आयुक्त का कार्यालय, (अपीलस)
Office of the Commissioner,

केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय
Central GST, Appeal Commissionerate- Ahmedabad

सत्यमेव जयते

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
: 079-26305065 टेलेफैक्स : 079 - 26305136

By speed Post

क फाइल संख्या :File No : **V2(ST)114-116/North/Appeals/2019-20 & V2(ST)30-31/RA/NORTH/2019-20** /14779 TO 14784

ख अपील आदेश संख्या :Order-In-Appeal No.: **AHM-EXCUS-002-APP-006 to 010/2019-20** -21

दिनाँक Date :30.04.2020 जारी करने की तारीख Date of Issue: 07/06/2020

श्री अखिलेश कुमार, आयुक्त (अपील) द्वारा पारित

Passed by **Shri Akhilesh Kumar,** Commissioner (Appeals) Ahmedabad

ग _____आयुक्त, केन्द्रीय GST, अहमदाबाद North आयुक्तालय द्वारा जारी मूल आदेश : दिनाँक : से सृजित

Arising out of Order-in-Original:**As Per File,** Date: **19/08/2015** Issued by: **Assistant** Commissioner ,CGST, Div: II, Ahmedabad North.

ध अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

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

M/s. The Orient Club

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, 4th 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 मामलें 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.

घ अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी केडिट मान्य की गई है और ऐसे आदेश जो इस द्वारा 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 दिनाँक 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 रूपये या उससे कम हो तो रूपये 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 अपीलः–

Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35– ण्बी/35–इ के अंतर्गतः–

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 2nd 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 इ.ए–3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणें की गई अपील के विरूद्ध 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 वहां 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 वहां रूपए 10000/– फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से रेखाकिंत 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. Registar 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 ओदश के लिए फीस का भुगतान उपर्युक्त ढग 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 हैं।

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 not withstanding 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 अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रू.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 beer a court fee stamp of Rs.6.50 paisa 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 in 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 (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।

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

Three Appeals have been filed by M/s. The Orient Club, Kavi Nhanalal Marg, Ellisbridge, Ahmedabad-380006 before this authority, against the Orders-in-Original issued by the Assistant Commissioner of Service Tax, Division-II, Ahmedabad (*here-in-after referred to as the "adjudicating authority"*) whereby two refund claims were rejected and one refund claim was partly sanctioned. Besides that, two Appeals have been filed by the Assistant Commissioner of Service Tax, Division-II, Ahmedabad in view of the Review Order No. (i) 15/2015-16 dated 02.12.2015 and (ii) 21/2016-17 dated 11.07.2016, of Principal Commissioner of Service Tax, Ahmedabad against the Orders-in-Original of Assistant Commissioner of Service Tax, Division-II, Ahmedabad allowing Refund of Service Tax partly in respect of M/s. The Orient Club. The details in respect of these five appeals are as under :

Srl. No.	Order-in-Original No., Date and Appeal No.	Appellant	Respondent	Period	Ref. Claim filed on	Total Refund Amount (in Rs.)	Refund Allowed (in Rs.)	Refund Rejected (in Rs.)
(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)
1	SD-02/Ref-105/DRM/2015-16 Dated : 19.08.2015 Appeal No. : V2(ST)117/North/Appeal/19-20	M/s. Orient Club	Asstt.Commissionr, Service Tax, Divn-II, Ahmedabad.	01.04.2013 to 31.03.2014	24.03.2015	1720681	299305	1421376
2	SD-02/Ref-105/DRM/2015-16 Dated : 19.08.2015 Appeal No. : V2(ST)31/RA/North/Appeal/19-20	Asstt.Commissionr, Service Tax, Divn-II, Ahmedabad.	M/s. Orient Club	01.04.2013 to 31.03.2014	24.03.2015	1720681	299305	1421376
3	SD-02/Ref-104/DRM/2015-16 Dated : 19.08.2015 Appeal No. : V2(ST)115/North/Appeal/19-20	M/s. Orient Club	Asstt.Commissionr, Service Tax, Divn-II, Ahmedabad.	01.04.2011 to 31.03.2012	24.03.2015	706170	0	706170
4	SD-02/Ref-106/DRM/2015-16 Dated : 19.08.2015 Appeal No. : V2(ST)114/North/Appeal/19-20	M/s. Orient Club	Asstt.Commissionr, Service Tax, Divn-II, Ahmedabad.	01.04.2012 to 31.03.2013	24.03.2015	1376558	0	1376558
5	SD-02/Ref-299/DRM/2015-16 Dated : 31.03.2016 Appeal No. : V2(ST)30/RA/North/Appeal/19-20	Asstt.Commissionr, Service Tax, Divn-II, Ahmedabad.	M/s. Orient Club	01.04.2014 to 31.03.2015	28.09.2015	2057416	1298372	759044
					TOTAL	7581506	1896982	5684524

Hereinafter in this order (i) Show Cause Notice will be referred as "*SCN*"; (ii) Orders-in-Original will be referred as "*impugned orders*"; (iii) Appellant shown at Srl. No.2 and 5 in the Column (C) will be referred as "*Department*" and (iv) M/s. The Orient Club will be referred as "*Orient Club*".

2. The facts of the cases, in brief, are that on 25.03.2013, Hon'ble Gujarat High Court in the case of Sports Club of Gujarat Ltd., Rajpath Club Ltd. and Karnavati Club Ltd. v/s. Union of India (S.C.A. No. 13654, 13655 and 13656 of 2005 respectively) declared the Section 65(25a), Section 65(105)(zzze) and Section 66 of the Finance (No.2) Act, 1994 as incorporated/amended by the Finance Act, 2005 to be ultra vires to the extent that the said provisions purport to levy service tax in respect of services purportedly provided by the petitioner club to its members. Pursuant to the said decision of Gujarat High Court, the Orient Club filed Four Refund Claims for the service tax paid by them in the relevant years

2011-12 to 2014-15 as per the details shown in the table hereinabove. SCNs were issued in all the claims separately. The adjudicating authority after discussing the issue at length and relying upon the judgement of Hon'ble Supreme Court of India in case of M/s. Mafatlal Industries Ltd. v/s. Union of India [1997(89)ELT 247(SC)] and in view of the provisions contained in Section 11B of the Central Excise Act, 1944 as made applicable to the Service Tax by Section 83 of the Finance Act, 1994 vide the impugned orders **(i)** rejected the full amount of refund as time barred as shown at Srl. No. 3 & 4 in the table as these claims, pertaining to period 2011-12 and 2012-13, were filed after lapse of one year from date of payment of duty/tax as prescribed under Section 11B of the Central Excise Act, 1944 and **(ii)** partly sanctioned the amount of refund shown at Srl. No.1 & 5 in the table and disallowed claims which was beyond the period of one year from the date of the payment of duty/tax.

3(i). The Orient Club filed the appeals where the amount of Refund was rejected and reduced (shown at Srl. No. 3, 4 and 1 respectively in the table). Further, the Department filed the appeals where the amount of Refund was allowed (shown at Srl. No. 2 and 5 in the table).

3(ii). The Orient Club preferred the appeals before this authority on the grounds that **(a)** in view of ratio laid down by Hon'ble Supreme Court in the case of M/s. Mafatlal Industries Ltd. reported in 1997(89)ELT 247(SC) holding that whenever duty is paid under court's order whether by way of an order granting stay or suspension thereof pending an appeal will certainly be a payment under protest as the petitioner is paying the said amount under protest as the matter is in appeal before Supreme Court; **(b)** the amount paid by them was deposit and not tax in view of the judgement of Hon'ble Gujarat High Court who declared the relevant levy of tax ultra vires and Section 11B is applicable to tax and not deposit; **(c)** Section 11B of the Central Excise Act, 1944 is not applicable where the levy itself is struck down by Hon'ble High Court and held duty itself is not payable as the same is against the constitution; **(d)** the bar of limitation would not apply when any levy of tax is held ultra vires; **(e)** unjust enrichment would not be applicable in their case as the service provided to its members can not be termed as service provided to others.

3(iii). The Department preferred the appeals on the ground that **(a)** the unjust enrichment has not been discussed in the impugned orders; **(b)** that the Orient Club was not a party to the petition before the Hon'ble Gujarat High Court thus the said judgement is not applicable to the Orient Club in absence of any locus standi; **(c)** the said judgement of Gujarat High Court had been challenged before the Apex Court and therefore can not be relied upon; **(d)** reliance is place on judgement of the Apex Court in case of M/s. Mafatlal Industries Ltd. reported in 1997(89) ELT 247(SC) wherein it was nowhere stated that principle of unjust enrichment would not apply; **(e)** reliance is also placed upon M/s. Oswal Agro Mills Ltd. etc. reported under 1993(66)ELT 37(SC); **(f)** w.e.f. 01.07.2012, a new system of taxation of service has been introduced and by virtue of explanation 3(a) to Section 65B(44) of the Finance Act, 1994 a deeming provision has been introduced to the effect that the club and members are deemed to be separate person. In view of these changes, the judgement of Hon'ble High Court relied upon by the applicant is no more applicable to facts of the present refund claim **(g)** the argument of doctrine of mutuality bears no significance in the

context of taxable service provided by clubs and association as the same has been legally overcome by creating the legal fiction treating clubs and association and iis members as two separate persons; and **(h)** from the legal changes brought after introduction of negative list regime, the claimant has correctly paid the service tax and refund granted is erroneous.

4. It was noticed that an appeal in respect of M/s. Calcutta Club Ltd. on the validity of Section 65(25a) and Section 65(105)(zzze) was pending before the Hon'ble Supreme Court, and accordingly these appeals were kept in Call-Book pending the decision from the Hon'ble Supreme Court. The case of M/s. Calcutta Club Ltd., before the Hon'ble Supreme Court, attained finality vide order dated 03.10.2019 passed under Civil Appeal No.4184 of 2009 and 7497 of 2012 reported in 2019(29)GSTL 545(SC), and thus these cases were retrieved from the Call-Book.

5. Personal hearing in these cases was accorded on 26.02.2020. Shri C.N.Shah from M/s. Shreekant S. Shah & Co. (Chartered Accountants), on behalf of Orient Club, attended the hearing. He reiterated the submissions made in the Appeal Memorandum and in cross-objection. He relied upon the judgement of Hon'ble Supreme Court in the case of M/s. Calcutta Club Ltd. [reported under (2019)110 taxmann.com 47(SC)] and submitted their cases are covered by the said judgement. He requested to consider their arguments for all these cases as matters are identical in nature.

6. I have carefully gone through the facts of the case available on records, submissions made by Orient Club in the Appeal Memorandum, in cross-objection, & oral submissions made during the course of personal hearing and the submissions made by the Department in Appeal Memorandum. In three appeals, Orient Club is Appellant and in two appeals, they are Respondent. The issue involved in all the appeals is common or same. The issue involved in all these appeals is that whether the refund is admissible to the Orient Club in view of the judgement dated 25.03.2013 of Gujarat High Court in SCA No.13654, 13655 and 13656 of 2005 in case of Sports Club of Gujarat Ltd. and others, which was challenged before the Hon'ble Supreme Court by the Department and the outcome is in form of the judgement in case of M/s. Calcutta Club Ltd.

7(i). The refund applications pertain to period 2011-12 to 2014-15. Hence, the period since 01.07.2012 pertain to negative list regime. It is observed that the Orient Club filed the refund claims on the basis of the judgement of Hon'ble Gujarat High Court who declared the Section 65(25a), Section 65(105)(zzze) and Section 66 of the Finance (No.2) Act, 1994 as incorporated/amended by the Finance Act, 2005 to be ultra vires to the extent that the said provisions purport to levy service tax in respect of services purportedly provided by the petitioner club to its members. It is pertinent to mention here a few things viz., **(i)** the Orient Club was not the party in the said judgement of Gujarat High Court; **(ii)** the Gujarat High Court stayed the said judgment for six weeks so as to enable the Department to carry the matter further. The result is the judgement of Hon'ble Supreme

Court in M/s. Calcutta Club Ltd. case reported under 2019(29)GSTL 545(SC) upon which reliance has been placed by the Orient Club also; **(iii)** Section 65(25a), Section 65(105)(zzze) and Section 66 of the Finance Act, 1994 in respect of 'club or association' service were interpreted and explained by the Apex Court in detail under the said judgement pertaining to M/s. Calcutta Club Ltd. **(iv)** the impugned orders have been passed considering the judgement of Hon'ble Gujarat High Court while the outcome of appeal against the said judgement of Gujarat High Court, before the Apex Court, was pending.

7(ii). Since the judgement of the Apex Court in case of M/s. Mafatlal Industries Ltd. [1997(89)ELT 247(SC)] comprised of 9 Justice and deals with the Refund under the Excise Law (as made applicable to service tax law also), it becomes necessary that the said judgement should be taken into consideration while deciding the present issue (which is also pertaining to Refund), more particularly when both the parties i.e. Orient Club and Department have referred the said judgement. The said judgement of the Apex Court continues to hold ground. It is necessary to mention here that the adjudicating authority has discussed the issue in great length under its impugned orders on the basis of this Judgement of Apex Court.

7(iii). Since the said judgement of Apex Court in case of M/s. Mafatlal Industries Ltd. is lengthy enough, and the parties herein are well aware of it as both of them have referred it, it would be proper to put only relevant points of the said judgement here under :

(a) *Refunds of Central Excise and Customs Duties – All claims for refund except where levy is held to be unconstitutional, to be preferred and adjudicated upon under Section 11B of the Central Excise Act, 1944 or under Section 27 of the Customs Act, 1962 and subject to claimant establishing that burden of duty has not been passed on to third party – no civil suit for refund of duty maintainable – Writ jurisdiction of High Courts under Article 226 and of Supreme Court under Article 32 unaffected by said Section 11B or Section 27 but writ court to have due regard to the provisions of Central Excise and Customs Act and to refuse grant of relief where burden of duty passed on to third party – Favourable order not to result in automatic refund and claimant to prove burden of duty not passed on to third party.*

(b) *Refund – Bar of unjust enrichment – Incidence of duty – Refund of duty either under Central Excise Act, Customs Act, in a civil suit or a writ petition grantable only when it is established that burden of duty has not been passed on to others – Person ultimately bearing the burden of duty can legitimately claim its refund otherwise amount to be retained by the State – Section 11B of the Central Excise Act, 1994 – Section 27 of the Customs Act, 1962 – Section 72 of the Contract Act and Articles 32 and 226 of the Constitution of India.*

(c) *Section 11B of the Central Excise Act, 1944 and Section 27 of the Customs Act, 1962 both before and after 1991 amendments are valid and constitutional as per proposition initiated by Supreme Court in Kamala Mills' case – 1966(1)SCR 64.*

(d) *99(i) Where a refund of tax duty is claimed on the ground that it has been collected from the petitioner/plaintiff - whether before the commencement of the Central Excises and Customs Laws (Amendment) Act, 1991 or thereafter - by mis-interpreting or mis-applying the provisions of the Central Excises and Salt Act, 1944 read with Central Excise Tariff Act, 1985 or Customs Act, 1962 read with Customs Tariff Act or by mis-interpreting or mis-applying any of the rules, regulations or notifications issued under the said enactments, such a claim has necessarily to be preferred under and in accordance with the provisions of the respective enactment before the authorities specified thereunder and within the period of limitation prescribed therein. No suit is maintainable in that behalf.*

.....

The said enactments including Section 11B of Central Excises and Salt Act and Section 27 of the Customs Act do constitute "law" within the meaning of Article 265 of the Constitution of India and hence, any tax collected, retained or not refunded in accordance with the said provisions must be held to be collected, retained or not refunded, as the case may be, under the authority of law. *Both the enactments are self-contained enactments providing for levy, assessment, recovery and refund of duties imposed thereunder. Section 11-B of the Central Excises and Salt Act and Section 27 of*

the Customs Act, both before and after the 1991 (Amendment) Act are constitutionally valid and have to be followed and give effect to. .....

(ii) Where, however, a refund is claimed on the ground that the provision of the Act under which it was levied is or has been held to be unconstitutional, such a claim, being a claim outside the purview of the enactment, can be made either by way of a suit or by way of a writ petition.

This principle is, however, subject to an exception : where a person approaches the High Court or Supreme Court challenging the constitutional validity of a provision but fails, he cannot take advantage of the declaration of unconstitutionality obtained by another person on another ground; this is for the reason that so far as he is concerned, the decision has become final and cannot be re-opened on the basis of a decision on another person's case; this is the ratio of the opinion of Hidayatullah, CJ. in Tilokchand Motichand and we respectfully agree with it.

.....

(iv) It is not open to any person to make a refund claim on the basis of a decision of a Court or Tribunal rendered in the case of another person. He cannot also claim that the decision of the Court/Tribunal in another person's case has led him to discover the mistake of law under which he has paid the tax nor can he claim that he is entitled to prefer a writ petition or to institute a suit within three years of such alleged discovery of mistake of law. A person, whether a manufacturer or importer, must fight his own battle and must succeed or fail in such proceedings. Once the assessment or levy has become final in his case, he cannot seek to reopen it nor can he claim refund without re-opening such assessment/order on the ground of a decision in another person's case. Any proposition to the contrary not only results in substantial prejudice to public interest but is offensive to several well established principles of law. It also leads to grave public mischief. Section 72 of the Contract Act, or for that matter Section 17(1)(c) of the Limitation Act, 1963, has no application to such a claim for refund.

.....

(ix) The amendments made and the provisions inserted by the Central Excises and Customs Law (Amendment) Act, 1991 in the Central Excises and Salt Act and Customs Act are constitutionally valid and are unexceptionable.

.....

(e) Central Excise and Customs Law (Amendment) Act, 1991 – Amendments made and provisions inserted thereby in the Central Excise Act and Customs Act are constitutionally valid and are unexceptionable.

(f) Where a duty has been collected under a particular order which has become final, the refund of that duty can not be claimed unless the order (whether it is an order of assessment, adjudication or any other order under which the duty is paid) is set aside according to law. So long as that order stands, the duty can not be recovered back nor can any claim for its refund be entertained. It is un-understandable how an assessment/adjudication made under the Act levying or affirming the duty can be ignored because some years later another view of law is taken by another court in another person's case. Nor is there any provision in the Act for re-opening the concluded proceedings on the aforesaid basis. In short, no claim for refund is permissible except under and in accordance with Rule 11 and Section 11B. An order or decree of a court does not become ineffective or unenforceable simply because at a later point of time, a different view of law is taken. If this theory is applied universally, it will lead to unimaginable chaos. Therefore the theory of mistake of law and the consequent period of limitation of 3 years from the date of discovery of such mistaken of law can not be invoked by an assessee taking advantage of the decision in another assessee's case. All claims of refund ought to be and ought to have been, filed only under and in accordance with Rule 11/Section 11B and under no other provision and in no other forum. An assessee must succeed or fail in his own proceedings and the finality of the proceedings in his own case can not be ignored and refund ordered in his favour just because in another assessee's case a similar point is decided in favour of the manufacturer/assesee.

(g) If a levy or imposition is held to be unconstitutional or illegal or not exigible in law, i.e. without jurisdiction, it is open to the assessee to take advantage of the declaration of the law so made, and pray for appropriate relief inclusive of refund on the ground that tax was paid due to mistake of law, provided he initiates action within the period of limitation prescribed under the Limitation Act. ..... If the levy or imposition was held to be unconstitutional or illegal or not exigible in law, in a similar case filed by some other person, the assessee who had already lost the battle in a proceeding initiated by him or has otherwise abandoned the claim can not, take advantage of the subsequent declaration rendered in another case where the levy is held to be unconstitutional, illegal or not exigible in law.

(h) As regards to time limit, the second proviso to Section 11B (as amended in 1991) expressly provides that "the limitation of six months shall not apply where any duty has been paid under protest". Now, where a person proposes to contest his liability by way of appeal, revision or in the higher courts, he would naturally pay the duty, wherever he does, under protest hence time limit would have no application to such cases.

(i) *Refund of "unconstitutional levy" i.e. where the provisions of the Act under which duty/tax is levied is struck down as unconstitutional – Person paying such tax entitled to refund – Claim for such refund not governed by Rule 11/Section 11B of the Central Excise Act, 1944 – Right for refund do arise under Article 265 of the Constitution but there is no automatic or unconditional right of refund – Such refund claimable either by filing civil suit under Section 72 of the Contract Act or by filing writ petition under Article 32 or 226 of the Constitution of India – Such refunds subject to claimant establishing that burden of duty not pass on to third party – Social and economic justice – Article 38, 39 and Preamble to the Constitution of India.*

(j) *Where the petitioner-plaintiff has not himself suffered any loss or prejudice (having passed on the burden of the duty to others), there is no justice or equity in refunding the tax (collected without the authority of law) to him merely because he paid it to the State. It would be a windfall to him. As against it, by refusing refund, the monies would continue to be with the State and available for public purposes..... The preamble of Constitution and the Article 38 and 39 do demand that where a duty can not be refunded to the real persons who have bore the burden, for one or other reason, it is but appropriate that the said amounts are retained by the State for being used for public good. Accordingly even looked at from the constitutional angle, the right to refund of tax paid under an unconstitutional provision of law is not an absolute or an unconditional right.*

(k) *Refund of "unconstitutional levy" – where assessee unsuccessfully challenging constitutional validity of levy, he can not take advantage of the declaration of unconstitutionability obtained by another person on another ground – Right to refund or restitution neither automatic nor unconditional – Civil suit to be filed subject to time limit of Section 17(1)(c) of the Limitation Act – Section 11B of the Central Excise Act, 1994.*

(l) *Protest – Duty paid under order of the court whether by way of order granting stay, suspension, injunction or otherwise is to be treated as a payment under protest – Protest under Rule 233B of the Central Excise Rules, 1944 need not to be lodged – Section 11B of the Central Excise Act, 1944.*

(m) *Jurisdiction – Decision of an authority exercising powers under the statute not to be treated without jurisdiction even if such decision may be erroneous – Such erroneous adjudication/assessment not treatable as without jurisdiction – Section 11A, 11B and 33 of the Central Excise Act, 1944 and Sections 27, 28 and 122 of the Customs Act, 1962.*

8. The relevant part of Section 11B of the Central Excise Act, 1944 as made applicable to the Service Tax by Section 83 of the Finance Act, 1994 reads as under :

Section 11B : Claim for refund of duty and interest, if any, paid on such duty –

(1) Any person claiming refund of any duty of excise and interest, if any, paid on such duty may make an application for refund of such duty and interest, if any, paid on such duty to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise before the expiry of one year from the relevant date in such form and manner as may be prescribed and the application shall be accompanied by such documentary or other evidence (including the documents referred to in Section 12A) as the applicant may furnish to establish that the amount of duty of excise and interest, if any, paid on such duty in relation to which such refund is claimed was collected from, or paid by him and the incidence of such duty and interest, if any, paid on such duty had not been passed on by him to any other person :

Provided *.....*

Provided *further that, the limitation of one year shall not apply where any duty and interest, if any, paid on such duty has been paid under protest.*

(2) If, on receipt of any such application, the Assistant Commissioner or Deputy Commissioner of Central Excise is satisfied that the whole or any part of the duty of excise and interest, if any, paid on such duty paid by the applicant is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund :

Provided .....

Provided further .....

(3) Notwithstanding anything to the contrary contained in any judgement, decree, order or direction of the Appellate Tribunal or any Court or in any other provision of this Act or the rules made thereunder or any other law for the time being in force, no refund shall be made except as provided in sub-section (2).

(4).....

(5)....

Explanation *– For the purpose of this section, -*

(A) .....

(B) "relevant date" means –

(a) .....

(b) .....

(c) .....

(d) .....

(e) in the case of a person, other than the manufacturer, the date of purchase of the goods by such person;

(ea) .....

(eb) .....

(ec) in case where the duty becomes refundable as a consequence of judgement, decree, order or direction of appellate authority, Appellate Tribunal or any court, the date of such judgement, decree, order or direction;

(f) in any other case, the date of payment of duty.

9. Now perusal of the relevant points of the judgement of the Apex Court as shown in para 7(iii) here-in-above, reveal that **(i)** the Section 11B is constitutionally valid and any refund claim is required to be dealt with under provisions of Section 11B of the Central Excise Act, 1944 as made applicable to the Service Tax by Section 83 of the Finance Act, 1994; **(ii)** It is not open to any person to make a refund claim on the basis of a decision of a Court or Tribunal rendered in the case of another person. He cannot also claim that the decision of the Court/Tribunal in another person's case has led him to discover the mistake of law under which he has paid the tax nor can he claim that he is entitled to prefer a writ petition or to institute a suit within three years of such alleged discovery of mistake of law. A person, whether a manufacturer or importer, must fight his own battle and must succeed or fail in such proceedings. Once the assessment or levy has become final in his case, he cannot seek to reopen it nor can he claim refund without re-opening such assessment/order on the ground of a decision in another person's case; **(iii)** If the levy or imposition was held to be unconstitutional or illegal or not exigible in law, in a similar case filed by some other person, the assessee who had already lost the battle in a proceeding initiated by him or has otherwise abandoned the claim can not, take advantage of the subsequent declaration rendered in another case where the levy is held to be unconstitutional, illegal or not exigible in law; **(iv)** the second proviso to Section 11B expressly provides that the limitation shall not apply where any duty has been paid under protest. *However if an assessee opts to pay the duty/tax under protest it will be mandatory on part of him to approach the proper authority for contesting such levy. It would be unacceptable that the said assessee files the protest and then sit idle and does not contest/oppose the said levy before proper authority and wait for the others to do so. In short whenever an assessee opts to pay the duty/tax under protest, he will have to contest/challenge such levy before the proper authority and then and then only the duty/tax paid by the said assessee would be considered to be paid under protest during the pendency of such litigation initiated by the said assessee;* **(v)** where, a refund of tax/duty is claimed on the ground that the provision of the Act under which it was levied is or has been held to be unconstitutional, such a claim, being a claim outside the purview of the enactment, can be made either by way of a suit or by way of a writ petition. However it was further clarified that this principle is, subject to an exception that where a person approaches the High Court or Supreme Court challenging the constitutional validity of a provision but fails, he cannot take advantage of the declaration of unconstitutionality obtained by another person on another ground; this is for the reason that so far as he is concerned, the decision has become final and cannot be re-opened on the basis of a decision on another person's case; **(vi)** where a refund of tax/duty is claimed on the ground that it has been collected from the petitioner/plaintiff by mis-interpreting or mis-applying the provisions of the Central Excises and Salt Act, 1944 read with Central Excise Act, 1985 or by mis-interpreting or mis-applying any of the rules, regulations or

notifications issued under the said enactments, such a claim has necessarily to be preferred under and in accordance with the provisions of the respective enactment before the authorities specified thereunder and within the period of limitation prescribed therein (*which herein the present case is Section 11B of the Central Excise Act, 1944*); **(vii)** Where a duty has been collected under a particular order which has become final, the refund of that duty can not be claimed unless the order (whether it is an order of assessment, adjudication or any other order under which the duty is paid) is set aside according to law. So long as that order stands, the duty can not be recovered back nor can any claim for its refund be entertained; **(viii)** where assessee fails challenging, constitutional validity of levy, he can not take advantage of the declaration of unconstitutionability obtained by another person on another ground – Right to refund or restitution neither automatic nor unconditional – Civil suit to be filed subject to time limit of Section 17(1)(c) of the Limitation Act – Section 11B of the Central Excise Act, 1994; **(ix)** Section 11B of Central Excises and Salt Act and Section 27 of the Customs Act do constitute "law" within the meaning of Article 265 of the Constitution of India and hence, any tax collected, retained or not refunded in accordance with the said provisions must be held to be collected, retained or not refunded, as the case may be, under the authority of law.

10. In view of the discussion already had in para-7 and para-9 above and in view of the judgement of Apex Court in case of M/s. Mafatlal Industries Ltd., it can be said that :

(i) where the levy of tax is held to be unconstitutional, the same can not be dealt with under that particular Act and a suit or writ petition before High Court or Supreme Court is required to be filed for refund. However, where the levy of tax has not been declared or held unconstitutional, the refund can be dealt with only under that particular Act/law under which the tax was levied. Here, in the case on hand, the levy of tax has not been declared unconstitutional by the Hon'ble Supreme Court. Therefore, the refund claim is required to be dealt with under the provisions of Section 11B of the Central Excise Act, 1944 (which deals with the refund of duty/tax) as made applicable to the Service Tax under Section 83 of the Finance Act, 1994, as the Orient Club has paid the tax under the provisions of Finance Act, 1994 only.

(ii). Instead of contesting their case before the proper authority, Orient Club is taking advantage of the order/judgement passed by the Courts in favour of some other assessees which is not permissible in view of the judgement of Apex Court in case of M/s. Mafatlal Industries Ltd. Since the Orient Club has not contested the levy of tax, the service tax paid by them has become final and the judgement pronounced by the Courts in the matter of some other assessees can not help them to escape from their liabilities. It is pertinent to mention that the judgement of Gujarat High Court (*on the basis of which the Orient Club has filed the refund claims*) was pronounced in case of some other parties and the Orient Club was not a party in the said judgement.

(iii). where the assessee is not satisfied with the levy of some duty/tax, he is required to lodge the protest and required to fight the case before proper authority. During such pendency of the litigation, the tax paid by the assessee would be treated as paid

under protest. Even the time limit of one year, prescribed under provisions of Section 11B would not be applicable till such pendency of the litigation. In the present cases, the Orient Club has not put forth any evidence that they have ever challenged/contested the levy of the said tax. They even failed to produce the order/judgement of any Higher authority in their own case which shows that they have never contested the levy of tax. Therefore in absence of any litigation or appeal on part of the Orient Club, the service tax paid by them can not be treated as paid under protest. In these circumstances, the second proviso of the Section 11B of the Finance Act, 1994 (*which says that the limitation of one year shall not apply where any duty and interest, if any, paid on such duty has been paid under protest*) would not be applicable in case of Orient Club and the time limit prescribed under Section 11B of the Central Excise Act, 1944 (*which is one year*) for filing the refund claim would be applicable in this case. Thus, the adjudicating authority to that extent has rightly rejected the refund claims of the Orient Club for the period 2011-12 and 2012-13 (shown at Srl. 3 & 4 in the table) which were filed by them beyond the period of one year from the payment of tax.

11(i). It is further observed that the Hon'ble Apex Court has in case of M/s. Calcutta Club Ltd. discussed in details the aspect of levy of service tax under club and association service, both in pre-negative list and negative list regime upon incorporated and unincorporated entities and the relevant paragraphs are reproduced below :

"73. It is, thus, clear that companies and cooperative societies which are registered under the respective Acts, can certainly be said to be constituted under those Acts. This being the case, we accept the argument on behalf of the Respondents that incorporated clubs or association or prior to 1st July, 2012 were not included in the service tax net."

"76. What has been stated in the present judgement so far as sales tax is concerned applies on all fours to service tax; as, if the doctrine of agency, trust and mutuality is to be applied qua members' clubs, there has to be an activity carried out by one person for another for consideration. We have seen how in the judgement relating to sales tax, the fact is that in members' clubs there is no sale by one person to another for consideration, as one cannot sell something to oneself. This would apply on all fours when we are to construe the definition of "service" under Section 65B(44) as well."

"77. However, Explanation 3 has now been incorporated, under sub-clause (a) of which unincorporated associations or body of persons and their members are statutorily to be treated as distinct persons."

"78. The explanation to Section 65, which was inserted by the Finance Act of 2006, reads as follows:

Explanation : For the purposes of this section, taxable service includes any taxable service provided or to be provided by any unincorporated association or body of persons to a member thereof, for cash, deferred payment or any other valuable consideration:"

"79. It will be noticed that the aforesaid explanation is in substantially the same terms as Article 366(29-A)(e) of the Constitution of India. Earlier in this judgement qua sales tax, we have already held that the expression "body of persons" will not include an incorporated company, nor will it include any other form of incorporation including an incorporated co-operative society."

"80. It will be noticed that "club or association" was earlier defined under Section 65(25a) and 65(25aa) to mean "any person" or "body of persons" providing service. In these definitions, the expression "body of persons" cannot possibly include persons who are incorporated entities, as such entities have been expressly excluded under Section 65(25a)(i) and 65(25aa)(i) as "any body established or constituted by or under any law for the time being in force". "Body of persons", therefore, would not, within these definitions, include a body constituted under any law for the time being in force."

"81. When the scheme of service tax changed so as to introduce a negative list for the first-time post 2012, services were now taxable if they were carried out by "one person" for "another person" for consideration. "Person" is very widely defined by Section 65B(37) as including individuals as well as all associations of persons or bodies of individuals, whether incorporated or not. Explanation 3 to Section 65B(44), instead of using the expression "person" or the expression "an association of person or bodies of individuals, whether incorporated or not", uses the expression "a body of persons" when juxtaposed with "an unincorporated association"

"82. We have already seen how the expression "body of persons" occurring in the explanation to Section 65 and occurring in Section 65(25a) and (25aa) does not refer to an incorporated company or an incorporated cooperative society. As the same expression has been used in Explanation 3 post-2012 (as opposed to the wide definition of "person" contained in Section 65B(37), it may be assumed that the legislature has continued with the pre-2012 scheme of not taxing members' club when they are in the incorporated form. The expression "body of persons" may subsume within it persons who come together for a common purpose, but cannot possibly include a company or a registered cooperative society. Thus, Explanation 3(a) to Section 65B(44) does not apply to members' clubs which are incorporated."

"83. The expression "unincorporated associations" would include persons who join together in some common purpose or common action – see ICT, Bombay North, Kutch and Saurashtra, Ahmedabad v. Indira Balkrishna (1960)3 SCR 513 at page 519-520. The expression "as the case may be" would refer to different groups of individuals either bunched together in the form of an association also, or otherwise as a group of persons who come together with some common object in mind. Whichever way it is looked at, what is important is that the expression "body of persons" cannot possibly include within it bodies corporate."

"84. We are therefore of the view that the Jharkhand High Court and the Gujarat High Court are correct in their view of the law in following Young Men's Indian Association (supra). We are also of the view that from 2005 onwards, the Finance Act, 1994 does not purport to levy service tax on members' club in the incorporated form."

11(ii). In view of the above, it can be inferred that the said sections of the Finance Act, 1994 leyving service tax on the services in question have not been declared as unconstitutional or ultra vires by the Apex Court and they still hold their place in the said Act. Thus, the contention of the Orient Club that the duty/tax itself is not payable as the same is against the constitution does not hold any ground after taking into consideration of the judgement of the Apex Court in case of M/s. Calcutta Club Ltd. supra. It is necessary to mention here that where, a refund is claimed on the ground that the provision of the Act under which it was levied is or has been held to be unconstitutional, such a claim, being a claim outside the purview of the enactment, can be made either by way of a suit or by way of a writ petition only as held by the Apex Court in case of M/s. Mafatlal Industries Ltd. [1997(89)ELT 247(SC)]. Hence, the contention of the Orient Club that the judgement of Hon'ble High Court of Gujarat as well as of the Hon'ble Supreme Court are applicable to them is not legally correct as it was not a party to the litigation and hence is liable for rejection.

12. As discussed in para 11 above, the Hon'ble Apex Court has held that levy of service tax on club and association service is not applicable, only in a case, where the assessee is an incorporated one. Thus, the said judgement reveal that the assessees, who are incorporated one, were not liable to levy of service tax in pre and post 01.07.2012 regime. However, an unincorporated assessee was made liable to pay service tax w.e.f. 01.07.2012 by incorporating specific provision under the law as Explanation 3. In view of the said judgement of Apex Court in case of M/s. Calcutta Club Ltd., the question of refund would arise only where the service tax was paid by an incorporated assessee. Orient Club has relied upon the said judgement of the Apex Court in case of M/s. Calcutta Club Ltd. which makes it clear that they are well aware of the said judgement. Therefore, it was very much necessary on part of the Orient Club to provide/submit the incorporation certificate issued to them under any law. However, they failed to provide/submit any certificate in this respect. In absence of such important document, I am not inclined to accept them an incorporated one under the law. Since they fail to prove that they are incorporated one, they are un-incorporated one which were made liable to pay service tax w.e.f. 01.07.2012

and therefore, the service tax paid by them was well within the law and the provisions made thereunder w.e.f. 01.07.2012. Thus the question of refund of service tax paid w.e.f. 01.07.2012 in their case does not arise. The Department's contention in this respect is accepted that w.e.f. 01.07.2012, the Orient Club is liable to pay tax and when they have rightly paid the tax under the law, the question of any refund of the same does not arise.

13. Now regarding the refund of service tax paid prior to 01.07.2012 it can be seen that the claim was required to be filed under the provisions of Section 11B of the Central Excise Act, 1944 as made applicable to service tax under Section 83 of the Finance Act, 1994. There is a time limit of one year for filing the refund claim **(i)** from the date of payment of tax or **(ii)** from the date of the decision of the Appellate Authority, Appellate Tribunal or any Court. However one year time limit is not applicable to the case where duty/tax has been paid under protest. Orient Club failed to produce any order of Appellate Authority, Tribunal or Court in their favour which could have been possible only when they have challenged or protested the levy of such service tax. They also failed to produce/submit any proof regarding filing of protest against the levy of such tax. Moreover, it is pertinent to mention that had they protested the levy of such tax, they would have challenged such levy before any authority prescribed under the law. Thus, in absence of such document, the time limit of one year from the date of payment of tax would be applicable in their case in case of the tax paid by them prior to 01.07.2012. The Orient Club has filed the refund claim in 2015 which is time barred for the refund claim for the period prior to 01.07.2012.

14. In view of above, the appeals filed by Orient Club are rejected and the appeals filed by the Department are allowed.

(Akhilesh Kumar)
Commissioner (Appeals)

Date :. .04.2020

Attested

(Jitendra Dave)
Superintendent (Appeal)
CGST, Ahmedabad.

BY R.P.A.D. / SPEED POST TO :
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2. The Principal Commissioner, CGST & Central Excise, Ahmedabad North Comm'rate.
3. The Addl./Jt. Commissioner (Systems), CGST & Cen. Excise, Ahmedabad North Comm'rate.
4. The Addl. Commissioner, CGST & Cen. Excise, Ahmedabad North Comm'rate.
5. The Dy./Asstt. Commissioner, CGST & Cen. Excise, Division-VII, Ahmedabad North Comm'rate.
6. Guard File.
7. P.A. File.
8. Appeal No.V2(ST)31/RA/North/Appeals/2019-20.
9. Appeal No.V2(ST)115/North/Appeals/2019-20.
10. Appeal No.V2(ST)114/North/Appeals/2019-20.
11. Appeal No.V2(ST)30/RA/North/Appeals/2019-20.