

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
BANGALORE**

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No. 21319 of 2016

*(Arising out of Order-in-Original No.3 & 4/2016-17
dated 3.6.2016 passed by the Commissioner of Service
Tax, Bangalore.)*

**M/s. Karnataka Golf
Association**

No.1, Golf Avenue,
Kodihalli,
Off. Airport Road,
Bangalore – 560 008.

Appellant(s)

Versus

The Commissioner of Service Tax

16/1, 5th Floor, S.P. Complex,
Lalbagh Road
Bangalore – 560 027.

Respondent(s)

AND

Service Tax Appeal No. 21320 of 2016

*(Arising out of Order-in-Original No.3 & 4/2016-17
dated 3.6.2016 passed by the Commissioner of Service
Tax, Bangalore.)*

**M/s. Karnataka Golf
Association**

No.1, Golf Avenue,
Kodihalli,
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Appellant(s)

Verus

**The Commissioner of Service
Tax**

16/1, 5th Floor, S.P. Complex,
Lalbagh Road
Bangalore – 560 027.

Respondent(s)

Appearance:

Mr. K. S. Ravi Shankar,
Sr. Advocate and

For the Appellant

Mr. K. S. Naveen Kumar,
Advocate

Mr. Dyamappa Airani, AR

For the Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)

HON'BLE MR. PULLELA NAGESWARA RAO, MEMBER (TECHNICAL)

Final Order No. 21134 - 21135 / 2023

Date of Hearing: 28.06.2023

Date of Decision: 19.10.2023

Per : DR. D.M. MISRA

These two appeals are filed against common impugned Order-in-Original No.3 & 4/2016-17 dated 3.6.2016 passed by the Commissioner of Service Tax, Bangalore.

2. Briefly stated the facts of the case are that the appellant is a society registered under Mysore Societies Registration Act, 1960. They are also registered with the Service Tax department and discharging service tax under the category of 'Mandap Keeper service'. On the basis of the investigation initiated by the DGCEI regarding advance admissions/enrolment fee collected from the prospective Members, who apply for club membership, it was alleged that the amounts so collected would be chargeable to Service Tax under the category of "Club or Membership Association Service". Consequently, show cause notices were issued to the Appellant periodically for recovery of Service Tax for the period from 2005 to April 2012. The said demands were confirmed on adjudication and the matter reached before this Tribunal, which had been decided in their favour following the

judgement of the Hon'ble Supreme Court in **State of West Bengal Vs. Calcutta Club Ltd.: 2019 (29) GSTL 545 (SC)**.

Further, two show-cause notices dated 22.5.2014 and 10.4.2015 demanding service tax of Rs.30,77,848/- and Rs.74,67,200/- for the period from April 2012 to March 2013 and April 2013 to March 2014 respectively, were issued to the Appellant. On adjudication, the said demand notices were confirmed with interest and penalty. Hence, the present appeals.

3. The learned Senior Counsel for the appellant submits that in their own case, this Tribunal granted relief to them for the period 01.10.2007 to 30.9.2008 by setting aside the order as reported in **2020-TIOL-500-CESTAT-BANG**. He submits that the said order has not been appealed and hence, attained finality. It is his contention that, therefore, contrary stand now taken by the Revenue in the present appeals cannot be sustained. In support, he referred to the following judgments:

(i) CCE vs. Bigen Industries Ltd.: 2006 (197) ELT 305 (SC)

(ii) Marsons Fan Industries vs. CCE: 2008 (225) ELT 334 (SC)

(iii) CCE vs. ITC Ltd.: 2021 (50) GSTL 339 (Kar.)

3.1 Further, he has submitted that the impugned orders are contrary to the provisions of 65B of the Finance Act, 1944 as the appellant is an incorporated body being a registered society under Mysore Societies Registration Act, 1960. He has submitted that levy of Service Tax on the fees paid by the members to the club is no more *res integra* covered by the judgment of the Hon'ble Supreme Court in the case of **State of West Bengal & Ors. Vs. Calcutta Club Association: 2019 (29) GSTL 545**

(SC) and applicable for the period after 01.07.2012. Further, responding to the Revenue's arguments that receipt of application and processing the same by itself is a 'service' for which the advance entrance fee/ admission fee is paid, in their written submission dated 03.07.2023, the appellant has submitted that the applicants could not be eligible for any service till they become members. Their membership was not automatic but contingent and subject to conditions. Therefore, the definition of 'Service' under Section 66B(44) and Finance Act, 1944 is not fulfilled so as to attract Service Tax. Further, they have submitted that such an allegation not levelled in the show-cause notices issued, hence cannot be allowed at this stage. In support, they have referred to the judgments of Hon'ble Supreme Court in the case of **SACI Allied Products Ltd. vs. CCE: 2005 (183) ELT 225 (SC)**.

3.2 They have further submitted that entrance fee paid by a person intending to be a member is only a token of expression of interest by making deposit which is akin to a gratuitous bailment of money made by the depositor to be held in safe keeping by the recipient till the occurrence of an event. It should be returned to the bailor on non-occurrence of an event (in this case, grant of membership). The amount collected by the appellant as 'advance entrance or admission fees' does not enter into the revenue stream but it is shown as a liability in the balance sheet.

4. The learned Authorised Representative for the Revenue reiterated the findings of the learned Commissioner. He has submitted that processing of the application of the prospective members itself is a 'service' under the negative list regime. Hence, the amount collected as advance would be subjected to levy of Service Tax after 01.7.2012.

5. Heard both sides and perused the records.

6. The common issue involved for determination in these two appeals is: leviability of Service Tax on advance entrance/admission fee collected by the appellant from the applicants for the period from April 2012 to June 2012 and under the amended scheme of Service Tax from July 2012 to March 2014.

7. This Tribunal vide Final Order No. 20198-20199/2020 dated 17.2.2020 reported in **2020-TIOL-500-CESTAT-BANG** and vide Final Order No. 21108-21111/2023 dated 28.6.2023 in their own case held that the amount collected as advance fee from the applicants for membership of the club cannot be subjected to Service Tax levy under the category of 'Club or Membership Association Service'. Hence, the demand for the period April 2012 to June 2012 is squarely covered by the said decisions of this Tribunal and accordingly not sustainable. Also, the learned Authorised Representative for the Revenue has not disputed the same.

8. The Revenue has argued that since the aforesaid judgments pertain to the period prior to 01.7.2012, the same may not be applicable after introduction of the definition of 'Service' with effect from 01.7.2012 and processing of the application itself is a service and chargeable to tax.

9. Rebutting the said arguments of the Revenue, the learned Advocate for the appellant submitted that such an issue has not been raised while issuing the show-cause notices and such argument now advanced would be beyond the parameters of the show-cause notices and the Revenue should not be allowed to improve upon their case at this stage. Further, he has submitted that the judgment of the Hon'ble Supreme Court in the case of **Calcutta Club Ltd.** (cited supra) is also applicable for the period subsequent to introduction of negative list as the constitution of the society has not changed and Explanation 3(a) to Section 65B(44) does not include incorporated body.

10. We find that though in the show-cause notice dated 22.5.2014, the applicability of definition of 'service' has not been raised, however, in the show-cause notice dated 10.4.2015 it is alleged that the advances collected by the appellant would fall under the scope of 'service' as defined under Section 65B(44) of the Finance Act, 1994; also it is alleged that the activity of the appellant does not fall under the Negative List of services contained in Section 66D of the Finance Act, 1994, hence leviable to service tax. The Ld. Commissioner in the impugned

order by interpreting the definition of 'Service' has confirmed the demands for the period after 01.7.2012.

11. We find that the Hon'ble Supreme Court in **State of West Bengal & Ors. Vs. Calcutta Club Association's case** (supra) observed that 'Doctrine of Mutuality of Interest' is also applicable for the period after 01.7.2012; interpreting newly introduced definition of 'person' under Section 65B(37) and explanation 3(a) to Section 65B(44) of Finance Act, 1994, Their Lordships observed as:

“81. When the scheme of Service Tax changed so as to introduce a negative list for the first time post-2012, services were now taxable if they were carried out by “one person” for “another person” for consideration. “Person” is very widely defined by Section 65B(37) as including individuals as well as all associations of persons or bodies of individuals, whether incorporated or not. Explanation 3 to Section 65B(44), instead of using the expression “person” or the expression “an association of persons or bodies of individuals, whether incorporated or not”, uses the expression “a body of persons” when juxtaposed with “an unincorporated association”.

82. We have already seen how the expression “body of persons” occurring in the explanation to Section 65 and occurring in Sections 65(25a) and (25aa) does not refer to an incorporated company or an incorporated cooperative society. As the same expression has been used in Explanation 3 post-2012 [as opposed to the wide definition of “person” contained in Section 65B(37)], it may be assumed that the Legislature has continued with the pre-2012 scheme of not taxing members' clubs when they are in the incorporated form. The expression “body of persons” may subsume within it persons who come together for a common

purpose, but cannot possibly include a company or a registered cooperative society. Thus, Explanation 3(a) to Section 65B(44) does not apply to members' clubs which are incorporated."

12. Applying the above principle of law, we do not see merit in the impugned order and accordingly, set aside the same. In the result, the appeals are allowed with consequential relief, if any, as per law.

*(Order pronounced in Open Court on **19.10.2023.**)*

(D.M. MISRA)
MEMBER (JUDICIAL)

(PULLELA NAGESWARA RAO)
MEMBER (TECHNICAL)

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