

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
SOUTH ZONAL BENCH  
BANGALORE**

Appeal(s) Involved:

**ST/219/2009-DB**

[Arising out of No. Order-in-Original No.57/2008 dated  
28/11/2008 passed by Commissioner of Central Tax,  
Bangalore North.]

**M/s. Adarsh Realty & Hotel Pvt. Ltd.**

No.1010,1st Floor 26th Main,  
4th T Block, Jayanagar,  
Bangalore – 560 065.

Appellant(s)

**Versus**

**Commissioner Of Central Tax,  
Bangalore North**

No.59, HMT Bhawan  
Ground Floor, Bellary Road  
BANGALORE – 560 032.  
KARNATAKA

Respondent(s)

**Appearance:**

**Mr. T. R. Rajesh Kumar, CA**

HIRAGANGE & ASSOCIATES  
#1010, 1st floor(Above Corp.Bank) 26th  
Main, 4th T Block, Jayanagar, Bangalore  
Bangalore  
Karnataka  
560041

For the Appellant

**Mr. K. T. Pakshirajan,  
Asst. Commissioner (AR)**

For the Respondent

Date of Hearing: 14/08/2018

Date of Decision: \_\_\_\_\_

**CORAM:**

**HON'BLE SHRI S.S GARG, JUDICIAL MEMBER  
HON'BLE SHRI P. ANJANI KUMAR, TECHNICAL MEMBER**

**Final Order No. \_\_\_\_\_/2018**

**Per : S.S GARG**

The present appeal is directed against the impugned order dated 28.11.2008 passed by the Commissioner of Service Tax, Bangalore whereby the Commissioner has confirmed the demand of Rs.62,75,575/- under Section 73(2) of the Finance Act under the category of 'Club or Association Membership Service' for the period 16.6.2005 to 31.12.2006 and also demanded the interest and imposed penalty under Section 76, 77 and 78 and appropriated an amount of Rs.12,44,722/- paid by the appellant.

2. Briefly the facts of the present case are that the appellants are engaged in providing various club facilities to their members and they are holding service tax registration under the category of 'Club and Fitness Service'.

2.1 On the intelligence gathered by the officers of Bangalore Zonal Unit of the Directorate General of Central Excise Intelligence, Bangalore (BZU), that Palm Meadows are rendering various club facilities without paying appropriate service tax on the said service, documents relevant for further investigation were collected from them under summons proceedings.

Statement of Shri T. R. Sathyanarayana Bhat, Manager-Accounts of Palm Meadows was recorded on 25.4.2007.

2.3 On verification of the records submitted, it appeared that Palm Meadows are providing services, which are classifiable under the category of 'Club or Association Membership Service', which is taxable from 16.6.2005. They are providing various services and facilities to their Members viz., card room, library, children's are in the main building, swimming pool, gymnasium, tennis, indoor pool, squash, badminton, billiards, external heated Jacuzzi, internet charges, travel desk assistance, health club and spa, safe deposit lockers, left luggage service, money changing, travel booking and courier service. Palm Meadows are providing four categories of Membership to its Members viz., (1) Resident Owners Membership, (2) Tenant Membership, (3) External Membership and (4) Corporate Membership. Members utilize facilities provided in Palm Meadows by paying subscription fixed by Palm Meadows. Accompanied guest of the Members can also utilize the facilities of Palm Meadows on payment of guest fees by such Members. The activities of Palm Meadows appeared to fall under the category of 'Club or Association Membership Services', which is made liable for service tax with effect from 16.6.2005.

2.4 During the investigations, statement of T. R. Satyanarayana Bhat, Manager-Accounts was recorded and thereafter, after the completion of investigation, a show-cause notice was issued and after following the due process, the Commissioner confirmed the demand along with interest and penalties.

3. Heard both sides and perused the records.

4. Learned consultant appearing for the appellant submitted that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and the law. He further submitted that the impugned order has been passed merely on assumptions, unwarranted inferences and presumptions by ignoring the statutory provisions. He further submitted that the nature of activity undertaken by the appellant is not that of 'Club or Association Membership Service'. The persons who are being named as Members in the show-cause notice are not the Members of the appellant, instead they are customers of the appellant. The 'Club or Association' in general is formed by the Members who intend to avail services from 'Club or Association' and in the concept of 'Club or Association' there will not be any independent person other than such body and the

Members who are forming it. Further, the Members of the private limited company are different from the customers who are named as Members in trade practice. He further submits that to be covered under 'Club or Association' service, the following conditions are to be fulfilled.

- a. The service provider should be club or association which is defined to mean "any person or body or persons providing services, facilities or advantages, for a subscription or other amount, to its Members, but excludes.
  - i. Anybody established or constituted by or under any law for the time being in force; or
  - ii. ....
- b. The service should be given by such club or association to its members.
- c. The services should be in relation to services, facilities or advantages; and
- d. The same is for a subscription or any other amount.

4.1 He further submitted that in the present case though the appellant is an association of members, the membership fee on which the demand is made is not collected from the Members of the appellant. Accordingly, the basis on which the show-cause

notice is issued is itself not proper and legal. It is his further submission that in the present case, the service receivers are totally independent persons from the appellant and they are only customers who avail services of the appellant independently under the scheme formulated by the appellant. It is clear that the amount collected is from the customer and not from the Members. Accordingly, the activity does not fall under the category of 'Club or Association' service and the impugned order is required to be set aside on this ground also. He further submitted that the impugned order considering the Business Division of the appellant 'Palm Meadows Club' as a separate entity and the customers are members of that entity is not proper and legal. He further submitted that even for the sake of argument the issue of taxability of service tax on the fee collected from the Members have been clearly decided in favour of the assessee in the following case laws:

- *Ranchi Club Ltd. vs. UOI: 2012 (26) STR 401 (Jhar.)*
- *Sports Club of Gujarat Ltd. vs. UOI: 2013 (31) STR 645 (Guj.)*

5. On the other hand, the learned AR defended the impugned order and submitted that the activities carried out by

the appellant fall in the taxable service of 'Club or Association Membership Service' and they are liable to pay service.

6. After considering the submissions of both the parties and perusal of the material on records, we find that the appellant is a private limited company which is engaged in operating and managing 'Palm Meadows' club and the Members of the said club are not the members in the strict sense but they are customers of the appellant. Further, we find that the Members of the private limited company are different from the customers. The activities carried out by the appellant does not fall in the definition of 'Club or Association Membership Service' as provided in Section 65(25a) of the Finance Act, 1994. Further, the scope of 'Club or Association Membership Service' have been discussed and clarified vide Board Letter MD(DR) F No. B1/6/2005-TRU dated 27.7.2005. It is clarified vide the said Circular that 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 are liable for service tax. In the present case, the service recipients are totally independent person and they are only the customers who avail services of the appellant independently under the scheme

formulated by the appellant. Further, we find that the appellants are not paying the service tax on the entrance fee and are paying service tax with regard to all other services provided by them and it has been admitted by the Manager of the Company in its statement recorded during the investigation. We also note that even for the sake of argument, we consider the appellant as a 'Club or Association' even then the entrance fee charged by the appellant is not liable to service tax in view of the following decisions.

- *Ranchi Club Ltd. vs. UOI: 2012 (26) STR 401 (Jhar.)*
- *Sports Club of Gujarat Ltd. vs. UOI: 2013 (31) STR 645 (Guj.)*
- *Surat Tennis Club vs. UOI: 2016 (42) STR 821 (Guj.)*
- *Green Environment Services Coop. Society Ltd. vs. UOI: 2015 (37) STR 961 (Guj.)*
- *DD Retreat vs. CCE: 2017 (52) STR 506 (Tri.-Bang.)*
- *Century Club vs. CCE, Bangalore: Final Order No.21458-21460/2018 dated 25.9.2018.*

6.1 In view our discussions above, we are of the considered view that the activities carried out on by the appellant does not fall in the definition of 'Club or Association' service and the demand confirmed on the appellant under the 'Club or Association Membership Service' is not sustainable in law. Therefore, we set

aside the impugned order by allowing the appeal of the appellant with consequential relief, if any.

(Order was pronounced in Open Court on \_\_\_\_\_.)

**P. ANJANI KUMAR**  
**TECHNICAL MEMBER**

**S.S GARG**  
**JUDICIAL MEMBER**

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