



प्रधान आयुक्त का कार्यालय,
Office of the Principal Commissioner,
केंद्रीय जीएसटी अहमदाबाद दक्षिण आयुक्तालय
Central GST, Commissionerate- Ahmedabad South,
चौथी मंजिल, अम्बावाड़ी अहमदाबाद ३८००१५,
4th Floor, GST Bhavan, 380015



फा.सं. STC/4-01/O&A/16-17

DIN-20230664WS000000B68A

आदेश की तारीख: Date of Order: 22.6.2023

जारी करने की तारीख: Date of Issue : 22.6.2023

द्वारा पारित / Passed by: Shri Shravan Ram, JOINT COMMISSIONER

मूल आदेश सं./Order-In-Original No.: 03/CGST/Ahmd-South/JC/SR/2023-24

यह प्रति उस व्यक्ति)यों (को, जिसके) जिनके (लिए यह आदेश जारी किया गया है, उसके)उनके (व्यक्तिगत उपयोग के लिए निःशुल्क प्रदान की जाती है।

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यदि कोई व्यक्ति इस आदेश से स्वयं को असंतुष्ट अनुभव करता है, तो वह इस आदेश के विरुद्ध आयुक्त)अपील (,केन्द्रीय जीएसटी, केन्द्रीय जीएसटी भवन, आंबावाड़ी, अहमदाबाद-15 को प्रारूप एस.टी.-4 में अपील कर सकता है। उक्त अपील पक्षकार पर आदेश तामील होने अथवा अथवा उसे डाक द्वारा प्राप्त करने की तारीख से दो माह के भीतर दाखिल की जानी चाहिए। इसपर रूप 2.00 -/केवल का न्यायालय शुल्क टिकट लगा होना चाहिए।

Any person deeming himself aggrieved by this Order may appeal against this order in Form **S.T.4** to Commissioner (Appeals), Central GST, Central GST Bhavan, Near Government Polytechnic, Ambawadi, Ahmedabad -15 within sixty days from date of its communication. The appeal should bear a court fee stamp of Rs.2.00-/- only.

उक्त अपील दो प्रतियों में प्रारूप सं. एस.टी.-4 में दाखिल की जानी चाहिए। उसपर केन्द्रीय उत्पाद शुल्क)अपील (नियमावली, 2001 के नियम 3 के उपबंधों के अनुसार अपीलकर्ताओं जद्वारा हस्ताक्षर किए जाने चाहिए। इसकेसाथ निम्नलिखित को संलग्न किया जाए :

The Appeal should be filed in form No. S.T.4 in duplicate. It should be filed by the appellants in accordance with provisions of Rule 3 of the Central Excise (Appeals) Rules, 2001. It shall be accompanied with the following:

उक्त अपील की प्रति।

Copy of the aforesaid appeal.

निर्णय की दो प्रतियाँ)उसमें से एक उस आदेश की प्रमाणित प्रतिलिपि होनी चाहिए जिसके विरुद्ध अपील की गई है (अथवा उक्त आदेश की अन्य प्रति जिसपर रु 2.00 -/का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।

Two copies of the Decision (one of which at least shall be certified copy of the order appealed against) or copy of the said Order bearing a court fee stamp of Rs. 2.00/-.

इस आदेश के विरुद्ध आयुक्त)अपील (में शुल्क के 7.5% जहां शुल्क एवं जुर्माना का विवाद है अथवा जुर्माना जहां शिर्फ जुर्माना के बारे में विवाद है उसका भुक्तान करके अपील की जा सकती है।

An appeal against this order shall lie before the Commissioner (Appeal) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."

संदर्भ/Reference : कारण बताओ सूचना फा.सं. STC/4-01/O&A/16-17 dated 7.3.2017 M/s Young Mens Christian Association, Sarkhej Gandhinagar Highway, Ahmedabad-380015.

Brief facts of the case:-

M/s Young Mens Christian Association, Ahmedabad were registered with Service tax in Ahmedabad Service Tax Commissionerate as a provider of services under the category of "Membership Club or Association Service", as defined in Section (25aa) of Section 65 of the Finance Act, 1994. Taxability of services provided by Membership clubs to their members was in dispute and the matter was first agitated by Ranchi Club Ltd before the Hon'ble High Court of Jharkhand at Ranchi. Vide judgment dated 15.03.2012, reported in 2012 (26) STR 401 (Jhar), the Hon'ble Jharkhand High Court held that in view of mutuality, if club provides any service to its members, it is not a service by one legal entity to another and is not liable to Service tax. Three Clubs from Ahmedabad, namely Sports Club of Gujarat Limited, Rajpath Club Limited and Karnavati Club Limited, filed identical petitions in the Hon'ble High Court of Gujarat praying for declaring Section 65(25a), Section 65(105) (zzze) and Section 66 of the Finance (No. 2) Act, 1994 as incorporated/amended by the Finance Act, 2005, to the extent that the said provisions purport to levy service tax in respect of services purportedly provided by the petitioner club to its members, as being ultra vires, beyond the legislative competence of the Parliament, unconstitutional, illegal and void. In this regard, they relied on the judgment of Hon'ble High Court of Jharkhand supra. These petitions were allowed by the Hon'ble High Court of Gujarat, vide the decision reported in 2013 (13) STR 645 in effect, upholding the findings of Jharkhand High Court. Following the decision of the Hon'ble High Court of Gujarat supra, the Noticee filed five claims for refund of service tax paid by them for the Members Club Association service and as there was no stay against the operation of the High Court order, they were allowed the refund of service tax total amounting to Rs 1,94,79,720/- under five different Orders passed by the jurisdictional Deputy Commissioner, as listed below:

Order-In-Original No.	Period	Amount of refund sanctioned (Rs)	Rejected (Rs) being time barred
STC/Ref/161/HCV/YMCA/DIV III/15-16 dated 25.02.2016 passed by the Deputy Commissioner, Service Tax Division III, Ahmedabad.	October, 2015 to December, 2015	33,13,096/-	
STC/Ref/141/HCV/YMCA/DIV III/15-16 dated 10.02.2016 passed by the Deputy Commissioner, Service Tax Division III, Ahmedabad.	July, 2015 to September, 2015	25,68,919/-	
STC/Ref/140/HCV/YMCA/DIV III/15-16 dated 11.02.2016 passed by the Deputy	April, 2015 to June, 2015	61,79,786/-	

Commissioner, Service Tax Division III, Ahmedabad.			
STC/Ref/135/HCV/YMCA/DIV III/15-16 dated 05.02.2016 passed by the Deputy Commissioner, Service Tax Division III, Ahmedabad.	April, 2014 to March, 2015	47,52,254/-	64,67,363
STC/Ref/51/H C Verma/DC/DIV III/15-16 dated 09.09.2015 passed by the Deputy Commissioner, Service Tax Division III, Ahmedabad.	2009-10 to 2013-14	26,65,665/-	9,11,95,653/-
Total		1,94,79,720	9,76,63,016

However, since the department did not accept the judgment of the Hon'ble High Court of Gujarat supra, an SLP No. 24977/2013 was filed in the Hon'ble Supreme Court. (It was connected to Appeal Civil No. 7497 of 2012 as per the Court web site). A protective Show Cause Notice bearing No. STC/4-01/O&A/16-17 dated 07.03.2017 was therefore, issued by the Additional Commissioner, Service Tax, Ahmedabad, proposing to recover the amount of Rs 1,94,79,720/-, erroneously refunded to the Noticee. As the demand could be adjudicated only after the outcome of the above SLP is known, the case was kept in Call Book. The Hon'ble Supreme Court, vide judgment reported in 2019 (29) G.S.T L 545 (S.C), in the case of State of West Bengal Vs Calcutta Club Limited and others, decided various appeals including the subject appeal, filed by the Revenue and decided the cases against the appellants. On the basis of the above, this Show Cause Notice was ordered to be taken out of Call Book on 18.12.2020, for adjudication.

A personal hearing was offered to the Noticee and Shri Pravin Dhandhariya, C.A, appeared on 25.05.2023 and reiterated the written reply of 19.12.2022, wherein essentially, the Noticee contended that the Ground of Mutuality has already been decided by the Hon'ble Supreme Court in their favour in the case of State of West Bengal & Ors Vs Calcutta Club Limited and hence, the Show Cause Notice against the refund sanctioned requires to be vacated.

Discussion and findings:-

I have carefully gone through the facts of this case. I have also considered the submissions of the Noticee, given in writing as well as during the personal hearing held on 25.05.2023.

The main issue involved in this case, namely that of taxability of services provided by membership clubs to its members has been decided by the apex Court in favour of the clubs and against the revenue. The paragraphs 84

and 85 of the judgment in the case of State of West Bengal Vs Calcutta Club Limited reported in 2019 (29) G.S.T L 545 (S.C), is reproduced below:

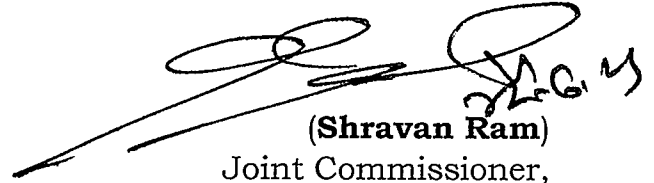
“84. We are therefore of the view that the Jharkhand High Court and the Gujarat High Court are correct in their view of the law in following Young Men’s Indian Association (supra). We are also of the view that from 2005 onwards, the Finance Act of 1994 does not purport to levy Service Tax on members’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

85. The appeals of the Revenue are, therefore dismissed. Writ Petition (Civil) No. 321 of 2017 is allowed in terms of prayer (i) therein. Consequently, show cause notices, demand notices and other action taken to levy and collect Service Tax from incorporated members’ clubs are declared to be void and of no effect in law”.

In view of the findings of Hon’ble Supreme Court, the Noticee being a Members Club, the services provided to its members is not taxable and the refund sanctioned was correct in law. In view of my above findings, I hereby pass the following Order:

ORDER

I hereby order to vacate the demand raised in the Show Cause Notice F. No. STC/4-01/O&A/16-17 dated 07.03.2017, issued by the Additional Commissioner, Service Tax, Ahmedabad.


(Shравan Ram)
Joint Commissioner,
Central GST,
Ahmedabad South.

RPAD / SPEED POST

F. No. STC/04-01/ O&A/16-17.

Date: - 22.06.2023

To
M/s Young Mens Christian Association,
Sarkhej Gandhinagar Highway,
Ahmedabad 380 015.

Copy to:

1. The Principal Commissioner, Central Tax, Ahmedabad South.
2. The Assistant Commissioner, Central Tax, Division-VIII, Ahmedabad South.
3. The Deputy/Asstt. Commissioner, Central Tax, TAR Section, HQ, Ahmedabad South.
4. The Superintendent, Central Tax AR- , Div.-VIII, Ahmedabad South
5. The Superintendent, Central Tax, Systems HQ, Ahmedabad South for uploading on the website
6. Guard file.