



<p>आयुक्त का कार्यालय केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद - उत्तर, कस्टम हाउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		 <p>OFFICE OF COMMISSIONER CENTRAL GST & CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1ST FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
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निबन्धित पावती डाक द्वारा/By R.P.A.D

DIN 20210364WT000000B83C

फ़ा.सं./F.No. STC/15-210/OA/2020

आदेश की तारीख/Date of Order :- 08.03.2021

जारी करने की तारीख/Date of Issue :- 10.03.2021

द्वारा पारित/Passed by:-

मारुत त्रिपाठी / Marut Tripathi

संयुक्त आयुक्त / Joint Commissioner

मूल आदेश संख्या / Order-In-Original No. 51/JC/ MT /2020-21

जिस व्यक्ति(यो) को यह प्रति भेजी जाती है, उसके/उनके निजी प्रयोग के लिए मुफ्त प्रदान की जाती है।

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

इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरुद्ध अपील, इसकी प्राप्ति से 60 (साठ) दिन के अन्दर आयुक्त (अपील), केन्द्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क, केन्द्रीय उत्पाद शुल्क भवन, अंबावाड़ी, अहमदाबाद 380015-को प्रारूप संख्या एस टी -4 (ST-4) में दाखिल कर सकता है। इस अपील पर रु. 5.00 (पांच रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

Any person deeming himself aggrieved by this order may appeal against this order in form EA-1 to the Commissioner(Appeals), Central GST & Central Excise, Central Excise Building, Ambawadi, Ahmedabad-380015 within sixty days from the date of its communication. The appeal should bear a court fee stamp of Rs. 5.00 only.

इस आदेश के विरुद्ध अपील करने के लिए आयुक्त (अपील) के समक्ष नियमानुसार पूर्व जमा के धनराशी का प्रमाण देना आवश्यक है।

An appeal against this order shall lie before the Commissioner (Appeal) on giving proof of payment of pre deposit as per rules.

उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या एस टी -4 (ST-4) में दो प्रतियों में दाखिल की जानी चाहिए। उस पर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2001 के नियम 3 के प्रावधानों के अनुसार हस्ताक्षर किए जाने चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।

(1) उक्त अपील की प्रति।

(2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रु. 5) 00. पांच रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

The appeal should be filed in form एस टी -4 (ST-4) in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 3 of Central Excise (Appeals) Rules, 2001. It should be accompanied with the following:

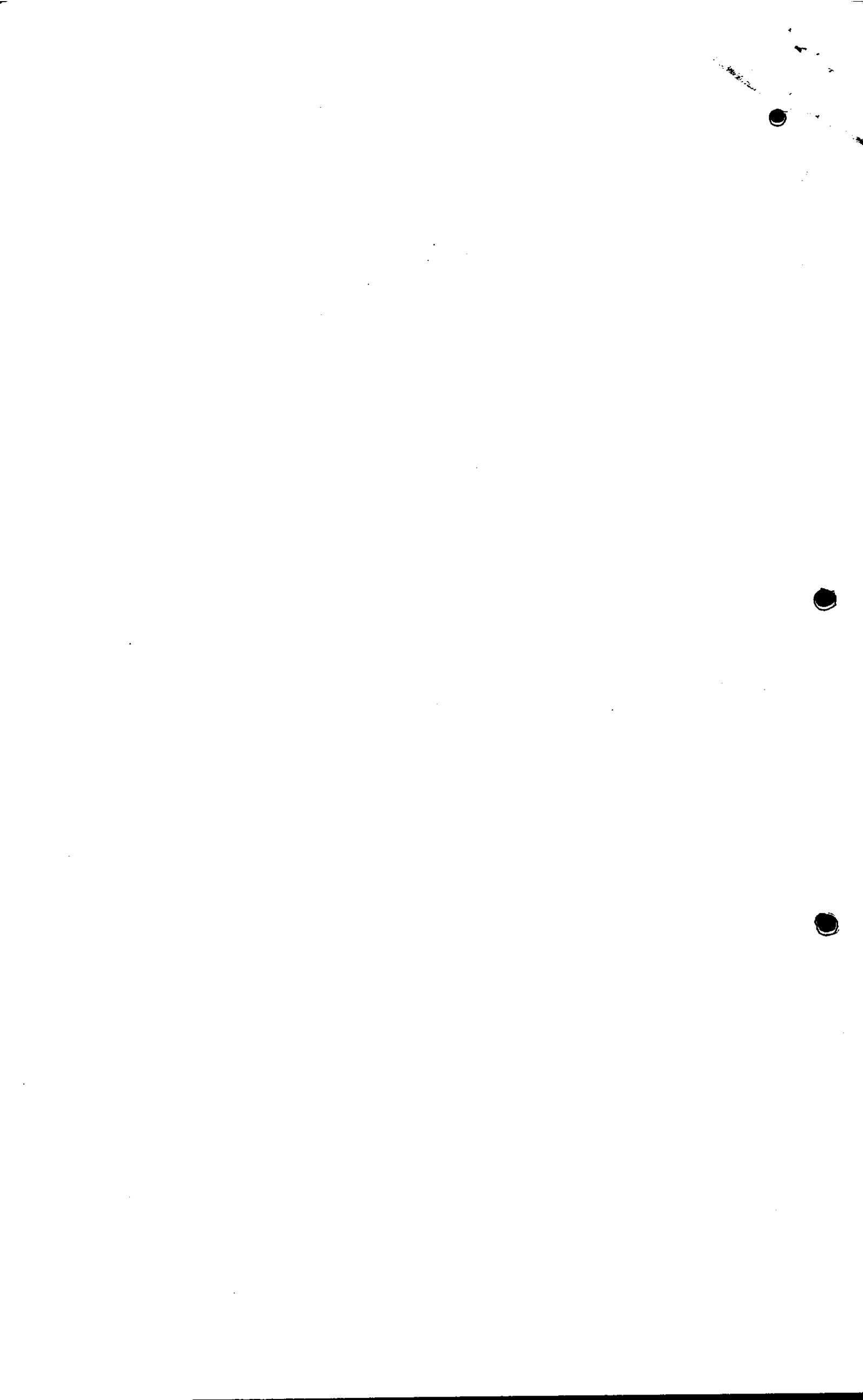
(1) Copy of accompanied Appeal.

(2) Copies of the decision or, one of which at least shall be certified copy, the order

Appealed against OR the other order which must bear a court fee stamp of Rs.5.00.

विषय- कारण बताओ सूचना/ Proceeding initiated against Show Cause Notice No. STC/4-33/O&A/08 dated 17.10.2008 issued to M/s. The Sports Club of Gujarat Limited, Sardar Patel Stadium, Navrangpura, Ahmedabad.





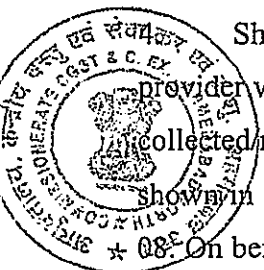
Brief Facts of the Case:

M/s. the Sports Club of Gujarat Limited, Sardar Patel Stadium, Navrangpura, Ahmedabad, (hereinafter the said service provider) is registered with the Service Tax department and holding service tax Registration Number AA4CT7280NST001 under the category of Mandap Keeper, Health Club and Membership of Club or Association service. On the basis of intelligence gathered that that the said service provider was not paying Service Tax on the gross amount collected towards rendering various taxable services and the gross amount collected was not being reflected in their ST-3 Returns filed at the relevant time with the Service tax department.

2. A summons bearing F. No.STC/04-08/Prev.V/06-07 dated 09/03/2007, 12/03/2008 and 23/06/2008 was issued to the said service provider calling for records/returns/Balance Sheets and, other relevant details for investigation in the matter. During the course of investigation the said service provider submitted Balance sheets>Returns and other details vide their submission dated 17/03/2007, Balance Sheet for the FY 2006-07 submitted on 03/12/2007, 19/02/2008, 02/04/2008, 11/04/2008, 15/06/2008, 02/07/2008 and 01/09/2008.

3. Shri Mayur R. Shah, Administrative Manager and authorized signatory of M/s The Sports Club of Gujarat Limited, Ahmedabad appeared before the officers to give statement on behalf of M/s The Sports Club of Gujarat Limited and his statement was recorded on 20/02/2008 and 21/08/2008 under provision of Section 14 of the Central Excise Act, 1944 made applicable to Service Tax matters vide Section 83 of the Finance Act, 1994. Shri Mayur R. Shah, Administrative Manager and authorized, signatory of the said service provider in his aforesaid statements stated that he served as Administrative Manager of M/s. Sports Club of Gujarat Limited, Navrangpura, Ahmedabad; that he looked after all the affairs including Service Tax, accounts & Administrative work matters; that he was authorized to give statement on behalf of M/s Sports Club of Gujarat Limited, Navrangpura, Ahmedabad; that the said firm is a company limited by guarantee; that the same was started around 1965 in the name of Mis. Sports Club of Gujarat Limited; that the said Company is registered with the Service tax department; that their service; that their service tax registration Number is AA4CT7280NST001; that they are registered for Mandap Keeper, Health Fitness centre and Club or Association service; that the said club is providing services of Conference hall, Party plot, Restaurant, Health club, Swimming Pool, Rooms etc to their members/clients; that they have furnished the records/returns/information called for by the department; that the figures shown in the balance sheets are gross amount i.e. as per ledger account.

Shri Mayur R Shah, Administrative Manager and authorised signatory of the said service provider vide his statement dated 21/08/2008 produced a detailed worksheet showing the amount collected/realized and amount disclosed in the ST-3 returns under various heads of Income shown in their Balance Sheet for the period from 2005-06 (16/06/2005 to 31/03/2006) to 2007-08. On being asked to explain the non payment of service tax on gross receipts under the head of



Club or Association service he explained that they were not paying service tax on gross receipts on some of the club activities which are as detailed below along with explanation given by Shri Mayur R. Shah, Administrative Manager and authorized signatory of the said service provider:

(i) **Advance Subscription: U** Regarding difference in taxable value of advance subscription fees realized, as per the balance sheet/ledger account for the FY 2005-06 and the taxable value shown in the ST-3 returns; Shri Mayur R. Shah stated that they were ready to pay service tax along with Interest on the differential amount i.e. on Rs. 42,374/-.

(ii) **Entrance Fees:** Regarding difference in taxable value of Entrance Fees realized, as per the balance sheet/ledger account for the year 2006-07 and the taxable value shown in ST-3 Returns, the service provider paid the applicable service tax of Rs.34,634/- along with Interest on differential amount of Rs. 2,82,957/- and for the FY 2007-08 the service provider paid service tax of Rs.11,124/- along with Interest on the differential value of Rs. 90,000/- during the course of investigation.

(iii) **Sundry Housie Participation Fees and Other Housie:** Regarding non-payment of Service Tax on gross amount collected under the head of Sunday Housie participation fees and Housie charges collected for the period from 16.06.2005 to 31.03.2008, Shri Mayur R Shah stated that they were not paying Service Tax on the gross amount collected/realized since the amount on which they have not paid Service Tax pertains to entry ticket being issued to have an entry into the housie arena and in their opinion the service tax was not leviable on the same as it being a entry ticket that it pertains to collection from members for the game of Housie and the same are being distributed to the members and they were collecting as an agent on the behalf of the beneficiary who are winners of the prizes and amount so collected as a Housie participation fees was for entering the game of housie arena; that as per their understanding and ' interpretation of Law the amount realized under the said head was not taxable; that no services have been provided. and amount so collected me being distributed on the sopt by way of prize3s to the winners such as First line, second line , third line, that what they collect was distributed among the participants as per basis principle of housie game.

(iv) **Guest Fees:** Regarding non payment of service tax on gross amount collected under the head of Guest Fees collected for the period 16/06/2005 to 31/03/2006 Shri Mayur R. Shah stated that those charges pertain to the guest charges being paid by the members for the introduction of the guest to the club for various activities and due to calculation mistake they had not paid service tax on part amount of Rs. 2,12,225/- and that they are ready to pay the service tax on the same at the applicable rate.

(v) **Hall Hire. Charges from members in respect of Club property and Other**

Hire charges: Regarding non payment of service tax on gross amount collected under the head of Hall Hire charges from members in respect of Club property for the period 16/06/2005 to 31/03/2006 Shri Mayur R. Shah stated that it pertained to the amount collected from the members for using the facilities of Hall for normal dinner/party/functions etc. and that they were paying



service tax on the same; that they had due to calculation mistake not paid service tax on part amount and that they were willing to pay the service tax on the same at the applicable rate.

(vi) **Cricket** : Regarding non payment of service tax on gross amount collected under the head of Cricket for the period from 16/06/2005 to 31/03/2008 Shri Mayur R. Shah stated that the said charges pertain to Tournament entry fees, Coaching charges charged and collected by our club from our members and which as per their understanding and interpretation of Law the amount realized under the said head was not taxable.

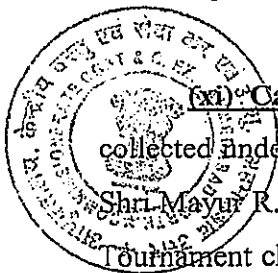
(vii) **Billiard charges** : Regarding non payment of service tax on gross amount collected under the head of Billiard charges collected for the period from 16/06/2005 to 31/03/2008, Shri Mayur R. Shah stated that the said charges collected pertained to Coaching Fees, Tournament entry fees charged by their club from their members which were detailed vide his statement dated 21/08/2008 and which as per their understanding and interpretation of Law the amount realized under the said head was not taxable.

(viii) **TT & Minor games**: Regarding non-payment of Service Tax on gross amount collected under the head of TT & Minor games for the period from 16/06/2005 to 31/03/2008, Shri Mayur R. Shah stated that they were not paying service tax on the part amount collected under the said head pertained to Tournament entry fees, Coaching charges and Aerobics charges charged and collected by their club from their members and which as per their understanding and interpretation of Law the amount realized under the said head was not taxable.

(ix) **Badminton** : Regarding non payment of service tax on gross amount collected under the head of Billiard charges collected for the period from 16/06/2005 to 31/03/2008, Shri Mayur R. Shah stated that the said charges collected pertained to charges collected from members for Coaching Fees, Tournament entry fees, Badminton Court rent, sale of shuttle cork charged by their club from members and which as per their understanding and interpretation of Law the amount realized under the said head was not taxable.

(x) **Swimming Pool Charges**: Regarding non-payment of Service Tax on gross amount collected under the head of Swimming Pool charges for the period from 16/06/2005 to 31/03/2008, Shri Mayur R Shah stated that it pertained to Aquatic meet charges and coaching charges which were collected by their club from members and which as per their understanding and interpretation of Law the amount realized under the said head was not taxable.

(xi) **Card Room Income**: Regarding non-payment of Service tax on gross amount collected under the head of **Card Room** charges for the period from 16.06.2005 to 31.03.2008, Shri Mayur R. Shah stated that the said charges pertained to sale and renting charges of cards and Tournament charges charged by their club from members and which as per their understanding and interpretation of Law the amount realized under the said head was not taxable.



(xii) **Home Theatre Income** : Regarding difference in taxable value of Entrance Fees realized, as per the balance sheet/ledger account for the period 16/06/2005 to 2006-07 and the taxable value shown in the ST-3 returns amounting to Rs.32,033/- and Rs. 7,662/- the assessee paid the applicable service tax of Rs. 3,267/- + Rs. 938/- along with Interest during the course of investigation.

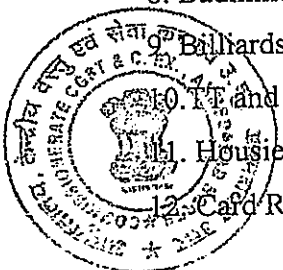
(xii) **Health Centre Charges**: Regarding non-payment of Service Tax on gross amount collected under the head of Health Centre charges collected for the period from 01/04/2005 to 31 /03/2008, he stated that it pertains to the amount collected from the members for using the health center facilities and they are paying service tax on the same; that they had due to calculation mistake not paid service tax on part amount of Rs. 1,27,221/- (FY 2003-04)+Rs.61,075/- (F.Y.2004-05)+ Rs.97,549/- (F.Y.2005-06) and ready to pay the Service Tax on the same at the applicable rate under intimation to the Department along with detailed worksheet, that regarding the amount shown as non-taxable under the category of Health Centre for the FY 2003-04 Rs.1,15,794/- and for the FY 2004-05 Rs.1,5,887/- he stated that the said amount relates to charges collected under the head of jazzercise i.e. for teaching dances and it had no connection whatsoever with regard to physical fitness and it is more or less a cultural activity and hence not falling under the category of Health Centre.

(xiii) **Swimming Pool Income**: Regarding non payment of service tax on gross amount collected under the head of Swimming Pool charges for the period from 16/06/2005 to 31/03/2008, Shri Mayur R. Shah stated that the said charges pertained to Aquatic meet charges and coaching charges which are collected by the club from members and which as per their understanding and interpretation of Law the amount realized under the said head was not taxable.

5. Shri Mayur R Shah, Administrative Manager, during the course of recording the statement produced summary of following Ledger Accounts along with Ledger accounts of different heads of income/ Xerox copy of all the ST-3 returns for the period from 2003-04 to 2007-08/sample of housie tickets:

1. Annual Subscription.
2. Sundry Housie participation fees.
3. Other Housie.
4. Hall Hire charges from members in respect of club property.
5. Guest Fees
6. Other Hire charges from members in respect of club property.
7. Cricket.
8. Badminton.

9. Billiards.
10. T.F. and Minor games.
11. Housie.
12. Card Room.



13. Swimming Pool.

14. Home theatre.

15. Health Centre for the period from 2003-04 to 2007-08 along with Jazzercise Ledger for the said period.

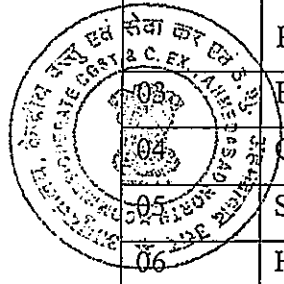
6. Shri Mayur R. Shah, Administrative Manager, in his statement also stated that they had paid Service Tax amounting to Rs.1,74,771/- along with interest thereof Rs.31,507/- for the FY 2005-06, 2006-07 and 2006-07 and Service Tax of Rs.16,696/- for the F.Y.2003-04 to 2004-05 under Health Centre service provided to their members which they had short paid in regular course due to calculation mistake/mis-interpretation, the details of which given by the said provider is produced as under:-

2005-06 (w.e.f. 16.06.2005)

Sr.No.	Details of Club Activity	Taxable Amount (inclusive of Service Tax) on which ST required to be paid/Rs.	Total Service Tax paid on/Rs.
01	Other Hall charges	56253	4869
02	Sundry House Participation Fees	133850	12389
03	Guest Fees	212225	19643
04	Billiards	72638	1132
05	Card Room	343000	11219
06	Swimming Pool	78435	5700
07	Health Centare	252289	11335
08	Home Theatre Income	35300	3267
	Total	1173990	69554

Year 2006-07

Sr.No.	Details of Club Activity	Taxable Amount (inclusive of Service Tax) on which ST required to be paid/Rs.	Total Service Tax paid on/Rs.
01	Entrance Fees	317591	34634
02	Sunday Housie Participation Fees	459580	3030
03	Hall Hire Charges	259241	32658
04	Card Room	448477	17652
05	Swimming Pool	50989	5182
06	Home Theatre	8600	938



Total	1544478	94094
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Year 2007-08

Sr.No.	Details of Club Activity	Taxable Amount (inclusive of Service Tax) on which ST required to be paid/Rs.	Total Service Tax paid on/Rs.
01	Entrance Fees	90000	11124
	Total	90000	11124

7. It was alleged that the said service provider had collected various taxable charges under the Club or Association service for the year 2005-06 amounting to Rs. 80,62,269/- + for the FY 06-07 Rs.1,83,12,956/- + for the FY 07-08 Rs.2,30,07,081/- total amounting to Rs.4,93,82,306/- from their club members towards providing different services of club by which they had provided different types of facility/advantages/services as the case may be, whereas they had showing taxable value amounting to Rs.26,32,690/- for the FY 2005-06+Rs.1,18,84,430/- for the FY 2006-07 + Rs.2,00,67,552/- for the FY 2007-08, total amounting to Rs.3,45,84,672/- in their ST-3 Return filed with the Department at the relevant time, that they had not paid the Service Tax at the relevant time on the different time, that they had not paid the Service Tax at the relevant time on the difference value amounting to Rs.1,47,97,634/- (and cum Service Tax value thereof comes to Rs.1,33,12,229/-).

8. As per the provisions of clause 25(a) of Section 65 of the Finance Act, 1994 w.e.f. 16th July, 2005, the term "club or association" has been defined as under:-

"Club or Association" means any person or body of persons providing services, facilities or advantages, for a subscription or any other amount, to its members .

9. As per the sub clause (zzze) of clause (105) of section 65, the taxable service provided by a club or association is:

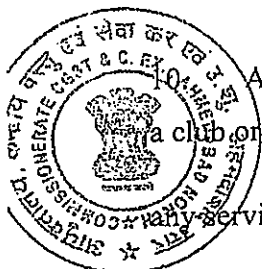
any service provided or to be provided, "to its members, by any club or association in relation to provision of services, facilities or advantages for a subscription or any other amount."

As per the provisions of clause (25a) of Section 65 of the Finance Act, 1994, w.e.f 16th July 2005, the term "club or association" has been defined as under:-

"Club or Association" means any person or body of persons providing services, facilities or advantages, for a subscription or any other amount, to its members."

As per the sub clause (zzze) of clause (105) of section 65, the taxable service provided by a club or association is:

any service provided or to be provided, "to its members, by any club or association in relation to



provision of services, facilities or advantages for a subscription or any other amount.

11. As per the provisions of clause (52) of Section 65 of the Finance Act, 1994 w.e.f. 16th August, 2002 the term "Health Club and Fitness Centre" has been defined as under-

"Health club and Fitness Centre" means service for physical well-being such as, sauna and steam bath, Turkish bath, solarium, spas, reducing or slimming salons, gymnasium, yoga, meditation, massage (excluding therapeutic massage) or any other like service".

12. As per the sub clause (zw) of clause (105) of section 65, the taxable service provided by a Health club and Fitness Centre is-

Any service provided or to be provided, "to any person, by a Health club and Fitness Centre in relation to health and Fitness services."

13. As per the provisions of clause (67) of Section 65 of the Finance Act, 1994 w.e.f. 1st July, 1997, the term "Mandap Keeper" has been defined as under:-

"Mandap keeper" means a person who allows temporary occupation of a Mandap for consideration for organizing any official, social or business function,

14. As per the provisions of clause (65) of Section 65 of the Finance Act, 1994, the term 'Mandap' has been defined as under.

"Mandap" means any immovable property as defined in section 3 of the Transfer of property Act, 1882 and includes any furniture, fixture, light fittings and floor coverings therein let out for consideration for organizing any official, social or business function.

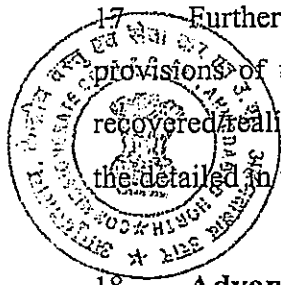
15. As per the sub clause (m) of clause (105) of section 65, the taxable service provided by a mandap keeper is:

any service provided or to be provided, "to a client, by a mandap keeper in relation to the use of mandap in any manner, including the facilities provided or to be provided to the client in relation to such use and also the services, if any, provided or to be provided as caterer".

16. The said service provider was paying service tax under the category of club or association since 16-6-2005 for the charges collected by them as Mandap Keeper service & Health club and Fitness Centre service provided to their members being the club activity and falls under the category of club or association looking to the definition of the category of club or association.

17. Further, it was alleged that in view of the aforesaid definition of taxable services and provisions of the Finance Act, 1994, the reasons for non payment of service tax on charges recovered/realized by the assessee from their members under various heads was not tenable and the details in view of the below mentioned discussion.

18. Advance Subscription:- As per the statement of the authorized signatory and



details/information provided by the said service provider it appeared that they had collected Gross Advance subscription from their members for the year 2005-06, amounting to Rs.692903/- out of which amount of Rs.548548/- comes to for the period from 16-6-2005 to 31-3-2006, on which they were required to pay service tax, because the Membership of club or association service was enforced from 16-02005, but they had paid service tax on Rs.5,06,174/- in their ST-3 return only and not paid the service tax on remaining advance receipt of Rs.42374/- received after 16/06/2005 which was required to be recovered from them, as the said service fall under the definition of Membership of club or association service as laid down under the Finance Act, 1994.

19. **Guest Fees:-** . As per the statement of the authorized signatory and details/information provided by the said service provider it appeared that they had collected total charges from their members, under the head of Guest Charges for the year 2005-06, amounting to Rs. 439560/- out of which amount of Rs. 123655/- shown under ST-3 returns at the relevant time and on remaining amount of Rs. 212225/- not shown in the ST-3 return at the relevant time and they agreed to pay Service Tax on the differential value as the same was collected towards the Service provided to members which falls under the definition of Membership of club or association service.

20. **Cricket:** As per the statement of the authorised signatory and details/information provided by the said service provider it appeared that they had collected total charges amounting to Rs.145310/-, Rs.323850/- and Rs. 222853/- from their members under the head of Cricket for the year 2005-06, 2006-07 and 2007-08 respectively, and the said amounts not shown in the ST-3 return at the relevant time and they had not paid service tax which was required to be recovered from them, as the said service provided by the service providers by collecting consideration/charges from their members falls under the definition of Membership of club or association service as laid down under the Finance Act, 1994. The argument of the Service providers as narrated in the foregoing paras was untenable because the charges of Tournament entry Fees and Coaching charges were collected from members to facilitate the members for coaching and for taking part in the game of Cricket and without paying these charges the members can not participant in the said game and as per the definition of Membership of Club or Association service, any amount other than subscription charged from the members for any facility/advantages/services would also attract the Service Tax.

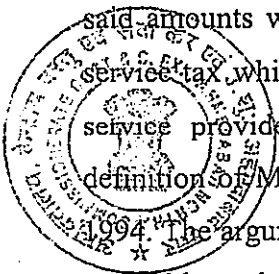
21. **Badminton:-** As per the statement of the authorized signatory and details/information provided by the said service provider it appears that they had collected total gross charges from their members under the head Badminton amounting to Rs.113360/-,Rs.112075/- and Rs.126400/- for the year 2005-06,2006 -07 and 2007-08 respectively, out of which they had paid service tax on the value of Rs.80405/-, Rs.92406/- and Rs.125780/- at the time of filing of ST-3 returns for the respective years. They had not paid service tax amounting to Rs.113360/-, Rs.112075/-, Rs.24025/- for the year 2005-06, 2006-07 and 2007-08 respectively and not shown



the said value in the ST-3 returns at the relevant time and it was required to recover the service tax on the said value from them, as the said service provided by the service providers by collecting consideration/charges from their members falls under the definition of Membership of club or association service as laid down under the Finance Act, 1994. The argument of the service provider as narrated in the foregoing paras was untenable because the said charges were collected towards coaching fees, tournament entry fees, badminton court rent charges and coaching fees from their members to facilitate them for taking part in the game of Badminton and without paying this charges the members can not participant in the said game and as per the definition of Membership of club or association service, any amount other than subscription charged from the members for any facility/ advantages/services would also attract the service tax.

22. **Billiard:** As per the statement of the authorised signatory and details/information provided by the said service provider it was alleged that the said service provider had collected total gross charges from their members under the head Billiard amounting to Rs.171288/-, Rs.156445/- and Rs.190468/- for the year 2005-06, 2006-07 and 2007-08 respectively, out of which they had paid Service Tax on the value of Rs.98650/-, Rs.131445/- and Rs.159168/- at the time of filing of ST-3 returns for the respective years. Further, the said service provider failed to pay service tax on the differential value amounting to Rs.72638/-, Rs.25,000/- Rs.1000/- for the year 2005-06, 2006-07 and 2007-08 respectively and also not reflected the said amount in their ST-3 returns filed at the relevant time, on which Service Tax was liable to be recovered on the said differential value from the said Service provider for providing facilities/services to the members of the club and for which they have collected/realized charges from their members, under the definition of Membership of club or association service as laid down under the Finance Act, 1994. The defense put forth by the service provider in this respect was untenable since the charges were collected from the members of the club to facilitate the members for taking part in the game of Billiard and for non payment of the said charges the members can not participant in the said game and as per the definition of Membership of club or association service, any amount other than subscription charged from the members for any facility/ advantages/services were liable for service tax levy.

23. **TT & Minor Games :-** As per the statement of the authorized signatory and details/information provided by the said service provider it was alleged that they had collected gross charges amounting to Rs.163635/-, Rs.208197/- and Rs.315506/ from their members under the head of TT & Minor Games for the year 2005-06, 2006-07 and 2007-08 respectively, and the said amounts were not shown in the ST- 3 return at the relevant time and they had not paid service tax which was required to be recovered from them, as the said service provided by the service providers by collecting consideration/charges from their members falls under the definition of Membership of club or association- service as laid down under the Finance Act, 1994. The argument of the service provider in this respect as narrated in the foregoing paras was untenable as the charges collected from members to facilitate the members for taking part in the game of TT & Minor Games and without paying this charges the members can not participant in



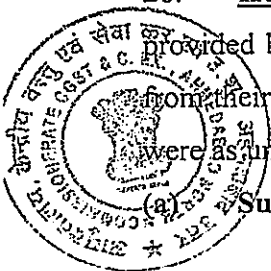
the said game and as per the definition of Membership of club or association service; any amount other than subscription charged from the members for any facility/advantages/services would also attract the Service Tax.

24. **Card Room:-** As per the statement of the authorized signatory and details/information provided by the said service provider it was alleged that they had collected total gross charges from their members under the head Card Room amounting to Rs.839697/-, Rs.978400/- and Rs.992988/- for the year 2005-06, 2006-07 and 2007-08 respectively. They had not paid service tax amounting to Rs.343000/-, Rs.448477/-, Rs.310659/- for the year 2005-06, 2006-07 and 2007-08 respectively and not shown the said value in the ST-3 returns at the relevant time and it was required to recover the service tax on the said value from them, as the said service provided by the service providers by collecting consideration/charges from their members falls under the definition of Membership of club or association service as laid down under the Finance Act 1994. The defense put forth by the service provider for non payment of service tax in this respect was untenable as the gross charges collected from members to facilitate the members pertains towards taking part in the game of Card including all other facilities and on non payment of such charges the members can not participate in the said game and as per the definition of Membership of club or association service, any amount other than subscription charged from the members for any facility/ advantages/services also attract the levy of Service tax.

25. **Swimming Pool:** As per the statement of the authorised signatory and details/information provided by the said service provider it was alleged that they had collected total gross charges from their members under the head Swimming Pool amounting to Rs.491566/-, Rs.457266/- and Rs.432551/- for the year 2005-06, 2006-07 and 2007-08 respectively. The said service provider failed to pay service tax amounting to Rs.78435/- and Rs.50989/- and Rs.24440/- for the year 2005-06, 2006-07 and 2007-08 respectively which was required to be recovered from them as the said service provided by the service providers by collecting consideration/charges from their members falls under the definition of Membership of club or association service as laid down under the Finance Act, 1994. The defense put forth by the service provider, in this respect as narrated in the foregoing paras was untenable as the said charges were, collected towards coaching and aquatic meets from the members towards swimming pool activities and without paying these charges the members can not participate in the said activities and as per the definition of Membership of club or association service, any amount other than subscription charged from the members for any facility/ advantages/services attracts the levy of Service Tax.

26. **Housie:** As per the statement of the authorized signatory and details/information provided by the said service provider it was alleged that they had collected total Gross charges from their members under the different head of housie for- the year 2005-06 (w.e.f. 16.06.2005) were as under:-

(a) Sunday Housie participation Fees.



This was the receipt of amount collected from the members towards Sunday housie participation Fees and shown as income in the balance sheet however the service provider had paid service tax on the amount of Rs.54270/- at the time of filing of the ST-3 return and not paid service tax on the remaining amount of Rs. 133850 /and they agreed to pay the service tax as they believed that the amount was not shown in the ST-3 return which was taxable under the service of Membership of club or association service.

(b) **Housie or other Housie**

This was the receipt of amount collected from the members towards other housie and shown as income in the balance sheet however, the service provider is not paying service tax on the same on the premise that these charges were collected for issuing of tickets to have an entry by member into housie arena for playing housie game, hence not chargeable to service tax. The defense of the service provider in this respect was untenable since these charges were collected from the members to facilitate the members for taking part in the game of housie by entering in the housie arena and without paying this charges the members could not participate in the game of housie and as per the definition of Membership of club or association service, any amount other than subscription charged from the members for any facility/advantages/services attracts levy of service tax. Further the said service provider during the course of investigation furnished few copies of such tickets and it appeared that it was nothing but a form in which member can fill up the numbers when declared/announced in the game of Housie. In view of the same it appeared that the said charges collected by the service provider do not pertain to sale of ticket.

27. **Health Centre:** As per the statement of the authorized signatory and details/information provided by the said service provider it appeared that they had collected total gross charges from their members under the head of Health Centre amounting to Rs.1183753/-, Rs.1423359/-, Rs.1554044/- Rs.2187839/- and Rs.2189301/- for the year 2003-04, 2004-05, 2005-06, 2006-07, and 2007-08 respectively, out of which they had paid service tax on the value of Rs.940738/-, Rs.1211397/-, Rs.1301755/-, Rs.1337014/- and Rs.1484325/- at the time of filing of ST-3 returns for the respective years. The said service provider failed to pay service tax on the total differential cum service tax value amounting to Rs.7,49,858/- for the period from 2003-04 to 2007-08 and also the said value was not reflected in their ST-3 returns filed with the department at the relevant time. In view of the above the said service provider had failed to pay service tax amounting to Rs. 126840/- for the period from 2003-04 to 2007-08 and not shown the said value in the ST-3 returns at the relevant time on which Service Tax was required to be recovered from the said service provider as the amount had been collected by the service provider from their members towards jazzercise which was nothing but a club activity falling under the definition of Membership of club or association service as laid down under the Finance Act 1994. The argument of the service provider that the differential amount pertained to charges collected for teaching dances and the service tax not leviable on the same. The argument put forth by the service provider was irrelevant in the matter, because the said service provided by them was nothing but Jazzercise i.e. physical exercise with music and which falls under the

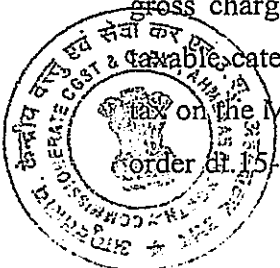
category of Health Centre service or Membership of club or Association as they are collecting charges for the same from members for physical exercise.

28. **ENTERTAINMENT/CULTURE PROGRAMME INCOME** : It was alleged that the said service provider also arranged different programmes falling under Club activities like Garba, tabla tandav, Home theatre, Musical Nite, Gujarati drama, Christmas fun fare, children activities income etc. as reflected in the provisional trial balance for the FY 2005-06 to 2007-08. The total amount collected realized under the said programme income produce by M/S The Sports Club of Gujarat L.td., Ahmedabad vide letter No.04-10-08 as reflected in their trial balance are as under-

Program Income for the FY	Total Amount collected/realized entertainment programme/Rs.	Total Amount collected/realized Culture programme/Rs.	Sponsorship Amount for entertainment programme/Rs.	Sponsorship amount for for Culture programme/Rs.
2005-06	122811	142830	299471	0
2006-07	739429	105730	204938	0
2007-08	873465	197770	228140	20000
Total	2835705	446330	732549	20000

29. It was also alleged that the aforesaid activities organized and carried out by the said service provider for their members was a taxable service falling under the category of Club or association service, as by arranging such programmes they were providing services/facilities/advantages to their members and charges for the same were collected from the members and the said charges collected/realized were leviable for service tax. Further the said service provider neither reflected the aforesaid charges collected/realized in their ST-3 returns filed with the department nor paid service- tax on the same. The failure to pay service tax amounting to Rs. 259043/- for the period from 2005-06 to 2007-08 on the aforesaid charges realized/collected was required to be demanded and recovered from them under the proviso to Section 73(1) of the Finance Act, 1994 by invoking extended period of 5 years as the said service provider failed to reflect the same in their file ST-3 filed at the relevant time with the department. All these acts of contravention of the provisions of Section 68 and 70 of the Finance Act, 1994 read with Rules 6 and 7 of the Service Tax Rules, 1994 appeared to be punishable under the provisions of Section 75,76,77 and Section 78 of the Finance Act, 1994.

30. **MANDAP KEEPER SERVICE** : As per the statement of the authorized signatory and details/information provided by the said service provider it was alleged that they had collected gross charges from their members under the head of Hall hire charges which falls under the category of Mandap Keeper service and further he stated that they had not paid service tax on the Mandap Keeper service as the matter was stayed by the honorable high of Gujarat vide order dt. 15-3-99 against the levy of service under Mandap keeper service and that the same had



not been vacated till date and he also produced the copy of the said stay order dt.15-399 in respect of SCA No.1691/99. It was also alleged that the said service provider had collected the said charges amounting to Rs.500868/- during the FY 2003-04 and Rs. 7 47950/- during the FY 2004-05 and they had failed to pay service tax amounting to Rs.94292/- on the said charges collected during the period from 2003-04 to 2004-05 under the category of Hall Hire charges which was taxable under the category of Mandap Keeper Service. Further the said service provider was paying service tax at the applicable rate on the said category from 2005-06 onwards. The failure to pay service tax amounting to Rs. 94292/- on the aforesaid charges realized/collected was required to be demanded and recovered from them under the proviso to Section 73(1) of the Finance Act, 1994 by invoking extended period of 5 years as the said service provider failed to reflect the same in their file ST-3 filed at the relevant time with the department. All these acts of contravention of the provisions of Section 68 and 70 of the Finance Act, 1994 read with Rules 6 and 7 of the Service Tax Rules, 1994 was alleged to be punishable under the provisions of Section 75, 76, 77 and Section 78 of the Finance Act, 1994.

31. **BUSINESS AUXILIARY SERVICE:** As per the statement of the authorized signatory and details/information provided by the said service provider it appeared that they have collected charges reflected in their Balance Sheet for the FY 2003-04 to 2007-08 under the heading of 10% retention of Catering bills. Whereas the contention of the said service provider that the said retention money is nothing but re-imbursment of expenses such as crockery, furniture etc provided by them to their Outdoor caterer and that in their view it is not taxable as they are not providing any service, is untenable because as per the information submitted by the service provider i.e. Trial Balance for the FY 2007-08 it can be seen that they are providing to their outdoor caterer, i.e. M/s Ahura Enterprises. Whereas as reflected in their Trial Balance under the Account Code 34480109 it is shown as "Catering purchase Ahura Enterprise A/C", wherein they have debited Rs. 7132681/- (under the Debit Col.) and Rs. 5721904/- under the credit Col.. Whereas the service provider under the Account code 34470702 has shown Rs. 906092/- under the credit Col under the head 'Commission on Catering Sales'. In view of the same, it appeared that the aforesaid discussion that the Income under the heading of 10% retention of Catering bills is nothing but commission income from M/s.Ahura Enterprises (outdoor caterer) for the services provided by M/s.The Sports Club of Gujarat to their outdoor caterer. The said business support service bills under the category of Business Auxiliary service and is taxable w.e.f. 01.07.2003.

32. As per the provisions of Section 65(19) of the Finance Act, 1994 the term 'Business Auxiliary Service' has been defined as:

"business auxiliary service" means any service in relation to

- Promotion or marketing or sale of goods produced or provided by or Belonging to the client; or
- Promotion or marketing of service provided by the client; or
- Any customer care service provided on behalf of the client or
- (iv) Procurement of goods or services, which are inputs for the clients,

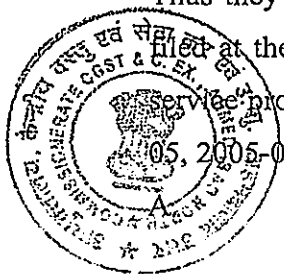


- (v) Production or processing of goods for or on behalf of the client
- (vi) Provision of service on behalf of the client; or
- (vii) A service incidental or auxiliary to any activity specified in sub-clauses to (v) such as billing, issue or collection or recovery of cheques, payments, maintenance or accounts and remittance, inventory management, evaluation or development of prospective customer or vendor, public relation services, management or supervision and includes services as a commission agent, but does not include any information technology service and any activity that amounts to 'manufacture' within the meaning of clause(f) of Section 2 of the Central Excise Act, 1944 (1 of 1944).

33. It appeared that the said service provider has collected the said commission charges amounting to Rs.973148/- during the FY 2003-04, Rs. 1058649/- during the FY 2004-05, Rs.1185971/- during the FY 2005-06, Rs.1142496/- during the FY 2006-07, Rs. 906092/- for the FY 2007-08 and they have failed to pay service tax amounting to Rs.558638/- on the said charges collected under the category of 10% RETENTION OF CATERERS BILLS TOWARDS USE OF CROCKERY, CUTLERY, ETC. which is taxable under the category of Business Auxiliary Service w.e.f. 01/07/2003. The failure to pay service tax amounting to Rs. 558638/- on the aforesaid charges realized/collected is required to be demanded and recovered from them under the proviso to Section 73(1) of the Finance Act, 1994 by invoking extended period of 5 years as the said service provider failed to reflect the same in their file ST-3 filed at the relevant time with the department. All these acts of contravention of the provisions of Section 68 and 70 of the Finance Act, 1994 read with Rules 6 and 7 of the Service Tax Rules, 1994 appeared to be punishable under the provisions of Section 75, 76, 77 and Section 78 of the Finance Act, 1994.

34. In view of the above statement of Shri Mayur R Shah, Administrative Manager and Authorised signatory of the said service provider, definition of "Mandap keeper Service", "club or association Service" and Health club and Fitness Centre Service" and above discussion, it is revealed that the said service provider is engaged in providing services of "Mandap keeper", "Club or Association" and Health club and Fitness Centre service" but are paying service tax only on a part of gross receipts from the members and not paying service tax on full gross receipts from the members which appears to falls under the definition of Mandap Keeper, Club or Association service and Health club and Fitness Centre service. Further it appeared that to evade payment of Service tax on the whole element of the services provided, the said service provider is bifurcating the total gross income under various heads in their books of account. Also as per balance sheet , the various receipts from the members in respect of housie game, Cricket, TT & Minor Games etc. not shown the in the ST-3 returns and evade the payment of service tax. Thus they have suppressed the facts by not showing the full taxable value in the ST-3 returns

at the relevant time. On the basis documents, statement of authorized signatory of above service provider, the short-payment/non-payment of of Service Tax for the year 2003-04. 2004-05, 2005-06, 2006-07 and 2007-08 has been worked out and attached with the SCN as Annexure



35. During the course of investigation the assessee paid Service Tax amounting to Rs.1,74,771/- along with Interest thereof Rs. 31,507/- for the FY 2005-06, 2006-07 and 2007-08 and Service tax of Rs. 16,696/- for the FY 2003-04 to 2004-05 under Health Centre service provided to their members which they had short paid in regular course due to calculation mistake/mis-interpretation, is required to be appropriated towards their total liability.

36. The total Service Tax non-paid/short paid required to be recovered from the said service provider came to Rs.18,98,755/-, out of which, they had paid Rs.1,91,467/- during the course of investigation along with interest amounting to Rs.31507/- as discussed in the foregoing paras.

37. In view of the above discussion, it was alleged that the said service provider-

(i) were engaged in providing service of Club or Association service which consist of Mandap Keeper service and Health club and Fitness Centre service and were registered with the service tax department under, the category of Club or association/Mandap Keeper/ Health club and Fitness Centre service and had not paid Service Tax on the gross amount collected/realized under the said services for the period from 16-6-2005 to 31-3-2008, by not reflecting the same in the taxable value shown in ST-3 returns filed during the said period as defined under Section 70 of the Finance Act, 1994.

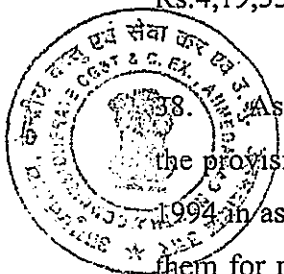
(ii) had collected an amount of Rs.12,48,818/- falling under the category of Mandap Keeper service for the period from 2003-04 to 2004-05 but failed to pay service tax amounting to Rs.94,292/-, recovery of which was subject to the out come of High Court of Gujarat order in respect of SCA No.1691/99.

(iii) Had collected amount of Rs.52,66,356/- falling under the category of Business Auxiliary service for the period from 2003-04 to 2007-08 but had failed to pay Service Tax amounting to Rs.5,58,638/-.

(iv) had collected amount of Rs.1,47,97,634/- falling under the taxable category of Club or Association service for the period from 2005-06 to 2007-08 but had failed to reflect the same in ST-3 returns and failed to pay service tax amounting to Rs.15,28,260/- on the differential cum service tax value of Rs.1,33,12,229/-.

(v) had collected amount of Rs.26,07,112/- falling under the taxable category of Health Club and Fitness Centre service for the period from 2003-04 to 2004-05, out of which they had failed to pay Service Tax amounting to Rs.35,444/- on the differential cum Service Tax value of Rs.4,19,533/-.

38. As seen from the foregoing paras if alleged that the said service provider had contravened the provisions of Section 68 of the Finance Act 1994 read with Rule 6 of the Service Tax Rules 1994 in as much as they had failed to determine and pay Service Tax on the charges received by them for rendering such services; Section 70 of the Finance Act, 1994 read with Rule 7 of the



Service Tax Rules, 1994 in as much as they had failed to include the taxable value in their relevant ST-3 returns filed with the service tax department at the relevant time.

39. All these acts of contravention on the part of said service provider was alleged to have been committed by way of suppression of facts with an intent to evade payment of Service Tax and, therefore, the said Service Tax not paid at the relevant time was- required to be demanded and recovered from them under the proviso to Section 73(1) of the Finance Act, 1994 by invoking extended period of 5 years. All these acts of contravention of the provisions of Section 68 and 70 of the Finance Act, 1994 read with Rules 6 and 7 of the Service Tax Rules, 1994 was alleged to be punishable under the provisions of Section 75, 76, 77 and Section 78 of the Finance Act, 1994.

40. The said service provider, therefore, was called upon to Show Cause to the Joint Commissioner of Service Tax, 7th floor, Central Excise Bhavan, Near Polytechnic, Ambawadi, Ahmedabad vide Show Cause Notice No. STC/04-53/O&A/08 dated 17.10.2008, as to why:

(i) the Service Tax amounting to Rs. 22,16,634/- (Rupees Twenty Two Lakhs Sixteen Thousand Six Hundred and Thirty Four only) including education cess /higher education cess should not be demanded for the various services rendered under Section 73 (1) of the Finance Act, 1994, invoking the larger period of five years. Out of which the said service provider has paid the Service Tax amounting to Rs. 191467/- along with interest amounting to Rs. 31,507/- vide Challan dated 29/02/2008 of Rs.14,159, dated 29/02/2008 of Rs.72,724/-, challan dated 14/05/2008 for Rs. 67,577 , challan dated 30/05/2008 for Rs. 12,221/-, challan dated 28/06/2008 of Rs. 11810/-, challan dated 28/06/2008 of Rs. 4886/-, challan dated 01/07/2008 of Rs. 39597/- should not adjusted against total liability of the non payment/short payment of service tax.

(ii) Interest at the prescribed rate should not be charged from them in terms of the provision of Section 75 of the Finance Act, 1994, and Interest amounting to Rs. 31507/- paid by the service provider should not be adjusted against their total liability of Interest.

(iii) Penalty under Section 76 of the Finance Act, 1994 should not be imposed on them in as much as they failed to pay Service Tax as discussed above.

(iv) Penalty under Section 77 of the Finance Act, 1994 should not be imposed on them in as much as they failed to declare the taxable value in the prescribed ST-3 returns in due time.

(v) Penalty should not be imposed on them under Section 78 of the Finance Act, 1994 for suppressing and not disclosing the value of the taxable service provided by them before the Department with intent to evade payment of Service Tax.

After due process of personal hearing, the aforesaid show cause notice was adjudicated by the Additional Commissioner, Service Tax, Ahmedabad vide OIO



No.STC/01/Addl.Commissioner-KVSS/2009 dated 26.08.2009 wherein, he passed the following orders -

(i) Considered the amount of Rs.52,66,356/- received during 2003-04 to 2007-08 from the Outdoor Caterer as taxable value in view of the provisions of Section 67 of the Finance Act, 1994 and also as defined under Section 68 of the Finance Act, 1994 as amended, under the category of Business Auxiliary Service and confirmed the demand of service tax on the above taxable value which worked out to Rs.5,58,638/- (including education cess) by invoking extended period of five years. Also, considered the amount of Rs.1,47,634/- received during 2005-06 to 2007-08 from their members as taxable value in view of the provisions of Section 67 of the Finance Act, 1994 and also as defined under Section 68 of the Finance Act, 1994 as amended, under the category of Club or Association Service and confirmed the demand of Service Tax on the taxable value which worked out to Rs.15,28,260/- (including education cess) on the differential cum Service Tax value of Rs.1,33,12,229/- by invoking extended period of five years. Further, the adjudicating authority considered the differential amount of Rs.4,19,533/- received during 2003-04 to 2004-05 from their members as taxable value in view of the provisions of Section 67 of the Finance Act, 1994 and also as defined under Section 68 of the Finance Act, 1994 as amended, under the category of Health Club Service and confirmed the demand of Service Tax on the above taxable value which worked out to Rs.35,444/- (including education cess) by invoking extended period of five years. The adjudicating authority dropped the demand of Rs.94,292/- collected received during 2003-04 to 2004-05 from their members.

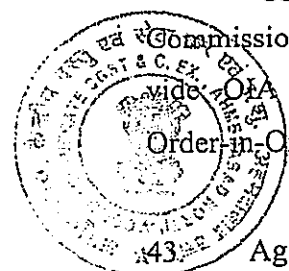
(ii) M/s.Sports Club of Gujarat Ltd, were also directed to pay interest on their Service Tax liability as applicable under Section 75 of the Finance Act, 1994 for delay in making payment of Service Tax within the stipulated time. Also, ordered adjusting of Rs.31,507/- paid by them as interest against their total liability of interest.

(iii) Imposed a penalty of Rs.200/- (Rupees two hundred only) per day or at the rate of 2% of the Service Tax amount per month, whichever is higher but restricted to the Service Tax liability on them under Section 76 of the Finance Act, 1994.

(iv) Imposed a penalty of Rs.21,22,342/- on the service provider under Section 78 of the Finance Act, 1994, for suppressing the value of taxable services provided by them before the department with intent to evade payment of Service Tax amount of Rs.21,22,342/- under various categories of Service. However, if the amount of Service Tax demanded is paid along with the appropriate interest within 30 days from the date of receipt of this order, then the amount of penalty under Section 78 of the Finance Act, 1994 shall be reduced to 25% of the amount of Service Tax so determined, provided such penalty is also paid within 30 days.

42. Aggrieved with the above Order-in-original, the service provider has filed appeal before Commissioner(Appeal)-IV, Central Excise, Ahmedabad wherein the Commissioner (Appeal-IV) No.36/2010(STC)HKJ/Commr(A)/Ahd dated 29.01.2010/02.02.2010 upheld the Order-in-Original and rejected the appeal filed by the applicant.

Again, aggrieved with the Order-in-Appeal No. 36/2010(STC)HKJ/Commr(A)/Ahd



dated 29.01.2010/02.02.2010, the service provider filed appeal before the CESTAT, Ahmedabad. The Hon'ble CESTAT, vide its order No.A/10988-10992/2019 dated 03.06.2019 has remanded back the matter to the adjudicating authority with a direction to decide the case afresh after the outcome of the Larger Bench of Hon'ble Supreme Court. In para 4 of its order, the Hon'ble CESTAT has ordered as under:-

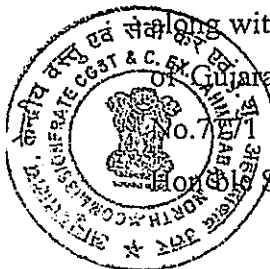
"4. Considered the submission made by both the sides and perused the records. We find that the issue that whether as per doctrine of mutuality the appellant is not liable to pay Service Tax is pending before the Larger Bench of Hon'ble Supreme Court in the case reported as Ranchi Club Ltd-2018(13)GSTL J 91(SC). Accordingly, no purpose will be served to keep these appeals pending before this Tribunal. Hence, the appeals are allowed by way of remand to the adjudicating authority with a direction to decide afresh, after the outcome of the Larger Bench of Hon'ble Supreme Court in the case cited above".

44. M/s. Sports Club of Gujarat, vide their letter SCG/3727/2021 received in this office on 12.01.2021 referring to the above CESTAT order, requested this office to pass a fresh order in respect of the said CESTAT order looking into the judgment of the Hon'ble Supreme Court order dated 03.10.2019. M/s.Sports Club of Gujarat, vide their above letter submitted copy of the CESTAT order No. A/10988-10992/2019 dated 03.06.2019, OIO No. STC/01/Addl.Commr/RVSS/2009 OIA No.36/2010/STC/HKJ/Commr.A/AHD related to the present case and also copy of Order passed by the Hon'ble Supreme Court of India in Civil Appeal No.4184/2009 in the case of State of West Bengal & Others Vs Calcutta Club Ltd, CA No.7497/2012 in the case of Chief Commissioner of Central Excise & Service Tax & others Vs M/s.Ranchi Club Ltd, CA No.7773/2019, 7771/2019, CA7772/2019, CA No.4377-4380 of 2015 and various Civil Appeals. In fact, this office had not received the aforesaid CESTAT order. This remand case came into light only when M/s.Gujarat Sports approached this office for early decision of their remand case.

45. Upon receipt of the letter referred to above from M/s.Sports Club of Gujarat Ltd, genuineness of the order was telephonically confirmed from other Commissionerates viz. CGST, Ahmedabad South. A letter in this regard has also sent to the Ahmedabad South Commissionerate. Subsequently, copy of the subject CESTAT order was downloaded from the website of the CESTAT, Ahmedabad.

PERSONAL HEARING:

46. Accordingly, personal Hearing in this case was fixed on 12.02.2021. Shri C.N.Shah, CA, along with Ms Nilofar Gaha, appeared for the personal hearing. They stated that the Sports Club of Gujarat is incorporated under Companies Act. Further, they relied upon the Civil Appeal No.7771 of 2019. They requested to decide the case keeping in view of the decision of the Hon'ble Supreme Court of India.



DISCUSSION AND FINDINGS:

47. I have carefully gone through the records of the case, order passed by the Hon'ble CESTAT, Ahmedabad and the order passed by the Hon'ble Supreme Court of India in the case of Civil Appeal No.7771/2019, 7772/2019 and various other Civil Appeals.

48. I find that Show Cause Notice was issued to M/s.Sports Club of Gujarat Ltd, Ahmedabad for non-payment of Service Tax on various services rendered by them and asking them to show cause as to-

(i) the Service Tax amounting to Rs. 22,16,634/- (Rupees Twenty Two Lakhs Sixteen Thousand Six Hundred and Thirty Four only) including education cess /higher education cess should not be demanded for the various services rendered under Section 73 (1) of the Finance Act, 1994, invoking the larger period of five years. Out of which the said service provider has paid the Service Tax amounting to Rs. 191467/- along with interest amounting to Rs. 31,507/- vide Challan dated 29/02/2008 of Rs.14,159, dated 29/02/2008 of Rs.72,724/-, challan dated 14/05/2008 for Rs. 67,577 , challan dated 30/05/2008 for Rs. 12,221/-, challan dated 28/06/2008 of Rs. 11810/-, challan dated 28/06/2008 of Rs. 4886/-, challan dated 01/07/2008 of Rs. 39597/- should not adjusted against total liability of the non payment/short payment of service tax.

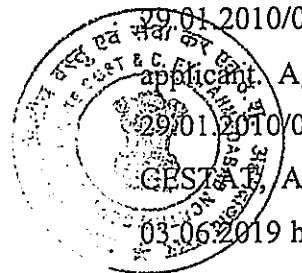
(ii) Interest at the prescribed rate should not be charged from them in terms of the provision of Section 75 of the Finance Act, 1994, and Interest amounting to Rs. 31507/- paid by the service provider should not be adjusted against their total liability of Interest.

(iii) Penalty under Section 76 of the Finance Act, 1994 should not be imposed on them in as much as they failed to pay Service Tax as discussed above.

(iv) Penalty under Section 77 of the Finance Act, 1994 should not be imposed on them in as much as they failed to declare the taxable value in the prescribed ST-3 returns in due time.

(v) Penalty should not be imposed on them under Section 78 of the Finance Act, 1994 for suppressing and not disclosing the value of the taxable service provided by them before the department with intent to evade payment of Service Tax.

49. The said show cause notice was confirmed by the adjudicating authority vide OIO No.STC/01/Addl.Commissioner-KVSS/2009 dated 26.08.2009. Aggrieved with the Order-in-Original, M/s.Sports Club of Gujarat Ltd, Ahmedabad filed appeal before Commissioner(Appeals) who vide OIA No. 36/2010(STC)HKJ/Commr(A)/Ahd dated 29/01/2010/02.02.2010 upheld the Order—in-Original and rejected the appeal filed by the applicant. Aggrieved with the Order-in-Appeal No. 36/2010(STC)HKJ/Commr(A)/Ahd dated 29/01/2010/02.02.2010, M/s.Sports Club of Gujarat, Ahmedabad filed appeal before the CESTAT, Ahmedabad. The Hon'ble CESTAT, vide its order No.A/10988-10992/2019 dated 03/06/2019 has remanded back the matter to the adjudicating authority with a direction to decide the case afresh after the outcome of the Larger Bench of Hon'ble Supreme Court. Hence, present



order.

50. I find that M/s.Karnavati had challenged the validity of Section 65(105)(zzze) Section 65 (25a) and Section 66 of the Finance Act,1994, as amended to the extent that the said provisions purport to levy Service Tax in respect of services purportedly provided by the assessee to its member before the Hon'ble High Court of Gujarat, as being ultra vires.

51. I find that Hon'ble High Court of Gujarat, relying on the judgment of the Division Bench of Jharkhand High Court at Ranchi in the matter of Ranchi Club Ltd. Versus Chief Commissioner of C. Ex, & S. T ., Ranchi zone reported in 2012 (26) STR 401 (Jhar); allowed the appeal and declared that 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 to its members to be *ultra vires*.

52. The relevant paragraph from the judgment of the Jharkhand High Court at Ranchi in the matter of Ranchi Club Ltd. v/s. Chief Commission of C.Ex. & S.Tax., Ranchi Zone reported in 2012 (26) STR 401 (Jhar), wherein they had relied upon the judgment of Hon'ble Supreme Court in the case of Joint Commercial Tax Officer v/s. The Young Men's Indian Association, which held as under:

"In that situation, Hon'ble Supreme Court considered the issue that the club is rendering service or selling any commodity to its members for a consideration then whether that amounts to sale or not. Hon'ble Supreme Court held that it is a mutuality which constitutes the club and therefore, sale by a club to its members and its services rendered to the members, is not a sale by club to the members."

53. CESTAT, Ahmedabad, in the case of M/s. Karnavati Club Ltd., in its decision reported in 2013 (31) S.T.R. 445 (Tri. - Ahmd.), has also relied upon the judgment of the Hon'ble High Court of Gujarat and held as under:

11. *It can be seen from the above reproduced paragraphs that their Lordships have come to a categorical conclusion that the members of the club cannot be seen separately as a client or customer and the mandap or the club is one and the same. Since the Service Tax is sought from the club and it has been set aside at the show cause notice stage, by the Hon'ble High Court, it cannot be said that said club has passed on the incidence of Service Tax liability to its members, as the members are not separate from the club, is the ratio of their Lordships. If that be so, it cannot be said that by claiming the refund from self, the club itself will be unjustly enriched. Services rendered to self cannot be equated with the services rendered to a client or customer.*

In my view, the appellant has passed the hurdle of unjust enrichment and I hold that the provisions of Section 12B will not be applicable in this case as the club and the members are not



separate and are one as held in this case by Hon'ble High Court, the question of producing any other evidence in support of non-passing of Service Tax liability does not arise.

13. Accordingly, in the facts and circumstances of this case, I set aside the impugned order and allow the appeals with consequential relief.

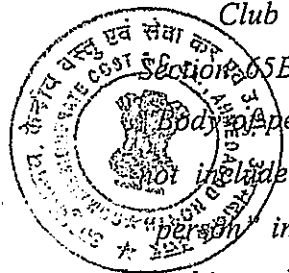
54. The department had not accepted the aforesaid order of the Hon'ble High Court of Gujarat dated 25.03.2013 and SLPs had been filed in the Supreme Court of India.

55. The Hon'ble Supreme Court of India, has decided the above issue, vide their judgment dated 03.10.2019, in the case of Chief Commissioner of Central Excise and Service Tax & Others V/s. M/s. Ranchi Club Ltd. (Civil Appeal No. 7497 of 2012), reported in 2019 (29)GSTL 545(S.C.), wherein it was held as under:

Clubs - Having no shareholders, dividends declaration and distribution of profits -
Such clubs cannot be treated as separate in law from their members. - If persons carry on a certain activity in such a way that there is a commonality between contributors of funds and participators in the activity, a complete identity between the two is then established. This identity is not snapped because the surplus that arises from the common fund is not distributed among the members -- It is enough that there is a right of disposal over the surplus, and in exercise of that right they may agree that on winding up, the surplus will be transferred to a club or association with similar activities. Most importantly, the surplus that is made does not come back to the members of the club as shareholders of a company in the form of dividends upon their shares. Since the members perform the activities of the club for themselves, the fact that they incorporate a legal entity to do it for them makes no difference. What is of essence, therefore, in applying this doctrine is that there is no sale transaction between two persons, as one person cannot sell goods to itself. [paras 29, 30]

Club or association Service Tax levy thereon - Person providing services for subscription or any other amount to members is within tax net - However, anybody "established or constituted" by or under any law for time being in force, is not included - 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 - Hence, incorporated clubs or associations or 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]

Club or association Service Tax levy thereon - Post 1st July, 2012 Explanation 3(a) to Section 65B(44) of Finance Act, 1994 - It does not apply to incorporated members' clubs - "Body of persons" may subsume persons who come together for common purpose, but it does not include company or registered cooperative society - 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 - 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]

Club or association Service Tax levy thereon - "Body of persons" in Explanation 3(a) to Section 65B(44) of Finance Act, 1994 post 1st July, 2012 - "Unincorporated associations" includes persons who join together in common purpose or action - "As case may be" refers to different groups of individuals either bunched together in form of association also, or otherwise as group of persons who come together with some common object in mind - Hence, "body of persons" does not include within it bodies corporate. [paras 83, 84]

Taxation - Doctrine of mutuality - Applicability of - After 46th amendment adding Article 366(29A) of Constitution of India - It continues to apply to incorporated and unincorporated members' clubs - Young Men's Indian Assn. (1970) 1 SCC 462 still holds field - Article 366(29A)(f) ibid has no application to members' clubs.

56. The relevant extract of the judgment of Hon'ble Supreme Court is as under:

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 "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.

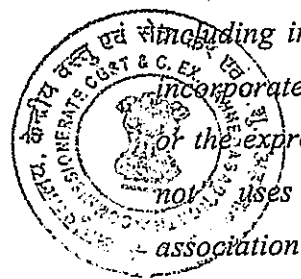
78. The Explanation to Section 65, which was inserted by the Finance Act of 2006, reads as follows :

"Explanation. - For the purposes of this section, taxable service includes any taxable service provided or to be provided by any unincorporated association or body of persons to a member thereof, for cash, deferred payment or any other valuable consideration."

79. It will be noticed that the aforesaid explanation is in substantially the same terms as Article 366(29A)(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 cooperative society.

80. It will be noticed that "club or association" was earlier defined under Sections 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 Sections 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 Sections 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.

83. The expression "unincorporated associations" would include persons who join together in some common purpose or common action - see *CIT, Bombay North, Kutch and Saurashtra, Ahmedabad v. Indira Balkrishna*, (1960) 3 SCR 513 at pages 519-520. The expression "as the case may be" would refer to different groups of individuals either bunched together in the form of an association also, or otherwise as a group of persons who come together with some common object in mind. Whichever way it is looked at, what is important is that the expression "body of persons" cannot possibly include within it bodies corporate.

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.

57. The list of relevant Civil Appeals decided vide the above judgment are as under:

- (i) Civil Appeal No. 4184 of 2009 (*State of West Bengal & Ors. v/s. Calcutta*)
- (ii) CA No. 7497 of 2012 (*Ranchi Club Ltd.*)
- (iii) C.A. Nos. 7773 of 2019 arising out of SLP (C) No. 26883 of 2013 (*M/s. Karnavati Club Ltd.*),
- (iv) C.A. Nos. 7771 of 2019 arising out of SLP (C) No. 22909 of 2013 (*M/s. Rajpath Club Ltd.*),
- C.A. Nos. 7772 of 2019 arising out of SLP (C) No. 24977 of 2013 (*M/s. Sports Club Ltd.*),

The C.A. No. 7772 of 2019 pertains to *M/s. Sports Club Ltd.* Therefore in light of the aforementioned judgment of the Supreme Court of India, I am left with no alternative but to drop

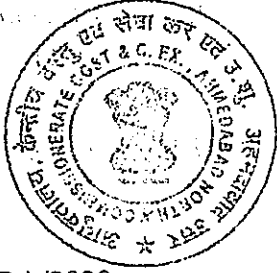


the proceedings initiated against M/s.The Sports Club of India Ltd, Ahmedabad.

In view of the above, I pass the following order:

ORDER

I drop the proceedings initiated against M/s. The Sports Club of Gujarat Ltd, Ahmedabad vide Show Cause Notice No.STC/4-53/O&A/08 dated 17.10.2008.



(Marut Tripathi)
Joint Commissioner,
CGST & CEx., Ahmedabad-North.

By Regd.A.D.

F.No. STC/15-210/OA/2020

Date: 10.03.2021.

To,

M/s The Sports Club of Gujarat Limited,
Sardar Patel Stadium,
Navrangpura, Ahmedabad,

Copy to :

- (1) The Commissioner, Central GST & Central Excise, Ahmedabad North.
- (2) The Assistant/Deputy Commissioner, CGST & Central Excise, Division-VII ,Ahmedabad North.
- (3) The Superintendent, Central GST & Central Excise, Range-I, Division-VII, Ahmedabad North
- (4) Guard File

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