CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL ALLAHABAD

REGIONAL BENCH - COURT No. I

Service Tax Appeal No. 70928 of 2018-[Division Bench]

(Arising out of Order-in-Appeal No. 01/CGST-Noida/2018-19 dated 17/04/2018 passed by Commissioner of Central Goods & Service Tax (Appeals), Noida)

M/s Alexander Athletic Club, **.....Appellant**

(Court Compound, Meerut)

VERSUS

Commissioner of Central Excise, **....Respondent**

(Division-I, Meerut)

APPEARANCE:

Shri Kartikeya Narain, Advocate for the Appellant
Shri Gyanendra Kumar Tripathi, Deputy Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE SMT. ARCHANA WADHWA, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO.- 71083 / 2019

Date of Hearing : 15/05/2019
Date of Decision : 15/05/2019

PER: ANIL G. SHAKKARWAR

Present appeal is directed against Order-in-Appeal No. 01/CGST-Noida/2018-19 dated 17/04/2018 passed by Commissioner of Central Goods & Service Tax, Noida in the capacity of Commissioner (Appeals).

2. Brief facts of the case are that the appellants were registered with Service Tax Department as "Club or Association

Service and Restaurant Service". The records of the appellants were scrutinized by the audit team of revenue. On the basis of observations of audit team a show cause notice dated 13.10.2016 was issued to the appellant. It was stated in the said show cause notice that some amounts were received by the appellant from new members and the said amounts were split into three parts. One part was treated as Admission Fee and service tax liability on the same was discharged by the appellant. Another part was treated as Security, which used to be refundable on termination of membership and it was stated in the said show cause notice that the said security was not liable to be subjected to payment of service tax. The remaining portion of the amount so received was treated as Donation. It was alleged that the said donation was not being included in the consideration for discharge of service tax. Therefore, service tax of around Rs.43 lakhs was demanded through the show cause notice for the period from 2011-12 to 2015-16 by invoking extended period under Section 73 of Finance Act, 1994. The said show cause notice was adjudicated through Order-in-Original dated 31.03.2017 on contest. The Original Adjudicating Authority had confirmed the demand and imposed equal penalty. Aggrieved by the said order, appellant preferred appeal before Commissioner (Appeals). The said appeal was decided through the impugned Order-in-Appeal. The appellant had submitted before the Commissioner (Appeals) that the amount so collected was not consideration for rendering of any service, that the service tax transaction becomes recognizable only if the benefit accrues to a recipient and that the said donation was not resulting in any service provided to member and therefore, it was not liable to be subjected to service tax. Learned Commissioner (Appeals) through the impugned order upheld the said Order-in-Original dated 31.03.2017. Aggrieved by the said order, appellant is before this Tribunal.

3. We have heard Shri Kartikeya Narain learned Advocate on behalf of the appellant. He has submitted that the issue of liability of service tax on donation received from members as well as non-members is no more res-integra and decided by the decision of a Coordinate Bench of this Tribunal in the case of M/s Cosmopolitan Club Vs Commissioner of Service Tax, Chennai reported at 2019 (21) GSTL 518 (Tri.-Chennai)

4. Shri Gyanendra Kumar Tripathi learned Deputy Commissioner (AR) on behalf of the revenue, supported the impugned Order-in-Appeal.

5. Having considered the contentions from both the sides and on perusal of records, we note that it was stated in the show cause notice that appellant was receiving said donation from new members and was not discharging service tax on the same. We also note that the appellants have submitted before the learned Commissioner (Appeals) that the said amount collected was not a consideration for rendering of any service. We also note from the show cause notice that revenue also did not bring on record as to which service was being provided to the appellant out of

the said amount collected as donation. Further, we note that Coordinate Bench of this Tribunal in the case of M/s Cosmopolitan Club (supra) has held in para 5.8 as follows:-

> *"**5.8** At this stage, Ld. Advocate Shri Akhil Suresh (Appeals No. ST/40768/2013, ST/40791/2013, ST/430/2011, ST/40949/2014 and ST/40069/ 2016) informs us that in some of the appeals apart from the fees and other amounts such as fees for sports, card/games etc., collected from members, the appellants also received donations from members as well as non-members. Even such donation amounts have been sought to be brought within the fold of Section 65(25)(a) read with Section 65(105)(zzze) ibid. It is contended that such donations are received without any condition or promise to do any service or activity in return to the donor. We note that there was no quid pro quo vis-a-vis such donations by way of providing any service to such donors by the appellant in return, has been brought forth by Revenue. This being so, we are of the opinion that these amounts would not in any way come within the ambit of amounts received against provision of services. On both counts, we find that such donations even if made by the non-members, cannot be made liable to service tax under the Finance Act, 1994."*

6. As can be seen from the above reproduced para when there was no quid pro quo vis-à-vis donation by way of providing any service to such donors then such amounts do not in any way come within the ambit of amounts received against provision of Service and therefore, they were held to be not liable to be payment of service tax.

7. By following the said precedent decision of Coordinate Bench of this Tribunal, we set aside the impugned order and allow the appeal.

(Dictated and pronounced in open court)

(Archana Wadhwa)
Member (Judicial)

(Anil G. Shakkarwar)
Member (Technical)

akp