



सत्यमेव जयते

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



☎ 26305065-079 : टेलिफैक्स 26305136 - 079 :

DIN-20201264SW0000116096

स्पीड पोस्ट

- क फाइल संख्या : File No : V2(ST) 191/Ahd-South/2019-20
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-60/2020-21
दिनांक Date : 27.11.2020 जारी करने की तारीख Date of Issue : 30.12.2020
आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. ST/Addl.Commr-KVSS/12/2009-2010 dated 12.01.2010 passed by the Additional Commissioner, Service Tax Commissionerate, Ahmedabad.
- ध अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

M/s Odhav Enviro Projects Ltd.,
Plot No.25, 12/B, 266/4,
GIDC Estate, Odhav,
Ahmedabad-382415.

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 क्री 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 प्रकिया 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:-

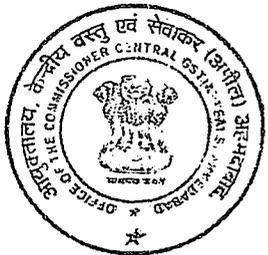
Appeal to Custom, Excise, & Service Tax Appellate Tribunal:

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत के अंतर्गत:-

Under Section 35B/ 35E of Central Excise Act, 1944 or Under Section 86 of the Finance Act, 1994 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 (सिस्टेंट) 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.



- (2) The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of 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 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 adjudicating authority shall bear 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 contained 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 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

This order arises on account of appeal filed by M/s Odhav Enviro Projects Ltd., Plot No. 25, 12/B, 266/4, GIDC Estate, Odhav, Ahmedabad-382415 (hereinafter referred to as 'Appellant') against the Order-in-Original No. ST/Addl.Commr-KVSS/12/2009-2010 dated 12.01.2010 (hereinafter referred to as 'impugned order') passed by the Additional Commissioner of the erstwhile Service Tax Commissionerate, Ahmedabad (hereinafter referred to as 'adjudicating authority').

2. Facts of the case, in brief, are that the appellant is a Public Limited Company registered under the Companies Act, 1956. They had a Common Effluent Treatment Plant at 25, GIDC Estate, Odhav, Ahmedabad to collect, convey, treat and dispose off the primary/secondary treated effluent generated by their member units situated at GIDC Estate, Odhav. Towards providing the said service, they were collecting from their members various charges viz. capital cost pro-rata, Treatment and Maintenance charges on pro-rata basis and effluent transfer fees in case a member transferred his registered effluent quantity to another member after obtaining permission from their company. Penalty was collected in the cases where the members have paid their dues late. They were not paying any service tax on the various above said charges collected from their member towards the said services provided nor they were registered with the Service Tax Department. The department contended that the Effluent Treatment Services provided by the appellant to their members were taxable service under the category of "Club or Association Service" defined under sub-clause (zzze) of clause (105) of Section 65 of the erstwhile Finance Act, 1994 (hereinafter referred to as 'the Act') read with clause (25a) of Section 65 of the Act and they were liable to pay service tax on the various charges collected from their members towards the said services provided. Therefore, they were issued with a Show Cause Notice dated 03.07.2008 calling upon them to explain as to why the effluent services provided by them to their members should not be classified as a taxable service under the category of "Club or Association Service" and why the amount of Rs.1,26,48,888/-, calculated on the gross amount collected for providing that service amounting to Rs.1,41,29,354/-, considering it as cum-tax value, during the period from 16.06.2005 to 31.03.2008 should not be considered as taxable value and why the service tax amounting to Rs.14,80,467/- payable by them on the said taxable value but not paid should not be recovered from them along with interest and why penalty should not be imposed on them under Section 76, 77 and 78 of the Act for contraventions of various provisions of the Act. The said Notice was adjudicated by the adjudicating authority vide the impugned order wherein he had held the effluent services provided by the appellant as taxable service under the category of 'Club or Association Service' category and confirmed the demand of service tax along with interest and imposed penalties under Section 76, 77 and 78 of the Act.

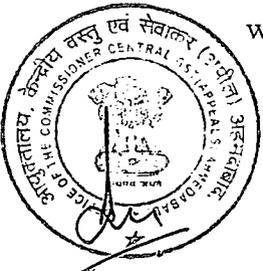
3. Feeling aggrieved with the impugned order, the appellant has filed the present appeal mainly on the following grounds:



- (a) The appellant is not a Club or Association as the company was established by the law as laid down by Hon'ble Gujarat High Court;
- (b) Statutory definition of Club or Association Service specifically excludes any body established or constituted by or under any law. Further, it also excludes the person or body of persons engaged in any activity having objectives which are in the nature of public service;
- (c) The object of appellant company is not of generating profits;
- (d) The Hon'ble High Court of Gujarat in the case of Green Environment Services Co.Op. Society Ltd. has held that the activity for ensuring protection of the environment is certainly an activity in public interest;
- (e) The appellant does not render services, facilities or advantages;
- (f) Since the appellant company has been established by the order of Hon'ble High Court on public interest litigation, the activity undertaken by the appellant is necessarily in public interest;
- (g) Ministry of Labour and Employment of Gujarat issued notification to the effect that occupation of workers under appellant company is a public service under Industrial Disputes Act, 1947;
- (h) The appellant company is not providing services to its member but providing services to the public at large;
- (i) As such, the appellant could not be covered under the ambit of Club or Association Service; and
- (j) The adjudicating authority has not considered the submissions made by the appellant in its right perspective and also not considered the various case laws relied upon by them in support of their contention.

They also challenged the invocation of extended period for the demand and the various penalties imposed on them and relied on various case laws in support of their contentions.

4. The present appeal was transferred to Call Book as a departmental appeal on similar issue, under Civil Appeal No.7924 of 2015, in the case of M/s Green Environment Services Co-operative Society Ltd. was pending before the Hon'ble Supreme Court of India for decision. The Hon'ble Supreme Court vide their Order dated 03.10.2019 in the case of State of West Bengal Vs. Calcutta Club Ltd. [2019 (29) G.S.T.L. 545 (S.C.)] has dismissed the above Civil Appeal filed by the department. In view of the disposal of the departmental appeal, the present appeal was retrieved from Call Book and appeal proceedings on the same were reopened.



5. Personal hearing in the matter was held on 21.10.2020. Shri P.G. Mehta, Advocate, attended the hearing on behalf of the appellant. He re-iterated the submissions made in Appeal Memorandum and also made additional written submissions for consideration. In the additional submissions, they after briefly stating their contentions made in the Appeal, made the following the submissions that:

- Service provided by a society to its member came to be declared as unconstitutional by Hon'ble High Court of Gujarat in the case of Sports Club of Gujarat Ltd. Vs. UOI cited at 2013(31)STR-645 (Guj.) and Hon'ble High Court of Gujarat in the case of Green Environment Services Co-operative Society Ltd. cited 2015(37)STR0961 (Guj.) set aside the order of Commissioner of Service Tax relying on the above judgement. As such service tax cannot be demanded from a society providing services to its members;
- In the light of the Notification No.42/2011-ST dated 25.07.2011 as amended by Notification No.01/2012-ST dated 17.03.2012 and clause 145 of the Finance Bill, 2012, the Club or Association Service rendered in relation to common effluent treatment plant has been exempted retrospectively from 16.06.2005. In view of the said exemption, the demand in the case needs to be quashed and set aside;
- Identical issue in their own case came up before Hon'ble Commissioner (Appeals), wherein service tax confirmed for the period from October 2009 to March 2010 was set aside under OIA No.279/2012(STC)/SKS/Commr(A)/Ahd dated 22.11.2012; and
- They submitted various documents from the Central/State Government to establish that the common effluent treatment plant was established with the financial assistance of Central as well as State Government and therefore were eligible for exemption provided under Notification No.42/2011-ST dated 25.07.2011 as amended.

6. I have carefully gone through the facts of the case, appeal memorandum, the submissions made during the hearing and in the additional written submissions. It is observed that the issue to be decided in the case is as to whether the Effluent Treatment Services provided by the appellant to their members in the case was a taxable service falling under the category of 'Club or Association Service' as defined under sub-clause (zzze) of clause (105) and clause (25a) of Section 65 of the Act or not and whether the various charges collected by them from their member towards providing the said service is leviable to service tax or not.

7. I find that similar issue was agitated by the department before the Hon'ble Supreme Court under Civil Appeal No. No.7924 of 2015 filed against Hon'ble High Court of Gujarat decision dated 15.12.2014 in SCA No.30148 of 2007 in the case of M/s Green Environment Services Co-operative Society Ltd.. The Hon'ble High Court had given their decision in the



said matter relying on the decision of the Division Bench of same High Court in the case of Sports Club of Gujarat Vs. Union of India [2013 (13) STR 645 (Guj.)], which was also challenged by the department, under SLP (C) No.024977/2013 /Civil Appeal No.7772 of 2019, before the Hon'ble Supreme Court. Both these appeals filed by the department were dismissed by the Hon'ble Supreme Court vide their Order dated 03.10.2019 in the case of State of West Bengal Vs. Calcutta Club Ltd. [2019 (29) G.S.T.L. 545 (S.C.)]. The Hon'ble Apex Court in their above decision has upheld the view taken by the High Court of Gujarat in the case of Sports Club of Gujarat Vs. Union of India (supra).

7.1 The issue on taxability of the services in dispute raised by the appellant in the appeal already stand decided by the Hon'ble Supreme Court vide their above judgment dated 03.10.2019. The Hon'ble Supreme Court, in their above judgment, after elaborate discussions on the issue of leviability of service tax on 'Clubs or Associations' for the period prior to 01.07.2012 and post 01.07.2012, has held that from 2005 onwards, the Finance Act of 1994 does not purport to levy Service Tax on members' clubs in the incorporated form. The Hon'ble Court has observed that the doctrine of mutuality continues to apply to incorporated and unincorporated members' clubs and the Apex Court decision in Young Men's Indian Assn. (1970) 1 SCC 462 still holds field and Article 366(29A)(f) has no application to members' clubs. They held that company incorporated under Companies Act or Cooperative Society registered as cooperative society under State Act is "constituted" under any law for time being in force and hence, incorporated clubs or associations prior to 1st July, 2012 (when new Section 65B was introduced in Finance Act, 1994) were not included in Service Tax net [paras 72, 73, 76]. For leviability of service tax for the period post 1st July, 2012, the Apex Court after examining the changes brought out in the statutory provisions with the introduction of negative list regime with effect from 01.07.2012 with the definition of 'service' given under Section 65B(44) of the Act and the Explanation 3(a) thereto and the definition of 'person' under Section 65(37) of the Act, has observed that the expression "Body of persons" used in Explanation 3(a) to Section 65B(44) of Finance Act, 1994 may subsume persons who come together for common purpose, but it does not include company or registered cooperative society; that as opposed to wide definition of "person" in Section 65B(37) of Finance Act, 1994, it has used same expression as previously used in explanation to Sections 65, 65(25a) and (25aa) ibid, which did not refer to incorporated company or cooperative society and hence, it may be assumed that legislature has continued with pre-2012 scheme of not taxing members' clubs when they are in incorporated form [para 82]. Though the conclusion was drawn by the Apex Court for members' clubs, the decision equally applies/covers the cooperative societies registered under State Act also being appellants/respondents in the bunch of appeals decided vide the above order.

7.2 Since the period of demand under dispute in the present appeal being of period prior to 1st July 2012, the relevant extracts of the Hon'ble Apex Court's observations on leviability of service tax for the period prior to 1st July, 2012 may be referred to which are as under:



“71. With this background, it is important now to examine the Finance Act as it obtained, firstly from 16th June, 2005 upto 1st July, 2012.

72. The definition of “club or association” contained in Section 65(25a) makes it plain that any person or body of persons providing services for a subscription or any other amount to its members would be within the tax net. However, what is of importance is that anybody “established or constituted” by or under any law for the time being in force, is not included. Shri Dhruv Agarwal laid great emphasis on the judgments in *DALCO Engineering Private Limited v. Satish Prabhakar Padhye and Ors. Etc.*, (2010) 4 SCC 378 (in particular paragraphs 10, 14 and 32 thereof) and *CIT, Kanpur and Anr. v. Canara Bank*, (2018) 9 SCC 322 (in particular paragraphs 12 and 17 therein), to the effect that a company incorporated under the Companies Act cannot be said to be “established” by that Act. What is missed, however, is the fact that a Company incorporated under the Companies Act or a cooperative society registered as a cooperative society under a State Act can certainly be said to be “constituted” under any law for the time being in force. In *R.C. Mitter & Sons, Calcutta v. CIT, West Bengal, Calcutta*, (1959) Supp. 2 SCR 641, this Court had occasion to construe what is meant by “constituted” under an instrument of partnership, which words occurred in Section 26A of the Income Tax Act, 1922. The Court held :

“The word “constituted” does not necessarily mean “created” or “set up”, though it may mean that also. It also includes the idea of clothing the agreement in a legal form. In the Oxford English Dictionary, Vol. II, at pp. 875 & 876, the word “constitute” is said to mean, *inter alia*, “to set up, establish, found (an institution, etc.)” and also “to give legal or official form or shape to (an assembly, etc.)”. Thus the word in its wider significance would include both, the idea of creating or establishing, and the idea of giving a legal form to, a partnership. The Bench of the Calcutta High Court in the case of *R.C. Mitter and Sons v. CIT* [(1955) 28 ITR 698, 704, 705] under examination now, was not, therefore, right in restricting the word “constitute” to mean only “to create”, when clearly it could also mean putting a thing in a legal shape. The Bombay High Court, therefore, in the case of *Dwarkadas Khetan and Co. v. CIT* [(1956) 29 ITR 903, 907], was right in holding that the section could not be restricted in its application only to a firm which had been created by an instrument of partnership, and that it could reasonably and in conformity with commercial practice, be held to apply to a firm which may have come into existence earlier by an oral agreement, but the terms and conditions of the partnership have subsequently been reduced to the form of a document. If we construe the word “constitute” in the larger sense, as indicated above, the difficulty in which the Learned Chief Justice of the Calcutta High Court found himself, would be obviated inasmuch as the section would take in cases both of firms coming into existence by virtue of written documents as also those which may have initially come into existence by oral agreements, but which had subsequently been constituted under written deeds.”

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 associations or prior to 1st July, 2012 were not included in the Service Tax net.



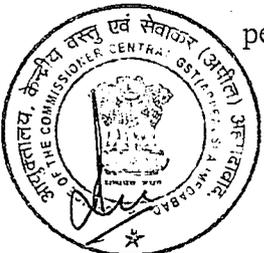
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84. *We are therefore of the view that the Jharkhand High Court and the Gujarat High Court are correct in their view of the law in following Young Men's Indian Association (supra). We are also of the view that from 2005 onwards, the Finance Act of 1994 does not purport to levy Service Tax on members' clubs in the incorporated form."*

7.3 The Hon'ble Supreme Court, in their above decision, has categorically held that the companies and co-operative societies which are registered under the respective Acts can certainly be said to be constituted under those Acts and being so they stand specifically excluded from the definition of 'Club or Association' as defined under clause (25a) of Section 65 of the Act and were not included in the Service Tax net prior to 1st July, 2012. In the facts of the present case, it is not in dispute that the appellant is a public limited company registered under the Companies Act, 1956 and for that reason, the above judgment of the Hon'ble Supreme Court becomes squarely applicable to their case. Accordingly, the conclusion to be followed is that the services provided by the appellant to their own members cannot be held liable to service tax. In view of the above legal position in the matter declared by the Apex Court which for that reason itself settles the issue in favour of the appellant, I do not find it necessary to consider the other arguments raised by the appellant in their appeal and hence I do not go into the merits of the same.

8. Further, it is observed that notwithstanding the above legal position settled by the Hon'ble Supreme Court, the services provided by the appellant, if were taxable under 'Club or Association Service' as contended by the department, they were eligible for exemption from service tax in terms of Notification No.42/2011-ST dated 25.07.2011 as amended by Notification No.01/2012-ST dated 17.03.2012 which provided for exemption from whole of service tax on the Club or Association Service rendered in relation to common effluent treatment plant set up with financial assistance from the Central or State Government. The said exemption provided was given retrospective effect with effect from 16.06.2005. From the various documents submitted by the appellant, it is established that the common effluent treatment was set up by them with the financial assistance of Central as well as State Government. This was also confirmed by the Commissioner (Appeals) in the appellant's own case vide OIA No.279/2012(STC)/SKS/Commr(A)/Ahd dated 22.11.2012 while setting aside the demand on the same issue for the period October 2009 to March 2010. Thus, on this count also, the demand confirmed against the appellant vide the impugned order on the issue fails to survive before law.

9. When the demand fails to survive, there does not arise any question of interest or penalty in the matter.



10. Accordingly, in view of my foregoing discussions, I set aside the impugned order passed by the adjudicating authority for being not legal and proper and allow the appeal filed by the appellant.

11. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

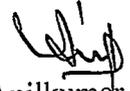
The appeal filed by the appellant stand disposed off in above terms.


 (Akhilesh Kumar)
 Commissioner (Appeals)
 27th November, 2020

Date : 27.11.2020



Attested:


 (Anilkumar P.)
 Superintendent(Appeals),
 CGST, Ahmedabad.

BY SPEED POST TO :

M/s Odhav Enviro Projects Ltd.,
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2. The Principal Commissioner, CGST, Ahmedabad South.
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 (for uploading the OIA)
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