



सत्यमेव जयते

आयुक्त (अपील) का कार्यालय,
Office of the Commissioner (Appeal),
 केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
 जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
 CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
 07926305065- टेलिफैक्स 07926305136



स्पीड पोस्ट

- क फाइल संख्या : File No : V2(ST)171/Ahd-South/2019-20 & V2(ST)34/EA-2/Ahd-South/2019-20 / 14021 To 14025
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-001-APP-100 & 101-2019-20**
 दिनांक Date : **21-02-2020** जारी करने की तारीख Date of Issue **26/2/2020**
 आयुक्त (अपील) द्वारा पारित
 Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. **SD-01/03/DC/AMA/2013-14** दिनांक: **30.05.2013** , **SD-01/24/DC/AMA/2012-13** दिनांक: **29.11.2012** , issued by Deputy. Commissioner, Div-I,STC, Ahmedabad
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Ahmedabad managent Association
Ahmedabad

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।

Any person aggrieved by this Order-In-Appeal 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 :

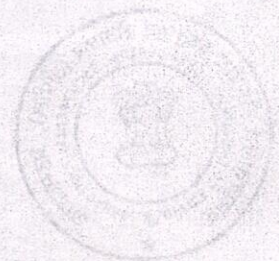
Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन 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 प्रक्रिया 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.



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

(A) 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.

(ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(B) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

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

(c) 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 दिनोंक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

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

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

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

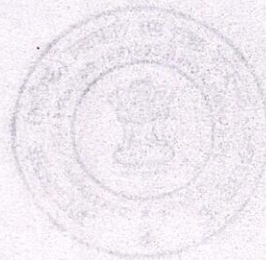
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

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

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

(क) 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 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद -380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.



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

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

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

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

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

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

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

- (6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇒ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील दाखिल करने के लिए पूर्व शर्त बना दिया गया है.

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

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.

इस 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।

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."



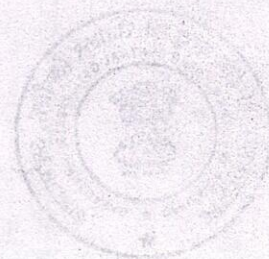
ORDER-IN-APPEAL

Two Appeals have been filed before this authority. The details are as under :

Srl. No.	Name of the Appellant / Respondent	Order-in-Original No. and Date	Passed by the Authority	Period of dispute	Amount involved (inclgd. Cess)
1	2	3	4	5	6
1	Appellant : Dy.Commissioner of Service Tax, Division-I, Ahmedabad. Respondent : M/s. Ahmedabad Management Association, AMA Management House, Torrent-AMA Management Centre, Atira Campus, Dr. Vikram Sarabhai Marg, Ahmedabad-380015.	SD-01/24/DC/AMA/12-13 Dated : 29.11.2012	Deputy Commissioner of Service Tax, Division-I, Ahmedabad.	01.04.2010 to 31.03.2011	Rs. 2,24,077 + Interest + Penalty
2	Appellant : M/s. Ahmedabad Management Association, AMA Management House, Torrent-AMA Management Centre, Atira Campus, Dr. Vikram Sarabhai Marg, Ahmedabad-380015. Respondent : Dy.Commissioner of Service Tax, Division-I, Ahmedabad.	SD-01/03/DC/AMA/13-14 Dated : 30.05.2013	Deputy Commissioner of Service Tax, Division-I, Ahmedabad.	01.04.2011 to 31.03.2012	Rs. 1,81,538 + Interest + Penalty

Hereinafter in this order (i) M/s. Ahmedabad Management Association, AMA Management House, Torrent-AMA Management Centre, Atira Campus, Dr. Vikram Sarabhai Marg, Ahmedabad-380015 will be referred as "assessee"; (ii) Deputy Commissioner of Service Tax, Division-I, Ahmedabad, will be referred as "adjudicating authority"; (iii) Order-in-Original No. SD-01/24/DC/AMA/12-13 dated 29.11.2012 will be referred as "impugned order-1"; (iv) Order-in-Original No. SD-01/03/DC/AMA/13-14 dated 30.05.2013 will be referred as "impugned order-2" (v) the details shown at Srl. No.1 will be referred as "Appeal No.1"; and (vi) the details shown at Srl. No.2 will be referred as "Appeal No.2".

2(i). The facts of the case pertaining to Appeal No.1, in brief, are that the assessee is holding Service Tax Registration No.AAATA5881DST001. It was noticed that the assessee was providing annual membership to their members for programme participation and corporate support for campus development. It appeared to the Department that the membership fees, recurring subscription fee or any other amount/consideration recovered from the members, in relation to provision of service, facilities or advantages, were liable to service tax. Therefore, the assessee was requested to provide the details of payment received towards "Service by Club or Association" for the period 01.04.2010 to 31.03.2011. From the information provided by the assessee, it was observed that the assessee was liable to pay service tax to the tune



of Rs.2,24,077/- (including Cess) for the said period under category 'services by club or association'.

2(ii). This resulted into issuance of a Show Cause Notice (hereinafter referred to as "SCN") dated 04.10.2011 issued by the Deputy Commissioner of Service Tax, Division-1, Ahmedabad under F.No.SD-01/4-143/SCN/AMA/11-12 proposing recovery/demand of Service Tax of Rs.2,24,077/- (including Cess) under Section 73(1) read with Section 68 alongwith interest under Section 75 of the Finance Act, 1994. Penalties for non-payment of service tax of the said amount and for non-filing of correct ST3 returns were also proposed under Section 76 under 77 of the Finance Act, 1994 respectively. Opportunities of personal hearing were granted to the assessee, however they chose not to attend the same and vide their letter dated 25.09.2012 filed written reply and requested for speaking order without any personal hearing in that regard. After considering the assessee's written reply, the adjudicating authority vide its impugned order-1 dropped the demand of service tax alongwith interest and also did not impose penalty.

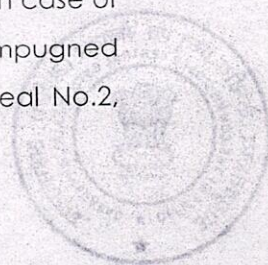
2(iii) However, being aggrieved with the said impugned order-1, the Department preferred the present appeal in the matter.

3(i). The Appeal No.2, pertains to the demand of service tax to the tune of Rs.1,81,538/- (including Cess) on the same issue for the further period from 01.04.2011 to 31.03.2012 confirmed by the adjudicating authority vide the impugned order-2.

3(ii). Being aggrieved with the impugned order-2, the assessee preferred an appeal before this authority against the said impugned order-2. A stay Order No.01(ST)/2014-15 dated 17.04.2014 was issued in the matter under which Stay was granted till the pendency of Appeal.

4. Since it was found that an appeal in respect of M/s. Calcutta Club Ltd. on the similar issue was pending before the Hon'ble Supreme Court, both the appeals were kept in Call-Book for the decision from the Hon'ble Supreme Court. The issue in the matter attained finality under Civil Appeal No.4184 of 2009 and 7497 of 2012, and thus both the cases were retrieved from the Call-Book and personal hearing was accorded to the assessee. They vide their letter dated 01.02.2020 submitted that the judgement of Hon'ble Apex Court in the case of M/s. Calcutta Club Ltd. may please be considered and requested speaking order with waiver of personal hearing.

5. I have carefully gone through the facts of the case available on records and submissions made by the assessee in the Appeal Memorandum and in their defence against the Departmental Appeal. The facts of the case reveal that in case of Appeal No.1, since the adjudicating authority dropped the SCN vide the impugned order-1 the Department has preferred the appeal however in case of Appeal No.2,



since the adjudicating authority confirmed the SCN vide the impugned order-2 the Assessee is in Appeal. Appeal No.1 is pertaining to the period 2010-11 and the Appeal No.2 is pertaining to the period 2011-12. However, the issue in both the appeals is same. The issue to be decided in the instant appeals is whether the service tax is payable by the assessee on the service which has been provided to the members.

6. The appellant has relied upon the judgement of Hon'ble Supreme Court dated 03.10.2019 in case of M/s. Calcutta Club Ltd. relevant to the present issue. The Hon'ble Supreme Court has discussed the issue at length and therefore it is very much necessary to look into the decision rendered by the Hon'ble Apex Court. The Hon'ble Apex Court at para-73, para-76, Para-80 and para-82 of its judgement has stated as under :

"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.

"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 "anybody 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."

"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."

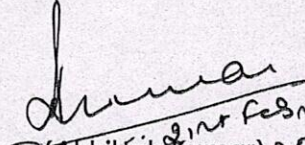
7. The Hon'ble Apex Court has discussed the definition of "club or association" as defined under Section 65(25a) [w.e.f. 16.06.2005] and under Section 65(25aa) [w.e.f. 01.05.2011] in para-58 and para-60 respectively under its judgement. Then under Para-80, the Apex Court held that in these definitions, the expression "body of persons" which are incorporated entities have been expressly excluded under Section 65(25a)(i) and 65(25aa)(i) of the Finance Act, 1994. The Apex Court has also held that in case of service to its member, there is an absence of existence of another person and one can not provide service to self. The Apex Court has also discussed the term 'established' and 'constituted' in detail in its judgement at para-72. From this, it



can be inferred that an incorporated body of persons, is out of the purview of service tax prior to 1st July, 2012.


8. The assessee has submitted a photocopy of Certificate of Registration issued by the Deputy Charity Commissioner, Ahmedabad Region, Ahmedabad in its favour. This certificate shows that the assessee is a Public Trust, registered under the Bombay Public Trusts Act, 1950 and therefore it can be said that the assessee is an incorporated one. It is also observed that the impugned order fails to establish that the demand of service tax is towards the service rendered by the assessee to the persons other than their members. In such scenario, the service can be considered to be rendered to self which is out of purview of service tax. The issue in the present appeal has attained finality in view of the recent judgement of the Hon'ble Apex Court referred here-in-above. Thus the demand of service tax under the impugned order does not sustain in view of the decision of the Hon'ble Apex Court.

9. In view of above discussion, I set aside the demand of service tax. Since the demand is set aside, the question of charging any interest on such demand and imposition of any penalty upon the assessee does not arise. The appeal filed by the assessee is allowed and the appeal filed by the Department is rejected. Both the appeals stands disposed of in above terms.


(Akhilés'h Kumar) 21.02.2020
Commissioner (Appeals)

Date : 21.02.2020

Attested


25/02/2020
(Jitendra Dave)
Superintendent (Appeal)
CGST, Ahmedabad.



BY R.P.A.D. / SPEED POST TO :

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Copy to :-

1. The Principal Chief Commissioner, CGST & Central Excise, Ahmedabad Zone.
2. The Principal Commissioner, CGST & Central Excise, Ahmedabad South Comm'rate.
3. The Addl./Jt. Commissioner, (Systems), CGST & Cen. Excise, Ahmedabad South Comm'rate.
4. The Dy./Asstt. Commissioner, CGST & Cen. Excise, Division-VI, Ahmedabad South Comm'rate.
5. Guard File.
6. P.A. File.

