


<p>आयुक्त का कार्यालय केंद्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क ,अहमदाबाद उत्तर, कस्टम हाँउस(तल प्रथम) नवरंगपुरा- अहमदाबाद ,380009</p>		<p>Office of the Commissioner of Central Goods &amp; Services Tax &amp; Central Excise, Ahmedabad North, Custom House(1<sup>st</sup> Floor) Navrangpura, Ahmedabad-380009</p>
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**निबन्धित पावती डाक द्वारा / By REGISTERED POST AD**

फा .सं/. F.No. STC/15-25/OA/2017

आदेश की तारीख / Date of Order : 24.06.2020

जारी करने की तारीख / Date of Issue : 24.06.2020

द्वारा पारित/Passed by -

डॉ बलबीर सिंह / Dr. BALBIR SINGH

आयुक्त / COMMISSIONER

**ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR – 06-08 /2020-21**

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 ,O-20, मेघाणीनगर ,न्यु मेन्टल हास्पिटल कम्पाउन्ड , अहमदाबाद -380016 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 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 हस्ताक्षर किए जाएंगे। उक्त अपील को चार प्रतियाँ में दाखिल किया जाए तथा जिस आदेश के विरुद्ध अपील की गई हो ,उसकी भी उतनी ही प्रतियाँ सलग्न की जाएं )उनमें से कम से कम एक प्रति प्रमाणित होनी चाहिए।( अपील से संबन्धित सभी दस्तावेज भी चार प्रतियाँ में अग्रहित किए जाने चाहिए।

The Appeal should be filed in Form No. E.A.3. It shall be signed by the persons specified in sub-rule (2) of Rule 3 of the Central Excise (Appeals) Rules, 2001. It shall be

filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate.

4. अपील जिसमें तथ्यों का विवरण एवं अपील के आधार शामिल हैं चार प्रतियों में दाखिल उसकी भी उतनी ही की जाएगी तथा उसके साथ जिस आदेश के विरुद्ध अपील की गई हो उनमें से कम से कम प्रतियाँ संलग्न की जाएंगी एक प्रमाणित प्रति होगी।

The Appeal including the statement of facts and the grounds of appeal shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy.)

5. अपील का प्रपत्र अंग्रेजी अथवा हिन्दी में होगा एवं इसे संक्षिप्त एवं किसी तर्क अथवा विवरण के बिना अपील के कारणों के स्पष्ट शीर्षों के अंतर्गत तैयार करना चाहिए एवं ऐसे कारणों को क्रमानुसार क्रमांकित करना चाहिए।

The form of appeal shall be in English or Hindi and should be set forth concisely and under distinct heads of the grounds of appeals without any argument or narrative and such grounds should be numbered consecutively.

6. अधिनियम की धारा 35बी के उपबन्धों के अंतर्गत निर्धारित फीस जिस स्थान पर पीठ स्थित है, वहां के किसी भी राष्ट्रीयकृत बैंक की शाखा से न्यायाधिकरण की पीठ के सहायक रजिस्ट्रार के नाम पर रेखांकित मांग ड्राफ्ट के जरिए अदा की जाएगी तथा यह मांग ड्राफ्ट अपील के प्रपत्र के साथ संलग्न किया जाएगा।

The prescribed fee under the provisions of Section 35 B of the Act shall be paid through a crossed demand draft, in favour of the Assistant Registrar of the Bench of the Tribunal, of a branch of any Nationalized Bank located at the place where the Bench is situated and the demand draft shall be attached to the form of appeal.

7. न्यायालय शुल्क अधिनियम 1970 की अनुसूची 1-मद 6 के अंतर्गत निर्धारित किए अनुसार संलग्न किए गए आदेश की प्रति पर 1.00रूपैया का न्यायालय शुल्क टिकट लगा होना चाहिए।

The copy of this order attached therein should bear a court fee stamp of Re. 1.00 as prescribed under Schedule 1, Item 6 of the Court Fees Act, 1970.

8. अपील पर भी रु 4.00 का न्यायालय शुल्क टिकट लगा होना चाहिए।

Appeal should also bear a court fee stamp of Rs. 4.00.

विषय: -कारण बताओ सूचना:

Sub: Proceedings initiated vide Show Cause Notice bearing F.No. STC/04-60/O&A/2014-15 dated 19.06.2015, STC/4-23/O&A/2015-16 dated 03.02.2016 and STC/15-25/OA/2017 dated 29.06.2018 issued to M/s Rajpath Club Ltd., Sarkhej Gandhinagar Road, Ahmedabad-380059.



**BRIEF FACTS OF THE CASE:**

The Rajpath Club Limited, Sarkhej Gandhinagar Road, Ahmedabad 380 059 (hereinafter referred to as "the Noticee") is registered with the Service Tax Range IV, Div-II, Commissionerate, Ahmedabad holding Service Tax Registration number AACR7379AST001 under the category of Membership Club or Association Service.

2. The Noticee had filed Refund claims totaling to Rs 9,27,62,690/-, as detailed below before the Jurisdictional Assistant Commissioner in view of order dated 25.03.2013 passed by the Hon'ble High Court of Gujarat at Ahmedabad in Special Civil Application No. 13655 of 2005. The Noticee had filed the said SLP against the department's direction to take registration and pay service tax under the category of 'Membership Club or Association Service'. The Noticee, got themselves registered and started paying service tax under the said category of service, however, they challenged the constitutional validity of Section 65(25a), Section 65(105)(zzze) and Section 66 of the Finance Act, 1994.

3. The refund claims had been sanctioned by the Jurisdictional Assistant Commissioner as per details given in the Table below :

F.No.	Period	Amount	OIONo.
SD-01/4-114/Ref/Rajpath/14-15	2005-06	37,21,078/-	SD-01/Ref/118/DC/Rajpath/14- 15
SD-01/4-113/Ref/Rajpath/14-15	2006-07	66,62,519/-	SD-01/Ref/119/DC/Rajpath/14- 15
SD-01/4-1127/Ref/Rajpath/13-14	2007-08	91,03,832/	SD-01/Ref/65/AC/Rajpath/14-15
SD-01/4-1128/Ref/Rajpath/13-14	2008-09	93,57,516/-	SD-01/Ref/66/AC/Rajpath/14-15
SD-01/4-1129/Ref/Rajpath/13-14	2009-10	2,71,14,924/-	SD-01/Ref/67/AC/Rajpath/14-15
SD-01/4-939/Ref/Rajpath/13-14	2010-11	96,74,000/-	SD-01/Ref/68/AC/Rajpath/14-15
SD-01 / 4-940/Ref/Raj path/13-14	2011-12	1,81,05,975/-	SD-01 /Ref/69/DC/Rajpath/14-15
SD-01/4-118/Ref/Rajpath/14-15	4/12-6/12	90,22,846/-	SD-01/Ref/120/DC/Rajpath/14- 15
<b>Total</b>		<b>9,27,62,690/</b>	

4. The Noticee had further filed the Refund claim totaling to Rs.5,64,12,703/- as detailed below before the Jurisdictional Assistant Commissioner. In view of para 2 above, the refund claims had been sanctioned by the jurisdictional Assistant Commissioner as per details given in the Table below:-

F.No.	Period	Amount (Rs.)	OIO No.
SD-02/Ref-189/14-15	2012-13	1,68,32,500/-	SD-02/Ref/38/NT/2015-16,dated 15.05.2015
SD-02/Ref-188/14-15	2014-15	1, 10,07, 799/-	SD-02/Ref/40/NT/2015-16,dated 15.05.2015
SD-02/Ref-190/14-15	2013-14	1, 78,64,916/-	SD-02/Ref/39/NT/2015-16,dated 15.05.2015
SD-02/Ref-42/15- 16	2014-15	1,07,07,488/-	SD-02/Ref/76/NT/2015-16,dated 25.06.2015
<b>TOTAL...</b>		<b>5,64,12,703/-</b>	

5. Further, on the same issue, refund claims amounting to **Rs.2,01,17,450/-** for the period from **April 2015 to September 2015** were filed by the Noticee under Section 11 B of the Central Excise Act, 1944. The said refund claims were sanctioned by the Assistant Commissioner, Division-II of Service Tax Commissionerate, Ahmedabad, vide OIO N. SD-02/Ref-245/DRM/2015-16, dated 09.02.2016.

6. SCA No.s. 13654/2005, 13655/205 and 13656/2005 were filed by M/s. Sports Club of Gujarat, M/s. Rajpath Club Ltd. and M/s. Karnavati Club Ltd. respectively, in Hon'ble High Court of Gujarat for issuing writ declaring Section 65 (25a), Section 65(105)(zzze) and Section 66 of the Finance (No.2) Act, 1994 as ultra vires. In its order dated 25.03.2013, 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*. This order of the Hon 'ble High Court had not been accepted by the department and SLP No.22909/2013 and SLP No. 24977/2013 had been filed in the Supreme Court of India.

7. As the Noticee's claim was based on the Hon'ble High Court of Gujarat's order dated 25.03.2013 and in view of the fact that there was no stay on the said order of the Hon'ble High Court, refunds totaling **Rs 9,27,62,690/-**, **Rs.5,64,12,703/-** and **Rs.2,01,17,450/-** were sanctioned by the jurisdictional Assistant Commissioner under Section 11B of the Central Excise Act, 1944 vide Orders-in-Original (OIOs) detailed in Para 3, 4 and 5 above.

8. It, however, appeared that the refunds of **Rs 9,27,62,690/-**, **Rs.5,64,12,703/-** and **Rs.2,01,17,450/-** had been granted to the notice erroneously as the department had not accepted the aforesaid order of the Hon'ble High Court of Gujarat dated 25.03.2013 and an SLP No.24977/2013 had been filed in the Supreme Court of India on the following grounds.

(i) *The Honorable High Court has erred by holding constitutional validity of section 65(25a), section 65(105) and section 66 of the Finance Act, 1994 as ultra vires and allowing the petition filed by M/s. Rajpath Club Ltd by relying upon the decision of the Jharkhand High Court reported in 2012(26) STR 401(Jhar) in the case of Ranchi Club Limited Vs. Union of India which has been challenged by the department before the Hon'ble Apex Court and the matter bearing Diary No. 28241/2012 between Commissioner of Customs and Excise, Ranchi Vs. Ranchi Club & Others is still pending.*

(ii) *That Section 65(105)(zzze) defines the taxable service provided by clubs and association. Section 65(25a) defines the terms 'clubs and associations' and section 66 is the charging section of service tax.*

(iii) *That from the legal provisions as above, the taxable service is any service provided by a club or association to its members in relation to provision of services, facilities or advantages for a subscription or any amount.*

(iv) *Accordingly, the argument of doctrine of mutuality bears no significance in the context*



of taxable service provided by clubs and associations as the same has been legally overcome by creating a legal fiction treating clubs and associations and its members as two separate persons. This is evident from the definition of clubs and associations.

- (v) Notwithstanding the above, in the instant case mutuality is not a valid grounds of challenge in view of the fact that the petitioner club is incorporated under the Companies Act. In law, a company is a legal entity, which has a separate legal identity from its members.
- (vi) The petitioner has stated that vide Entry 62 of the State List reads as 'taxes on luxuries, including taxes on entertainments, amusements, betting and gambling' vide this entry; states are competent to legislate on the activity of amusement and entertainment. [(2005) TIOL-10-sC-LT-CB]. However, this has to be distinguished with the levy on the service of providing entertainment or amusement. Service Tax levy is not a levy on the activity of amusement or entertainment per se but on the service of provision of such entertainment or amusement. Thus, the levy of service tax on services provided by clubs and associations to its members is well within the legislative competence of the Parliament.
- (vii) The exclusion provided in the definition of 'clubs and associations' to 'any body established or constituted by or under any law' is not applicable to a company. A company is not established and constituted by or under the Companies Act but rather is formed and registered under the said Act.
- (viii) In view of the above, it is respectfully submitted that section 65(25a), 65(105)(zzze) and section 66 of the Finance Act, 1994 are not ultra virus as held by the Hon'ble High Court of Gujarat vide its order dated 25.03.2013 and the said order is not legal and proper.

9. It also appeared that the refund claims were not hit by the clause of unjust enrichment, had not been established by the Noticee. While sanctioning the above refunds, reliance had been placed on CESTAT Ahmedabad Final Order No-10306-10309/WZB/AHD/2013 dated 29.01.2013, however it appeared that non-filing of appeal against the said Tribunal order was on account of low amount and did not have any precedent value. CESTAT, Ahmedabad, vide the said order in the case of M/s. Karnavati Club Ltd., had held as under:

*Refund - Unjust Enrichment - Applicability of - Club or Association service - Demand raised for rendering Health and Fitness Service to members - Payment of Service Tax under protest under 'Mandap Keeper' category upon insistence of lower authorities challenged before High Court - HELD : High Court categorical conclusion that members not to be seen separately as clients or customers and mandap or club one and the same - Since demand set aside at SCN stage; incidence of tax liability not passed to members - Services rendered to self cannot be equated with services rendered to client or customer - Assessee passed hurdle of unjust enrichment - Provision of Section 12B of Central Excise Act, 1944 not applicable; therefore question of producing evidence supporting non-passing of Service Tax liability not to arise - Impugned order set aside - Sections 11B and 12B of Central Excise Act, 1944 as applicable to Service Tax vide Section 83 of Finance Act, 1994. [paras 9, 10, 11, 12, 13]*

Appeal allowed

10. In view of above, the refund of Rs.9,27,62,690/-,Rs.5,64,12,703/- and Rs. 2,01,17,450/- granted to the Noticee vide different Orders-in-Original mentioned hereinabove appeared erroneous and therefore, appeared liable to recovered from the Noticee under Section 73(1) of the Finance Act, 1994.

11. Therefore, M/s. Rajpath Club Limited, Sarkhej Gandhinagar Road, Ahmedabad 380 059 was hereby called upon to show cause as to why the refunds of Rs 9,27,62,690/-, Rs.5,64,12,703/- and Rs.2,01,17,450/- sanctioned by the jurisdictional Assistant Commissioner under different Orders-in- Original mentioned hereinabove, should not be treated as erroneous refund and the same should not be recovered from them under Section 73 (1) of the Finance Act, 1994. The following Show Cause Notices were issued to the assessee in this regard.

Sr. No.	SCN F.No.	SCN Date
01	STC/4-60/O&A/2014-15	19.06.2015
02	STC/4-23/O&A/2015-16	03.02.2016
03	STC/15-25/OA/2017	29.06.2018

### WRITTEN SUBMISSION

12. The Noticee vide their letter dated 2.11.2019, had filed their reply to the SCN no. STC/4-60/O&A/2014-15, dated 19.06.2015, wherein they have submitted that the Hon'ble Supreme Court of India in their own case, judgment reported in 2019-TIOL-449-SC-ST-LB, has held in para 84 and 85 as under:

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.

### PERSONAL HEARING:

13. Shri Bishan Shah, C.A., appeared on behalf of the assessee before me on 15.06.2020, and reiterated the above fact and requested that the proceedings initiated against the assessee may be dropped in light of the judgment passed by the Hon'ble Supreme Court of India, para 84 & 85 stated as under-

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.

### DISCUSSION AND FINDINGS:

I have gone through the records of the case, the submissions made by the assessee in their reply to the Show Cause Notices and during the course of personal hearing.

15. I find that the issue to be decided is whether the services provided by the assessee to its members in relation to provision of services, facilities or advantages for a subscription or any amount, is a taxable service provided by clubs and associations defined under Section 65(105)(zzze) of the Finance Act, where Section 65(25a) defines the terms 'clubs and

associations' under the Finance Act, 1994 and Service Tax is charged under Section 66 of the said Act.

16. The assessee 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.

17. 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*.

18. Attention is drawn to 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."*

19. 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.*

12. *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.*

20. The Show Cause Notices were issued to the assessee as 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 on the grounds mentioned in Para 5 above.



21. 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 Article 366(29A)(f) ibid has no application to members' clubs.**

21.1 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 only "to create", when clearly it could also mean putting a thing in a legal shape. The Bombay High Court, therefore, in the case of Dwarkadas Khetan and Co. v. CIT [(1956) 29 ITR 903, 907], was right in holding that the section could not be restricted in its application only to a firm which had been created by an instrument of partnership, and that it could reasonably and in conformity with commercial practice, be held to apply to a firm which may have come into existence earlier by an oral agreement, but the terms and conditions of the partnership have subsequently been reduced to the form of a document. If we construe the word "constitute" in the larger sense, as indicated above, the difficulty in which the Learned Chief Justice of the Calcutta High Court found himself, would be obviated inasmuch as the section would take in cases both of firms coming into existence by virtue of written documents as also those which may have initially come into existence by oral agreements, but which had subsequently been constituted under written deeds."

73. It is, thus, clear that companies and cooperative societies which are registered under the respective Acts, can certainly be said to be constituted under those Acts. This being the case, we accept the argument on behalf of the respondents that incorporated clubs or associations or prior to 1st July, 2012 were not included in the Service Tax net.

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 Bakrishna, (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.

22. 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.),
- (v) C.A. Nos. 7772 of 2019 arising out of SLP (C) No. 24977 of 2013 (M/s.Sports Club Ltd.),

23. The C.A.no. 7771 of 2019 pertains to M/s. Rajpath 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 against the assessee.

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

**:: ORDER ::**

(i) I drop the proceedings initiated against the assessee vide the following Show Cause Notices.

Sr. No.	SCN F.No.	SCN Date
01	STC/4-60/O&A/2014-15	19.06.2015
02	STC/4-23/O&A/2015-16	03.02.2016
03	STC/15-25/OA/2017	29.06.2018



F.No.STC/15-25/OA/2017

*(Signature)*  
 (Dr. Balbir Singh)  
 Commissioner,  
 C.G.S.T.,  
 Ahmedabad, North  
 Date: 27/06/2020

**BY Registered post. A.D/ Hand Delivery/ S.P.A.D**

To

M/s. Rajpath Limited,  
 Sarkhej Gandhinagar Road,  
 Ahmedabad 380 059

Copy to :

1. The Principal Chief Commissioner, C.G.S.T, Ahmedabad Zone, Ahmedabad.
2. The Assistant Commissioner, CGST, Division-VI, Ahmedabad.
3. The Superintendent, AR-I, Division-VI, CGST, Ahmedabad.North.
- ✓ 4. Guard file.