Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad

REGIONAL BENCH-COURT NO. 3

Service Tax Appeal No. 10429 of 2016 - DB

(Arising out of OIO-SUR-EXCUS-001-COM-023-15-16 dated 01.10.2015 passed by Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

Avadh Club Ltd **........Appellant**
International Business Centre, Mora,
Hazira, Besides Big Bazar, Piplod, Surat,
Gujarat

VERSUS

C.C.E. & S.T.-Surat-i **......Respondent**
New Building...Opp. Gandhi Baug,
Chowk Bazar,
Surat, Gujarat- 395001

APPEARANCE:
Shri Kushal Rathi, Chartered Accountant, appeared for the Appellant
Shri Rajesh R Kurup, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. C L MAHAR

Final Order No.11318/2024

DATE OF HEARING: 01.02.2024
DATE OF DECISION:13.06.2024

RAMESH NAIR

The brief facts of the case are that M/s. Avadh Club Ltd. are engaged in providing taxable services under the category of "Club or Association Service." An intelligence gathered by officers of Surat-I indicated that Appellant was collecting advance for lifetime membership of the said club from the prospective members. As per schedule decided at the time of booking neither they were registered with Service tax department nor paid Service tax on the amount collected from the prospective members. The premises of Appellant was searched and subsequently certain records found relevant to the investigation were withdrawn. A statement of Shri Bharat Dayabhai Undhad, Director of M/s Avadh Club Ltd. was recorded. From the documents resumed during the investigation, the month wise receipt amount is calculated along with Service tax liabilities. The gross amount received from sale of membership of the Club for the period July- 2013 to November 2013 comes to Rs. 8,03,32,000/- on which service tax payable is Rs. 99,29,035/-. Accordingly, a show cause notice dated 12.02.2015 was issued to the appellant proposing demand of service tax with interest and penalty under the category of 'Club& Association service. The adjudicating authority confirmed the demand, proposed in the show cause notice against the Appellant and ordered for the appropriation of the amount of service tax, interest & penalty deposited during the investigation *vide* Order-in-Original No. SUR-EXCUS-001-COM-023-15-16 dtd.01.10.2015 which is impugned herein. Being aggrieved by the said Order-in-Original, Appellant filed the present appeal.

2. Shri Kushal Rathi appearing on behalf of the Appellant submits that the impugned order is bad in law and not sustainable since the impugned order confirmation of demand of service tax is premature before the commencement of service of Club or Association Service, under Section 65(105)(zzze), at the end of the Appellant. It is profound enough that the members are owners of the Club with respect of the share holding proposal and that it infers to principal of mutuality, in accordance with which , club and members being indistinguishable, the scope of transaction between the former and the later are beyond the scope of taxation as there exist not two parties, namely service provider or service receiver for any transaction to be executed. Also the contributions are accounted towards long term borrowing liable to be refunded in case of club's decision of cancellation of prospective membership. The demand raised by the department as well as upheld in the impugned order is completely arbitrary to the provision of the

law laid down in Section 65(105)(zzze) of the Finance Act, 1994. He placed reliance on the following decisions.

(i) Cricket Club of India Ltd. Vs. Commissioner of Service tax, Mumbai -2015(40)STR 973(Tri. Mumbai)

(ii) State of West Bengal Vs. Calcutta Club Ltd. – 2019 (29)GSTL 545 (SC)- Supreme Court

3. As regard the letter dtd. 21.12.2013 submitted before the Commissioner, Central Excise & Service tax intimating the payment of service tax, interest and penalty and requests to stop the proceedings, he submits that in order to stop the investigation proceedings by the Preventive Department, the appellant request the Commissioner, Central Excise and Service Tax, Surat. The Appellant did not inform the investigating officers to drop the proceedings and not to issue show cause notice. The Appellant just to buy peace from the investigating Officers requested directly to the Commissioner to stop proceedings. Nowhere in the said letter it was mentioned the Appellant will not claim refund of tax paid or will not file an appeal or will not litigate the matter. Further, no tax can be levied on club and association services, as per Article 265 of the Constitution of India, the Revenue Department cannot withhold the tax/interest/penalty amount.

4. On the other hand, Shri R.R. Kurup, Learned Superintendent (Authorized Representative) appearing on behalf of the revenue reiterates the finding of the impugned order.

5. We have carefully considered the submissions made by both sides and perused the records.

6. It is undisputed that the demand in the present matter is confirmed under the 'Club or Association Services' on the membership fees collected by the Appellant from their members. The question which falls for consideration is, whether in this factual matrix the services provided by the appellant to its own members can be considered as service provided by one entity to another and taxable.

7. We find that the Constitution Bench of the Supreme Court has in *State of West Bengal* v. *Calcutta Club Ltd.* discussed at length the doctrine of mutuality under Article 366(29A)(e) of the Constitution and held that doctrine of mutuality continues to be applicable to incorporated and unincorporated members' clubs after the 46th Amendment to the Constitution and, therefore, no sales tax is payable to the State by the Calcutta Club. It was further held that the same logic applies to service tax levied on members' clubs. Paragraphs 49, 50, 54, 55, 72, 73, 76, 77, 78, 79, 80 and 85 of this judgment are relevant.

8. We further find that though the legal issue prima facie covered by the Hon'ble Apex court judgment in Calcutta Club case supra. However the issue involved is mix of facts and law. Moreover, the adjudicating authority had no occasion to see the Apex court judgment in Calcutta Club case. Therefore we are of the view that matter should be reconsidered in the light of the above judgment coupled with the facts of the present case.

Accordingly, we set aside the impugned order and remand the matter to the adjudicating authority for passing a denovo order within a period of one month from the receipt of this order.

(Pronounced in the open court on 13.06.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(C L MAHAR)
MEMBER (TECHNICAL)

Arpita