



सत्यमेव जयते

आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी, अहमदाबाद-380015
GST Bhavan, Ambawadi, Ahmedabad-380015
Phone: 079-26305065 - Fax: 079-26305136
E-Mail : commrappl1-cexamd@nic.in
Website : www.cgstappealahmedabad.gov.in



आजादी का

अमृत महोत्सव

By SPEED POST

DIN:- 20240164SW0000318543

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/3287/2023 / 018 70 1022
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-001-APP-234/23-24 and 24.01.2024
(ग)	पारित किया गया / Passed By	श्री ज्ञानचंद जैन, आयुक्त (अपील) Shri Gyan Chand Jain, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of Issue	29.01.2024
(ङ)	Arising out of Order-In-Original No. 81/CGST/Ahmd-South/JC/SR/2022-23 dated 17.02.2023 passed by The Joint Commissioner, CGST, Ahmedabad South.	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s. Orient Club, Kavi Nahanalal Marg, Ellisbridge, 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 अथवा पुनरीक्षण आवेदन प्रस्तुत कर सकता है, जैसा कि ऐसे आदेश के विरुद्ध हो 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 :-

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 :-

(क) यदि माल की हानि के मामले में जब ऐसी हानिकार खाने 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।

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.

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



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।

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

(घ) 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।

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.

(2) 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 भीतरमूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ का मुख्य शीर्ष 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.

(3) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम होतो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्नरकम 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 सेवा कर 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 :-

(2) उक्तलिखित परिच्छेद 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।

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

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 अनुसूची -1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रू 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 और 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) एके प्रति अपीलो के मामले में कर्तव्यमांग (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 सेवाकर के अंतर्गत, शामिल होगा कर्तव्य की मांग (Duty Demanded)।

- (1) खंड (Section) 11D के तहत निर्धारित राशि;
- (2) लिया गलत सेनवैट क्रेडिट की राशि;
- (3) 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.

(6) (i) 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

The present appeal has been filed by M/s Orient Club, Kavi Nahanalal Marg, Ellisbridge, Ahmedabad (hereinafter referred to as the “*appellant*”) against Order in Original No. 81/CGST/Ahmd.-South/JC/SR/2022-23 dated 17.02.2023 [hereinafter referred to as “*impugned order*”] passed by the Joint Commissioner, CGST, Ahmedabad South (hereinafter referred to as “*adjudicating authority*”).

2. The appellant were engaged in providing services categorized as 'Membership of Club or Association Service,' and holding a service tax registration No. AAAAT5128PST001. However, an investigation revealed that they hadn't paid service tax on the total gross amount collected within certain categories of services 'Mandap Keeper Services,' and 'Business Auxiliary Services' and also had not declared in filed ST-3 returns. Further, for the period between 16.06.2005 to 31.03.2006, they collected Rs. 80,21,851/- under the category of 'Membership of Club or Association Service' but only declared and paid service tax on Rs. 19,24,246/-. This resulted in a calculated service tax liability of Rs. 6,25,853/-. Furthermore, for 'Mandap Keeper Services,' the appellant had collected Rs. 7,76,323/- between 2003-04 to 15.06.2005, and a service tax liability of Rs. 61,232/- was determined. Additionally, they had collected Rs. 9,45,000/- from decorators between 01.04.2003 to 16.06.2005 under the 'Business Auxiliary Service' category, leading to a service tax liability of Rs. 77,857/-. The adjudicating authority vide Order-in-Original No. STC-08/Addl. Commr.-KVSS/2009 dated 18.11.2009 issued by the Addl. Commissioner, Service Tax Ahmedabad confirmed the demand for service tax under the categories of club and association service and business auxiliary service, amounting to Rs. 6,25,853/- and Rs. 77,857/-, respectively. The demand for 'Mandap Keeper Service' was dropped. The appellants had already paid Rs. 3,67,371/- along with interest Rs. 71,058/-, which was



appropriated. Additionally, penalties under Section 76, 77, and 78 of the Act were levied by the adjudicating authority. Being aggrieved by the above said order the appellant as well as the department preferred Commissioner (Appeals), who rejected the appeal filled by the appellant and the appeal filled by the department was accepted vide OIA No. 135 & 136/2010(STC)/HKJ/Commr.(A)/Ahd. dated 22.04.2010. A subsequent appeal to CESTAT by the appellant vide Order No. A/10988-10992/2019 dated 03.06.2019 was allowed by way of remand the case to the adjudicating authority for fresh consideration, as the issue of the appellant's liability for service tax based on the doctrine of mutuality was pending before the Larger Bench of the Hon'ble Supreme Court in the Ranchi Club Ltd. case. Further the Hon'ble Supreme Court passed the final order in the above matter vide 2019(29)G.S.T.L 545 (SC). Thereafter, the adjudicating authority vide the impugned order dated 17th February 2023 confirmed the demand of service tax amounting to Rs. 7,64,672/- under Section 73(1) of the Finance Act, 1994 appropriating Rs. 3,67,371/- already paid by the appellant; confirmed the recovery of interest under section 75 of the Finance Act, 1994 appropriating Rs. 71,058/- already paid by the appellant; penalty upon the appellant equivalent to service tax amount under Section 78 of the Finance Act, 1994; confirmed the penalty of Rs. 10,000/- on the appellant under section 77 of the Finance Act, 1994; set aside the imposed penalty under section 76 of the Finance Act, 1994.

3. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal on the following grounds:

- That the appellant is an incorporated club hence service tax is not leviable.
- Doctrine of mutuality is applicable to both incorporated and unincorporated.



- Service tax is not leviable under any of head of service on which demand was raised under First SCN.
- Extended period cannot be invoked.

4. Personal Hearing in the case was held on 13.12.2023. Ms. Amrin Alwani and Shri Puru Sharma, Chartered Accountants, appeared on behalf of appellant for the hearing and reiterated the contents of the written submission in the appeal and requested to allow the appeal. They stated that the appellant are an unincorporated club. Principle of mutuality still holds the ground. The services are not liable for service tax.

5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum, and submission made at the time of personal hearing.

6. It is observed that the appellant claim in his written submission that they are registered with the Income Tax department as an AOP. The appellant have relied upon judgement of the Hon'ble Supreme Court in the case of Calcutta Club Limited [2019 (29) GSTL 545 (SC)] which is applicable only in the case of an incorporated club. On going through the submission it is found that the appellant are not an incorporated club. As the appellant are not an incorporated club, they are not excluded from 'club or association' service. The Hon'ble Supreme Court judgement in the Calcutta Clubs Limited is not helpful for them.

7. In view of the foregoing, I find that the appellant are liable for payment of service tax under the category of Membership of club or association service and Mandap Keeper service in respect of the amount collected from their members. The appellant have not given any defence in respect of service tax liability under Business Auxiliary Service. I find that the appellant are liable for service tax under Business Auxiliary Service, too.

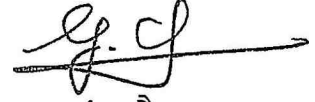


8. I agree with the adjudicating authority for the invocation of penalty under section 78 of the Act. The appellant failed to register for BAS and Mandap Keeper services, failed to file ST-3 return for the taxable service, didn't pay service tax for club or association service, and did not disclose it in their service tax returns. This warrants an extended period and invokes penalty under section 78 of the Finance Act, 1994. The appellant are also liable for interest on the confirmed demand. I also find right that the penalty under section 77 are imposed for failing to declare taxable value and timely registration and filing of returns. I do not find any infirmity in the impugned order.

9. In view of the above discussion, the impugned order is upheld.

10. अपीलकर्ता द्वारा दायर अपील का निपटान उपरोक्त तरीके से किया जाता है।

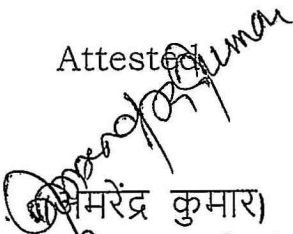
The appeal filed by the appellant stands disposed of in above terms.



(ज्ञानचंद जैन)
आयुक्त (अपील्स)

Date : 24.01.2024

Attested



(अनंद कुमार)
अधीक्षक (अपील्स)
सी.जी.एस.टी, अहमदाबाद

By RPAD / SPEED POST

To,

M/s Orient Club,
Kavi Nahanalal Marg,
Ellisbridge, Ahmedabad.



Copy to :

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Principal Commissioner, CGST, Ahmedabad South
- 3) The Joint Commissioner, Central GST, Ahmedabad South
- 4) The Deputy/Assistant Commissioner (RRA), Ahmedabad South
- 5) The Deputy/Assistant Commissioner (HQ System),
CGST, Ahmedabad South (For uploading the OIA)
- ✓ 6) Guard File
- 7) PA file

