



सत्यमेव जयते

## केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,  
केंद्रीय कर शुल्कभवन,  
सातवीं मंजिल, पोलिटेकनिक के पास,  
आम्बावाडी, अहमदाबाद-380015



☎ : 079-26305065

टेलीफैक्स : 079 - 26305136

क फाइल संख्या : File No : V2(ST)0270&271/A-II/2016-17

ख अपील आदेश संख्या : Order-In-Appeal No. AHM-EXCUS-001-APP-254&255-17-18

दिनांक Date : 18-1-2018 जारी करने की तारीख Date of Issue 24-1-2018

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals)

ग Arising out of Order-in-Original No SD-02/30&31/AC/2016-17 Dated 23.12.2016

Issued by Assistant Commr STC, Service Tax, Ahmedabad

घ अपीलकर्ता का नाम एवं पता

Name & Address of The Appellants

**M/s. Gujarat Urban Co-op Bank Federation 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 :-

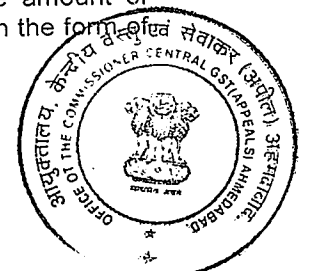
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-  
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू 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 और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहाँ रूपए 10000/- फीस भेजनी होगी।

(ii) The appeal under sub section (1) of Section 86 of the Finance Act 1994 to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules 1994 and Shall be accompany ed by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is 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 एवं सेवाकर



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 फॉर्म 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 भेजनी होगी।

(iii) The appeal under sub section (2A) of the section 86 the Finance Act 1994, shall be filed in Form ST-7 as prescribed under Rule 9 (2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise (Appeals)(OIA)(one of which shall be a certified copy) and copy of the order passed by the Addl. / Joint or Dy. /Asstt. Commissioner or Superintendent of Central Excise & Service Tax (OIO) to apply to the Appellate Tribunal.

2. यथासंशोधित न्यायालय शुल्क अधिनियम, 1975 की शर्तों पर अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार मूल आदेश एवं स्थगन प्राधिकारी के आदेश की प्रति पर रु 6.50/- पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

2. One copy of application or O.I.O. as the case may be, and the order of the adjudication authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.

3. सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्यविधि) नियमावली, 1982 में चर्चित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है।

3. Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

4. सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 34फ के अंतर्गत द्वितीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 23 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत " माँग किए गए शुल्क " में निम्न शामिल 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 अर्ज़ों 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,

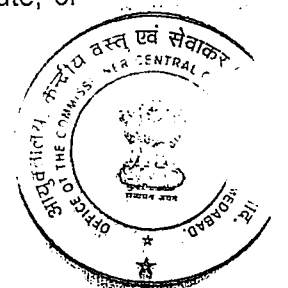
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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।

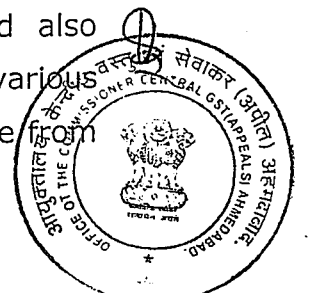
4(1) In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.



**ORDER IN APPEAL**

This is an appeal filed by M/s Gujarat Urban Co-operative Bank Federation (herein after referred to as the appellants) against the OIO No. SD-02/30 & 31/AC/2016-17 dtd. 23.12.2016 (herein after referred to as the impugned order) passed by the Asstt. Commissioner, Division-II, Service Tax, Ahmedabad (herein after referred to as the adjudicating authority) arising out of two show cause notices. Since both the appeals involve similar issue, I take them up together to decide by this common order.

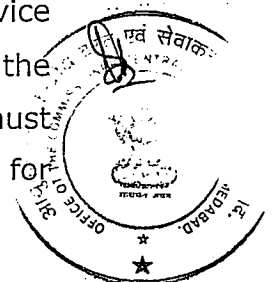
2. The brief facts of the case are that intelligence was received that the appellants were engaged in evading service tax on the income received against providing taxable services. It was learned that the appellants had received income under the heads "Administrative Fees", "annual subscription fees", "sponsorship of CBS event", "Flood E-bike surplus", "training fees", "Flood IT delegation fee and Flood IT project receipt", net project surplus arising out of information technology promotion project in Gujarat and had received charges per computer basis bought by the account holders. Accordingly, it was noticed that the appellants had failed to discharge their service tax liability of Rs. 24,62,334/- for the period from F.Y. 2010-11 to 2013-14 on various services provided by them and a show cause notice dtd. 16.10.2015 was served upon the appellants. It was learned that the appellants had received income under the heads "Administrative Fees" falling under Club or Association Service. It was noticed that the appellants had failed to discharge their service tax liability of Rs. 60,564/- for the F.Y. 2014-15 and a show cause notice dtd. 13.04.2016 was served upon the appellants. The adjudicating authority, after having considered their defence arguments and case records, held that the appellants were not falling under the purview of the exclusion clause of the definition of the service as they were not established or constituted by or under any law, but had registered their federation under the specific law to obtain legal identity to carry out their routine activities for providing services to their member banks. Therefore the services provided by the Federation is covered within the category of "Club and Association Services" falling under Section 65 (105) (zzze) and therefore liable to pay the service tax. The Federation had launched two projects viz Flood-E-Bike and Flood IT to sell their products through its member co-operative bank on the basis of loan for selling the e-bikes of the manufacturing companies computer manufacturing companies. These services were held to be covered under 'business auxiliary service' and were liable to pay service tax thereon. The Federation had also organized core banking solution event which was sponsored by various computer companies and member banks and had received the income from



member banks as a stall income to arrange the event and the stall income was correctly classifiable under the 'business exhibition service' and were liable to pay service tax thereon. The Federation had also received amounts from their member banks as donation to compensate the expenses of printing and preparing souvenir of the Federation. The activities of printing souvenir and circulation among the member banks is also an advertisement of the Federation and is thus liable to pay service tax on the amount under 'advertising agency service'. Accordingly, the adjudicating authority, vide the impugned order, confirmed the demand of service tax of Rs. 24,62,334/- and Rs. 60,564/- for the F.Y. 2014-15 along with interest and also imposed penalty of equal amount under Section 78 of the Act. The adjudicating authority also imposed penalties of Rs. 10,000/- and Rs. 20,000/- under Section 77(2) and 70 (1) of the Act respectively in the case of show cause notice dtd. 16.10.2015 and also imposed penalty of equal amount under Section 78 of the Act with penalties of Rs. 6,056/- and Rs. 10,000/- under Section 77(2) and 70 (1) of the Act respectively in the case of show cause notice dtd. 13.04.2016.

3. Being aggrieved by the impugned order, the appellants have filed this appeal on the following grounds:

- a) That the appellants are a federal society duly constituted under Section 2(9) of the Gujarat Co-operative Societies Act, 1971 and therefore the appellants are duly constituted under a statute and powers are delegated under the legislation to supervise the function of the member co-operative banks;
- b) That the appellants are neither in the nature of profit making nor any object to provide a service to any of members which may fall under the category of any of the services under the Finance Act, 1994;
- c) That their activities are nothing but charitable in nature and there is no element of profit involved;
- d) That their activities are meant for members and no facilities are provided by the appellants to any other person;
- e) That they rely on the judgment of Hon'ble Gujarat High Court in the matter of Sports Club Limited reported in 2013 (13 STR-645 (Guj.) as in their case also there is a mutuality between the federation and its member banks;
- f) That the entire exercise is revenue neutral as the amount of service tax paid by the appellants would be available as refund under the said notification and to consider any activity as service, there must be two persons and one person should carry out any activity for another for consideration;



- g) That the appellants are working as a bridge between the Reserve Bank of India and their member societies;
- h) The activities of the appellant federation towards their members do not fall in the nature of any recreational or sports or gathering but it is more in the nature of obligations cast upon them under the act.
- i) That there are no findings to the effect that though the appellants were aware about their liability of service tax and with intention to evade the same, it was not paid. Therefore mandatory penalty cannot be imposed as held in the case of M/s Hindustan Steel Limited reported in 1978 ELT (J159)

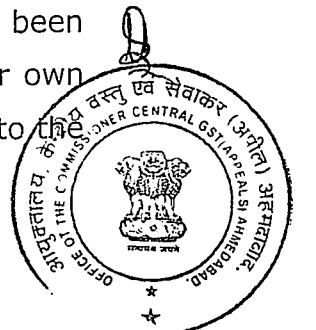
4. The personal hearing in the case was held on 06.10.2017 in which Shri Dhaval K Shah, Advocate appeared on behalf of the appellants. They reiterated the grounds of appeal and submitted that theirs is a statutory and gazette body and they are not a club. He submitted the citation of Federation of Indian Chamber of Commerce and Industry – 2015 (38) STR-529 (Tri.). He also submitted application for rectification of Form ST-4 for both the appeals.

5. I have carefully perused the documents pertaining to the case and submitted by the appellants along with the appeals. I have considered the arguments made by the appellants in their appeal memorandum as well as oral submissions during personal hearing.

6. I find that the issue to be decided in the instant case is whether the service tax has been rightly demanded on the services provided by the appellants under "Club and Association Services", 'business auxiliary service', 'business exhibition service' and 'advertising agency service'.

7. I find that the appellants have denied that the services provided by them is covered within the category of "Club and Association Services" falling under Section 65 (105) (zzze) of the Finance Act, 1994 on the grounds given above. I find that in the case of Sports Club of Gujarat vs Union of India, the Hon'ble High Court of Gujarat had held that the levied Service Tax on Club and Association Services vide Section 65(25a), Section 65(105)(zze) and Section 66 of the Finance Act, 1994 as incorporated by the Finance Act, 2005, to the extent that the said provisions purport to levy Service Tax in respect of services purportedly provided is held *ultra vires* upholding the principle of mutuality. Consequently, I hold that the services provided to their own members cannot be held liable to service tax in view of the above case law and the impugned order demanding service tax on the services such as administrative fee provided to their members stand set aside.

8. In view of the above fact that the principle of mutuality has been upheld and no service tax is leviable on the services provided to their own members, I hold that the consideration received for providing services to the



others who are not members, shall be liable to payment of service tax. I find that the appellants had launched two projects viz. Flood-E-Bike and Flood IT in which two companies, which were not their member banks, participated. The services provided are therefore held to be in the nature of sales promotion covered under "Business Auxiliary service" under Section 65(19) of the Finance Act, 1994.

9. Now I take up the demand of service tax on stall income for sponsorship of Core Banking Solution. During this event, I find from the records of the case that the appellants received income from stalls. As detailed in para 3.1 of the show cause notice, Rs. 10,82,000/- has been received as delegation fees from the member banks. Except this amount, rest of the amount is liable to service tax under the category of "business exhibition" under Section 65 (19a) of the Finance Act.

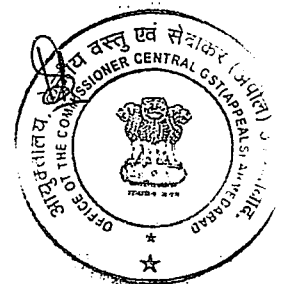
10. Now I take up the consideration of the issue of leviability of service tax on the amount under 'advertising agency service'. The Federation had received amounts from their member banks as donation to compensate the expenses of printing and preparing souvenir of the Federation. The activities of printing souvenir and circulation among the member banks is among the members only and is thus not liable to pay service tax on the amount under 'advertising agency service' in view of the principle of mutuality.

11. In view of the above findings, the appeal in relation to the show cause notice dtd. 16.10.2015 is disposed off by way of remand for specific purpose of quantification on the basis of grounds detailed above and the amount involved pertaining to services to the member banks will stand allowed and rest rejected. The appeal pertaining to the show cause notice dtd. 13.04.2016 stands allowed in view of the findings given above.

12. The amount of equal penalty imposed under Section 78 of the Act in show cause notice dtd. 16.10.2015 will stand modified according to the quantified amount confirmed by this order after remand proceedings and the equal penalty imposed in show cause notice dtd. 13.04.2016 under Section 78 of the Act stands set aside in view of the findings given above.

13. The ends of the justice will meet if the penalties imposed under Sections 77(2) and 70 (1) of the Act are reduced to 50% pertaining to the show cause notice dtd. 16.10.2015 the penalties imposed in show cause notice dtd. 13.04.2016 under Sections 77(2) and 70 (1) of the Act stands set aside in view of the findings given above.

14. The appeal is disposed off accordingly.



अपीलकर्ता द्वारा दर्ज की गयी अपील का निपटारा उपरोक्त तरीके से किया जाता है !

*उमा शंकर*  
(उमा शंकर)

केंद्रीय कर आयुक्त (अपील्स)  
अहमदाबाद

दिनांक: 18.01.2018

सत्यापित

*अध्याय*

(धर्मेंद्र उपाध्याय)

अधीक्षक (अपील्स),

केंद्रीय कर, अहमदाबाद

**By R.P.A.D.**

To:

M/s Gujarat Urban Co-op Bank Federation Ltd.,  
Co-operative Bank Bhawan,  
Ashram Road,  
Near Mithakhali Under Bridge,  
Ahmedabad-38009

**Copy to:-**

- (1) The Chief Commissioner, CGST, Ahmedabad Zone,
- (2) The Commissioner, CGST, Ahmedabad (South),
- (3) The Dy./Astt. Commissioner, CGST, Div.-VI, Ahmedabad (South),
- (4) The Dy./Astt. Commissioner(Systems),CGST, Ahmedabad (South),
- (5) Guard File,
- (6) P.A.File.



