
	<b>केन्द्रीय कर आयुक्त (अपील)</b>		
	O/O THE COMMISSIONER (APPEALS), CENTRAL TAX		
वस्तु एवं सेवा	कर भवना	GST Building, 7 <sup>th</sup> Floor, Near Polytechnic, Ambavadi, Ahmedabad- 380015	
सततमेव जायते			
सतवींमंजिल पॉलिटेक्निक के पास			
आम्बावाडी, अहमदाबाद-380015			
079-26305065		टेलिफैक्स: 079-26305136	

क फाइल संख्या :File No : **V2/127/GNR/2018-19**

*5087 to 5091*

ख अपील आदेश संख्या :Order-In-Appeal No.: **AHM-EXCUS-003-APP-133-18-19**

दिनांक Date :**19-11-2018** जारी करने की तारीख Date of Issue:

*9/11/2019*

**श्री उमाशंकर** आयुक्त (अपील) द्वारा पारित

*C. file*

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

ग अपर आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश : **04/D/GNR/NK/2018-19**

दिनांक : **02-07-2018** से सृजित

Arising out of Order-in-Original: **04/D/GNR/NK/2018-19**, Date: **02-07-2018** Issued by:  
Assistant Commissioner, CGST, Div:Gandhinagar, Gandhinagar Commissionerate,  
Ahmedabad.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the **Appellant** & Respondent

**M/s. Infocity Clubs & Resorts Pvt Ltd**

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

I. Any person aggrieved by this Order-In-Appeal issued under the Central Excise Act 1944, may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :  
**Revision application to Government of India :**

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अंतर्गत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अवर सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4<sup>th</sup> Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(b) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.



- (ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।  
(c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

ध अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(d) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35- षोबी/35-इ के अंतर्गत-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में दूसरा मंजिल, बहूमाली भवन, असारवा, अहमदाबाद, गुजरात 380016

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> floor, Bahumali Bhavan, Asarwa, Ahmedabad-380016 in case of appeals other than as mentioned in para-2(i) (a) above.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरण की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहाँ रूपए 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.



(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) 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 24) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 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 है

- (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 अर्ज़ी एवं अपील को लागू नहीं होंगे।

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.

(6)(i) 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।

(6)(i) 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."

II. Any person aggrieved by an Order-in-Appeal issued under the Central Goods and Services Tax Act, 2017/Integrated Goods and Services Tax Act, 2017/Goods and Services Tax (Compensation to States) Act, 2017, may file an appeal before the appropriate authority.



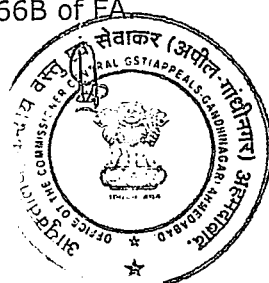
## ORDER-IN-APPEAL

This appeal has been filed by M/s Infocity Clubs & Resorts Pvt Ltd, Infocity Complex, Near Indroda Circle, Gandhinagar (Gujarat) [hereinafter referred to as "the appellant"] against Order-in-Original No.04/D/GNR/NK/2018-19 dated 02.07.2018 [hereinafter referred to as "the impugned order"] passed by the Assistant Commissioner, CGST, Gandhinagar Division, Commissionerate-Gandhinagar [hereinafter referred to as "the adjudicating authority"].

2. Briefly stated, the facts of the case is that based on an audit objection, demand notice dated 16.03.2017 was issued to the appellant for recovery of short payment of service tax amounting to [i] Rs.4,69,835/- under 'hotel, Inn, and Guest House service'; [ii] Rs.18,52,558/- under 'Mandap keeper Service'; [iii] Rs.2,44,703/- under 'Club or Association service'; [iv] Rs.3,97,998/-+Rs.18,113/- under 'activity of service'; [v] Rs.13,49,576/- under 'outdoor catering service'; and [vi] Rs.18,551/- under 'Renting of Immovable property service', for the period of April 2011 to March 2016. The said notice also proposes for recovery of interest under Section 75 of the Finance Act, 1944 (FA) and imposition of penalty under Section 77(2), 77(1) and 78 of FA. Vide the impugned order, the adjudicating authority has confirmed the demand of short paid service tax with interest and imposed penalty of Rs.43,51,334/- under Section 78 of FA; Rs.10,000/- each under Section 77(1)© and 77(2) of FA.

3. Being aggrieved with the impugned order, the appellant has filed the instant appeal on the grounds that:

- The adjudicating authority has travelled beyond more than 5 years from the date of show cause notice; that the authority has demanded short payment for the period of 2011-12 which is more than five years from the date of show cause notice.
- The adjudicating authority has just taken the base of broad grouping of profit & loss account and compared the same with the service tax returns and the year wise reconciliation submitted by the appellant was not reviewed and considered by the adjudicating authority.
- The adjudicating authority has erred in levying demand of Rs.4,88,995/- on basis of unaudited/provisional books of accounts, though the fact was very well conveyed to him.
- The Restaurant service was taxable only from 01.05.2011, however the adjudicating authority has demanded tax from 01.04.2011; that the adjudicating authority has not considered the fact that under mega exemption notification No.25/2012, non-AC Restaurants are exempt from charging tax under Section 66B of FA.



- The appellant had provided packed foods & sold the same on MRP basis on which the appellant had claimed exemption as sale of food vide circular No.173/08/2013; sale of food on MRP basis are out of purview of service tax.
- The appellant has recovered reimbursement of certain charges being luxury taxes, laundry charges on pure agent basis; that the reimbursement charges are not service at all, hence service tax is not chargeable on such expenses.
- The adjudicating authority has ignored the fact that the appellant is also running club and providing various activity to its members and hence service provided to members are exempt from tax; that he has not considered Hon'ble Gujarat High Court's decision in case of M/s Karnavati Club [2010 (20) STR 69].
- No extended period is invocable in the instant case as all the facts mentioned in the show cause notice were well within knowledge of the department.

4. Personal hearing in the matter was held on 25.10.2018. Shri Chintan Shah, Chartered Accountant appeared for the same and reiterated the grounds of appeal.

5. I have carefully gone through the facts of the case and submissions made by the appellant in the appeal memorandum as well as at the time of personal hearing. The issue to be decided in the matter is whether the short payment/non- payment of service tax confirmed vide the impugned order is correct or otherwise.

6. I find that the adjudicating authority has confirmed short payment of service tax in respect of following services, rendered by the appellant during 2011-12 to 2015-16. [i] Rs.4,69,835/- under 'hotel, Inn, and Guest House service' (Accommodation service); [ii] Rs.18,52,558/- under 'Mandap keeper Service'; [iii] Rs.2,44,703/- under 'Club or Association service'; [iv] Rs.3,97,998/-+Rs.18,113/- under 'activity of service' (Miscellaneous income and Laundry income); [v] Rs.13,49,576/- under 'outdoor catering service'; and [vi] Rs.18,551/- under 'Renting of Immovable property service'.

7. The appellant has made a general argument in respect of all the short payment of service tax in respect of above said services that the whole demand is time barred as no extended period is invocable in the show cause notice and even if extended period is invocable, the demand of 2011-12 is time barred as the show cause notice was issued on 16.03.2017 i.e after the period of five years.

7.1 Looking into the facts and circumstances of the case available on records, I find that the adjudicating authority has ~~correctly~~ invoked the extended period of



limitation in the instant case. The short payment in question relating to the concerned service was unearthed by the Audit officers, during the course of audit of records other than ST-3 return filed. Therefore, there is a case of improper assessment of tax liability on the part of the appellant by resorting deliberate intention/non-declaration and suppression of material facts. Further, the appellant has contended that the show cause notice was issued after a period of five years. I find the demand notice dated 16.03.2017 was confirmed for the period pertaining to the year of 2011-12 to 2015-16. Therefore, the appellant has argued that the demand of 2011-12 is time barred. I observe that the half yearly return for the period of April 2011 to September 2011 and October 2011 to March 2012 was generally required to be filed by 25<sup>th</sup> of October 2011 and 25<sup>th</sup> April 2012. As per the said contention of the appellant, only the demand pertaining to April 2011 to September 2011 is time barred, if they filed their return in time as prescribed or before 17.03.2012. In the instant case, I find that the short payment for the period of 2011-12 was detected by the Audit on the basis of ST-3 return filed by the appellant. Therefore, in the instant case non filing of ST-3 return does not arise. In the circumstances, I find merit in the contention of the appellant, especially the adjudicating authority has totally silent on this part. In view of above discussion, the demand pertaining to the period April 2011 to September 2011 is time barred.

8. Now, I take the service wise short payment made by the appellant.

8.1 I find from the impugned order that the adjudicating authority has noted certain facts. In para 3.3 of the impugned order, he has noted that accommodation has been provided by the "Club". Further, in para 4.2 of the impugned order, he stated that the demand is based on "Balance sheet". In para 5, it also takes into account "Membership fee". In view of these observations, I will examine the issues raised in the impugned order. Having noted down appellant as 'club', the adjudicating authority has not examined this aspect at all.

8.2 I find that tax liabilities pertaining to the services viz. 'hotel, Inn, and Guest House service' (Accommodation service); 'Mandap keeper Service'; 'activity of service' (Miscellaneous income and Laundry income); 'outdoor catering service'; and 'Renting of Immovable property service', appellants have contended that the adjudicating authority has not considered the reconciliation details submitted by them properly against the demand and applicability of exemption notification as well as reimbursement charges. In respect of service viz. "Club or Association service", they stated that the said service is not liable for service tax in view of Hon'ble Gujarat High Court's order in the case of M/s Karnavati Club Ltd [2010 (20) STR 169], wherein it has been held that any service provided by the club to its members is not a service, as there is mutuality of interest and the service provider and the service recipient are the same.



8.3 I find that the appellant is engaged in the activities of providing and receiving various services as mentioned above and being a club, they provides services to their club members as well as to their customers which has also been noted by the adjudicating authority in para 3.3 of the impugned order. I further find that the whole demand was raised on the basis of reconciliation of records with service tax return filed by the appellant, as noted in para 4.2 of the impugned order. It is a fact on record that the appellant has given reconciliation figures to the adjudicating authority by claiming value of exempted goods, reimbursement charges, cancellation charges and discount etc in respect of services and further argued that the service rendered to their club members is not liable for service tax in view of Hon'ble Gujarat High Court's order in case of M/s Karnavati Clb Ltd supra.

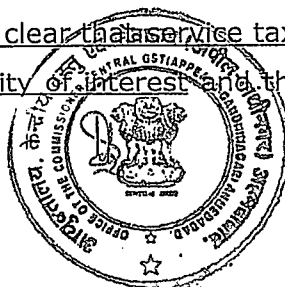
8.4 Hon'ble Gujarat High Court's order in the case of M/s Karnavati Club Ltd has held that any service provided by the club to its members is not a service, as there is mutuality of interest and the service provider and the service recipient are the same. In the said decision, the Hon'ble Court has held that the "member of a club is not a client". Similar view has also been in the decision of Hon'ble Gujarat High Court in the case of Sports Club of India [2013 (31) STR 645], wherein, it has been held the taxability of services by club to its members is *ultra vires*. The Head note of the order as under:

"Club - Finance Act, 1994 - Sections 65(25a), 65(105)(zzze) and 66 - Service Tax on club rendering service to its members - HELD : It was ultra vires and beyond legislative competence of Parliament - There was no loss of mutuality of club members even if club was incorporated under Companies Act, 1956 - Ranchi Club Ltd. [2012 (26) S.T.R. 401 (Jhar.)] applied - Department's plea that they have not accepted this judgment, rejected - Persuasive value of this judgment was not lost, more so because it had relied on a Full Bench decision of High Court. [paras 7, 7.1, 8]."

8.5 Further, I find that in the case of Ranchi Club Ltd. vs. chief Commissioner of Central Excise and Service Tax, Ranchi Zone, the Hon'ble High Court of Jharkhand[2012(26) S.T.R. 401 (Jhar.)] proclaimed that rendering of service by the petitioner-club to its members is not taxable service under the Finance Act, 1994. The head note of the judgment is as under:

"Club - Incorporated as Company and formed on principle of mutuality - Liability to Service tax for services utilised by members of club, viz. mandap keeper, etc. - HELD : In view of mutuality, if club provides any service to its members, it is not a service by one legal entity to another, and is not liable to Service tax - Explanation to Section 65 of Finance Act, 1994 that 'taxable service includes any taxable service provided or to be provided by any unincorporated association or body or persons to a member', found to be similar to Explanation-I to Section 2(n) of Madras General Sales Tax Act, 1959 including within definition of sale any transfer of property by club to its members, considering which Apex Court in Young Men's Indian Association [1970 (1) SCC 462] had held supply of preparations by club to its members was not a sale as there was no transfer of property from one to another, and even though club had distinct legal entity, it was acting only as an agent for its members - Sections 65(66) and 65(67) of Finance Act, 1994."

8.6 In view of above discussion, it is very clear that service tax is not liable from the members of the club as there is mutuality of interest and the service provider



and the service recipient are the same. Therefore, in the instant case, the service tax demanded towards the services rendered to its members is not liable for service tax and exemption from service tax is required to be given. At the outset, I observe that a demand of service tax amounting to Rs.2,44,703/- has been confirmed by the adjudicating authority in respect 'Club or Association service', by stating that the appellant has shown income in the head of membership fee, activity income and miscellaneous income received from their customers. The said demand is not tenable if it is pertains to the services rendered to the members. Only the services provided to other customers apart from the members are liable to service tax. However, it was not clarified that apart from membership fees collected, what service was given to their members and whether the activity income and miscellaneous income was received from their members or from other clients. Therefore, it needs to be verified further and exemption from service tax liability to be given accordingly. The appellant is at liberty to produce all the material that it wishes to rely on before the adjudicating authority as well any other evidence in support of their claim with respect to the services rendered to their members.

8.7 In respect of other services viz 'hotel, Inn, and Guest House service' (Accommodation service); 'Mandap keeper Service'; 'activity of service' (Miscellaneous income and Laundry income); 'outdoor catering service'; and 'Renting of Immovable property service', as stated above, I observe that the whole demand was raised only on the basis of verification/reconciliation of records. I observe that in this regard Rs.41,06,631/- was confirmed against short payment service tax. It is pertinent to point out here that the services rendered to club members is not taxable in view of Hon'ble Gujarat High Court's order in the case of M/s Karnavati Club Ltd supra. As stated above, the service tax pertains to the services rendered to the members is not tenable/taxable. Only the services provided to other customers apart from the members are liable to service tax. Therefore, out of service tax amounting to Rs.41,06,631/- demanded, the amount of service tax pertains to the services rendered to the club members, if any, is not taxable.

8.8 The appellant has contended that they have submitted reconciliation figures before the adjudicating authority for consideration; however, the adjudicating authority has not considered the same for want of documentary evidence in support of their claim. I observe that it is the responsibility of the appellant to give evidence in support of their claim before the authority but they failed to do so. Since the whole duty was demanded on the basis of verification/reconciliation of records only, I feel that the submissions regarding reconciliation of amount made by the appellant is genuine and needs to be considered properly as per above discussion. For this purpose, the appellant is directed to produce all the material that it wishes to rely on before the adjudicating authority as well any other evidence in support of their claim.





9. In view of above discussion, I remand the case to the adjudicating authority to consider the issue afresh and decide the case by following natural justice to the appellant in the light of my observation in foregoing para.

10. In view of above discussion, I set aside the impugned order and allow the appeal by way of remand. The appeal stands disposed of accordingly.

उमा शंकर

(उमा शंकर)  
आयुक्त (अपील्स)

Date : .11 .2018

Attested

(Mohan V.V) 11/8  
Superintendent (Appeal),  
Central Tax, Ahmedabad.



By RPAD.

To,  
Infocity Clubs & Resorts Pvt Ltd,  
Infocity Complex, Near Indroda Circle,  
Gandhinagar (Gujarat)

Copy to:-

1. The Chief Commissioner, Central Tax, Ahmedabad Zone .
2. The Commissioner, Central Tax, Ahmedabad-Gandhinagar
3. The Assistant Commissioner, System, Central Tax, Ahmedabad Gandhinagar.
4. The Assistant Commissioner, CGST, Gandhinagar Division
5. Guard File.
6. P.A.

