



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 19303 of 2015

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.S. SUPEHIA Sd/-
and
HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI Sd/-

Approved for Reporting	Yes	No
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YOUNG MEN'S CHRISTIAN ASSOCIATION
 Versus
 UNION OF INDIA & ORS.

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Appearance:

MR HARDIK P MODH(5344) for the Petitioner(s) No. 1
 RULE SERVED BY DS for the Respondent(s) No. 1
 MR ANKIT SHAH(6371) with MR PARTH MEHTA for Respondent(s) No. 2,3

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CORAM:HONOURABLE MR. JUSTICE A.S. SUPEHIA
and
HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI

Date : 10/06/2026
ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

1. In the present writ petition, the petitioner-Young Men's Christian Association has challenged the order of refund dated 09.09.2015, wherein and whereby the respondent No.3 has rejected the refund claim of the petitioner for the Financial Years (FYs) 2009-10 to 2012-2013 declaring the same as time barred under the provisions of Section 11B of the Central Excise Act, 1944 (for short "the Act").

2. At the outset, learned advocate Mr.Modh has submitted that the issue is squarely covered by the decision of the Apex Court in the case of



State of West Bengal Vs. Calcutta Club Limited, 2019 (29) GSTL 545 (SC), by which the judgement of the Coordinate Bench of this Court in the case of *Sports Club of Gujarat Limited Vs. Union of India*, 2013 (31) STR 645 (Guj.) has been confirmed. It is submitted that this Court in the case of *Sports Club of Gujarat Limited (supra)* has categorically declared levy of service tax on the service provided by the club to its members to be “ultra vires” under the provisions of sections 65(25a), 65(105)(zzze) and 66 of the Finance (No.2) Act, 1994 as incorporated/amended by the Finance Act of 2005.

3. It is further submitted by learned advocate Mr.Modh that after decision of this Court declaring the levy of service tax as “ultra vires” to the provisions as mentioned hereinabove, the petitioner has filed an application seeking claim of refund of Rs.9,38,61,318/- on 29.12.2024, which has been partly allowed to the extent of granting the refund of service tax for the FY 2013–2014 and consequently, denying the claim of refund from FY 2009–10 to 2012–13, which prompted the petitioner to file the present petition. It is submitted that the decision of this Court in the case of *Sports Club of Gujarat Limited (supra)* was subject matter of scrutiny before the Apex Court in the case of *Calcutta Club Limited (supra)* and



ultimately, the Apex Court has confirmed the judgement of this Court. Thus, it is urged that the claim of refund from FYs 2009-10 to 2012-13 refused by the respondents on the ground of limitation by resorting to the provision of section 11B of the Act is required to be quashed and set aside in light of the decision of this Court as confirmed by the Apex Court and it is urged that the matter may be remanded to the respondent authorities to take appropriate decision in accordance with law so that the liability of the petitioner towards its members along with interest can be determined by the respondent authorities.

4. In response to the aforesaid submissions, learned Senior Standing Counsel Mr. Shah has submitted that in fact, the petitioner filed the application seeking refund claim on 29.12.2014, after the decision of this Court in the case of ***Sports Club of Gujarat Limited (supra)*** on 25.03.2013 and hence, the respondents have precisely rejected the claim of refund for the FYs 2009-10 to 2012-13 as they are expressly time barred under the provisions of section 11B of the Act and the judgement of the Constitution Bench of the Apex Court in the case of *Mafatlal Industries LTD. Vs. Union of India*, 1997 (89) ELT 247 (SC) and has urged that the present writ petition may not be entertained.



5. We have heard the learned advocates appearing for the respective parties and also perused the documents, as pointed out by them.

6. It is not disputed that the action of the respondent department levying service tax in respect of services purportedly provided by the clubs to its members under the provisions of Sections 65(25a), 65(105)(zzze) and 66 of the Finance (No.2) Act, 1994 as incorporated/amended by the Finance Act of 2005 is declared "ultra vires" by this Court in the case of **Sports Club of Gujarat Limited (supra)**. The relevant directions are as under:

"8. In the result, these petitions are allowed and it is hereby declared that Section 65(25a), Section 65(105) (zzze) and Section 66 of the Finance (No.2) Act, 1994 as incorporated / amended by the Finance Act, 2005 to the extent that the said provisions purport to levy service tax in respect of services purportedly provided by the petitioner club to its members, to be ultra vires. Rule is made absolute with no order as to costs."

7. It appears that thereafter, the petitioner, which is also similarly situated to **Sports Club of Gujarat Limited (supra)** filed the application seeking refund claim of Rs.9,38,61,318/- collected by the respondents in respect of service tax for the FYs 2009-10 to 2012-13. The refund claim of Rs.26,65,665/- by the impugned order dated 09.09.2015 for the FY 2013-14 was



allowed and simultaneously, denied the refund claim for the FYs 2009-10 to 2012-13 declaring the same as time barred under the provision of section 11B of the Act as the application was filed beyond the prescribed period of one year.

8. It is the case of the respondents that since the application is belatedly filed by the petitioner seeking refund claim for the FYs 2009-10 onwards till 2012-13, the claim cannot be accepted, whereas the petitioner has contested that once the action is declared as "ultra vires" to the statutory provisions, limitation would not come in the way of the petitioner in claiming the refund of service tax.

9. At this stage, it would be apposite to refer to the observations of the Apex Court in the case of *Calcutta Club Limited (supra)*, wherein the Apex Court, after analysis of the provisions of section 65B of the Finance Act, 1944 along with other provisions of section 65B(44) and also expressed explanation 3(a) to section 65B(44) passed on 01.07.2010, has held thus:

"82. We have already seen how the expression "body of persons" occurring in the explanation to Section 65 and occurring in Section 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.

83. The expression "unincorporated associations" would include persons who join together in some common purpose or common action – see ICT, Bombay North, Kutch and Saurashtra, Ahmedabad v. Indira Balkrishna (1960) 3 SCR 513 at page 519-520. The expression "as the case may be" would refer to different groups of individuals either bunched together in the form of an association also, or otherwise as a group of persons who come together with some common object in mind. Whichever way it is looked at, what is important is that the expression "body of persons" cannot possibly include within it bodies corporate.

84. We are therefore of the view that the Jharkhand High Court and the Gujarat High Court are correct in their view of the law in following Young Men's Indian Association (supra). We are also of the view that from 2005 onwards, the Finance Act of 1994 does not purport to levy service tax on members' clubs in the incorporated form."

10. Thus, while confirming the directions and judgement and order of this Court passed in the case of ***Sports Club of Gujarat Limited (supra)***, the Apex Court has held that from 2005 onward, the Finance Act, 1994 does not purport to levy the service tax on members' clubs in the incorporated form. Thus, the action of the respondent-Department in levying of service tax and collection of the same from 2005 onwards as declared by this Court in the case of ***Sports Club of Gujarat Limited (supra)*** and as confirmed by



the Apex Court, is “ultra vires” to the provisions of statutes and thus, in the considered opinion of this Court, the claim of the petitioner after declaration of this Court and as confirmed by the Apex Court cannot be rejected on the ground of being time barred.

11. It is settled legal precedent that the claim of refund of service tax paid under mistake of law cannot be frustrated on the ground of limitation as it would go against the mandate of Article 265 of the Constitution of India (vide 3E Infotech Vs. CESTAT, Chennai, 2018 (18) GSTL 410 (Mad.)) In case of, Abdul Samad Vs. Commissioner of C.Ex and Service Tax, Mangaluru, 2019 (367) ELT 189 (Kar.), the Calcutta High Court has held that the department is not authorized to levy or collect such amount, which would otherwise be outside the purview of section 11B of the Act.

12. In the present case, the claim of the petitioner stands on far better footing in light of the fact that the action of respondents in collecting the service tax is declared as “ultra vires” from 2000 onwards. Hence, the petitioner after declaration of law of this Court had precisely filed the application claiming refund, and the same could not have been rejected as time barred under provision of section 11B of the Act for the FYs 2009-10 to 2012-13.



13. Hence, the impugned order rejecting claim of refund for the aforesaid FYs as time barred is hereby quashed and set aside. The matter is remanded to the respondents to decide the application on merits in accordance with law, which would also include the interest on such claim. Necessary decision shall be taken within a period of 06 weeks from the date of receipt of the judgement and order of this Court. Rule made absolute to the aforesaid extent.

Sd/-
(A. S. SUPEHIA, J)

Sd/-
(VAIBHAVI D. NANAVATI, J)

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