



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)168 to 170/Ahd-South/2019-20/14539 TO 14544
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-127 to 129-2019-20
दिनांक Date : 17-03-2020 जारी करने की तारीख Date of Issue 05/06/2020
आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. SD-01/14/DC/AMA/2012 दिनांक: 08.10.2012 , 16/Addl
Commissioner/2012 दिनांक: 15.03.2012, SD-01/10/AC/AMRTA/13-14 दिनांक: 04.12.2013 ,
issued by Deputy Commissioner, Div-Div-I,STC, Central Tax, Ahmedabad-South
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Ahmedabad military & Rifle Training 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 दिनांक 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.

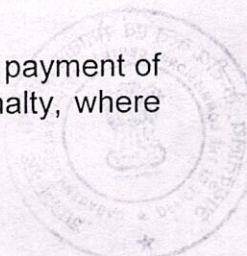
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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."

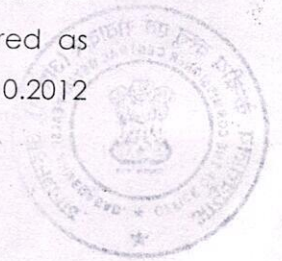


ORDER-IN-APPEAL

Three Appeals have been filed by M/s. The Ahmedabad Military and Rifle Training Association, Military Education Campus, Khanpur, Ahmedabad-380001 (here-in-after referred to as the "appellant") before this authority. The details in respect of these three appeals are as under :

Srl. No.	Appeal No.	Order-in-Original No., Date and Passed by	Period Involved	Demand of Service Tax under category of Service	Further Details	Service Tax amount involved (inclgd. Cess) (In Rs.)	Demand of Service Tax under Section of Finance Act, 1994	Charging of Interest and imposition of Penalties under Section of Finance Act, 1994
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1	V2(ST)169/Ahd-South/2019-20.	16/Additional Commissioner/2012; Dated : 15.03.2012; Addl. Commissioner, Central Excise, Ahmedabad-I.	16.06.2005 to 31.03.2009	Club or Association	Income excludes receipts for Guest Room and Snack Bar.	1793177	73(1)	Interest : Section 75 on the demand under Column (7) and for late payment of service tax on 11.03.2008 for the period April-2007 to Feb-2008; Penalties : Section 76, 77 and 78.
					Income pertaining to Room Charges	449242	73(1)	
			2006-07 to 2008-09	Business Support Service	For allowing the Caterer to use fully equipped premises alongwith furniture and utensils.	147817	73(1)	
2	V2(ST)168/Ahd-South/2019-20.	SD-01/14/DC/AMA/12-13; Dated : 08.10.2012; Deputy Commissioner, Service Tax, Division-I, Ahmedabad.	01.04.2010 to 31.03.2011	Club or Association	Income pertaining to Residential / Room Charges	183932	73(1)	Interest : Section 75; Penalties : Section 76, 77.
3	V2(ST)170/Ahd-South/2019-20.	SD-01/10/AC/AMRTA/13-14; Dated : 04.12.2013; Assistant Commissioner, Service Tax, Division-I, Ahmedabad.	01.04.2011 to 30.04.2011	Club or Association	Income pertaining to Residential / Room Charges	14214	73(1)	Interest : Section 75; Penalties : Section 76, 77.
			01.05.2011 to 31.03.2012	Short Term Accommodation	Income pertaining to Residential / Room Charges	193751	73(1)	
Total for 'Club or Association'						2440565		
Total for 'Business Support'						147817		
Total for 'Short-Term Accommodation'						193751		
GRAND TOTAL						2782133		

Hereinafter in this order (i) Show Cause Notice will be referred as "SCN"; (ii) the authority who has passed the Order-in-Original will be referred as "adjudicating authority"; (iii) Order-in-Original No.16/Additional Commissioner/2012 dated 15.03.2012 passed by the Addl. Commissioner of Central Excise, Ahmedabad-I will be referred as "impugned order-1"; (iv) Order-in-Original No.SD-01/14/DC/AMA/12-13 dated 08.10.2012

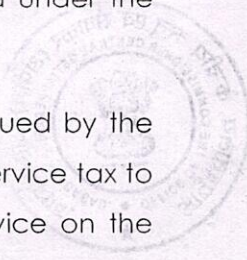


passed by the Dy.Commissioner of Service Tax, Division-I, Ahmedabad will be referred as "impugned order-2"; and (v) Order-in-Original No. SD-01/10/AC/AMRTA/13-14 dated 04.12.2013 passed by the Asstt. Commissioner of Service Tax, Division-I, Ahmedabad will be referred as "impugned order-3".

2(i). The facts of the cases, in brief, are that during the course of audit of the records of the appellant, it was noticed that the appellant was earlier registered under service tax but they surrendered their registration on 22.06.2005 on the ground that they were within the exemption limit of Small Scale Service Provider. They again obtained the registration of service tax in May-2007 and started paying service tax w.e.f. 01.04.2007. While reconciling the financial records with their Service Tax Returns, it was found that though they obtained the registration from May-2007, they were liable to pay the service tax from 16.06.2005 as the activity carried out by them was covered under 'Club or Association' Service w.e.f. 16.06.2005. Under reconciliation, the service tax liability came out to be Rs.17,93,177/- (including Cess) (excluding the income received from Guest Room and Snack Bar) for the period 16.06.2005 to 31.03.2009. It was also noticed that the appellant provided the facility or advantage of residential rooms to its members and their guests and received amount towards it, which appeared to be liable for service tax payment to the tune of Rs.4,49,242/- (including Cess) under Club or Association Service for the said period. It was further noticed that the appellant had entered into a catering contract with M/s. Balaji Caterers to run the restaurant inside the club premises on contract basis under which caterer was allowed to use the fully equipped premises alongwith furniture and utensils. For such facility, the appellant was retaining certain percentage of the income received by the caterer on the basis of bill amount charged by the Caterer to the Customers. The appellant avoided to provide the contract/agreement, made by them with the contractor, to the audit team. It appeared to the audit team that such activity of the appellant was falling under the category of 'Business Support Service' and they were liable to pay the service tax to the tune of Rs.1,47,817/- (including Cess) on such income during the period from 2006-07 to 2008-09. Apart from above, it was also noticed that for the period April-2007 to February-2008, payment of service tax to the tune of Rs.3,84,369/- was made on 11.03.2008 only. Thus it also appeared that the appellant was liable to pay the interest of Rs.19,620/- for such delayed payment of service tax. Thus, a SCN dated 13.04.2010 was issued by the Addl. Commissioner of Service Tax, Ahmedabad proposing demand of service tax under Section 73(1) of the Finance Act, 1994. Interest over such demand and the unpaid interest of Rs.19,620/- on late payment of service tax was also proposed to be recovered under Section 75 of the Finance Act, 1994. Penalties under Section 76, 77 and 78 of the Finance Act, 1994 were also proposed to be imposed upon the appellant.

2(ii). The adjudicating authority vide the impugned order-1, confirmed the demand of service tax alongwith interest and imposed penalties as proposed under the SCN.

2(iii). For the further period 2010-11, the SCN dated 29.09.2011 was issued by the Dy. Commissioner of Service Tax, Division-I, Ahmedabad proposing demand of service tax to the tune of Rs.1,83,932/- (including Cess) under the 'Club or Association' Service on the



amount received by the appellant towards service of facility or advantage of residential room to its members and their guests under Section 73(1) alongwith interest under Section 75 of the Finance Act, 1994. Penalties under Section 76 and 77 were also proposed to be imposed upon the appellant. The adjudicating authority, vide the impugned order-2, confirmed the demand of service tax alongwith interest and imposed penalties upon the appellant as proposed under the SCN.

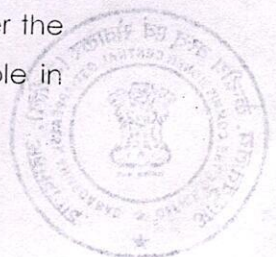
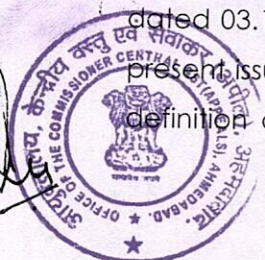
2(iv). For the month of April-2011, the service of room facility provided by the appellant to its members and their guests appeared to be classified under 'Club or Association'. However, from 01.05.2011 the service tax was imposed on the newly categorized service of 'Short-term Accommodation' service and thus the same activity of the appellant was appeared to be classified under 'Short-term Accommodation' Service w.e.f. 01.05.2011. Thus, SCN dated 10.10.2012 was issued by the Dy. Commissioner of Service Tax, Division-I, Ahmedabad to the appellant proposing demand of Service Tax to the tune of Rs.14,214/- (including Cess) and Rs.1,93,751/- (including Cess) under 'Club or Association' Service and 'Short-term Accommodation' Service respectively under Section 73(1) alongwith interest under Section 75 of the Finance Act, 1994. Penalties under Section 76 and 77 were also proposed to be imposed upon the appellant. The adjudicating authority vide the impugned order-3, confirmed the demand of service tax alongwith interest and imposed penalties upon the appellant as proposed under the SCN.

3. Being aggrieved with these impugned orders viz. impugned order-1, impugned order-2, and impugned order-3, the appellant preferred the appeals before this authority. Stay Order Nos. (i) 4(ST)/2014-15 dated 30.07.2014, (ii) 43(ST)/2013 dated 11.09.2013 and (iii) 5(ST)/2014-15 dated 30.07.2014, respectively were issued in the matter under which Stay was granted till the pendency of these Appeals.

4. It was noticed that an appeal in respect of M/s. Calcutta Club Ltd. on the similar issue was pending before the Hon'ble Supreme Court, and accordingly these three appeals were kept in Call-Book pending the decision from the Hon'ble Supreme Court. The issue in the matter has attained finality under Civil Appeal No.4184 of 2009 and 7497 of 2012 [2019(29)GSTL 545(SC)], and thus these three cases were retrieved from the Call-Book.

5. Personal hearing in the case was accorded to the appellant. Shri Pravin Dhandharia, Chartered Accountant, on behalf of the appellant attended the hearing on 26.02.2020. He reiterated the submissions made in the Appeal Memorandum. He stated that the Hon'ble Supreme Court in the case of M/s. Calcutta Club Ltd. has decided the issue and their cases are squarely covered by the judgement. He requested to drop the demand in view of the said judgement of the Supreme Court.

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. [2019(29)GSTL 545(SC)] relevant to the present issue and contended in their grounds of appeal that they are not falling under the definition of 'Club or Association' and their activity is public service and is charitable in

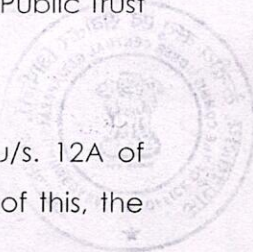


nature; that they are Charitable Trust duly registered under Section 12A of the Income Tax Act, 1961; that appellant is a non-profit making body and required to maintain income and expenditure account unlike other business concerns who are required to maintain profit & loss account; that the service provided by them to its members cannot be treated as service to other person but is a service to self; that the amount to the tune of Rs.55,33,222/- (Rs.9,18,980+9,27,665+21,44,313+15,42,264) was collected from non-members towards penalty for loss of I-Card, Kasar Income, Civilian Rifle Trg, Rifle Club, Sports & Youth Activity, Billiards, Maintenance Pre is not leviable to service tax; that the debtors as on 01.04.2005 to the tune of Rs.7,11,713/- and Rs.13,00,518/- towards collection from members till 15.06.2005 are out of purview of service tax as the tax is leviable w.e.f. 16.06.2005; that the Donation Receipts is out of purview of service tax in view of case law in respect of M/s. Cultural Society of Angamally v/s. CCE, Cochin as reported in 2007-TIOL-1490-CESTAT-Bang; that income from guest house is not subject to service tax as the same has become taxable w.e.f. 01.05.2011 under Section 65(105)(zzzzw); that 'Income from Snack Bar' is subject to service tax under Rental Income and not under Business Support Service as the agreement has been entered with M/s. Balaji Caterers is a rent agreement and rental are charged on the sharing basis and not the fixed amount and further the tax is already deposited under the category of Rental Service Head instead of Business Support Service; that demand is barred by limitation as there is no suppression or intention on part of them as the entire tax is paid suo-moto with interest; that there is no legal basis for imposing huge penalty.

7. I have carefully gone through the facts of the case available on records and submissions made by the appellant in the Appeal Memorandum and during the course of personal hearing. All the three appeals pertain to the same appellant. The issue involved in all the three appeals are that (i) whether the appellant is liable to pay the service tax under 'Club or Association' and 'Short-Term Accommodation' Service for providing the room facility to its members & their guests; and (ii) whether they are liable to pay service tax under 'Business Support Service' for allowing the caterer to use fully equipped premises alongwith furniture & utensils and receiving certain percentage of the bill amount charged by the caterer to the customers; (iii) whether the appellant is liable to pay the interest on the late payment of service tax amount.

8(i). It is the contention of the appellant that they are a Trust registered in the year 1947 (at Page-16 of Appeal Memorandum) however they also stated that they are registered in 1947 under the Societies Registration Act (at page-17). It is pertinent to mention that both the Acts are for different entities. However, none of the certificate in this regard was produced by the appellant either with the appeal or during the course of hearing. A photocopy of a Certificate of Registration was provided only after the same is requested by this office. This photocopy shows that the appellant is registered as Public Trust under The Bombay Public Trust Act, 1950.

(ii). They further submitted that they are Charitable Trust registered u/s. 12A of Income Tax Act, 1961 and non-profit making body (page-24). On the pretext of this, the



appellant treated itself being exempted from the levy of service tax also and sought clarification from the Department. Though the Department (on the basis of the Circulars issued by the CBEC, New Delhi) clearly informed them about the applicability of service tax on their activity, instead of challenging that before the proper authority, they kept themselves involved in unnecessary correspondence. The Circular dated 19.09.2006 has clearly stated that the exemption under the Income Tax Act on the ground of being a public charitable institution is of no consequence to levy of service tax. It is pertinent to mention that the service tax is governed by the Finance Act, 1994 which is altogether different from the Income Tax Act, 1961 meant for different purpose. Therefore a benefit which is available in a particular law, is not mandatorily available in a altogether different law. It is further noticed that for availing income tax benefit, registration under Section 12A of the Income Tax Act is required. Thus, by registering itself under Section 12A of the Income Tax Act, 1961 for availing some benefit under income tax law, does not make the appellant enable to be exempted under Service Tax Law also. Therefore this contention of the appellant does not hold water.

8(iii). At one hand, the appellant contended that they are not falling under the category of 'club or association' (page-22) and on the other hand during the course of hearing, they relied upon the judgement of the Hon'ble Supreme Court pronounced in respect of 'club or Association'. This establishes that the appellant themselves admitted that they were properly classified under 'Club or Association' category at the relevant point of time. Now let us look at the said judgement of the Apex Court under which the Hon'ble Court has discussed the issue at length. 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."



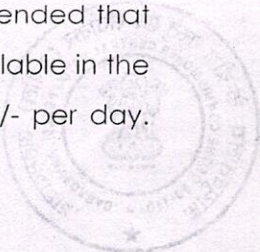
9. The Hon'ble Apex Court has discussed the definition of "club or association" as defined under Section 65(25a) [w.e.f. 16.06.2005] and under Section 65(25aa) [w.e.f. 01.05.2011] in para-58 and para-60 respectively under its judgement. Then under Para-80, the Apex Court held that in these definitions, 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 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.

10. The photocopy of Certificate of Registration submitted by the appellant shows that they are a Public Trust, registered under the Bombay Public Trusts Act, 1950 and therefore it can be said that the appellant is an incorporated one. It is also observed that the impugned order fails to establish that the appellant is an unincorporated one. 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 orders does not sustain in view of the decision of the Hon'ble Apex Court so far as it pertains to the demand of service tax under 'Club or Association' Service and therefore is set aside.

11(i). It is further observed that the adjudicating authority vide the impugned order-3 has confirmed the demand of service tax under category of 'Small-Term Accommodation' Service w.e.f. 01.05.2011. The said service is defined under erstwhile Section 65(105)(zzzzw) of the Finance Act, 1994 as under :

"Taxable Service means any service provided or to be provided to any person by a hotel, inn, guest house, club or campsite, by whatever name called, for providing of accommodation for a continuous period of less than three months."

11(ii). This service is all together a different service and does not have any restriction of being incorporated etc. as prescribed under 'Club or Association' Service. Therefore, when the service tax has been demanded under a category, other than 'Club or Association', the judgement of the Apex Court, pronounced for 'Club or Association' service, can not be made applicable for the given category of service. Even the concept of mutuality will not apply to the given category of service, as the concept of mutuality has been discussed by the Hon'ble Apex Court in consonance with the 'Club or Association' Service and the same can not be made applicable to each and every service defined under the Finance Act, 1994. From the above discussion, it is clear that the facility or advantage of room service provided by the appellant was clearly falling under the said category of service and therefore service tax was correctly demanded by the adjudicating authority under the said category of service. However, the appellant has contended that by virtue of Notification No.31/2011-ST dated 25.04.2011, the exemption was available in the said service where the declared tariff of accommodation is less than Rs.1,000/- per day. The text of the said Notification is as under :



"Short-term Accommodation service — Exemption when declared tariff less than Rs. 1000 per day

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable service as referred to in sub-clause (zzzzw) of clause (105) of section 65 of the said Act, when the declared tariff for providing of such accommodation is less than rupees 1000 per day from the whole of the service tax leviable thereon under section 66 of the said Act.

Explanation.- For the purpose of this notification, "declared tariff" includes charges for all amenities provided in the unit of accommodation like furniture, air-conditioner, refrigerators etc., but does not include any discount offered on the published charges for such unit.

2. This notification shall come into force on the 1st day of May, 2011.

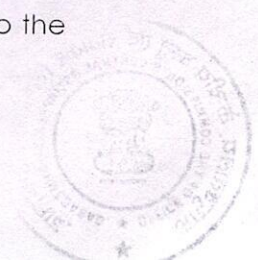
[Notification No. 31/2011-S.T., dated 25-4-2011]"

11(iii). It is noticed that according to the said Notification, exemption from whole of service tax is available only when the declared tariff of the room/accommodation is less than Rs.1,000/- per day. This notification makes it clear that if the declared tariff of a room/accommodation is Rs.1,000/- or more, the service tax would be leviable on the 'declared tariff' and not on the actual amount received by the service provider towards the said room/accommodation. No records have been provided by the appellant regarding the 'declared tariff' of the rooms. Though the appellant has submitted some photocopies of sample bills, but from that it is not clear whether the charges of the rooms are as per 'declared tariff' of the rooms or as per actual basis. There is also ambiguity in the Bills. For example in Bill No.312 dated 05.07.2011 the Room No.103, 104, 105, 106 have been provided for two days only and Rs.8,000/- have been charged, means thereby each room has been provided for Rs.1,000/- per day. Whereas in the Bill No.400 dated 07.09.2011 the same Room No.103 has been provided for two days and Rs.1,000/- has been charged, means thereby that the said room was provided for Rs.500/- per day. Thus, the demand pertains to the 'Short Term Accommodation' Service is required to be quantified on the basis of the 'declared tariff' only. Under the Circumstances, the demand of service tax under the category of 'Short Term Accommodation' Service is required to be re-quantified in view of the above provisions of law and therefore it would be prudent that for this part of demand the matter may be remanded back to the adjudicating authority for re-quantification of demand. It would also require the appellant to produce the documents in respect of declared tariff of the rooms before the adjudicating authority.

12(i). So far as the demand of service tax in respect of 'Business Support Service' is concerned, as confirmed by the adjudicating authority under its impugned order-1, Section 65(104c) of the Finance Act, 1994 defines the 'Business Support Service as under :

"support service of business or commerce means services provided in relation to business or commerce and includes evaluation of prospective customers, telemarketing, processing of purchase orders and fulfillment services, information and tracking of delivery schedules managing distribution and logistics, customer relationship management of services, accounting and processing of transactions, operational assistance for marketing, formulation of customer service and pricing policies, infrastructural support service and other transactions processing."

It is observed that the appellant was retaining certain percentage of the income received by the caterer on the basis of bill amount charged by the Caterer to the



Customers and the appellant is saying it as 'Income from Snack Bar'. This income on percentage basis is received towards the use of premises alongwith furniture and utensils by the caterer which is clearly covered under infrastructural support service under the said definition. The appellant is claiming it as 'Rental Income' and also claimed that Agreement with the caterer is a 'Rent Agreement'. It is very much necessary to mention here that right from the Audit, SCN, Adjudication and now at Appeal stage the appellant is only claiming such thing without putting forward any documentary evidence in this regard. It has been specifically mentioned in the impugned order-1 also, that the appellant has not submitted/provided the Agreement to substantiate their claim. Thus, the records and facts of the case reveal that the appellant is claiming the things without any substantial supporting documents in this regards and they avoided to produce/submit the same before various authorities and at various stage. In absence of such documents, I am not inclined to accept the simple say of the appellant without any substantial supporting document and hold that the adjudicating authority has rightly demanded the service tax on the 'Business Support Service' provided by the appellant to the caterer and therefore uphold the same. Though the appellant has claimed that they are paying the service tax under rental Service Head instead of Business Support Service, but again, there is absence of documents in support of their claim. The appellant also failed to prove that from which date they are paying the service tax on such rent income and whether the rent income is same as Business Support Service or is different from the Business Support Service. Therefore, this argument of the appellant also doesn't hold any ground and simple talk.

13. It was found from the records of the appellant itself that the payment of service tax to the tune of Rs.3,84,369/-, was made on 11.03.2008 only, which was pertaining to the period April-2007 to February-2008. Section 75 clearly states that if the tax is not credited to the account of the Government within the specified period, the interest would be payable. No contention has been put forward by the appellant regarding the charging of interest under Section 75 on the service tax amount paid late by the appellant. Also there can not be any escape or argument with the appellant for such clear provision of law and thus the charging of interest confirmed vide the impugned order-1 is upheld.

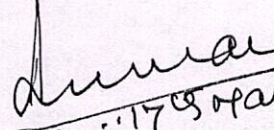
14. In view of above discussion, I order that (i) the demand of service tax confirmed under the impugned orders under the category 'Club or Association' Service is set aside; (ii) the demand of service tax confirmed under the impugned order-1 under the category of 'Business Support Service' is upheld; (iii) the interest charged for late payment of service tax under impugned order-1 is upheld and (iv) the demand of service tax confirmed under the impugned order-3 under the category of 'Short Term Accommodation' Service is upheld. However, since the exemption under Notification No.31/2011-ST dated 25.04.2011 is available on declared tariff, as discussed under para-11 here-in-above, the demand of service tax is required to be re-quantified. It goes without saying that where demand has been upheld the interest over such demand is also upheld.

So far as the penalty under Section 76, 77 and 77 are concerned, it has been decided by the higher authorities in number of cases that the penalty under Section 76 and 78 can not be imposed simultaneously. Therefore, the penalty imposed under Section 76 under the



impugned order-1 is set aside and the penalties imposed under Section 77 and Section 78 under impugned order-1 are upheld in accordance with the demand upheld in this order. Penalty imposed under Section 76 and 77 under impugned order-2 are set aside since the demand confirmed under the said impugned order has already been set aside. Penalty imposed under Section 76 and 77 under the impugned order-3 are upheld in accordance with the confirmation of demand of service tax under the category of 'Short Term Accommodation' Service already upheld in this order. It is specifically mentioned here that for the demand of service tax under the category of 'Short Term Accommodation' Service, the matter is remanded to the adjudicating authority for re-quantification and for passing the order afresh. The appellant is also directed to submit the required document before the adjudicating authority in the matter.

15. The above referred three appeals, filed by the appellant, are disposed of in accordance with the directions contained here-in-above.


(Akhilesh Kumar) 17/06/20
Commissioner (Appeals)

Date : .03.2020

Attested


03/06/20

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



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

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