आयुक्त का कार्यालय, (अपीलस)

Office of the Commissioner,

केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय

Central GST, Appeal Commissionerate- Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

: 079-26305065 **टेलेफैक्स** : 079 - 26305136

क फाइल संख्या : File No : **V2(ST)83&84 /North/Appeals/2018-19** 6655 to 6659

ख अपील आदेश संख्या : Order-In-Appeal No..**AHM-EXCUS-002-APP-61-62-18-19**

दिनाँक Date : **12-Sep-18** जारी करने की तारीख Date of Issue 5/10/2018

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No **Div-VII/North/92&93/Refund/17-18** Dated **10-May-18** Issued by **Deputy Commissioner ,** Central GST , Div-VII , Ahmedabad North.

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

M/s Naimish D. Marfatia (Sports Club of Gujarat Ltd)

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 :-

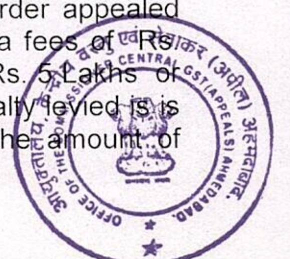
वित्तीय अधिनियम,1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:–
Under Section 86 of the Finance Act 1994 an appeal lies to :-

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 ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां 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 वहां 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 **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 शर्तो पर अनुसूची–1 के अंतर्गत निर्धारित किए अनुसार मूल आदेश एवं स्थगन प्राधिकारी के आदेश की प्रति पर रू 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, १९४४ की धारा ३५फ के अंतर्गत वित्तीय(संख्या-२) अधिनियम २०१४(२०१४ की संख्या २५) दिनांक: ०६.०८.२०१४ जो की वित्तीय अधिनियम, १९९४ की धारा ८३ 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 होगे।**

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

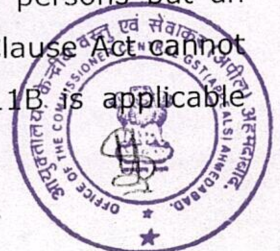
M/s. Sports Club of Gujarat Ltd., Sardar Patel Stadium, Navrangpura, Ahmedabad *(hereinafter referred to as 'appellants')* have filed the present appeals against the following Orders-in-Original *(hereinafter referred to as the 'impugned orders')* by the Deputy Commissioner, GST, Div-VII, Ahmedabad-North *(hereinafter referred to as 'adjudicating authority')*;

S. No	OIO No.	OIO date	Amount of refund claim (₹)	Period of the refund	Amount sanctioned (₹)
1	Div-VII/North/92/Refund/Sports/17-18	10.05.2018	29,88,957	01.10.2016 to 31.03.2017	0
2	Div-VII/North/93/Refund/Sports/17-18	10.05.2018	35,10,794	01.04.2017 to 30.06.2017	0

2. The facts of the case, in brief, are that the appellants had filed the refund claims for ₹29,88,957/- and ₹35,10,794/- for the periods October 2016 to March 2017 and April 2017 to June 2017 respectively. They were holding Service Tax registration number AAACT7280NST001 under the category of Membership Club or Association Service. They filed the above mentioned refund claims under the category of "Club or Association Services" claiming that under the principle of mutuality, they are not liable to pay Service Tax.

3. During scrutiny of the claims, the files were sent for pre-audit verification as the amount involved is more than ₹5 lacs. The Assistant Commissioner (Pre-Audit), after scrutiny of the claims observed that (a) the incidence of duty has been passed on to the members and hence, the claims are influenced by unjust enrichment and (b) the claims have been filed after the stipulated time frame of 1 year hence suffering from time limitation. The adjudicating authority, accordingly, rejected both the refund claims vide the impugned orders.

4. Being aggrieved with the impugned orders, the appellants preferred the present appeals. The appellants argued that the club and its members are not different persons in view of the order of the Hon'ble High Court of Gujarat. They further contended that they are not a simple body of persons but an incorporated entity and therefore, the provisions of General Clause Act cannot be applicable to them. They further claimed that Section 11B is applicable

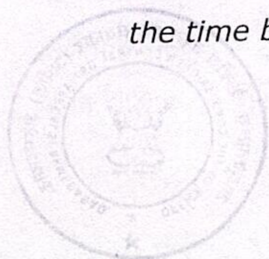


where the refund claim is of duty. But where the refund is of deposit, Section 11B cannot be invoked.

5. Personal hearing in the case was granted on 05.09.2018 wherein Shri C. N. Shah, Chartered Accountant, and Shri Mayur Shah, general Manager of the appellants, on behalf of the said appellants, appeared before me and reiterated the contention of their submission. Shri C. N. Shah contended that earlier orders were in their favour and submitted photocopies of previous Orders-In-Appeal.

6. To start with, I find that the adjudicating authority has rejected the claims mainly on the grounds that the appellants have passed on the burden of tax to their members hence, doctrine of unjust enrichment would be applicable to them and secondly, the claims are hit by limitation. Now, for better understanding of the situation, I would like to discuss the verdict of Hon'ble Gujarat High Court and the amendments made in the Finance Act, 1994 w.e.f. 01.07.2012. Hon'ble High Court of Gujarat vide its judgment dated 25.03.2013 allowed the petition declaring Section 65(25A), Section 65(105)(zzze) and Section 66 of the Finance Act, 1994 as amended by the Finance Act, 2005 to the extent providing levy of Service Tax in respect of the services provided by the club to its members as *ultra virus*, i.e. beyond the powers and therefore, not legal, upholding the principle of mutuality. I agree with the view of the adjudicating authority that the case dealt by the Hon'ble High Court of Gujarat was for the period prior to 01.07.2012. I find that the Hon'ble High Court of Gujarat, in its judgment dated 25.03.2013, has not taken into consideration the amendments made in the Act (w.e.f. 01.07.2012). In the new system, the word 'service' has been defined under Section 65B(44) of the Finance Act, 1994 which is printed as below;

> *"(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*
>
> *(ia) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of article 366 of the Constitution; or*
>
> *(ii) a transaction in money or actionable claim;*
>
> *(b) a provision of service by an employee to the employer in the course of or in relation to his employment;*
>
> *© fees taken in any court or tribunal established under any law for the time being in force.*



Explanation 1 for removal of doubts, it is hereby declared that nothing contained in this clause shall apply to;

A. The functions performed by the Members of Parliament, Members of State Legislative, Members of Panchayats, Members of Municipalities and Members of other local authorities who receive any consideration in performing the functions of that office as such member; or

B. the duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or

C. the duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or State Governments or local authority and who is not deemed as an employee before the commencement of this section.

Explanation 2— this clause, the expression "transaction in money or actionable claim" shall not include—

i. Any activity relating to use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged;

ii. Any activity carried out, for consideration, about, or for facilitation of, a transaction in money or actionable claim, including the activity carried out—

- *By a lottery distributor or selling agent on behalf of the State Government, about promotion, marketing, organising, selling of lottery or facilitating in the organising lottery of any kind, in any other manner, by the provisions of the Lotteries (Regulation) Act, 1998 (17 of 1998);*

- *by a foreman of chit fund for conducting or organising a chit in any manner.*

Explanation 3. – For the purpose of this chapter, -

a. <u>An unincorporated association or a body of persons, as the case may be, and a member thereof shall be treated as distinct persons;</u>

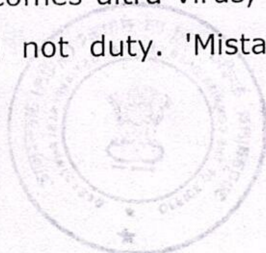
b. An establishment of a person in the taxable territory and any of his other establishment in a non-taxable territory shall be treated as establishments of distinct persons".

In view of the above, it is quite clear that unincorporated association or a body of persons and a member are to be treated as distinct entity. In the instant case, in their submission, the respondents have claimed that they are incorporated as company and not an unincorporated association. I found that the said appellants are incorporated under the Companies Act, 1956 (No. 1 of 1956) and their Certification of Incorporation number is 1183 of 1963-64. Thus, in view of the above, it is quite clear that the respondents are incorporated entity and the principles of mutuality are very much applicable to them. Now, the basic question erupts in the mind is that can anybody pass on the burden of tax to himself and get enriched? To my understanding, the answer is absolutely "NO". The burden of tax can be passed on from one distinct entity to another. In the present situation, the club and its members are to be treated as a single entity and the same view has been adopted by the adjudicating authority in paragraph 11 of both the impugned orders. I am reproducing below the related contents of the said paragraph for more clarity;

"11. I find that the club has rendered the services to its members only. In short, any services rendered by the members club to its members irrespective of nature thereof, would not be subject to service tax on the ground of doctrine of mutuality which has been held by catena judgment including the judgment of Hon'ble Supreme Court of India as well as Gujarat High Court in the case of the claimant........."

In view of the discussion held above, I conclude that though the appellants have provided service to their members and collected remuneration in return, the said operation cannot be treated as service provided from one entity to another. It is to be treated as service provided to own self and hence, one cannot make profit from himself/herself. Thus, I reject the observation of the Assistant Commissioner (Pre-Audit) that as the incidence of duty has been passed on to the members by the appellants; they are not entitled for the refund claim under the doctrine of unjust enrichment.

7. Now, comes the second issue that the claim is affected by limitation as the refund claims were filed after 1 year. Going through the above discussion, it is now quite clear that the principle of mutuality is applicable to both the cases. When principle of mutuality comes into the picture, the levy of Service Tax in respect of the services provided by the club to its members becomes *ultra virus*, i.e. beyond the powers and therefore, not legal. When the levy of Service Tax becomes ultra virus, the Service Tax collected is to be considered as deposit and not duty. 'Mistaken payment of Service Tax in excess of



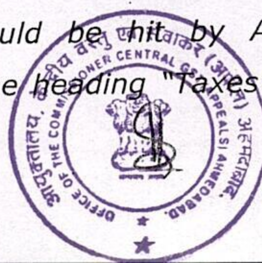
actually payable amount amounts to 'deposit' and time-limit of section 11B would not apply to the refund thereof. Hon'ble High Court of Kerala, while disposing the writ petition of M/s. Geojit BNP Paribas Financial Services Ltd. on 23.06.2015, has held that if Service Tax is not leviable, the refund claimed is not relatable to Section 11B of the Central Excise Act, 1944.

"10. The question of alternative remedy would arise if Service Tax is otherwise leviable under the Central Excise Act. Herein, in this case, there is no dispute with regard to the fact that no Service Tax is leviable for the service extended by the petitioner to the Muscat Bank SAOG. Thus, the writ petition is maintainable when the amount is arbitrarily withheld without any justification under law as the refund claimed by the petitioner is not relatable to Section 11B of the Central Excise Act. Similar view was also taken by the Karnataka High Court in K.V.R. Constructions v. Commissioner of Central Excise (Appeals) and another [(2010) 28 VST 190 (Karn)] and by the Madras High Court in Natraj and Venkat Associates v. Asst.Commr. of S.T., Chennai-II [2010 (249) E.L.T.337 (Mad.)].

11. In that view of the matter, the writ petition is allowed. There shall be a direction to the second respondent to sanction, refund claimed by the petitioner based on the request made by him within two months from the date of receipt of a copy of this judgment".

In the case of Joshi Technologies International vs. the Union of India, the Hon'ble High Court of Gujarat proclaimed that in case of amount paid by mistake or through ignorance, the revenue is duty bound to refund it as its retention is hit by Article 265 of Constitution of India which mandates that no tax shall be levied or collected except by the authority of law, Section 11B of Central Excise Act, 1944. I would quote the required contents of the paragraph 15.3 and 15.4 of the said judgment as below;

".........Therefore, the contention that the self assessment made by the petitioner has attained finality and hence, the petitioner cannot claim refund unless the assessment is challenged is misconceived and contrary to the law laid down in the above decision. The upshot of the above discussion is that even in case where any amount is paid by way of self assessment, in the event any amount has been paid by mistake or through ignorance, it is always open to the assessee to bring it to the notice of the authority concerned and claim refund of the amount wrongly paid. The authority concerned is also duty bound to refund such amount as retention of such amount would be hit by Article 265 of the Constitution of India which bears the heading "Taxes not to be imposed



save by authority of law" and lays down that no tax shall be levied or collected except by authority of law. Since the Education Cess and Secondary and Higher Secondary Education Cess collected from the petitioner is not backed by any authority of law, in view of the provisions of Article 265 of the Constitution, the respondents have no authority to retain the same. The decision of the Supreme Court in the case of Paros Electronics (P) Ltd. v. Union of India (supra) would have no applicability to the facts of the present case, inasmuch as, in that case the refund was not granted as the levy had become final being contested at all departmental levels. In the present case, the education cesses have been paid by the petitioner by way of self assessment and no assessment order has been passed thereon.

15.4*Reference may also be made at this stage to the decision of this court in the case of Alstom India Ltd. v. Union of India, 2014 (301) E.L.T. 446 (Guj.), on which reliance has been placed by the learned counsel for the petitioner, wherein it has been held as follows :*

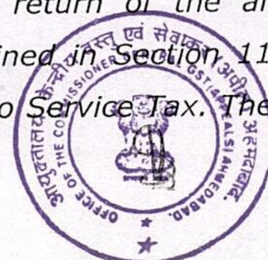
It is now "11. well-settled law that a citizen, even after making payment of tax on demand by either misinterpretation of the statutory provision or under unconstitutional provision or under mistake of law, can subsequently challenge the inherent lack of jurisdiction on the part of the said State authority to demand tax, and if such a citizen succeeds, the Court can, in an appropriate case, direct refund of the amount which had been collected by the State authority having no jurisdiction. There are instances where after payment of tax by an assessee, on his prayer, the provisions of imposition of tax has been held ultra vires the Constitution of India and in such a case, the subsequent proceedings for annulment of the proceedings under which the tax was collected cannot be dismissed on the sole ground of payment of tax by the petitioner inasmuch as there cannot be a waiver of constitutional rights of mandatory character or fundamental rights. The only exception to this principle is where the assessee has passed on the burden of tax to the third parties i.e. the consumers. [See Mafatlal Industries Ltd. and Others v. Union of India and Others reported in (1997) 5 SCC 536 = 1997 (89) E.L.T. 247 (S.C.)]. Thus, if the Constitution does not permit an authority to collect tax by enactment of appropriate law vesting such power, merely because such authority has recovered the amount by virtue of ultra vires adjudication, cannot be a factor standing in the way of the assessee to challenge the provisions as ultra vires just as in a Civil Litigation after suffering a decree, the judgment debtor in the executing proceedings can pray for declaration that the decree sought to be executed is a nullity for want of

inherent jurisdiction without preferring any appeal against the original decree [See Chiranjilal Shrilal Goenka v. Jasjit Singh reported in (1993) 2 SCC 507]."

Also in the case of Alstom India Ltd. vs. the Union of India, the Hon'ble High Court of Gujarat proclaimed that;

"Refund-Tax paid-On misinterpretation of statutory provision or under unconstitutional provision or under mistake of law-In such case, inherent lack of jurisdiction of State authority to demand tax can be challenged subsequent to payment of tax-If citizen succeeds, Court can, in appropriate case, direct refund of amount collected by State authority having no jurisdiction-Subsequent proceedings cannot be dismissed on sole ground of payment of tax by citizen as there cannot be waiver of constitutional rights of mandatory character or fundamental rights-Only exception to this principle is where assessee has passed on burden of tax to third parties".

Thus, in view of the above, I hold that when a particular amount has been paid erroneously, then in such a situation what has been collected as Service Tax is not 'tax' in the first place. It is only the 'amount' collected without authorization of law which is illegal and hence cannot be retained by the department and has to be refunded to the person who has paid such amount. This is a settled principle of law; time and again it has been reiterated by various judicial authorities. In Cawasi & Co case [1978 E L T (J 154)] the Hon'ble Supreme Court observed that the period of limitation prescribed for recovery of money paid under a mistake of law is three years from the date when the mistake is known, be it 100 years after the date of payment. This judgment has been quoted and depended upon by the Hon'ble Andhra Pradesh High Court in the case of M/s. U Foam Pvt. Ltd vs. Collector of Central Excise - 1988 (36) E L T 551(A P). In the case of Hexacom (I) Ltd vs CCE, Jaipur - 2003 (156) E L T 357 (Tri -Del), the tribunal held that if any amounts are collected erroneously as representing Service Tax, which is not in force, there is no bar to the return of such amounts. The time limit under Section 11B of Central Excise Act, 1944 does not apply. The tribunal observed the following, *"We have perused the records and heard both sides. It is not in dispute that no Service Tax was leviable during the period in question. Therefore, whatever payment was made did not relate to Service Tax at all. It was merely an erroneous collection by DOT and payment by the appellants. Therefore, provisions relating to refund of Service Tax, including those relating to unjust enrichment, cannot have any application to the return of the amount in question. It is further noted that provisions contained in Section 11D of the Central Excise Act have not been made applicable to Service Tax. Therefore, if*



any amounts are collected erroneously as representing Service Tax, which is not in force, there is no bar to the return of such amounts. The rejection of refund application was, therefore, not correct". In the case of CCE, Raipur vs. Indian Ispat Works Ltd -2006 (3) S T R 161 (Tri -Del), the Tribunal held that, "*The department has allowed the claim of the respondents for the period 16-11-97 to 1-6-98, but rejected the refund claim for the previous period and subsequent period as time barred. The rejection of the claim of refund is wrong as it can be seen from the records, that the amount paid by the respondents is not a tax, but an amount collected by the department without any authority of law*". In the case of CCE, Bangalore vs Motorola India – 2006 (206) E L T 90 (Kar), the High Court has held that in the case of claim of refund, limitation under Section 11B of Central Excise Act is not applicable since the amount paid by mistake in excess of duty and such amount cannot be termed as duty. Thus, the conclusion is clear that if a tax has been collected which is not leviable at all, the time limit given in the tax laws does not apply. The general time limit under the Limitation Act 1963, applies under which the limit is three years from the time of coming to know of it.

8. In view of the above, I hold that as the appellants have wrongly paid the Service Tax against 'Club or Associated Services' during the periods October 2016 to March 2017 and April 2017 to June 2017 respectively (leviable after the introduction of the Negative List w.e.f. 01.07.2012) under the doctrine of principles of mutuality. Accordingly, I set aside the impugned order with consequential relief to the appellants.

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

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

(उमा शंकर)

CENTRAL TAX (Appeals),
AHMEDABAD.

ATTESTED

(S. DUTTA)
SUPERINTENDENT,
CENTRAL TAX (APPEALS), AHMEDABAD.

BY R.P.A.D.

To,

M/s. The Sports Club of Gujarat Ltd.,

Sardar Patel Stadium, Navrangpura,

Ahmedabad- 380 014.

Copy To:-

1. The Chief Commissioner, Central Tax, Ahmedabad zone.
2. The Commissioner, Central Tax, Ahmedabad-North.
3. The Dy./Asstt. Commissioner, Central Tax, Div.-VII, Ahmedabad-North.
4. The Assistant Commissioner, System, Ahmedabad-North.
5. Guard File.
6. P.A. File.