



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-

टेलफैक्स 07926305136



रजिस्टर्ड डाक ए.डी. द्वारा

01/09/2020

क फाइल संख्या : File No : V2(ST)172/Ahd-South/2019-20/15552 70 15556

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-33-2020-21

दिनांक Date : 24-08-2020 जारी करने की तारीख Date of Issue 24-08-2020

श्री अखिलेश कुमार आयुक्त (अपील) द्वारा पारित

Passed by Shri. Akhilesh Kumar, Commissioner (Appeals)

ग Arising out of Order-in-Original No SD-01/39/DC/Gujarat Club/11-12 दिनांक: 31.01.2012 issued by Deputy Commissioner, Div-I, Service Tax, Ahmedabad.

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

M/s Gujarat Club,
Behind City Civil Court, Bhadra, Ahmedabad-380001

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 issued under the Central Excise Act 1944, may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :

Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अंतत 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।

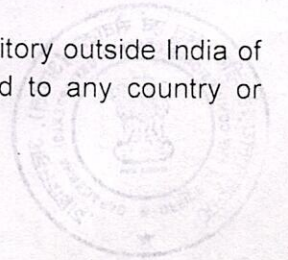
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by 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.

(b) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

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



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

(b) In case of rebate of duty of excise on goods exported to any country or territory outside india, of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

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

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

अतिम 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।

(d) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित 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 जीएसटी अधिनियम, 2017 की धारा 112 के अंतर्गत:-

Under Section 112 of CGST act 2017 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.

- (14) 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)

- (15) 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)

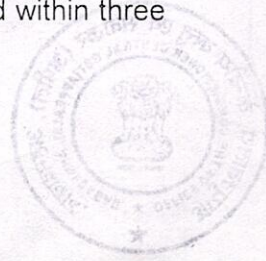
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (xiii) amount determined under Section 11 D;
(xiv) amount of erroneous Cenvat Credit taken;
(xv) 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।

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

II. Any person aggrieved by an Order-In-Appeal issued under the Central Goods and Services Tax Act,2017/Integrated Goods and Services Tax Act,2017/ Goods and Services Tax(Compensation to states) Act,2017,may file an appeal before the appellate tribunal whenever it is constituted within three months from the president or the state president enter office.



ORDER-IN-APPEAL

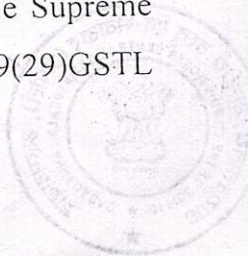
M/s. Gujarat Club, Behind City Civil Court, Bhadra, Ahmedabad-380001 (hereinafter referred to as the “*appellant*”) has filed the present appeal against the Order-in-Original No.SD-01/39/DC/Gujarat Club/11-12 dated 31.01.2012 (hereinafter referred to as the “*impugned order*”) passed by the Deputy Commissioner of Service Tax, Division-I, Ahmedabad, (hereinafter referred to as the “*adjudicating authority*”).

2. The facts of the case, in brief, are that the appellant was holding Service Tax Registration No.AAABG0111EST001 for providing various service under the category of Club or Association Service. On the basis of gathered intelligence, summons/letters were issued to the appellant on various dates starting from 09.03.2007 onwards for providing financial and other records/documents for the period 2005-06 to 2008-09, for investigation and recording statement. The documents/records were provided by the appellant on 02.12.2009 and 23.02.2010 only. However, no one appeared for giving statement. The records submitted by the appellant revealed that they were receiving amount under different heads (which has already been shown in Show Cause Notice and in the impugned order) but they were neither paying service tax on the gross income so received by them nor showing the said gross income in their ST-3 returns. It appeared that the amount received by the appellant from their members in lieu of advantages/facilities provided to them were taxable under club or association service w.e.f. 16.06.2005. Therefore a Show Cause Notice dated 22.04.2010 (hereinafter referred to as the “*SCN*”) was issued to them proposing demand of service tax amounting to Rs.2,64,417/- (for the period 16.06.2005 to 31.03.2006, 2006-07, 2007-08 and 2008-09) under proviso to Section 73(1) by invoking extended period alongwith interest 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 under the said SCN for failure to pay service tax, failure to assess the correct taxable value and not showing the same in ST-3 returns and suppressing the value and nature of taxable service, respectively. Further penalty under Section 77(1)(c)(iii) was also proposed for failure to respond to the various summons issued to them.

3. After hearing the appellant and considering the submissions made by them, the adjudicating authority vide the impugned order confirmed the demand alongwith interest and also imposed penalties as proposed under the SCN. However, the adjudicating authority did not impose penalty under Section 77(1)(c)(iii) as proposed under the SCN.



4. The appellant preferred an appeal before the then Commissioner(Appeals-IV), Central Excise, Ahmedabad against the impugned order. A Stay Order No.45(ST)/2013 dated 16.09.2013 was issued in the matter under which Stay from recovery was granted till the pendency of Appeal without insisting any pre-deposit. However, 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 in the matter was granted to the appellant on 19.08.2020. Shri Amit Laddha, Advocate, represented the appellant and submitted that the issue has been decided by the Hon'ble Supreme Court in Sports Club of Gujarat Ltd. and Calcutta Club Ltd. reported in 2019(29)GSTL 545(SC) and requested to drop the demand based on the said judgement.
6. I have carefully gone through the facts of the case available on records and submissions made by the appellant in the Appeal Memorandum. The issue to be decided in the instant appeal is whether the service tax is payable by the appellant under the club and association service which has been provided to the members under the category of Membership of Club or Association Service as defined under erstwhile Section 65(105)(zzze) of the Finance Act, 1994. The period involved is from 2005-06 to 2008-09.
7. It has been contended by the appellant in their grounds of appeal that (i) theirs is the members' club and services offered by them are only as a matter of convenience for the use by their members (ii) they being a members' club rendering services only to its members the doctrine of mutuality is applicable in their case and based on various judgements no tax can be levied to the members' club on the ground that there is absence of any other person (iii) sale of cards can attract at the most VAT and not service tax (iv) the demand pertaining to the sale of old/new cards, electric light charges and telephone charges have been calculated for the period prior to 16.06.2005 also whereas service tax on club or association has been imposed only on and from 16.06.2005 and therefore no demand can be raised for the period prior to 16.06.2005. The issue in the matter 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).



8. Since the appellant has relied upon a recent judgement pronounced by the Hon'ble Supreme Court in M/s. Calcutta Club Ltd. case, where the Apex Court has discussed the issue at length and therefore it is very 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 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 "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 apparent that the Hon'ble Apex Court has held that the service rendered by the members' club to its member cannot be considered to be a service from one person to another which is required for levy of service tax. Hence, the issue is no longer res-integra and the Hon'ble Supreme Court has decided the matter in favour of the appellants. The Apex Court has held that in case of member's club, where an activity is carried out for members, the same can not be considered to be an activity to others but for self only.

10. It is also observed that the impugned order fails to establish that the demand of service tax is towards the service rendered by the appellant 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 matter 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). Thus, the demand of service tax under the impugned order does not sustain considering the said decision of the Hon'ble Apex Court.



11. 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.

Date : .08.2020

Attested

[Signature]
31/08/2020

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

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

M/s. Gujarat Club,
Behind City Civil Court, Bhadra,
Ahmedabad-380001.

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-I, Ahmedabad South Comm'rate.
- ✓ 6. Guard File.
7. P.A. File.

[Signature]
24th August, 2020..
(Akhilesh Kumar)
Commissioner (Appeals)





05.03/2012