आयुक्त का कार्यालय केंद्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क ,अहमदाबाद उत्तर, कस्टम हॉउस(तल प्रथम) नवरंगपुरा- अहमदाबाद ,380009		Office of the Commissioner of Central Goods & Services Tax & Central Excise, Ahmedabad North, Custom House(1st Floor) Navrangpura, Ahmedabad-380009
फ़ोन नंबर./ PHONE No.: 079-2754 4599 फैक्स/ FAX : 079-2754 4463 E-mail:- *oaahmedabad2@gmail.com*		

निबन्धित पावती डाक द्वारा / By REGISTERED POST AD

फा .सं/. F.NO.STC/15-16/OA/2019 DIN : 20211064WT0000999AEF

आदेश की तारीख़ / Date of Order : 29.10.2021

जारी करने की तारीख़ / Date of Issue : 29.10.2021

द्वारा पारित/Passed by -

उपेन्द्र सिंह यादव / UPENDRA SINGH YADAV

आयुक्त / COMMISSIONER

मूल आदेश संख्या /

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR–28/2021-22

जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसे व्यक्तिगत प्रयोग के लिए निःशुल्क प्रदान की जाती है।

This copy is granted free of charge for private use of the person(s) to whom it is sent.

2. इस आदेश से असंतुष्ट कोई भी व्यक्ति -इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ,अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार ,सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण , द्वितीय तल, बाहुमली भवन असरवा, गिरधर नगर पुल के पास, गिरधर नगर, अहमदाबाद, गुजरात 380004 को संबोधित होनी चाहिए।

Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, 2nd Floor, Bahumali Bhavan Asarwa, Near Girdhar Nagar Bridge, Girdhar Nagar, Ahmedabad, Gujarat 380004.

2.1 इस आदेश के विरुद्ध अपील न्यायाधिकरण में अपील करने से पहले मांगे गये शुल्क के 7.5% का भुगतान करना होगा, जहाँ शुल्क यानि की विवादग्रस्त शुल्क या विवादग्रस्त शुल्क एवं दंड या विवादग्रस्त दंड शामिल है ।

An appeal against this order shall lie before the Tribunal 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.

(as per amendment in Section 35F of Central Excise Act,1944 dated 06.08.2014)

3. उक्त अपील प्रारूप सं .इ.ए 3.में दाखिल की जानी चाहिए। उसपर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2001 ,के नियम 3 के उप नियम (2)में विनिर्दिष्ट व्यक्तियों द्वारा

BRIEF FACTS OF THE CASE:

M/s Rajpath Club Limited, Sarkhej-Gandhinagar Highway, Ahmedabad 380059 (hereinafter referred to as the 'assessee') are holding a Service Tax Registration No AAACR7379AST001. They are providing taxable services namely Club & Association Services, Accommodation in club and Outdoor Catering Service.

2 During the course of audit of the said assessee for the period from October 2013 to June 2017, the following observations were raised.

Revenue Para 1: Inadmissible credit taken on Imported Health Fitness Equipment

3 During the course of audit, it was noticed that the assessee had shown an amount of Rs. 29,49,926/- as input cenvat credit availed in their ST-3 return for the month of August 2016. On scrutiny of the corresponding cenvat register, it was seen that they had availed cenvat credit in respect of 'Imported Health Fitness Equipment', under three Bills of Entry numbered 6155275 dated 28.7.2016, 6314720 dated 10.9.2016 and 6316215 dated 10.8.2016.On a detailed scrutiny of the cenvat credit availed against these three Bills of Entry, it was noticed that apart from availing cenvat credit on Countervailing duty ('CVD'), the assessee had also availed the cenvat credit of Basic Customs Duty ('BCD'), Special Additional Customs duty ('SAD'), Education Cess on customs duty ('EC') and Secondary & Higher Education Cess on customs duty ('SHE'), as tabulated below:

Bill of Entry No	Date of Bill of Entry	Total credit availed (Rs)	Credit availed on CVD (Rs)	Total credit availed on BCD, SAD, EC and SHE (Rs)
(a)	(b)	(c)	(d)	(e)= c – d
6155275	28.07.16	234596	109565	125031
6314720	10.09.16	192972	90125	102847
6316215	10.08.16	2522358	1178031	1344327
Total		2949926	1377721	1572205

4 As the cenvat credit on BCD, SAD, EC and SHE appeared to be inadmissible, an objection was communicated to the assessee on 15.4.2019. The assessee however had not agreed with the objection. The relevant text to Rule 3 (1) of the Cenvat Credit Rules, 2004 ('Cenvat Rules') relating to admissibility of cenvat credit is reproduced below:

Period	Ineligible credit taken (Rs)	Nature of Input Credit taken
2014-15	678346	Credit taken on excise duty paid on input (TMT Bars) in respect of M/s Grace Castings Ltd.
2015-16	916038	Credit taken on excise duty paid on input TMT Bars in respect of M/s Grace Castings Ltd and M/s Shree Parmeshwar Steels Pvt. Ltd
2016-17	62924	Credit taken on excise duty paid on input (TMT Bars and RMC) in respect of M/s Grace Castings Ltd and M/s Yogeshwar Concrete respectively, M/s Vijay Steel Industries and M/s ParmeshwarSteel Pvt. Ltd.
	16,57,308/-	Total

7 As the cenvat credit on TMT Bars and RMC appeared to be inadmissible, an objection was communicated to the assessee on 15.4.2019. The assessee had not agreed with the objection. The relevant text of Rule 2(k) of the Cenvat Rules which defines 'input', is reproduced below:

[(k) "input" means -

(i) all goods used in the factory by the manufacturer of the final product; or

(ii) any goods including accessories, cleared along with the final product, the value of which is included in the value of the final product and goods used for providing free warranty for final products; or

(iii) all goods used for generation of electricity or steam [or pumping of water] for captive use; or

(iv) all goods used for providing any [output service, or];

[(v) all capital goods which have a value upto ten thousand rupees per piece.]

but excludes -

(A) light diesel oil, high speed diesel oil or motor spirit, commonly known as petrol;

[(B) any goods used for -

(a) construction or execution of works contract of a building or a civil structure or a part thereof; or

(b) laying of foundation or making of structures for support of capital goods,

except for the provision of service portion in the execution of a works contract or construction service as listed under clause (b) of section 66E of the Act;]

[(C) capital goods, except when,-

(i) used as parts or components in the manufacture of a final product; or

(ii) the value of such capital goods is upto ten thousand rupees per piece;]"

8 It appeared from the definition of 'input' as detailed under Rule 2 (k) of the Cenvat Rules that there is an exclusion clause mentioned in the Rule. The exclusion clause says that goods used for construction would be ineligible for cenvat credit.

Revenue Para 3 : Non payment of service tax on revenue share received by the assessee for providing space and infrastructure:

therefore, service tax not paid amounting to Rs.9,36,912/- was liable to be demanded and recovered from the assessee under the proviso to Section 73(1) of the Act.

Revenue Para No 4: Short payment of service tax on renting of space and other infrastructure facilities

15 It was noticed that the said assessee had let out its space and other infrastructure facilities to various entities like M/s Beauty Salon, M/s Shree Elora Decorators, M/s Janta Corporation, M/s Shibani Chocolates etc. It was seen that apart from the agreed annual contract charges, the assessee was also recovering an amount from each of the entity in the name of reimbursement of electricity burning expenses. It was also seen that they had not discharged service tax on these reimbursable amounts collected by them. It appeared that the said assessee had not fulfilled all the conditions for claiming deductions as a 'pure agent' and therefore, service tax was payable by them on the reimbursable amounts.

16 The objection was communicated to the assessee on 15.4.2019. However, the assessee had not agreed with the objection. The relevant text of Section 67(1) of the Act reads as under:

"SECTION [67. Valuation of taxable services for charging service tax. — (1) Subject to the provisions of this Chapter, where service tax is chargeable on any taxable service with reference to its value, then such value shall, —

(i) in a case where the provision of service is for a consideration in money, be the gross amount charged by the service provider for such service provided or to be provided by him;

(ii) ...

(iii) ...

(2) ...

(3) The gross amount charged for the taxable service shall include any amount received towards the taxable service before, during or after provision of such service.

(4) Subject to the provisions of sub-sections (1), (2) and (3), the value shall be determined in such manner as may be prescribed.

Explanation. — For the purposes of this section, —

(a) ["consideration" includes —

(i) any amount that is payable for the taxable services provided or to be provided;

(ii) any reimbursable expenditure or cost incurred by the service provider and charged, in the course of providing or agreeing to provide a taxable service, except in such circumstances, and subject to such conditions, as may be prescribed"

17 Rule 5 of the Valuation Rules reads as under:

"RULE 5. Inclusion in or exclusion from value of certain expenditure or costs. — (1)

day for normal use, commercial use or exhibition respectively in respect of Diamond Hall and Rs 10,000/-, Rs 12,000/- and Rs 20,000/- per day for normal use, commercial use and exhibition, respectively in respect of Golden Hall. From the ledger maintained by the assessee, it was seen that the assessee was recovering Rs 30,000/- per month in respect of the beauty parlour and Rs 25,000/- on lumpsum basis from M/s ShibanisChocolatz. On verification of the relevant documents, it was noticed that the assessee had not received the electricity burning expenses on actual basis from any of the parties operating from their premises.

21 It appeared that the said assessee did not fall within the meaning of 'pure agent' as envisaged under Explanation 1 to Rule 5(2) of the Valuation Rules. It further appeared from the above that the assessee had not received the actual amounts incurred to procure goods or services in the above cases. The assessee had received more amounts as detailed above, against the actual expenses incurred by them. Clause (d) to Explanation 1 to Rule 5(2) of the Valuation Rules envisages that the assessee receives only the actual amount incurred to procure such goods or services. Condition No (vii) to Rule 5(2) of the Valuation Rules also says that the assessee recovers from the recipient of service only such amount as has been paid by him to the third party. It is seen that the assessee had recovered more amounts than the actual amounts incurred by them for procuring such goods or services. The condition No (vii) to Rule 5(2) of the Valuation Rules and clause (d) of Explanation 1 to Rule 5(2) of the Valuation Rules had not been complied by the assessee as they had not received the actual amounts as reimbursement for which payments were made to third parties and, therefore, not acted as a 'pure agent'.

22 On going through their financial records for the period from October 2013 to June 2017, it was seen that the following income had been shown by the said assessee on account of reimbursements received in the name of electricity burning expenses, which is tabulated below:

Period	Value received in the name of Electricity Burning Expenses (Rs)	Service Tax (Rs)
2013-14 (Oct-Mar)	3322500	410661
2014-15	4046000	500086
2015-16	1235000	179075
2016-17	0	0
2017-18 (Apr-Jun)	0	0
Total	8603500	1089822

23 From the above facts and discussions, it appeared that the assessee had contravened the provisions of:

from the members towards games and other activities. The income as shown in the financial statements would obviously pertains to the above mentioned activities. All the above activities are undertaken by the assessee for another for a consideration and as such the same falls within the ambit of the definition of 'service' as defined at Section 65B(44) of the Act which reads as under :

"'service' means any activity carried out by a person for another for consideration, and includes a declared service"

27 'Taxable Service' defined under Section 65B(51) of the Act reads as under:

""taxable service" means any service on which service tax is leviable under section 66B"

28 It was seen that the activities did not find mention in any of the provisions of Section 66D of the Act. It, therefore, appeared that they did not fall under the negative list and therefore, were taxable services. Further, there is no exemption provided to the services under the mega exemption Notfn No 25/2012-ST dated 20.6.2012, as amended or any other notification issued under the Act. Accordingly, it appeared that the services provided by the said assessee were taxable and liable for payment of service tax. The activity appeared to be taxable as defined under Section 65B(51) of the Act.

29 As per Board's Instruction No 1080/09/DLA/MISC/15 dated 21.12.2015 and Instruction No 1080/11/DLA/CC Conference/2016 dated 8.7.2016, pre-consultation with the adjudicating authority has been made mandatory before issuance of a show cause notice involving an amount of over Rs 50 lacs. Based on these instructions, a communication was made to the assessee fixing the date for pre-consultation discussion on 18.4.2019. Mr. Bishan Shah, Consultant appeared on behalf of the assessee and sought time till 22.4.2019 for submitting certain documents. However, he has not submitted any documents till the time of issuance of the notice.

30 Therefore, SCN was issued to M/s Rajpath Club Ltd. Sarkhej-Gandhinagar Highway, Ahmedabad 380 058 asking them as to why:

i. cenvat credit amounting to Rs. 15,72,205/- (Rupees Fifteen lacs seventy two thousand two hundred five only), wrongly availed and utilized by them, should not be recovered from them under the proviso of Section 73(1) of the Act read with the provisions of Rule 14(1)(ii) of the Cenvat Rules;

ii. cenvat credit amounting to Rs. 16,57,308/- (Rupees Sixteen lacs fifty seven thousand three hundred eight only), wrongly availed on inputs namely TMT Bars &RMC, should not be recovered from them, under

repeal are not the same as applicable to amendments of an Act. When the Finance Act is amended and a particular Chapter is omitted, the Chapter is completely obliterated from the statute and it is impermissible to apply repeal and saving provisions for the same.

(iii). Hon'able Supreme Court in the case of Rayala Corporation (P) Ltd. Vs. Director of Enforcement (1969) 2 sec 412 has held as under:

"Section 6 of the General Clauses Act is inapplicable in the case of omission of a statute for two reasons that Section 6 applies only in respect of repeal and not omission and it applies when the repeal is of a Central Act or a Regulation and not a Rule. Para 18 of the decision is to the effect that Section 6 can be applied only to a repealed statute and not to an expiring statute."

(iv). Hon'able Supreme Court in the case of Air India Vs. Union of India (1995) 4 sec 734 has held as under:

"that subordinate legislation such as Rules issued under the Act are not saved unless expressly stated when the Act is repealed CENVAT Credit Rules have not been expressly saved under Section 174 and hence there cannot be any show cause notice with reference to CENVAT Credit Rules, 2004."

(v) Supreme Court in the case of Kolhapur Cane Sugar Works Vs. Union of India (2000) 2 sec 536 in Para 37 has held as under:

"that the normal effect of repealing a statute or deleting a provision is to obliterate it from. the statute books as it had never been passed and the statute must be considered as a law that never existed, but an exception is engrafted under Section 6 of the General Clauses Act and accordingly if a statute is unconditionally omitted without a saving clause in favour of pending provisions all actions must stop where the omissions finds them and if the final relief had not been granted before the omission went into effect, it cannot be granted afterwards."

(vi). Omission is not the same as repeal and therefore the saving provisions of Section 174(2) cannot be extended to Service tax since Chapter V was omitted.

Therefore the show cause notice seeking to levy service tax under Section 73 which forms part of Chapter V which does not exist in the statute books as on the date of show cause notice is clearly not maintainable.

33. They further submitted that ;

(i). The scope of repeal and saving clauses are limited and cannot be extended in a manner whereby a SCN can be issued by one authority and the said authority can direct reply to be filed before another authority for the purpose of adjudication. In any event none of the notifications authorizing such an exercise have been saved under Section 174.

(ii). The power to specify an authority who can adjudicate matters lies with the Board and all such notifications specifying the authorities who have the power

High Court further held the expression "instituted" in sub-clause (e) of Section 173 of the CGST Act, 2017 would imply the proceeding which stood already instituted at the time of repeal or omission of the 1994 Act.

(ix). Hon'able Supreme Court in the case of Commissioner of Central Excise Vs. Brindavan Beverages (2007) 213 EL T 487 has held as under:

"Show Cause Notice is the foundation on which the Department has to build up its case. If the allegations in the Show Cause Notice are not specific and on the contrary vague, lack of details and/ or unintelligible, then it is not a sufficient one that has given proper opportunity to the assessee to meet the allegations and therefore cannot be maintainable."

(x). Hon'able Supreme Court while dismissing the Civil Appeal filed by the Commissioner against the Tribunal's Final Order No. 1132/2001 dated 17.07.2001 in the case of Commissioner of Central Excise Vs. Chirakkadavu Rubber Latex Works (2002) 140 ELT 87 has held that the Show Cause Notice is vague and therefore the same is not maintainable.

(xi) The object of repeal and saving is that the authority can issue a notice in respect of an issue prior to implementation of GST based on the provisions of the Finance Act. However, this does not mean that the authority can exercise the role of an administrative body and direct adjudication by another authority.

(xii) The concept of issue of notice by one authority and adjudication by another authority is inconsistent with the provisions of the GST Act. In the GST legislation, the process of issue of notice is through Section 73 and Assessees are divided between Central and State tax authorities and hence the provisions are completely different.

(xiii). None of the administrative Notifications issued in the pre-GST era can be said to survive unless it is expressly spelt out in the repealing statute including mentioning the title of the subordinate legislation. There is no room for implying anything in this behalf. This is the view of the Supreme Court in the case of Air India Vs. Union of India (1995) 4 sec 734.

(xiv). The Delhi High Court in the case of Mangali Impex Vs. Union of India (2016) 335 EL T 605 has held as under:

"in the context of Customs Act that the Department cannot seek to rely upon Section 28(1) of the Act as authorizing the officers of the customs, DRI, DGCEI, etc. to exercise powers in relation to non-levy, short-levy for the period prior to the date on which Section 28(11) was amended. There was no proper assigning, functions of re-assessments or assessments in favour of such officers who issued such SCNs since they were not proper officers for the purposes of Section 2(34) of the Act and Explanation-2 to Section 28 presently enacted makes it explicit that such non-levy, short-levy prior to the amended date

There is no power to delegate the power of identifying authorities to carry out adjudication functions to another authority. The Board alone can specify who should be the adjudicating authority and an authority issuing a Show Cause Notice cannot specify another authority as an adjudicating authority. Further, all these powers have not been exercised after implementation of GST and such exercise of powers prior to implementation of GST do not survive and are not protected by Section 174.

(xxi). The Board itself being a delegated authority, cannot further delegate. It is a settled position of law that a delegatee cannot further delegate. This has been reiterated by the Supreme Court in the case of A.K. Roy & Another Vs. State of Punjab (1986) 4 sec 326 and Mangulal Chunilal Vs. Manilal Maganlal & Another (AIR-1968-SC-822).

34. The assessee submitted that Show cause notice issued is time barred;

(i) The assessee had filed ST-3 returns for the period October 2013 to June 2017 and facts regarding rendering of services and payment of service tax was mentioned in the ST 3 returns. The assessee prepared their books of accounts showing profit and loss account and balance sheet for the years 2013-14 to 2017-18 and facts regarding receipt of revenue share from the restaurant service providers and receipt of reimbursement of electricity charges were included in profit and loss account from time to time. The assessee had not suppressed facts with intend to evade payment of tax on account of suppression of facts or misstatement.

(ii). Therefore SCN should have been issued within 18 months up to 13.05.2016 and 30 months from 14.05.2016 from the relevant period. The details of delay in issue of SCN is as under:

PERIOD	HALF YEAR	DATE OF FILIN G RETURN	DATE OF ISSUE OF SCN	PERIOD FROM FILING ST3 RETURN TILL DATE OF ISSUE OF SCN
October 2013 to March 2014	II	25/04/2014	22/04/2019	More than 60 Months
2014-15	I	14/11/2014	22/04/2019	More than 54 Months
2014-15	II	23/04/2015	22/04/2019	More than 48 Months
2015-16	I	23/10/2015	22/04/2019	More than 42 Months
2015-16	II	25/04/2016	22/04/2019	More than 36 Months
2016-17	I	24/10/2016	22/04/2019	More than 30 Months
2016-17	II	II 22/04/2017	22/04/2019	More than 24 Months

willful default. In fact, it is the mildest expression used in the proviso. Yet the surroundings in which it has been used it has to be construed strictly. It does not mean any omission. The act must be deliberate. In taxation, it can have only one meaning that the correct information was not disclosed deliberately to escape from payment of duty. Where facts are known to both the parties the omission by one to do what he might have done and not that he must have done does not render it suppression."

(v) Hon'able Supreme Court of India in case of Continental Foundation Jt. Venture Vs. CCE, Chandigarh-I 2007 (216) E.L.T. 177 (S.C.) held as under.

• "Suppression" used in the proviso to section 11 A of the Central Excise Act, 1944 accompanied by very strong words as "fraud" or "collusion" and, therefore, has to be constructed strictly.

• Mere omission to give correct information is not suppression of facts unless it was deliberate to stop the payment of duty.

Suppression means failure to disclose full information with intent to evade payment of duty when the facts are known to both the parties, omission by one party to do what he might have been done would not rendered it suppression.

• When the Revenue invokes the extended period of limitation under section 11A the burden is cast upon it to prove suppression of facts.

• As far as fraud and collusion are concerned, it is evident that intent to evade duty is built into this words.

• As far as mis-statement or. suppression of facts are concerned, they are clearly qualiied by the word "wilful", preceding the words "mis-statement or suppression of the facts" which means with intent to evade duty. The next set of words "contravention of any of the provisions of this Act or Rules" are again qualified by the immediately following words "with intent to evade payment of duty".

• Therefore, there cannot be suppression or mis-statement of facts, which is not wilful and yet constitute a permissible ground for the purpose of the proviso to section 11A4. Misstatement of facts must be wilful.

• Hon'able Supreme Court in the case of CCE Vs. Ballarpur Industries (2007) 8 SCC 89 has applied the principles laid down in Continental Foundation Jt. Venture Vs. CCE, Chandigarh-I 2007 (216) E.L.T. 177 (S.C.)case cited supra and held that the term 'suppression' should be construed strictly and therefore, the extended period is not applicable.

37. The assessees submitted that they have imported health fitness equipment between July to September 2016.The assessee had taken CENVAT credit of Rs.13,77,721/- of Counter Vailing Duty (CVD). The credit of Rs.13,77,721/- was reversed after availment.

Since the credit was reversed before issue of SCN, interest and penalty should not be imposed. The assessee had availed credit and has also reversed the same on monthly basis as refund of the same period was claimed.

public purposes, may be including the purpose contemplated under the Sugar Development Fund Act, 1982. In the light of the aforesaid statutory provisions, the cess imposed under the Act is a duty of excise or a tax. The contention that it is a fee and the assessee is not entitled to Cenvat credit has no substance. Therefore, the sugar cess paid under the Act is tax, and to be precise it is Duty of Excise and not Fee.

.....

35. In view of the aforesaid provisions, when an assessee imports goods into India in addition to payment of basic Customs Duty, he shall be liable to pay additional duty of customs equal to the excise duty for the time being leviable on a like article if produced or manufactured in India and if such excise duty on a like article is leviable at any percentage of its value, the additional duty to which the imported article shall be so liable shall be calculated at that percentage of the value of the imported article. Therefore, on imported goods or articles, in addition to basic Customs Duty, an assessee is also liable to additional duty of customs, equivalent to excise duty. The excise duty is leviable under the Central Excise Act, 1944 and also the Sugar Cess Act, 1982.

.....

39. The aforesaid discussion makes it very clear that a manufacturer or producer of final products shall be allowed to take credit of the additional duty which is commonly known as CVD leviable under Section 3 of the Customs Tariff Act equivalent to the duty of Excise specified under sub-clause (i), (ii), (iii), (iv), (v) and (vi) of Rule 3(1) of the Cenvat Credit Rules, 2004. Though it is called as Excise Duty, this Excise Duty is paid under the Customs Tariff Act, which is described as an additional duty (CVD) under Section 3 of the Customs Tariff Act, 1975. Though the duty payable under Section 2 of the Customs Act is not eligible for Cenvat credit, the additional duty paid and payable under the Customs Tariff Act, 1975 are eligible for Cenvat credit as is clear from clause (vii) of sub-rule (1) of Rule 3 of the Cenvat Credit Rules, 2004. It is that additional customs duty collected under Section 3 of the Customs Tariff Act, 1975, which is referred to as the excise duty under the Central Excise Act, 1944 and also the Sugar Cess Act, 1982.

40. In the instant case, it is not in dispute that this duty of excise is not collected as a cess at the time of production of the sugar in the assessee's sugar factory in India. It is not also in dispute that it is also collected at the time of importing raw sugar. At the time of importing raw sugar the assessee has paid the additional Customs duty or CVD (countervailing duty) as prescribed under Section 3 of the Customs Tariff Act of 1975. If the Article imported is a like article produced or manufactured in India and if excise duty on such like article is leviable, the assessee is liable to pay the additional duty. The Excise Duty on sugar is payable under two enactments, i.e., (1) Section 3 of Central Excise Act of 1944, at the rate prescribed in the Central Excise Tariff Act, 1985. In addition, the assessee is also liable to pay cess as a duty of excise under the Sugar Cess Act of 1982. On such additional duty or CVD paid at the time of import by the assessee, apart from the Basic Customs Duty, he is entitled to the Cenvat credit in terms of clause (vii) of Rule 3 of Cenvat Credit Rules, 2004."

The assessee has availed credit and also reversed the same on monthly basis as refund of the same period is claimed.

39. The assessee submitted that they had availed CENVAT credit on TMT Bars and Ready Mix Concrete during 2014-15 to 2016-17 amounting to Rs.

partnership of law applies to a transaction between co-venturer and joint venture and not the entire Partnership Act per se. Secondly, even under the Partnership Act there is no stipulation that the partners must necessarily share losses. In any case, in a joint venture of the present type where jointly controlled operations are being undertaken and one of the venturers brings in the land and the water front and the right to exploit such water front as his contribution while the other venturer brings in money to create infrastructure on the same as his capital, each of the partners is responsible / liable for the loss of his capital in case the venture is not successful.

There is no service rendered by the appellant and the money flow to the assessee from SWPL under the nomenclature of royalty is not a consideration for rendition of any services but in fact represents the appellant's share of revenue arising out of the joint venture being carried on by the assessee and SWPL."

Tribunal in case of KPH Dream Cricket (P) Ltd. Vs. CCE (2012) 26 STR 362 while granting stay has observed as under:

"payment made by BCCI towards share of central receipts for media rights and other income cannot be considered as payment for services since BCCI - IPL and KPH Dream are jointly undertaking a business venture where there may a loss Or profit."

The ratio of the aforesaid decision is squarely applicable since together an activity has been carried out; there is no inter-se service between the partners and in any event the activity by itself is not liable to service tax.

41. Regarding Non payment of service tax on reimbursement received for electric burning expenses; Assessee has submitted that;

(i). The assessee had let out its space and other infrastructure facilities to various entities. The assessee recovered reimbursement of electricity burning expenses. The assessee had recovered electricity burning expenses on lump sum basis. The audit party had objected that the consideration received by the assessee for reimbursement of electricity charges should be treated as consideration in terms of Section 67 of the Finance Act,1994 and Rule 5 of Service Tax (Determination of Value) Rules, 2006 and the assessee was liable to pay service tax.

(ii). Electricity is covered under chapter 27 of the Central Excise Tariff Act,1985. Electricity is a goods and chargeable to nil rate of Central Excise duty. Therefore service tax is not applicable on supply of electricity duty under provision of Finance Act, 1994.

(iii). In case of ICC Reality (India) Pvt Ltd. Vs. Commissioner of C.Ex., Pune-III [2013(32) STR 427(Tri.-Mumbai)] it is held as under:

"Reimbursement of electricity charges from tenants inclusion of electricity covered under Schedule A Sr. No. 20 of Maharashtra Value Added Tax Act,

for the purpose of charging service tax is ultra vires Section 66 and 67 of the Finance Act, 1994 and travels much beyond the scope of those sections.

Section 67 authorizes the determination of the value of the taxable service for the purpose of charging service tax under Section 66 as the gross amount charged by the service provider for such service provided or to be provided by him, in a case where the consideration for the service is money. It is only the value of such service that can be brought to charge and nothing more. The quantification of the value of the service can therefore never exceed the gross amount charged by the service provider for the service provided by him.

If the expenses on air travel tickets are already subject to service tax and is included in the bill, to charge service tax again on the expense would .certainly amount to double taxation. It is true that there can be double taxation, but it is equally true that it should be clearly provided for and intended; Double taxation cannot be enforced by implication."

(ix). In case of Amit Sales V /s. Commisisioner of Central Excise-Jaipur-I [2017(47)STR156(TRI.-Del.)] it is held that:

"Assessee given a remuneration/commission and certain amount per. case. As per rest of clauses of agreement, all expenses entered into by the C & F would be reimbursed by principal. There is no merit in Revenue's stand."

(x). From the above, it is clear that electricity is considered as goods and supply of electricity is supply of goods, and not a supply of service.

(xi). The electricity charges collected by the assessee is part of supply of electricity. Therefore the assessee is not required to pay service tax on amount of electricity charges collected.

42. The assessee submitted that,

(i). As per the department's contention, in reconciliation of income shown in Financial Statements and ST-3 Returns for the period 2013-14 to June 2017 there was difference of income of Rs.18,98,56,114/-. Accordingly service tax of Rs. 2,69,70,591/- was required to be paid by the assessee on the same.

(ii). Service tax can be levied only when there is a provision of taxable service and financial statements and ST-3 returns need not match since there are many services which are kept out of the ambit of service tax on account of exemption or on account of negative list or on account of pure agency. there are revenue streams which are not even liable to service tax but would find place in the financial statements and need not find place in the ST-3 returns.

(vi). CESTAT Ahmedabad in case of Commissioner of Service Tax -Ahmedabad Vs. Rajpath Club Ltd. (A/10785/2018 dated 26/04/2018) for the period October 2015 to March 2016 held that on the principle of mutuality members and club are not separate entity but are the same. Hence services to own self does not attract service tax.

(vii). In case of M/s. Rajpath Club Ltd., Commissioner (A) by order no. AHM-EXCUS-001-APP-237-17-18 dated18.01.2018 has already decided that the assessee is an incorporated organisation and hence explanation 3 to Section 65B (44) regarding unincorporated association or a body of person is not applicable to them.

(viii). There is no question of levy of service tax based on comparison of financial statements and ST-3 returns given the fact that the revenues reflected in the financial statements do not involve any service and are not taxable based on the principle of mutuality.

43 . The assessee has also submitted that penalty was not impossible on them under. Section 78(1) of Finance Act,1994 and Rule 15(3) of CENVAT Credit Rules,2004:

(i). The assessee had filed ST-3 returns for the period October 2013 to June 2017 within prescribed time limit and facts regarding rendering of services and payment of service tax was mentioned in the ST 3 returns. The assessee had prepared their books of accounts showing profit and loss account and balance sheet for the years 2013-14 to 2017-18 and facts regarding receipt of revenue share from the restaurant service providers and receipt of reimbursement of electricity charges were included in profit and loss account from time to time. The assessee had not suppressed facts with intend to evade payment of tax on account of suppression of facts or misstatement.

It is mentioned that proviso under Section 73(1) of the Finance Act, 1994 is not applicable and also extended period of 5 years is not applicable to the assessee. The assessee had not suppressed the facts with intend to evade payment of service tax therefore the assessee was not liable to pay penalty under Section 78(1) of the Finance Act,1994 and Rule 15(3) of CENVAT Credit Rules,2004.

(ii). Penalty was not imposable when natter relates to legal interpretation:

The issue involved relates to interpretation

a) whether electricity is goods or not and whether supply of electricity is a service and whether it attracts service tax and

b) revenue share received by the assessee as per agreement from restaurant service providers attract service tax even though the restaurant service providers have paid service tax on gross value of restaurant service provided by them.

45.1 On going through the SCN I find that the SCN has been issued on the basis of audit conducted for the period from October,2013 to June,2017 by the office of the Commissioner Central GST, Audit, Ahmedabad. Query Memos dated 03.04.2019 and 15.04.2019 were issued to the assessee. Since the assessee was not in agreement with the queries raised by the audit, accordingly, the Commissioner, Central GST, Audit, Ahmedabad has issued the subject SCN vide F.No.VI/1(b)/CTA/Tech-9/SCN/RCL2019-20 dated 22.04.2019.

45.2 During the Personal Hearing Shri Bishan Shah has submitted the copy of judgment passed in the case of State of West Bengal & ors Vs. Calcutta Club Limited and refund claim passed by the i) Assistant Commissioner of Service Tax, Division-II, Ahmedabad ii) Assistant Commissioner of Service Tax , Division-I, Ahmedabad iii) Assistant commissioner of Goods & Service Tax, Division-VI, Ahmedabad North and order passed by the Commissioner (Appeals), Central Tax, Ahmedabad in Appeal No.AHM-EXCUS-001-APP-237-17-18 dated 18.01.2018.

45.3 The assessee has relied upon the judgment of Hon'ble Supreme Court dated 03.10.2019 passed in Civil appeal No.4184 of 2009 State of West Bengal & ors. Vs. Calcutta Club Limited. The crux of the said judgement is reproduced as under:

"Hon'ble Supreme Court has discussed the definition of 'Club or Association' in Para-58 and 60 under its judgment under Section 65(25a)(w.e.f 16.06.2005) and Section 65(25aa)(w.e.f 01.05.2011). Then Para 80 of the said judgment Apex Court held that in these definitions, the expression 'body of persons' which are incorporated entities have been expressly excluded under Section 65(25a)(l) and 65(25aa)(l) of the Finance Act,1994. The Apex Court has also held that in case of service to its member, there is an absence of existence of another person and one cannot provide service to self. The apex Court has also discussed the term 'established' and 'constituted' at para-72 of the judgment. The Apex Court has finally held that the services provided by the club to its members are not liable to Service Tax. The service can be considered to be rendered to self which is out of purview of service Tax."

I find that the issue regarding levy of Service Tax on Club/Assocaition Service have been decided by the Hon'ble supreme Court in the case of M/s. Calcutta Club Limited., Civil Appeal No.4184 of 2009. However, in the instant case there are other issues pertaining to discharge of service tax liability such

clause (viiia) to Rule 3(1) of the Cenvat Rules, the assessee being a provider of output service, are not eligible to take credit of additional duty leviable under sub-section (5) to Section 3 of the Customs Tariff Act, 1985 (SAD).

The assessee has submitted that they have availed the above Cenvat credit and has also reversed the same on monthly basis as refund of the same period was claimed. However, they have failed to provide any documentary proof in this regard before the adjudicating authority. Further the judements/ decisions cited by the assessee in this regards are not squarely applicable to the facts and circumstances of this case.

From the above, it is quite clear that the assessee has taken wrong credit of custom duties and cesses which was inadmissible to them and I find that the same is recoverable from the assessee under the provisions of the Finance Act, 1994 and rules made thereunder.

***2: Inadmissible cenvat credit taken on inputs namely TMT bars* and Ready Mix Concrete ('RMC')**

The assessee had availed cenvat credit on TMT bars and RMC in respect of inputs received from certain suppliers , which are tabulated as under:

Period	Ineligible credit taken (Rs)	Nature of Input Credit taken
2014-15	678346	Credit taken on excise duty paid on input (TMT Bars) in respect of M/s Grace Castings Ltd.
2015-16	916038	Credit taken on excise duty paid on input TMT Bars in respect of M/s Grace Castings Ltd and M/s Shree Parmeshwar Steels Pvt. Ltd
2016-17	62924	Credit taken on excise duty paid on input (TMT Bars and RMC) in respect of M/s Grace Castings Ltd and M/s Yogeshwar Concrete respectively, M/s Vijay Steel Industries and M/s ParmeshwarSteel Pvt. Ltd.
16,57,308/-		Total

In the matter, I find that from the definition of 'input' as detailed under Rule 2 (k) of the Cenvat Rules there is an exclusion clause mentioned in the Rule. The exclusion clause categorically says that goods used for construction would be ineligible for cenvat credit.

The assessee has submitted that they have availed the above Cenvat credit and has also reversed the same on monthly basis as refund of the same period was claimed. However, they have failed to provide any documentary proof in this regard before the adjudicating authority. Further the judgements/

(a)"consideration" includes —
(i) any amount that is payable for the taxable services provided or to be provided;
(ii) any reimbursable expenditure or cost incurred by the service provider and charged, in the course of providing or agreeing to provide a taxable service, except
in such circumstances, and subject to such conditions, as may be prescribed;
(iii) any amount retained by the lottery distributor or selling agent from gross sale
amount of lottery ticket in addition to the fee or commission, if any, or, as the case may be, the discount received, that is to say, the difference in the face value
of lottery ticket and the price at which the distributor or selling agent gets such ticket.
(b) [* * * *]
(c)"gross amount charged" includes payment by cheque, credit card, deduction from
account and any form of payment by issue of credit notes or debit notes and [book adjustment, and any amount credited or debited, as the case may be, to any account, whether called
"Suspense account" or by any other name, in the books of account of a person liable to pay
service tax, where the transaction of taxable service is with any associated enterprise.

It is observed that the assessee has failed to include the Renting of immovable property service by the way of amending their registration certificate under ST-2. They have also failed to declare the said service provided by them during the relevant period in their monthly ST-3 returns filed by them during the aforesaid period and hence failed to discharge applicable service tax on the same.

In this regards I would like to mention here that Hon'ble CESTAT, Regional Bench, Hyderabad in Hyderabad Race Club versus Commissioner of Cus. & C. Ex., Hyderabad (2020 (35) G.S.T.L.289 (Tri. – Hyd.) has confirmed the demand of the department for providing services to the caterers under the head of Renting of Immovable Property. The relevant paras of the judgement are reproduced hereunder:

> *"22. Finally, coming to the demand for providing services to the caterers. The said demand has been confirmed under the head of Renting of Immovable Property. Admittedly, the caterer is allowed to roam around in the entire premises of the appellant to offer the food and the catering services. The appellant has provided a space to the caterer to put his staff within the Clubs premises. Thus, in the case of caterer, the Club is not providing any other service either in the form of cutlery crockery or in the form of serving boys. Hence, the service provided by the appellant is merely Renting of Immovable Property Service. In Royal Western India Turf Club Ltd. case, the said service was alleged and confirmed by the adjudicating authorities as Business Support Service, but was held to be Renting of Immovable Property Service. The present show cause notice has proposed the demand for service provided to the caterer as Renting*

that in view of the Karnataka High Courts's decision cited supra, the demand on other services except membership fee service, the appellants are liable to pay service tax. Accordingly, the appeal is partly allowed."

The assessee has submitted in their defence that the two restaurant service providers were providing services to the members of the club. The club and the members are covered under the concept of mutuality i.e. club and members both are same and one cannot provide service to oneself. I find that the contention of the assessee is not tenable in the instant case as they are receiving income from the revenue of the restaurants which are different entities and the concept of mutuality does not apply to this case as under the concept of mutuality one cannot profit by receiving income from oneself.

In view of the above, I hold that service tax on the income received by the assessee for providing renting of immovable property service to M/s Swagat Caterers Pvt Ltd and M/s Somani Hospitality Services is recoverable from the assessee under the provisions of the Finance Act, 1994 and rules made thereunder. The contention of the assessee in this regard is not tenable. Further, the facts and circumstances of the decisions in the case of Hon'able CESTAT, Mumbai in case of Mormugao Port Trust Vs. CCus (2017) 48 STR 69 and KPH Dream Cricket (P) Ltd. Vs. CCE (2012) 26 STR 362 cited by the assessee are different and not relevant to the present case.

4: Short payment of service tax on renting of space and other infrastructure facilities.

The assessee had let out its space and other infrastructure facilities to various entities like M/s Beauty Salon, M/s Shree Elora Decorators, M/s Janta Corporation, M/s Shibani Chocolates etc., apart from the agreed annual contract charges, the assessee were also recovering an amount from each of the entity in the name of reimbursement of electricity burning expenses. They had not discharged service tax on these reimbursable amounts collected by them.

The assessee has recovered fixed amounts as per contract with M/s Janta Corporation and Shri Elora Decorators in the name of Electricity burning charges as Rs 15,000/-, Rs 18,000/- and Rs 25,000/- per day for normal use, commercial use or exhibition respectively in respect of Diamond Hall and Rs 10,000/-, Rs 12,000/- and Rs 20,000/- per day for normal use, commercial use and exhibition, respectively in respect of Golden Hall. The assessee were recovering Rs 30,000/- per month in respect of the beauty parlour and Rs 25,000/- on lump sum basis from M/s Shibanis Chocolatz. The assessee had

Corporation, M/s Shibani Chocolates etc. in guise of reimbursement received for electric burning expense is recoverable from the assessee under the provisions of the Finance Act, 1994 and rules made thereunder. The submission of the assessee in this regard is not tenable. The facts and circumstances of the decisions/ judgements cited by the assessee in the matter are different and not relevant to the present case.

5: Short payment of service tax due to difference in revenue reconciliation, a reconciliation of the income shown in their financial statements and those shown in their ST 3 returns for the same period was undertaken. The difference in income is as tabulated below:

Particulars	2013-14	2014-15	2015-16	2016-17	2017-18 (Q1)
Amount of Diff. in reconciliation	1,74,42,070	2,22,61,938	9,19,28,192	4,76,83,398	1,05,40,516
Service tax payable	21,55,840	27,51,576	1,33,29,588	71,52,510	15,81,077
Total differential value = Rs. 18,98,56,114/- Total Service Tax Payable = Rs. 2,69,70,591/-					

I find that the as per the evidences put forward by the way of scrutiny of documents as cited in the show cause notice, the nature of services provided by the assessee falls under their major service viz. Club/ association service and the income received under the un-reconciled amount of their financial statements vis-à-vis monthly ST-3 returns is actually membership charges received from their members.

I find that the issue regarding levy of Service Tax on Club/Assocaition have been decided by the Hon'ble supreme Court in the case of M/s. Calcutta Club Limited., Civil Appeal No.4184 of 2009. The assessee has relied upon the judgment of Hon'ble Supreme Court dated 03.10.2019 passed in Civil appeal No.4184 of 2009 State of West Bengal & ors. Vs. Calcutta Club Limited relevant to present issue. The Hon'ble supreme Court has discussed the issue at length and therefore it is very much necessary to look into the decision rendered by the Hon'ble Apex Court. The relevant Para-72, Para-73, Para-76, Para-79,Para-80, Para-81, Para-82, Para-83 ,Para-84 and Para 85 of the said judgment are reproduced as under:

72. The definition of "club or association" contained in Section 65(25a) makes it plain that any person or body or persons providing

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

76. What has been stated in the present judgment 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 judgment 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.

79. It will be noticed that the aforesaid explanation is in substantially the same terms as Article 366(29-A)(e) of the Constitution of India. Earlier in this judgment qua sales tax, we have already held that the expression "body of persons" will not include an incorporated company, nor will it include any other form of incorporation including an incorporated co-operative society.

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 "anybody 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.

81. When the scheme of service tax changed so as to introduce a negative list for the first-time post 2012, services were now taxable if they were carried out by "one person" for "another person" for consideration. "Person" is very widely defined by Section 65B(37) as including individuals as well as all associations of persons or bodies of individuals, whether incorporated or not. Explanation 3 to Section 65B(44), instead of using the expression "person" or the expression "an association of persons or bodies of individuals, whether incorporated or not", uses the expression "a body of persons" when juxtaposed with "an unincorporated association".

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' clubs 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.

has, from the very beginning, put in place mechanism of trust-based compliance on the part of manufacturers/ supplier of goods/ output service providers/ taxpayers and accordingly, measures such as self-assessment etc., based on mutual trust and confidence have been in place. In the spirit of mutuality of trust and transparent tax administration with reduced compliance burden vis-à-vis rules & procedures the government has consciously promoted the industries interest. Further, a manufacturer/ supplier of goods/ service provider/ taxpayer is not required to maintain any statutory or separate records under the provisions of the Finance Act, 1994 and Rules made thereunder, as considerable amount of trust is placed on them and private records maintained by them, for their normal business purposes, are accepted, practically for all the purposes. All these operate on the basis of expectation of honesty, truthfulness and due diligence on the part of the assessee. Therefore, the governing statutory provisions create an absolute liability when any provision is contravened or there is a breach of trust placed on them. From the evidences, it is observed that the assessee had knowingly suppressed the fact of receiving income under Renting of immovable property and taken wrongful Credit which was inadmissible to them. This deliberate act of suppressing income and wrongful credit under Finance Act, 1994 is in utter disregard to the requirements of law and breach of trust deposed on them and is certainly not in tune with Government's efforts in the direction to create a voluntary tax compliance regime.

Further, it is observed that the assessee was fully aware about the fact that they were receiving such income which was chargeable under the Service Tax and had taken wrong credit which was not admissible to them. However, in spite of knowing the facts; they chose not to pay the said applicable dues related to Service Tax. This has been done to escape from the eyes of the department with intent to evade the payment of dues related to Service Tax under the Finance Act, 1994. This fact of non-payment of dues related to Service Tax would have remained unnoticed, if the audit Officers had not

with the intent to evade payment of service tax, the person who has been served notice under the proviso to sub-section (1) of section 73 shall, in addition to the service tax and interest specified in the notice, be also liable to pay a penalty which shall be equal to hundred per cent. of the amount of such service tax :

Provided that in respect of the cases where the details relating to such transactions are recorded in the specified records for the period beginning with the 8th April, 2011 upto the 24 date on which the Finance Bill, 2015 receives the assent of the President (both days inclusive), the penalty shall be fifty per cent. of the service tax so determined :

Provided further that where service tax and interest is paid within a period of thirty days of — the date of service of notice under the proviso to (i) sub-section (1) of section 73, the penalty payable shall be fifteen per cent. of such service tax and proceedings in respect of such service tax, interest and penalty shall be deemed to be concluded; (ii)the date of receipt of the order of the Central Excise Officer determining the amount of service tax under sub-section (2) of section 73, the penalty payable shall be twenty-five per cent. of the service tax so determined :

Provided also that the benefit of reduced penalty under the second proviso shall be available only if the amount of such reduced penalty is also paid within such period :

Explanation. — For the purposes of this sub-section, "specified records" means records including computerised data as are required to be maintained by an assessee in accordance with any law for the time being in force or where there is no such requirement, the invoices recorded by the assessee in the books of accounts shall be considered as the specified records."

47.1 In view of the above, I hold that the assessee has suppressed the material facts with intent to evade the payment of duty by not reversing the wrongly availed and utilized Cenvat credit and accordingly contravened the provisions of Rule 3(1) and Rule 2(k) of the Cenvat Credit Rules, 2004 which makes them liable to reverse/ pay the same under the provisions of Section 73(1) of the Finance Act, 1994 read with provisions of rule 14 of the Cenvat credit rules, 2004. The assessee has also rendered themselves liable to pay interest on the inadmissible credit of Rs. 32,29,513/- under section 75 of the Finance Act, 1994. They have also rendered themselves liable for penalty under the provisions of Section 78(1) of the Finance Act, 1994 read with Rule 15 of the Cenvat Credit Rules, 2004.

47.2 Further, in view of the discussion made in the forgoing paras, I hold that the assessee has failed to pay the service tax on the income received for renting

assessee from various entities in the assessable value for the purpose of charging service tax, as per Explanation (a) (ii) to Section 67(1) of the Finance Act, 1994 read with Rule 5(1) of the Valuation Rules.

(vii) I confirm the demand of service tax of Rs. 10,89,822/- (Rupees Ten lacs eighty nine thousand eight hundred twenty two only) not paid on the reimbusrsable amount of Rs.86,03,500/- received as consideration under the category of renting of immovable services under the proviso of Section 73(1) of the Finance Act, 1994.

(viii) I order to recover interest at the applicable rate from M/s. Rajpath Club Ltd. under the provisions of Section 75 of the Finance Act, 1994 on the service tax demand at (iv) and (vi) above.

(ix) I impose penalty of Rs. 20,26,734/- (Rupees Twenty lacs twenty six thousand seven hundred thirty four only) under section 78(1) of the Finance Act, 1994 on the service tax demand at (iv) and (vi) above.

(x) I drop the proceedings demanding service tax on the short payment of service tax due to difference in revenue reconciliation amounting to Rs.2,69,70,591/- (Rupees Two crores sixty nine lacs seventy thousand five hundred ninety one only) in light of the Hon'ble Supreme Court judgement dated 03.10.2019 passed in Civil appeal No.4184 of 2009 in case of State of West Bengal & ors. Vs. Calcutta Club Limited.

(Upendra Singh Yadav)
Commissioner,
Central Excise & CGST,
Ahmedabad North.

By Regd. Post AD./Hand Delivery

F.No. STC/15-16/OA/2019

To,

M/s. Rajpath Club Limited,
Sarkhej-Gandhinagar Highway,
Ahmedabd-380 059,.

Copy to:

1. The Chief Commissioner of CGST & C. Ex., Ahmedabad Zone.
2. The Commissioner, CGST, Audit , Ahmedabad.
3. The Assistant Commissioner, CGST & C.Ex., Division-VI, Ahmedabad North.
4. The Superintendent, Range-I, Division-VI, Ahmedabad North.
5. The Superintendent (System), CGST, Ahmedabad North for uploading on the website.
6. Guard File