

**IN THE CUSTOMS, EXCISE AND SERVICE TAX
APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI**

APPEAL NO: ST/86747/2015 & ST/86815-86821/2015

[Arising out of Order -in-Appeal No: SR/17-24/ST-I/2015 dated 30/04/2015 passed by the Deputy Commissioner of Service Tax, Mumbai-II]

Commissioner of Service Tax,
Mumbai-II

... Appellant

versus

Tahnee Heights Co-op Ltd

...Respondent

Appearance:

Shri Dilip Shinde, Assistant Commissioner (AR) for appellant

Shri, Prasad Paranjape Advocate for respondent

CORAM:

Hon'ble Dr. D.M. Misra, Member (Judicial)

Hon'ble C J Mathew, Member (Technical)

Date of hearing: 11/12/2018

Date of decision: 11/12/2018

ORDER NO: A/88252-88259/2018

Per: Dr. D. M. Misra

These Eight Appeals are filed by the Revenue against order -
in-appeal no. SR/17 -24/ST-I/2015 passed by Commissioner of

to their members and consequently paid service tax on the service charges collected from the members under the taxable category of 'Club or Association Service' during the relevant period from January , 2008 to July , 2013. Later, as it was held in their own case by this Tribunal reported as Matunga Gymkhana Vs. Commissioner of Service Tax, Mumbai [2015(38) STR 407 (Tri -Mum.)] that service tax is not required to be paid on the service charge collected from the members of the society , consequently , they filed refund claims of the service tax paid during the said period. On adjudication, the refund claims were rejected by the adjudicating authority. Aggrieved by the said order, they filed appeals before the Learned Commissioner (Appeals), who in turn allowed their appeals. Hence, the revenue is in appeal.

3. Learned AR for the Revenue submits that in appeals no. ST/8681 7-21/2015 pertaining to the period July 2012 to July 2013 , the Ld. Commissioner (Appeals) remanded the matter to the adjudicating authority keeping all issues open to decide the same afresh , keeping in view, the change in law brought into effect from 01/07/2012. Thus, the said appeals are infructuous. As far as the appeals , relating to the period January 2008 to May 2012. The Ld.

the members for the maintenance of society cannot lead to the conclusion that there exist s mutual ity of interest , hence , not taxable.

4. The Ld. Advocates, Shri Paranjape for the respondent has submitted that in their own case reported as *Matunga Gymkhana V s. Commissioner of Service Tax [2015 (38) STR 407 (Tri.Mumbai)]* Tribunal for the earlier period decided the issue by following the judgement of the Hon'ble Jharkhand High Court in the case of *Ranchi Club Ltd V s. Chief Commissioner of Central Excise & Service Tax [2012 (26) STR 401 (JHAR)]* and Hon'ble Gujrat High Court in the case of *Sports Club of Gujrat Ltd V s. Union of India [2013 (31) STR 645 (Guj)]* and by the Hon'ble Tribunal in the case of *Federation of Indian Chambers of Commerce & Industr y vs. CST , Delhi [2015 (38) STR 529 (Tri. Delhi)]*. In all these Judgements it has been held that service tax is not payable on the service charges collected by registered society from its members is applying the principle of doctrine of mutuality of interest. He submits that the Hon'ble Bombay High Court endorsing the judgment of this Tribunal directed to pay interest on the refund amount vide order dated 03/08 /2015 reported as *Thane Heights Co -op. Society Ltd. vs . Union of India [2015(40) S.T.R.*

6. We find that the issue of applicability of service tax on the service charges collected by the registered society from its members under the category of 'Club s or Association ' Service has been settled in favour of the appellant by this Tribunal in Matunga Gy mkhana case (*supra*). Also , pursuant to the said judgement, the respondent was allowed refund of the service tax paid and also interest. Therefore, following the said precedent , we do not find reason to interfere with the order of the Learned Commissioner (Appeals) in relation to appeals pertaining to the period January 2008 to May 2012. Also , we find that for the subsequent period July 2012 to July 2013 , t he Ld. Commissioner (Appeals) has remanded the matter to the adjudic ating authority for deciding the issue afresh in the light of change in the provision of law brought into effect from 01/07/2012. In the result, the impugned order is upheld and the appeals filed by the Revenue are dismissed.

(Dictated and Pronounced in Court)

(C J Mathew)
Member (Technic al)

(Dr. D. M. Misra)
Member (Judici al)