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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **SERTA 20/2019**

**PRINCIPAL COMMISSIONER OF CENTRAL TAX, GST**

..... Appellant

Through: Mr.Harpreet Singh, Senior Standing  
Counsel with Ms.Suhani Mathur,  
Advocate.

versus

**INDIAN MEDICAL ASSOCIATION**

..... Respondent

Through: Mr.Sarvagya Sharma, Advocate.

**CORAM:**

**HON'BLE MR. JUSTICE MANMOHAN**

**HON'BLE MR. JUSTICE SANJEEV NARULA**

**ORDER**

% **12.03.2020**

**CM APPL. 39985/2019 (delay in filing 71 days)**

By this application the applicant seeks condonation of delay of 71 days in filing the appeal. For the reasons stated in the application, the delay is condoned.

The application stands disposed of in the aforesaid terms.

**CM APPL. 39986/2019 (delay in re-filing of 150 days)**

By this application the applicant seeks condonation of delay of 150 days in re-filing the appeal. For the reasons stated in the application, the delay is condoned.

The application stands disposed of in the aforesaid terms.

## **SERTA 20/2019**

The present appeal has been filed challenging the final order dated 4<sup>th</sup> June, 2018 passed by the Customs Excise & Service Tax Appellate Tribunal (CESTAT) in Appeal No. 52555/2014 filed by the respondent, whereby the appeal of the respondent was allowed and the demand of Service Tax as proposed against the respondent was dropped.

The Tribunal while passing the impugned order had relied upon decision of High Court of Gujarat in **Sports Club of Gujarat 1208: (2013) 64 VST 191** and also the judgment of High Court of Jharkhand in the case of **Ranchi Club 2012 (26) STR 401 (Jharkhand)**.

The aforesaid judgments of High Courts of Gujarat and Jharkhand were challenged before the Apex Court by the Chief Commissioner of Central Excise and Services. The Apex Court by way of its detailed judgment in **State of West Bengal & Ors. vs. Calcutta Club Limited** has affirmed the judgments of the High Court of Gujarat and Jharkhand. The Supreme Court has held as under:

*“71. With this background, it is important now to examine the Finance Act as it obtained, firstly from 16<sup>th</sup> June, 2005 upto 1<sup>st</sup> July, 2012.*

*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.”*

In view of the aforesaid Supreme Court judgment, no question of law arises for consideration in the present matter. Accordingly, the present appeal is dismissed.

**MANMOHAN, J**

**SANJEEV NARULA, J**

**MARCH 12, 2020**

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