
	केंद्रीय कर आयुक्त (अपील)	
सत्यमेव जयते	O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,	
	केंद्रीय कर शुल्क भवन,	7 th Floor, Central Excise Building,
	सातवीं मंजिल, पॉलिटेक्निक के पास,	Near Polytechnic,
	आम्बावाडी, अहमदाबाद-380015	Ambavadi, Ahmedabad-380015
	☎ : 079-26305065	टेलीफैक्स : 079 - 26305136

क फाइल संख्या : File No : **V2(ST)78 /A-II/2017-18** 1236+0 / 1240

ख अपील आदेश संख्या : Order-In-Appeal No. **AHM-EXCUS-002-APP-313-17-18**

दिनांक Date : **31-01-2018** जारी करने की तारीख Date of Issue 21-2-2018

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No **SD-01/26/AC/Palifica/16-17** Dated **08.03.2017**
Issued by **Assistant Commr STC**, Service Tax, Div-I , Ahmedabad

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

M/s. Pacifica Developers Pvt Ltd
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 :-

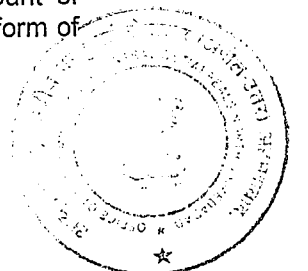
पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मेंटल हास्पिटल कम्पाउण्ड, मेघाणी नगर, अहमदाबाद-380016

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 ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग ओर 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

Original



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 देते हुए आदेश (OIO) की प्रति भेजी 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 लगाना 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 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1984 की धारा 43 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 अर्ज़ी 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,

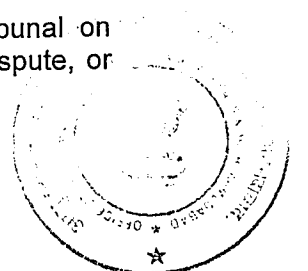
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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.



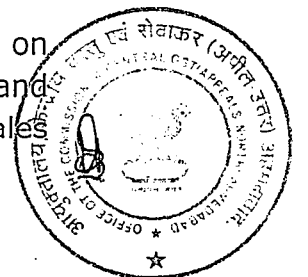
:: ORDER-IN- APPEAL ::

M/s. Pacifica Developers Pvt. Ltd., Reflections, Near Vaishnodevi Temple, Near Nirma University, Ahmedbad-382735. (*hereinafter referred to as 'appellants'*) , are having Service tax Registration No. AAECPO419RST001 for specified taxable services i.e. mainly Construction of Residential Complex Sercie, Manpower recruitment or Supply Agency service,---, Other Taxable Service-other than 119 listed (Special Service), Special services provided by builders, and are availing CENVAT credit under Cenvat Credit Rules, 2004.

2. The facts of the case, in brief, are that the appellant had wrongly availed Cenvat Credit of Service Tax on the invoices/debit notes issued by YMCA for club membership to their clients amounting to Rs. 462014/- for the year 2013-14 and Rs.913027/- for the year 2014-15 total amounting to Rs. 1375041/- which was inadmissible to them as per CCR, Rule 2004. The Internal Audit party of the department has audited the appellant records and the Show Cause Notice was issued on 17.11.2016 . The same was adjudicated vide impugned order No. SD-01/26/AC/Pacifica/16-17 dated 14.03.2017 . The adjudicating authority disallowed service tax credit as the same is not falling under the preview of "Input Services" as per Cenvat Credit Rules, 2004.

3. The appellant feeling aggrieved, had filed an appeal against the above said Order-in-Original on 08.03.2017 on the ground that the impugned order is not at all legally sustainable, hence it deserve to be quashed and set aside. The appellant has submitted that he is into the business of construction residential flats, and also paying service tax on the same. In doing so, the appellant avails service tax on various items of goods, and services which are used in the provision of servicers. Likewise, as a package deal, while selling the residential flats, in addition to the residential flat as well as the internal amenities provided within the same premises, the appellant also provides YMCA club membership to the prospective residents of the residential flats constructed by the appellant. The appellant purchased the membership of the YMCA club in bulk/group, and then whomsoever purchased their constructed flats, the appellant gives/allots membership to such flat owner, as a part of the package deal. Further the appellant gives the offer as a tool for advertising their product i.e. the sale of the residential flats, and in turn the prospective buyer of flat gets premium membership of a premium club for their social pleasure. The appellant offering the club membership only to those flat owners who book their flats and therefore, it is an offer made by them alongwith the sale of flat. The appellant bears the cost of the membership of the club, and does not collect/recover the same from the flat owner, in any manner and the cost of the club is otherwise included in the cost of the flat.

4. Personal hearing in the matter was granted and held on 19.12.2017. Mr. R. Subramanya , Advocate, appeared before me and reiterated the GOA and said that this service fall under the "Sale



Promotion".

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 appellant at the time of personal hearing.

6. Now issue to be decided is whether such credit which is taken by the appellant are eligible or otherwise. However before proceeding to discuss the service, I hereby reproduce the definition of input service as provided in Rule 2(I) of CCR, 2004 which came into force on 01.04.2011. The same is as under.

(I) "input service" means any service, -

(C) such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, **membership of a club**, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as leave or home travel concession, when such services are used primarily for personal use or consumption of any employee]

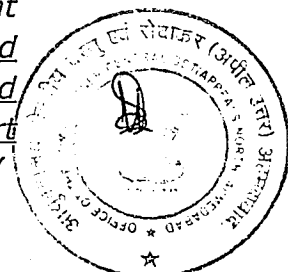
7. Further, in this regard, the appellant has place reliance upon the decisions in respect of;

i) 2016 (42) S.T.R. 757 (Tri.Mumbai) in case of PAM PHARMA & ALLIED MACHINERY CO. P. LTD. Versus CHIEF COMMISSIONER OF C. EX., MUMBAI-V

"In this case the Hon'ble Tribunal held that Club membership of Association known as Entrepreneur Organization - Membership of business club like the Entrepreneur Organization is indirectly related to the promotion of business of appellant - Expenses incurred on membership of club are forming part of assessable value- thus Expenses incurred on membership of business club is an Input Service and appellant can legally take Cenvat credit of expenses incurred on the membership of the Club."

ii) 2016 (42) S.T.R.332 (Tri.Mumbai) in case of RACOLD THERMO LTD. Versus COMMISSIONER OF CENTRAL EXCISE, PUNE

"The Hon'ble Tribunal in this case held that the club service is utilized to promote sales and purchase activity by attending the clients and holding conferences and such expenses are part and parcel of manufacturing cost of final product."



8. Further, I find that the service of club membership are offered by the appellant as a package deal along with the construction and sale of residential flats and the membership of club is not consumed by him or any of the employees of the appellant. Therefore, it cannot be said that the club membership service are for the personal use of the employees of the appellant .

9. I find that the issue of club membership is no more res integra. It is needless to say that in case of Lubi Industries, Honorable High Court of Gujarat has stated that unless a stay has been obtained , order of the higher judicial forum should be followed. In view of honorable Tribunal decision, I respectfully follow the same and allow the appeal filed by the appellant.

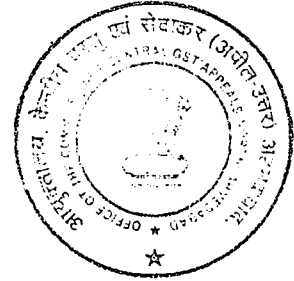
10. अपीलकर्ता द्वारा दर्ज की गई अपीलो का निपटारा उपरोक्त तरीके से किया जाता है।

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

उमा शंकर

(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)



ATTESTED

S. Dutta
2009/8
(S. DUTTA)

SUPERINTENDENT (APPEALS),
CENTRAL TAX, AHMEDABAD.

To,

M/s. Pacifica Developers Pvt. Ltd.,
Reflections, Near Vaishnodevi Temple,
Near Nirma University, Ahmedbad-382735.

Copy to:

The Chief Commissioner, Central Tax, Ahmedabad.
The Commissioner, Ahmedabad North.
The Addl. Commissioner, Ahmedabad North..
The Dy./Asst. Commissioner, Division-I, Ahmedabad North.
Guard File.

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