioner, GST South., Div-VI, Ahmedabad-I.
- 5) The Asst. Commissioner(System), GST South, Hq, Ahmedabad.
- 6) Guard File.
- 7) P.A. File.

