

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT NO. I

Service Tax Appeal No. 41796 of 2019

(Arising out of Order-in-Appeal No. 235/2019 (CTA-II) dated 31.08.2019 passed by the Commissioner of Central Tax (Appeals-II): C.G.S.T. & Central Excise, Newry Towers, 2054/1, II Avenue, 12th Main Road, Anna Nagar, Chennai – 600 040)

M/s. The Madras Club,
No. 8, Adyar Club Gate Road,
Chennai – 600 028

: Appellant

VERSUS

The Commissioner of G.S.T. & Central Excise,
Chennai South Commissionerate,
No. 692, Anna Salai, MHU Complex,
Nandanam, Chennai – 600 035

: Respondent

APPEARANCE:

Shri. R. Anish Kumar, Advocate for the Appellant

Shri. L. Nandakumar, Authorized Representative (A.R.) for the Respondent

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

FINAL ORDER NO. 40782 / 2020

DATE OF HEARING: 07.02.2020

DATE OF DECISION: **08.09.2020**

The assessee-appellant has filed this appeal against the Order-in-Appeal No. 235/2019 (CTA-II) dated 31.08.2019 passed by the Commissioner of Central Tax (Appeals-II), C.G.S.T. & Central Excise, Chennai, whereby the rejection of the appellant's claim for refund under Section 11B of the Central Excise Act, 1944 came to be upheld.

2. Heard Shri. R. Anish Kumar, Learned Advocate appearing for the assessee and Shri. L. Nandakumar, Learned Assistant Commissioner (Authorized Representative) appearing for the Revenue, have carefully gone through the documents placed on record and also various decisions relied on during the course of arguments.

3. The undisputed facts *inter alia* are that the appellant is registered with the Service Tax Department for providing membership of Club or Association Service; that vide Order-in-Original No. 75/2008 dated 31.10.2008, a demand of Rs. 29,24,687/- was raised as the Service Tax on the subscription amount received by the appellant from its members; that the above demand was set aside by the Learned First Appellate Authority-Commissioner (Appeals) vide Order-in-Appeal No. 162/2009 (MST) dated 15.12.2009, which order was also upheld by the CESTAT; that thereafter, the appellant filed its claim for refund of the above tax paid by it and that the above claim came to be rejected by the Adjudicating Authority for the reason of unjust enrichment since it was never disputed by the appellant that the above amount was collected from its customers and consequently, claim for refund of the same would tantamount to unjust enrichment.

4.1 A refund could be granted if the conditions laid down under Section 11B are satisfied and the primary condition is the principle of unjust enrichment. This test the appellant is unable to clear since the appellant is nowhere disputing the fact that it had passed on the duty element to its customers. There has also been an admission that as and when the refund is obtained, the duty element collected from its customers would be paid back. By this safe play, the appellant has ensured itself no loss since the same has been recovered and it has come in appeal by taking a chance.

4.2 Moreover, the decisions relied upon by the Learned Advocate for the appellant are on different factual matrices wherein the collection of duty element from the service recipients is perhaps missing and the common takeaway is clearly that once the amount was paid under protest, it is obligatory on the part of the Revenue to refund the same when the higher Court holds that there was no tax liability and that the petitioners are "not liable to pay". The fact that the appellant has passed on the tax element to its service recipient, the refund of which is not made as on date, coupled with the appellant's claim for refund of "tax" clearly attracts the principles of unjust enrichment and hence cannot be entertained. The lower authority has therefore rightly rejected which action does not call for any interference.

5. For the above reasons, I do not find any reason to interfere with the findings of the lower authorities and therefore, dismiss the appeal for being devoid of merits.

(Order pronounced in the open court on **08.09.2020**)

Sd/-

(P. DINESHA)
MEMBER (JUDICIAL)

Sdd