

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD**

Division Bench – Court No. – I

Service Tax Appeal No. 30232 of 2016

(Arising out of Order-in-Original No.HYD-EXCUS-002-COM-36-15-16 (Denovo)
dt.30.11.2015 passed by Commissioner of Customs, Central Excise & Service Tax,
Hyderabad-II)

Country Club (India) Ltd

(Now known as Country Club Hospitality & Holidays Ltd), 6-3-1219, 5th Floor, Begumpet, Hyderabad, Telangana – 500 016

.....Appellant

VERSUS

**Commissioner of Central Tax
Secunderabad - GST**

GST Bhavan, LB Stadium Road, Basheerbagh, Hyderabad – 500 004

.....Respondent

Appearance

Shri Nagarajan. N, Advocate for the Appellant.

Shri B. Sangameshwar Rao, AR for the Respondent.

**Coram: HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)
HON'BLE MR. ANGAD PRASAD, MEMBER (JUDICIAL)**

FINAL ORDER No. A/30150/2026

Date of Hearing: 22.01.2026

Date of Decision: 13.03.2026

[Order per: A.K. JYOTISHI]

M/s Country Club India Ltd (now known as Country Club Hospitality & Holidays Ltd) (hereinafter referred to as the appellant) are in appeal against the order of the Commissioner dt.30.11.2015, whereby, he has adjudicated 10 SCNs covering the period from 2005-06 to 2013-14. The details of the SCNs, period covered, taxable services under which demand was proposed and the amount of service tax demanded are indicated below. These SCNs comprised of 4 remand cases and 6 periodical notices.

S.No.	SCN OR No. with date	Period covered	Taxable service	Service Tax + Cess demanded
1.	34/2007-Adjn (ST) (C) dt.01.06.2007 [30/2015-Adjn (ST) (Commr)] – Remand	16.6.2005 to 31.3.2007 (i.r.o membership fee (with/without land) up to 31.3.2006) & 16.8.2002 to 15.6.2005	"Club or Association services" "Health Club & Fitness Center services"	a) Rs.1,06,98,631/- on 'Club or Association services' b) Rs.13,46,340/- on 'Health Club & Fitness Center services'

2.	80/2007-Adjn (ST) (C) dt.24.10.2007 [31/2015-Adjn (ST) (Commr)] – Remand	2006-07	"Club or Association services"	Rs.2,55,00,615/-
3.	79/2008-Adjn (ST) (C) dt.23.10.2008 [29/2015-Adjn (ST) (Commr)] – Remand	2007-08	-do-	Rs.1,31,46,816/-
4.	142/2009-Adjn (ST) (C) dt.21.10.2009 [127/2015-Adjn (ST) (Commr)] – Remand	2008-09	-do-	Rs.80,73,890/-
5.	144/2010-Adjn (ST) (C) dt.14.10.2010 [28/2015-Adjn (ST) (Commr)]	2009-10	-do-	Rs.13,01,096/-
6.	133/2011-Adjn (ST) (C) dt.21.10.2011 [32/2015-Adjn (ST) (Commr)]	2010-11	-do-	Rs.26,30,084/-
7.	26/2013-Adjn (ST) (C) dt.20.04.2013 [33/2015-Adjn (ST) (Commr)]	2011-12	-do-	Rs.23,81,360/-
8.	82/2014-Adjn (ST) (C) dt.16.05.2014 [34/2015-Adjn (ST) (Commr)]	01.04.2012 to 30.06.2012	-do-	Rs.5,41,986/-
9.	142/2014-Adjn (ST) (C) dt.12.09.2014 [35/2015-Adjn (ST) (Commr)]	01.07.2012 to 31.03.2013	-do-	Rs.26,63,024/-
10.	44/2015-Adjn (ST) (C) dt.09.04.2015 [111/2015-Adjn (ST) (Commr)]	2013-14	-do-	Rs.16,86,893/-

2. The brief facts of the case relevant to the appeal are that the appellants are a public limited company providing services under the categories of 'Health Club & Fitness Center services' falling under section 65(51) of the Finance Act, 1994, and 'Club or Association services' falling under section 65(25a) of the Finance Act, 1994. The appellants offer various categories of membership like Permanent, Life Master Local, Life Master

Non-local, etc., and the members will have various facilities like banquet hall service, fitness service, swimming pool, health club, etc., provided by the appellant for which the members are being charged in addition to monthly/annual membership subscription. Additionally, the appellants also offer its members/ future members, an option to purchase land along with the membership of the club, for which there is an additional charge over and above the membership fee and land is transferred absolutely to the said category of members.

3. Initially, the appellants were unaware about the imposition of service tax on these activities and on being pointed out by the department, they started paying service tax without waiting for SCN. Moreover, as no service tax has been collected separately from its club members, the amount was calculated on cum-tax basis. Further, as the sale of land to the said category of members did not amount to service and was not a charge for being a member of the appellant club, they had bonafide belief that no service tax is payable to that extent and did not pay service tax in respect of amounts recovered from members and others towards sale of land. They had also availed Cenvat credit.

4. The department examined certain documents and recorded certain statements to examine the leviability within the scope of service falling under section 65(25a) and issued 10 different SCNs covering different periods from time to time. In general, the appellants took defence that for the period prior to 01.07.2012, on a conjoint reading of section 65(105)(zzza) and section 67 of the Finance Act, it was clear that only taxable services provided by the club with respect to any facility to its members and the amount received towards such services could be made leviable to service tax. For the period post 01.07.2012, they relied on section 65B(44), which specifically excludes from the category of service, any transaction which involved a transfer of title in goods or immovable property by way of sale or gift or in any other manner.

5. On adjudication, the demands were confirmed and the amounts were appropriated. In the course of adjudication, the department has been taking a stand that the ground taken by the appellant that the cost of land would not form part of the service is not correct. However, on appeal filed before the Tribunal, in Appeal No.ST/173/2009, wherein, they also relied on Board

Circular dt.27.07.2005, the Tribunal, vide Final Order No.1323 & 1324/2010 dt.19.10.2010 covering another appeal ST/466/2009, allowed the matter by way of remand observing, inter alia, that adjudicating authority has not recorded any finding on the contention of the appellant that the amounts collected towards land were transferred by the appellant to their sister concern, Amrutha Estates, who in turn had allotted the plots to the respective members and also that based on Board Circular dt.27.07.2005, club or association was not required to include the cost of sale of items to the members for discharge of service tax liability. In the meantime, the department had also filed an appeal before the Tribunal against OIO No.30/2008 in Appeal No.ST/178/2009, wherein, the department challenged the holding of taking of credit of Rs.53,53,477/- as correct by the adjudicating authority. This was also remanded back to the Tribunal vide Order No.420/2011 dt.09.06.2011 to consider the issue of availment of Cenvat credit of Rs.53,53,477/-. Finally, the Tribunal again after hearing another appeal of the party on this issue, remanded back the matter, vide Final Order No.21034/2014, for verifying the correctness of the claim of the appellant regarding cost of land. However, it was also observed that it would be in the interest of justice and fairness to require the appellant to produce sale deeds and they were directed to give all the names of the members, who were provided membership with land.

6. In the remand proceedings, as per the direction of the Tribunal, the appellant submitted certain details of the amounts transferred towards land to their sister concern Amrutha Estates, duly supported by the bank statements. As a consequence of all the remand proceedings from time to time, the adjudicating authority took up the issue vide this impugned order and, inter alia, confirmed the demand without excluding the value of the land claimed by the appellant from the gross value.

7. Insofar the issue of levy of service tax on the activities of the appellant before and after July, 2012, the adjudicating authority did not agree with the plea taken by the appellant that on the doctrine of mutuality, there cannot be any service tax on the said service. Insofar as the period post July, 2012, the adjudicating authority did not consider the activity as merely an activity of sale of land or relating to transfer of title. He took into account the directions of the Tribunal in the order dt.07.10.2010, inter alia,

proceeded to examine the sale deeds produced for randomly selected members vis-à-vis related books of accounts, as also duty paying documents relating to Cenvat credit and its eligibility. After detailed verification including CA certificate, he, inter alia, held that the details furnished cannot be relied upon and even CA certificate was not found in order. He was also not satisfied as the sale deeds were not provided in respect of all the members, which according to him, were about 13600 in number and as against which, only 74 members' sale deeds were produced. It was also observed that sale deeds do not provide any conclusive evidence of transfer of amounts towards cost of land to their sister concern Amrutha Estates. In some cases, it was observed that the transaction is through gift deeds. Essentially, he held that the verification could not be made or determined from the books of accounts and the sale/gift deed documents produced by the appellant. Insofar as the issue of verification of duty paid documents relating to Cenvat credit amounting to Rs.57,13,980/-, after going through various documents, only an amount of Rs.8,14,481/- was found to be irregular. He also denied them the benefit of section 80 by holding that there was no reasonable cause for non-payment of tax. Moreover, section 80 was omitted by the Finance Act, 2015 w.e.f. 14.05.2015. He has also imposed penalty SCN-wise, wherein, in respect of SCN OR No.34/2007-Adjn (ST) (C), OR No.80/2007-Adjn (ST) (C) and OR No.79/2008-Adjn (ST) (C), he has also imposed penalty under section 78 and in the rest of the cases, he has imposed penalty under section 76.

8. Learned Advocate for the appellant has mainly contested that it is now settled position that the value of land cannot be included in the gross value for determining service tax leviable on the services of club or association. He has submitted that Tribunal's order referred has made it amply clear that the matter has been remanded back to the original adjudicating authority only to verify and examine the correctness of the claim of the value of land transferred to members, who have taken 'membership with land'. He has also contested that the observation of the Commissioner that the documents furnished are not conclusive proof, is not correct. As far as the issue of production of sale deeds is concerned, the earlier orders of the Tribunal has not given such direction and only in the year 2014, they were directed to produce sale deeds, which, in the course of verification, it was found that instead of sale deeds, gift deeds were executed in most of the cases. This

mechanism for transfer of land was made keeping in view the grounds taken by the respective Sub-Registrars that since there was no consideration being paid by the club members to Amrutha Estates, sister concern of the appellant, the documents could not be registered as sale deed and can be transferred only by way of gift deed and said deed could be registered. Therefore, irrespective of whether it is sale deed or gift deed, there is transfer of property i.e., land to the respective club members and there is also transfer of amount towards cost of land by the appellant to Amrutha Estates. Similarly, insofar as the observation of the Commissioner that in respect of some members, there is more than one sale deed is also explainable as in those cases, the member had taken more than one plots.

9. Learned AR for the department has reiterated the findings of the Commissioner in the impugned order.

10. Heard both sides and perused the records.

11. We find from the grounds of appeal that the appellants are not contesting the payment of service tax on the aforesaid services, per se, and in fact they have paid up service tax to the extent they felt leviable under section 65(105)(zzze). They are only contesting the value adopted by the department for calculating the amount of service tax leviable thereon in terms of various SCNs issued. In the first round of appeal before the Tribunal, the Tribunal, vide its order dt.07.10.2010, examined this issue keeping in view the submission that to the members, who had opted for membership with land, the appellants were transferring the cost of land to their sister concern viz., M/s Amrutha Estates, who were allotting plots to such members. The Tribunal considered the Board's Circular dt.27.07.2005, wherein it was clarified that sale of items such as food or beverages would not be taxable provided the documents evidencing such sale are available and therefore, the club or association was not required to include the cost of sale of items to the members for discharge of service tax liability. The appeal was therefore disposed of by way of remand to record a finding on the factual matrix of transfer of amount towards cost of land to the individual members, who have opted for membership (with land) in the appellant's club or association. Subsequently, the matter again reached the Tribunal and the Tribunal remanded the matter with more or less similar direction. The appellant again appealed before the Tribunal in view of the

remand order and the Tribunal, vide its order dt.26.06.2014, examined the findings holding, inter alia, that cost of land need not be included. However, in order to compute the said amount, certain modalities were indicated. Therefore, insofar as the issue of non-inclusion of land value is concerned, there is no dispute and it has to be excluded from the gross value for levying service tax under the category of 'club or association service'.

12. Insofar as the leviability of service tax on membership without land category, we find that the Commissioner (Adjn) has already decided this matter in his impugned order and appellants have also not contested the leviability of service tax on the membership fee before the Tribunal, as such, under the category of membership without land. Therefore, we are not entering into the aspect as to whether the leviability of service tax, per se, on the membership fee itself is maintainable or otherwise, as it has not been contested and there is no ground in the appeal for contesting this aspect of the demand.

13. Insofar as the issue of exclusion of cost of land from the value of taxable service, we find that the Tribunal has given a specific finding at Para 4 of the Order dt.26.06.2014, giving mechanism to decide the value/cost of land, which is reproduced below.

"4. Even though the learned advocate for the appellants insisted that we should follow the earlier order of this Tribunal which had directed the appellants to produce details of amount transferred and the related accounts of the two companies before the Commissioner and had not given a direction for production of sale deed, we are not able to agree with this suggestion. If the actual amount reflected in the sale deed is less than what is shown as transferred to the sister company by the appellant, as submitted by the learned AR, it would amount to collection of membership fee in the name of land which would be inappropriate and incorrect in view of the fact that appellants have no grievance about paying service tax for membership fee during the relevant period. That being the situation, in our opinion, it would be in the interest of justice and fairness to require the appellants to produce the sale deeds. At the same time, we find considerable force in the submissions made by the learned counsel that no purpose will be served in requiring the appellants to submit all the sale deeds and quantify the amount only on that basis. We consider that it would be sufficient if the appellants give all the names of members with land who have been provided membership (with land). The Commissioner can select approximately 10% or below at random and in respect of those members if the appellants produce sale deeds and the relevant extracts of books of accounts so that Commissioner can verify and satisfy himself with the amount shown as collected for sale of land and transferred to the sister company is actually equal to the amount reflected in the sale deed. Learned counsel fairly agrees to this suggestion. We make it clear that in case appellant is not liable to

produce a few sale deeds in respect of selected members, Commissioner may select some other names at random."

14. It is also clear from the said orders of the Tribunal that it was remanded back for the limited purpose of verifying the correctness of claim regarding cost of land collected by the appellant by following the method suggested by the Tribunal, while also in full agreement with the earlier decision. Therefore, we find that the methodology or the verification method suggested by the earlier orders of the Tribunal were only modified by the Tribunal vide Order dt.26.06.2014 by watering down the directions for verification given in the earlier orders of the Tribunal but all Tribunal orders made it clear that land value cannot be subjected to service tax under the category proposed in the SCN. Insofar as modalities indicated by the Tribunal in the past, we find that this was by way of facilitating a quicker and fair determination of the value of land, which was not directly transferred by the appellant themselves but it was transferred through their sister concern to whom they transferred the money towards the said land value. It is also not in dispute that initial membership fee is a composite fee inclusive of the value of the land. Therefore, what is required to be done is to exclude the value of land, which has been transferred by their sister concern to the members and the amount for the said land has been transferred by the appellant to their sister concern.

15. We find that there is a great deal of force in the submission of the appellant that they had given all the relevant details to the adjudicating authority for quantification of land value, which would be required to be excluded from the value adopted for demand of service tax. It has also been pointed out that in respect of earlier documents, they had already paid service tax, taking cum-tax value into consideration. Since they had computed their liability on cum-tax value, as mandated under section 67, they had already discharged the applicable service tax as well as interest thereon, wherever applicable. Therefore, once the tax liability is re-computed on cum-tax basis and eligible Cenvat credit is also allowed, no further service tax would be left for payment by the appellant in respect of SCNs and therefore, there is no outstanding service tax to be paid by the appellant once the value of land is excluded. Insofar as the total cost of land for the period from 2005-06 to 2013-14, the value adopted as cost of land for levy of service tax is Rs.37,83,89,254/-, which matches with the details

verified by the Commissioner and extracted at Para 35.2 of the impugned order. Further, out of this amount and as specifically required by the department, they had already produced certificate dt.23.07.2013 from an independent CA, as also the amount transferred by the appellant to their sister concern covering entire period of dispute amounting to Rs.37,83,89,254/-. This would essentially mean that entire amount of cost of land, on which service tax has been demanded, has been transferred to their sister concern i.e., Amrutha Estates. In fact, the department has issued SCN based on the amount transferred to Amrutha Estates.

16. Insofar as observation of the Commissioner that this amount is not matching with the amounts reflected in the ledger account of the appellant, he has submitted that once the transfer of these amounts is not disputed, the demand of service tax cannot be confirmed merely for the reason that amounts as per ledger account are different. It was also pointed out that amount transferred during the relevant period to the sister concern is on lump sum basis and not member-wise and it is to the tune of Rs.54.93 crores, as per the ledger account reflected in table at para 35.2 of the impugned order, which is much higher than the cost of land considered in the SCN for raising demand. He has also submitted that demand at S.No.1 of Annexure-A is barred by time since the findings of mis-declaration, suppression, etc., are not maintainable since the issue involved only interpretation of law as to levy of tax and therefore, equivalent penalty in respect of S.No.2 and S.No.3 of Annexure-A are also not maintainable.

17. We have gone through the details submitted by the appellant giving different breakups SCN-wise (10 SCNs) wherein, the activities have been split into various categories viz., membership fee (with land) under 'Club or Association service', membership fee (without land) under 'Club or Association service', subscription and facilities under 'Club or Association service' and 'Health Club and Fitness Center service'. We find that in respect of these 4 categories, only in the first category the land value is involved aggregating to total land value of Rs.37,83,89,254/-. The only issue is how to verify or arrive at this amount, as claimed by the appellant, which would be excluded from the gross value. We find that appellants have claimed that they had collected this amount during the period 2005-06 to 2013-14 and

transferred to Amrutha Estates, sister concern, towards land acquisition and development on lump sum basis.

18. Further, we find that adjudicating authority has mainly observed and doubted veracity of this claim towards land value on various grounds including no correlation between the amount transferred and amount collected from members, non-existence of sale deeds in some cases or multiple sale deeds, transfer by way of gift deeds and not sale deeds, etc. We find that because of these doubts and inability to verify or cross-check the details from the ledger, the adjudicating authority has doubted the CA certificate itself. We find that appellants have given detailed explanation towards these observations of the adjudicating authority in their grounds of appeal and we find that these are reasonable and plausible explanations to doubts and observations raised by adjudicating authority to discredit the CA certificate. Thus, in view of settled position regarding exclusion of land value from gross value, adoption of land value by department as furnished by the appellants themselves for the purpose of levy of service tax, department has mainly based their demand on gross value of membership fee for the category where land is also given to members. The value of land is in-built in the gross value and is an admitted fact. It is also admitted fact that they are transferring certain amount to their sister concern i.e., Amrutha Estates, who is transferring land to said category of members on behalf of the appellant. It is irrelevant as to what mode is adopted for transferring the land to the members and by whom i.e., by the appellant directly or through their sister concern, as long as there is transfer or allocation of certain amount of the gross value received towards cost of land. Therefore, doubting the credibility of CA certificate, which essentially certified the amount transferred to sister concern towards land value, is not proper.

19. It is not in dispute that the land is not being transferred directly by the appellant and the land is being transferred by way of sale deeds or gift deeds by their sister concern to the said category of members or their nominated person. It is also not in doubt that certain amount is being transferred by the appellant to their sister concern towards land value. It is also not in dispute that appellant has collected a consolidated amount, which is inclusive of land value from this category of members. Essentially, it is a consolidated payment made by the members, who wish to have a regular

membership along with a piece of land. While the membership towards club facilities etc., are being extended by the appellant, the land is being provided through their sister concern, even though initially both the membership fee and the cost of land have been taken as a lump sum amount by the appellants themselves. It is settled now that cost of land cannot be leviable to service tax and therefore, this value needs to be excluded from the gross value. Another aspect is to check whether appellants have transferred value towards land to their sister concern or otherwise. This exercise, considering the voluminous documents, can be based by cross-checking each and every sale deeds with ledger entries of both i.e., appellant and sister concern or by way of any authentic documents like CA's certificate. We also find that Membership fee collected from members without land aspect can be a basis for finding the difference between two categories of membership fee and the difference would be the land value. This may also substantiate the claim of land value claimed by the appellant. We find that simplest way to resolve this issue is to direct the appellant to produce the audited balance sheet and other financial and sales records to a CA, who shall, thereafter, clearly certify the amounts transferred by the appellant to their sister concern towards the value of the land, which was transferred by sister concern to the members under this category of membership on behalf of the appellant. The value of land sold/transferred to members of the appellant's club through their sister concern, as verified by CA based on financial records, bank statements, other relevant documents and certified accordingly, would be accepted as value of land and the same will be excluded from the gross value for re-computation of tax liability, if any, keeping in view the payments of service tax already made. While computing the service tax liability net of land value, the cum-tax benefit will also be extended along with eligible credit lying in the balance and used for payment of service tax.

20. We, further, find that penalties have been imposed under section 78 in successive SCNs, which were periodical in nature. We also note that the issue relating to leviability of tax under the category of 'club or association service' as defined under section 65(25a) has been subjected matter of various litigations and different interpretations and orders have been passed by judicial forum. Finally, the issue got settled by the Hon'ble Supreme Court in the case of State of West Bengal vs Calcutta Club Ltd [2019 (29)

GSTL 545 (SC)]. The Hon'ble Supreme Court, after going through catena of judgments, inter alia, held that companies and cooperative societies, which are registered under the respective acts can certainly be said to be constituted under those acts and this being the case, whether such incorporated clubs or associations were covered under the service tax net or otherwise was examined and it was held that said clubs or associations were not included in the service tax net. Even for the period post 01.07.2012, the same would not be leviable to service tax. Therefore, it is obvious that during the relevant time covered under different SCNs, the subject matter of leviability of service tax itself was being interpreted in different manner by the Tribunals and Hon'ble High Courts and ultimately, Hon'ble Supreme Court settled this disputed issue, vide aforesaid order. Therefore, it can be said that during this period, it was a matter of interpretation and the appellants were not in a position to take a firm stand as to whether they were liable to pay service tax or otherwise, though they have paid service tax on their own during certain period. Secondly, the fact that right since the beginning, it was already settled that value of land cannot be clubbed with the membership fee for the purpose of computing the value for levying service tax under the category of club or association service. Therefore, the major issue was also in their favour as the value of land, per se, was not includable, whereas the department had tried to include the same since the beginning. What was left later on was only a method of computing the value of land out of total consideration received from the members, who were given membership along with land. Therefore, on this count also, no malafide can be imputed that they had deliberately decided not to pay service tax on the land value included in the composite membership fee received from the said category of members. Therefore, though they have not contested or disputed this aspect of leviability, we find that the whole issue was one of interpretation and there is no other tangible ground for invoking either extended period or for imposing penalty under section 78.

21. To sum up,

- a) Value of land would be based on certificate of CA, who would certify the amount transferred by the appellant to sister concern towards value of land sold/gifted to said category of members for entire period under dispute.

- b) Cost of land would be worked out on the basis of CA certificate and the same will be excluded from the gross value of membership fee (with land) to arrive at the differential service tax payable, if any, in respect of club membership (with land) category.
- c) Penalty under section 78 will not be invocable; and
- d) Demand, if any, will be confirmed only within the normal period.

22. The impugned order to the extent of demand of service tax is set aside and is remanded back to the adjudicating authority for redetermination of demand, if any, as directed above. Further, this being an old matter and has travelled to Tribunal many times in the past, the demand has to be recomputed in the aforesaid manner within a period of two months of furnishing of the certificate of CA by the appellant to the adjudicating authority.

23. Appeal allowed partly by way of remand.

(Pronounced in the Open Court on 13.03.2026)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)