

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

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REGIONAL BENCH – COURT NO. 1

**Service Tax Appeal No.395 Of 2011**

[Arising out of OIA No.174/CE/CHD-I/2010 dated 14.12.2010 passed by the Commissioner (Appeals), Central Excise & Service Tax, Chandigarh]

**M/s Punjab Cricket Association** : **Appellant (s)**  
Phase-IX, Mohali, Punjab-160062

Vs

**The Commissioner of Central Excise,** : **Respondent (s)**  
**Chandigarh-I**  
Plot No. 19, Central Revenue Building,  
Sector-17C, Chandigarh-160017

APPEARANCE:

Shri Sudeep Singh Bhangoo, Advocate for the Appellant  
Ms. Shivani and Shri Ravinder Jangu, Authorised Representatives  
for the Respondent

**CORAM :**

**HON'BLE Mr. S. S. GARG, MEMBER (JUDICIAL)**  
**HON'BLE Mr. P. ANJANI KUMAR, MEMBER (TECHNICAL)**

**FINAL ORDER No.60306/2023**

Date of Hearing:18.08.2023

Date of Decision:30.08.2023

**Per: P.ANJANI KUMAR**

The appellants, M/s Punjab Cricket Association, assails the Order-in-Appeal dated 14.12.2010 passed by the Commissioner (Appeals), Central Excise, Chandigarh.

2. Brief facts of the case are that M/s Punjab Cricket Association are registered as service tax assessee for providing "Club or Association Services"; on conduct of an audit, the Department noticed

that the appellants have been receiving payments like registration fees, entrance fees, annual subscription and charges for provision of additional facilities like billiards, swimming pool, lawn tennis, accommodation from its members and have not discharged the applicable service tax liability. A show-cause notice dated 14.10.2008 was issued; the original authority vide order dated 15.05.2009 confirmed the demand of service tax of Rs.15,65,652/- along with interest while appropriating an amount of Rs.4,31,344/- paid by the appellants; imposed penalty under Section 76 and Section 78 of the Finance Act, 1994. On an appeal filed by the appellants, Commissioner (Appeals) passed the impugned order confirming the duty of Rs.8,09,168/- along with penalty under Sections 76 & 78. Hence, this appeal.

3. Shri Sudeep Singh Bhangoo, learned Counsel for the appellants, submits that the PCA is in associate with BCCI and enrolls eight categories of people as members; the broad categories being A and B; only associate members are charged a fee for enrolling as members; other members are not charged any fee; therefore, the PCA is not a Club or Association for the purpose of Section 65(25a) of the Finance Act, 1994 and therefore, no service tax is leviable as held by the Hon'ble Supreme Court in the case of Calcutta Club Limited- 2019 (29) GSTL 545 (SC). He further submits that, out of the total demand confirmed, Rs.4,31,334/- was already paid before issuance of show-cause notice and therefore, benefit of Section 80 is admissible.

4. Ms. Shivani, assisted by Shri Ravinder Jangu, learned Authorized Representatives for the Department, reiterates the findings of the impugned order.

5. Having heard the rival contentions and after the perusal of the records of the case, we find that Hon'ble Apex Court in the case of Calcutta Club (supra) held as follows:

**72.** The definition of "club or association" contained in Section 65(25a) makes it plain that any person or body of persons providing services for a subscription or any other amount to its members would be within the tax net. However, what is of importance is that anybody "established or constituted" by or under any law for the time being in force, is not included. Shri Dhruv Agarwal laid great emphasis on the judgments in *DALCO Engineering Private Limited v. Satish Prabhakar Padhye and Ors. Etc.*, (2010) 4 SCC 378 (in particular paragraphs 10, 14 and 32 thereof) and *CIT, Kanpur and Anr. v. Canara Bank*, (2018) 9 SCC 322 (in particular paragraphs 12 and 17 therein), to the effect that a company incorporated under the Companies Act cannot be said to be "established" by that Act. What is missed, however, is the fact that a Company incorporated under the Companies Act or a cooperative society registered as a cooperative society under a State Act can certainly be said to be "constituted" under any law for the time being in force. In *R.C. Mitter & Sons, Calcutta v. CIT, West Bengal, Calcutta*, (1959) Supp. 2 SCR 641, this Court had occasion to construe what is meant by "constituted" under an instrument of partnership, which words occurred in Section 26A of the Income Tax Act, 1922. The Court held:

"The word "constituted" does not necessarily mean "created" or "set up", though it may mean that also. It also includes the idea of clothing the agreement in a legal form. In the *Oxford English Dictionary*, Vol. II, at pp. 875 & 876, the word "constitute" is said to mean, *inter alia*, "to set up, establish, found (an institution, etc.)" and also "to give legal or official form or shape to (an assembly, etc.)". Thus the word in its wider significance would include both, the idea of creating or

establishing, and the idea of giving a legal form to, a partnership. The Bench of the Calcutta High Court in the case of *R.C. Mitter and Sons v. CIT* [(1955) 28 ITR 698, 704, 705] under examination now, was not, therefore, right in restricting the word "constitute" to mean only "to create", when clearly it could also mean putting a thing in a legal shape. The Bombay High Court, therefore, in the case of *Dwarkadas Khetan and Co. v. CIT* [(1956) 29 ITR 903, 907], was right in holding that the section could not be restricted in its application only to a firm which had been created by an instrument of partnership, and that it could reasonably and in conformity with commercial practice, be held to apply to a firm which may have come into existence earlier by an oral agreement, but the terms and conditions of the partnership have subsequently been reduced to the form of a document. If we construe the word "constitute" in the larger sense, as indicated above, the difficulty in which the Learned Chief Justice of the Calcutta High Court found himself, would be obviated inasmuch as the section would take in cases both of firms coming into existence by virtue of written documents as also those which may have initially come into existence by oral agreements, but which had subsequently been constituted under written deeds."

**73.** It is, thus, clear that companies and cooperative societies which are registered under the respective Acts, can certainly be said to be constituted under those Acts. This being the case, we accept the argument on behalf of the respondents that incorporated clubs or associations or prior to 1st July, 2012 were not included in the Service Tax net.

6. We find that the Revenue has not adduced any evidence to demonstrate that the appellants have collected the charges for providing any services to the members. They have submitted that only a few members, who are in the category of 'associated members' are only charged. In the facts and circumstances of the case, we find that it is not established with evidence that the appellants are rendering any particular service that is taxable. In view of this above judgment

and in view of the fact that PCA are registered under the Society Registration Act, the appellants are not liable to pay service tax under the heading "Club or Association Service". Therefore, we find considerable merit in the submissions of the learned counsel for the appellants. The impugned order cannot be sustained and is liable to be set aside.

7. Accordingly, the appeal is allowed.

*(Pronounced on 30/08/2023)*

**(S. S. GARG)**  
MEMBER (JUDICIAL)

**(P. ANJANI KUMAR)**  
MEMBER (TECHNICAL)

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