

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO.3

Service Tax Appeal No.48 of 2012

(Arising out of OIO-STC/55/COMMR/AHD/2011 dated 15/12/2011 passed by Commissioner of Service Tax-SERVICE TAX - AHMEDABAD)

Karnawati Club

Sarkhej Gandhinagar Highway,
Ahmedabad, Gujarat

.....Appellant

VERSUS

C.S.T.-Service Tax – Ahmedabad

7 th Floor, Central Excise Bhawan, Nr. Polytechnic
CENTRAL EXCISE BHAVAN, AMBAWADI,
AHMEDABAD, GUJARAT-380015

.....Respondent

APPEARANCE:

Shri Bishan Shah, Chartered Accountant for the Appellant
Shri Dinesh Prithiani, Assistant Commissioner (AR) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU**

Final Order No. A/ 11123 /2022

DATE OF HEARING: 09.09.2022
DATE OF DECISION: 13.09.2022

RAMESH NAIR

The issue involved in the present case is that whether the appellant is liable for service tax under the head of "Membership of Club or Association Service" in respect of the amount received towards various activities though from the members but the services were availed by the guests of the club members.

02. Shri Bishan Shah, learned chartered accountant appearing on behalf of the appellant at the outset submits that on the issue of taxability of Membership of Club or Association Service, the same is settled by the larger bench of Hon'ble Supreme Court in the case of State of West Bengal Vs. Calcutta Club Ltd.- 2019-TIOL-449-SC-ST-LB. He submits that the appellant was also one of the litigant before the Hon'ble Supreme Court. He submits that as per the Hon'ble Supreme Court judgment the present liability of service tax is not sustainable.

03. Shri Dinesh Prithiani, learned Assistant Commissioner (AR) appearing on behalf of the revenue reiterates the finding of the impugned order. He

emphatically submits that the judgment of Hon'ble Supreme Court is on the mixed issue of law and facts. He further submits that while passing the adjudication order, the judgment of Hon'ble Supreme Court was not available therefore, he seeks the remand of the matter to re-consider in the light of the Hon'ble Supreme Court judgment.

04. We have carefully considered the submissions made by both the sides and perused the records. We find that the issue related to taxability of Club Membership was under litigation before various forums. Finally, the hon'ble Supreme court in the case of Calcutta Club Ltd (supra) the larger bench has decided the issue. We are of the view that though the issue is settled as per the Hon'ble Supreme Court judgment, each case has to be re-considered applying the judgment of the hon'ble Supreme Court viz-a-viz the facts of each case.

4.1 Therefore, in our considered view the present issue needs to be reconsidered by the adjudicating authority on the basis of the law laid down by the Hon'ble Supreme Court vis-à-vis facts of each case therefore, we set aside the impugned order and remand the matter to the adjudicating authority for passing a fresh order. All the issues are kept open. Since the appeal pertain to the period 2012 and the period involved is 2005-06 to 2008-09, the adjudicating authority is expected to pass a denovo order within a period of two months from the date of this order.

05. The appeal is allowed by way of remand to the adjudicating authority.

(Pronounced in the open court on 13.09.2022)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Mehul