



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- टेलीफैक्स 07926305136



स्पीड पोस्ट

क फाइल संख्या : File No : V2(ST)184/Ahd-South/2019-20/14545. 7014550

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-016-2020-21  
दिनांक Date : 26-05-2020 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. 41/STC-AHD/ADC(AS)/2012-13 दिनांक: 29.01.2013 ,  
issued by ,Addl. Commissioner ,Service tax,Ahmedabad. .

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent  
Rajpath Club Ltd.  
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, 4<sup>th</sup> 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, अपीलों के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद -380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> 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 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 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.

यदि आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 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 the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



ORDER-IN-APPEAL

M/s. Rajpath Club Ltd., Sarkhej-Gandhinagar Highway, Ahmedabad-380058 (hereinafter referred to as the “*appellant*”) has filed the present appeal against the Order-in-Original No.41/STC/AHD/ADC(JSN)/2012-13 dated 29.01.2013 (hereinafter referred to as the “*impugned order*”) passed by the Addl. Commissioner of Service Tax, Ahmedabad, (hereinafter referred to as the “*adjudicating authority*”).

2. The fact of the case, in brief, are that the appellant was holding Service Tax Registration No.AAACR7379AST001 for providing various services. During the course of audit of the records of the appellant by the Department, it was noticed that they were receiving amount from the members and their guests for using the facility or advantage of residential rooms. It appeared that the amount received by the appellant from their members in lieu of advantages/facilities provided to them is taxable under club or association service. Therefore, the data was sought by the Range Office regarding such amount received by the appellant towards such activity for the period 2010-11 and accordingly a Show Cause Notice dated 20.09.2011 (hereinafter referred to as the “*SCN*”) was issued to them proposing demand of service tax amounting to Rs.27,76,253/- 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 under the said SCN.

3. After hearing the appellant and considering the submissions made by them, the adjudicating authority vide the impugned order confirmed the demand of service tax alongwith interest and also imposed penalties upon the appellant as proposed under the said SCN.

4(i). The appellant preferred an appeal before this authority against the impugned order on the grounds that (a) they had not rendered Club or Association service for renting rooms as club and its members are same; (b) principle of mutuality is applicable as the members and club are same entity; and (c) rooms rent charges received by them are covered under exclusion clause of renting of immovable property services and hence not taxable most of the room rents have been received from the guests. They

relied upon the case laws of M/s. Karnavati Club Ltd. passed by CESTAT, Ahmedabad and Gujarat High Court in support of their contention.



4(ii). A stay Order No.31(ST)/2013 dated 21.08.2013 was issued in the matter under which Stay was granted from recovery till the pendency of Appeal without insisting any pre-deposit. Further, 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, the matter was kept in Call-Book for the decision from the Hon'ble Supreme Court. Since the decision in the matter attained finality under Civil Appeal No.4184 of 2009 and 7497 of 2012, reported under 2019(29)GSTL 545(SC), this case was retrieved from the Call-Book.

5. Personal hearing was accorded to the appellant on 06.02.2020. Shri Bishan R. Shah, Chartered Accountant, represented the appellant and reiterated the submission made in appeal memorandum. They also referred and relied upon the judgement of Hon'ble Supreme Court in case of M/s. Calcutta Club Ltd. as supra and contended that service tax is not leviable in their case. He also submitted a copy of the order dated 15.11.2019 of the Hon'ble CESTAT, Ahmedabad in their own case and requested to drop the demand.

6. I have carefully gone through the facts of the case available on records and submissions made by the appellant in the Appeal Memorandum as well as during the course of personal hearing. It is observed that the issue to be decided in the instant appeal is whether the service tax is payable by the appellant on the income amounting to Rs.2,69,53,909/- received by them for use of residential rooms under the category of Membership of Club or Association Service as defined under Section 65(105)(zzze) of the Finance Act, 1994. The demand pertains to financial year 2010-11.

7. It is observed in this regard that the issue of taxability under Club or Association Service has attained finality in view of the judgement of Hon'ble Supreme Court dated 03.10.2019 in case of M/s. Calcutta Club Ltd. reported under 2019(29)GSTL 545(SC). The appellant has also submitted a copy of Memorandum and Articles of Association which consists of a Certificate of Incorporation issued by the Registrar of Companies in their favour.

8. Since the issue has attained finality on account of judgement of Hon'ble Supreme Court where the Apex Court has discussed the issue at length and therefore it is much necessary to look into the decision rendered by the 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 1<sup>st</sup> July, 2012 were not included in the service tax net."

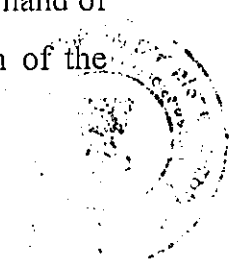
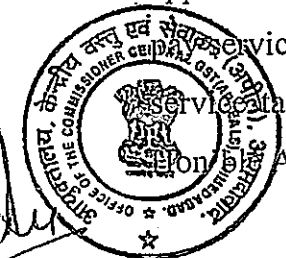
"76. What has been stated in the present judgement so far as sales tax is concerned applies on all fours to service tax; as, if the doctrine of agency, trust and mutuality is to be applied qua members' clubs, there has to be an activity carried out by one person for another for consideration. We have 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 "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."

"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. From the above; it is very much clear that the Hon'ble Apex Court has held that an incorporated company, cooperative society and clubs or association is out of the purview of service tax not only prior to 1<sup>st</sup> July, 2012 but also after 1<sup>st</sup> July, 2012. The Apex Court has also discussed the term 'established' and 'constituted' in detail in its judgement at para-72. The Certificate of Incorporation issued by the Registrar of Companies, shows that the appellant is incorporated under the Companies Act, 1956 and therefore it can be said that the appellant is an incorporated one which has been kept out of the purview of service tax. Moreover, the impugned order fails to establish that the amount has been received from the persons other than members. 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. It is also observed that based on the judgement of Hon'ble Supreme Court supra, the Tribunal, Ahmedabad has vide order dated 14.11.2019 in appellant's own case has held that the appellant being an incorporated club is not liable to

service tax under Membership of Club or Association Service. Hence, the demand of service tax under the impugned order does not sustain in view of the decision of the Hon'ble Apex Court.



10. 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 appellant does not arise. The appeal filed by the appellant stands disposed of in above terms.

*Akhilash Kumar*  
26 May, 2020  
(Akhilash Kumar)  
Commissioner (Appeals)

Date : .05.2020

Attested

*Jitendra Dave*  
03/06/20

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



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

M/s. Rajpath Club Ltd.,  
Sarkhej-Gandhinagar Highway,  
Ahmedabad-380058.

**Copy to :-**

1. The Principal Chief Commissioner, CGST & Central Excise, Ahmedabad Zone.
2. The Principal Commissioner, CGST & Central Excise, Ahmedabad South Comm'rate.
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 Dy./Asstt. Commissioner, CGST & Cen. Excise, Division-VI, Ahmedabad North Comm'rate.
5. Guard File.
6. P.A. File.

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