# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
# BANGALORE

REGIONAL BENCH - COURT NO. 1

**Service Tax Appeal No. 00792 of 2010**

[Arising out of Order-in-Appeal No. 31/2010 dated 15/01/2010 passed by Commissioner of Central Excise(Appeals), Mangalore]

**Belgaum Golf Association**
No.44, Yashwant Vihar,
Nanawadi,
Belgaum – 590 009.
Appellant(s)

*VERSUS*

**Commissioner of Central Excise,**
No.71, Club Road,
Belgaum – 590 001.
Respondent(s)

**AND.**

**Service Tax Appeal No. 03066 of 2011**

[Arising out of Order-in-Appeal No. 120/2011 dated 25/08/2011 passed by Commissioner of Central Excise(Appeals), Mangalore]

**Belgaum Golf Association**
No.44, Yashwant Vihar,
Nanawadi,
Belgaum – 590 009.
Appellant(s)

*VERSUS*

**Commissioner of Central Excise,**
No.71, Club Road,
Belgaum – 590 001.
Respondent(s)

**Appearance:**

Shri N. Anand, Advocate for the Appellant

Smt. C.V. Savitha, Superintendent(AR) for the Respondent

**CORAM:**

**HON'BLE MR. RAMESH NAIR, JUDICIAL MEMBER**

**HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER**

**Final Order No: 20150-20151 / 2022**

Date of Hearing: 25/03/2022
Date of Decision: 30/03/2022

**Per : RAMESH NAIR**

The brief facts of the case are that the appellant is a society registered under the Karnataka Societies Registration Act, 1960. The appellant is a non-profit organisation and registered as charitable institute for the purpose of Section 80G of the Income Tax Act, 196 during the period of dispute. The officers of the DGCEI undertook an investigation in relation to the service tax payable by the appellant on membership /admission / enrolment fee collected from the prospective members (applicants) who had applied for club membership. The appellant had collected membership fee from the applicants to become members like regular membership, service membership, associate membership, life membership, corporate membership. In addition, the appellant also received donations from members towards corpus fund and the appellant also received subscription from its members towards coaching fee, green fee, guest fee, tournament and sponsorship fee. Pursuant to the investigation, show-cause notices dt. 08/04/2008 and dt. 20/04/2009 were issued. The first show-cause notice dt. 08/04/2008 was adjudicated by the adjudicating authority vide adjudication order No.05/2009-ST dt. 17/03/2009 after allowing threshold exemption of Rs.4 lakhs (small service provider exemption), restricted demand of service tax to Rs.3,94,842/-. The Order-in-

Original came to be upheld by the learned First Appellate Authority, against which the appellant is in appeal before this Tribunal in appeal No.ST/792/2010. For the subsequent period, show-cause notice dt. 20/04/2009 was issued proposing to demand service tax on membership fee and donation received by the appellant (there was no other amounts collected from the members in this appeal). Adjudicating authority confirmed the said show-cause notice and the same was upheld by the Commissioner(Appeals). Therefore, the second appeal before this Tribunal being ST/3066/2011 has been filed by the appellant.

2. Shri N. Anand, learned advocate appearing on behalf of the appellant submits that the issue has been decided by the Larger Bench of the Hon’ble Supreme Court in the case of State of West Bengal & Ors. Vs. Calcutta Club Ltd. [2019(29) GSTL 545 (SC)] wherein it was held that there has to be an activity carried out by one person for another for consideration which would apply on all fours even in the context of definition of service. Therefore, the transaction between members and the club not amount of rendering of any service by the appellant to their members. As regards the taxability of guest fee, he submits that as per the ratio of the judgment by the Hon’ble Supreme Court (supra), this amount is also not taxable. However, even if it is assumed that this amount is taxable, the same is covered by the value

based exemption Notification No. 6/2005-ST dt. 01/03/2005 wherein the exemption is provided in respect of taxable service value which is not exceeding Rs.4 lakhs in a financial year. He submits that as per the Hon'ble Supreme Court judgment, all other activities are not held to be taxable services; accordingly the value of those activities shall not be taken into account for the purposes of exemption Notification No. 6/2005-ST. For this reason also, the demand of service tax in respect of the guest fee will not be sustainable. He also placed reliance on the following judgments:-

i. Cricket Club of India Ltd. Vs. CST [2015(40) STR 973 (Tri. Mum.)]
ii. Karnataka Golf Association Vs. CST [2020-TIOL-500-CESTAT-BANG]

3. Smt. C.V. Savitha, learned Superintendent(AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. We have carefully considered the submissions by both sides and perused the records. We find that all the charges on which demand of service tax was confirmed is squarely covered by the judgment of the Hon'ble Supreme Court in the case of Calcutta Club Ltd. (supra). Therefore, the issue is no longer res integra. As regards the dispute whether the guest fee is taxable or otherwise, we, without going into the issue of taxability, find that the appellant is clearly eligible for exemption Notification No.6/2005-ST. According to which, the

appellant are entitled for the exemption when the value of taxable service is not exceeding Rs.4 lakhs. In the present case, after excluding the value of all other services which are not taxable in view of the Hon'ble Apex Court's judgment, the value remains well within the threshold limit of the exemption i.e. Rs.4 lakhs. Therefore, the appellant is otherwise eligible for exemption under the Notification No.6/2005-ST. Accordingly, the guest fee even if taxable is exempted.

5. As per our above discussion and finding, the demand of service tax in both the appeals are not sustainable. Accordingly, the impugned orders are set aside and appeals are allowed.

(Order pronounced in open
court on 30/03/2022)

**(RAMESH NAIR)**
**JUDICIAL MEMBER**

**(P. ANJANI KUMAR)**
**TECHNICAL MEMBER**

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