

THE MAHARASHTRA APPELLATE AUTHORITY FOR ADVANCE RULING FOR GOODS AND SERVICES TAX  
(Constituted under Section 99 of the Maharashtra Goods and Services Tax Act, 2017)

ORDER NO. MAH/AAAR/SS-RJ/15/2019-20

Date- 06.11.2019

**BEFORE THE BENCH OF**

(1) Smt. Sungita Sharma, MEMBER

(2) Shri Rajiv Jalota, MEMBER

GSTIN Number	27AAABR06343JIZ
Legal Name of Appellant	Rotary Club of Mumbai Queens Necklace
Registered Address	Rotary Club of Mumbai Queens Necklace, B 41-45, Paragon Centre, Pandurang Budhkar Marg, Worli, Mumbai-400013
Details of appeal	Appeal No. MAH/GST-AAAR-15/2019-20 dated 08.08.2019 against Advance Ruling No. GST-ARA- 118/2018-19/B-46 dated 30.04.2019
Jurisdictional Officer	Dy./Asstt. Commissioner CGST & C.Ex., Division III, Mumbai Central Commissionerate

**PROCEEDINGS**

(Under Section 101 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the MGST Act.

The present appeal has been filed under Section 100 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act"] by Rotary Club of Mumbai Queens Necklace (herein after referred to as the "Appellant") against the Advance Ruling No. GST-ARA-118/2018-19/B-46 dated 30.04.2019.





### Brief Facts of the Case

1. This Appeal is being filed by **Rotary Club of Mumbai Queens Necklace** ('the **Appellant**' or 'the club') against ruling no. GST-ARA-118/2018-19/B-46 dated 30.04.2019 pronounced by Maharashtra Authority for Advance Ruling.
2. The appellant, having Good and Service Tax ('GST') Registration No. 27AAABR0643JIZ is an un-incorporated association of individuals. The club is affiliated to Rotary International, a worldwide organization with [520+] districts, [35000+] clubs and [1.2million plus] members. The object of Rotary is to encourage and foster the ideal of service.
3. For the sake of brevity, the structure of Rotary is explained as under:
  - (i) **Clubs** – Rotarians are members of Rotary clubs, which belong to the global association Rotary International (RI). Each club elects its own officers and enjoys full autonomy within the framework of Rotary's constitution and bylaws.
  - (ii) **Districts** – Clubs are grouped into RI districts, each led by a district governor. The district administration, includes District Secretary, District Treasurer, assistant governors and various committees. The District, guides and supports the clubs.
  - (iii) **Rotary International Board (RI)** – RI Board of Directors, which includes the RI president and president-elect, meets quarterly to establish policies. The RI president, who is elected annually, develops a theme and emphases for the year.
  - (iv) **The Secretariat:** Rotary International is headquartered in the Chicago suburb of Evanston, Illinois, USA, with seven inter-national offices in Argentina, Australia, Brazil, India, Japan, Korea, and Switzerland. The office for RI in India, serves clubs and districts in that region.
4. The normal functioning of the Rotary as a whole is summarized as under:
  - (i) **Rotary clubs** bring together dedicated individuals to exchange ideas, build relationships, and take action.
  - (ii) **Rotary International** supports Rotary clubs worldwide by coordinating global programs, campaigns, and initiatives.





- (iii) **The Rotary Foundation** uses generous donations to fund projects by Rotarians and other partners in communities around the world. As a nonprofit, all of the Foundation's funding comes from voluntary contributions made by Rotarians and friends who share our vision of a better world.

Together, Rotary clubs, Rotary International, and The Rotary Foundation work to make lasting improvements in our communities and around the world.

5. Appellant work with Rotary Foundation to:

- Promote Peace
- Fight Diseases
- Provide Clean Water, Sanitation and hygiene
- Save Mothers and children
- Support Education

6. The purpose of club is to promote integrity, and advance world understanding, goodwill, and peace through fellowship of leaders.

7. The members come together to form a rotary club. It is not a service club. There is an annual budget of expenses and that money is pooled by the members in equal share. It is non-profit institution. It has neither rendered commercial service to its members nor does it render services to outsiders for a fee.

8. For the said purpose, appellant receive contribution from its members for incurring expenditure on its meetings and communication. The receipts majorly comprise of:

- (i) **Fees from members which in essence is contribution towards yearly expenses. The contribution from new members is collected on pro rata basis rounded to quarter/ half year.**
- (ii) **One time admission Fees from New Members (other than who are or were Rotarians).**

9. The expenses are in the form of:

- (i) **Meeting Expenses**
- (ii) **Fees and contributions to District or Secretariat of Rotary**



(iii) **Other Administration expenses like printing, stationery, audit fees etc.**

10. The amounts collected by way of fees are only pooled together and it is not expected to generate any surplus. Club is not formed to give any facilities or services to its members. The members gather under the umbrella of the club to perform socially relevant activities.
11. Club in normal parlance is understood to provide goods or services to its members such as recreation, sports etc.

**However, appellant does not provide any facilities or benefits in terms of goods or services to its members.**

12. The activities relating to receiving donation etc. is carried out through a charitable trust which is registered under Bombay Public Trust Act, 1950.
13. To ensure the smooth and proper working of the club, membership subscription fees and admission fees are collected from members. The amounts collected are then utilized for administration purposes of the club.
14. In order to avoid unnecessary and unwanted litigation, the appellant was erstwhile registered under service tax vide registration number AAABR0643JSD002 and also under Good and Service Tax ('GST') having registration number as 27AAABR0643J1ZJ and is currently charging GST on the membership subscription and admission fees collected by it.
15. The Club organizes events for the purpose of enabling members to meet and interact with each other. For such events the Club incurs various expenditure like banquet charges, catering services, etc.

Club also incurs expenditure on banquet and catering services for its weekly/monthly meeting.

GST amount paid to vendors on such expenses is substantial.

16. The membership / subscription fees are collected from members only to cover meeting expenses, banquet expenses, catering expenses, printing and stationery expenses, etc.

Collections pooled from members is not intended to accumulate any surplus fund / profit. Appellant, being a non-profit entity, aims only at furtherance of





object of Rotary. Membership / Subscription fees is only to cover up the expenses of appellant.

17. In view of the above, the appellant filed an application before the advance ruling authority (Maharashtra) seeking a ruling on the questions as to whether:

- (i) **The amount collected as membership subscription and admission fees from members is liable to GST as supply of services?**
- (ii) **If the above receipts are liable to GST, can the appellant claim Input tax credit of the tax paid on the Banquet and Catering services for holding members meetings and various events?**

18. Advance ruling authority admitted the appellant's application in preliminary hearing held on 27.02.2019. Final hearing in respect of above matter was fixed on 03.04.2019. The appellant filed additional submissions dated 22.02.2019, 18.03.2019 and 09.04.2019 and re-iterated submissions made in the application filed with Advance ruling authority.

**Advance Ruling dated 30.04.2019 passed by AAR, Maharashtra**

19. Advance ruling authority (Maharashtra) vide their order no. GST-ARA-118/2018-19/B-46 dated 30.04.2019 passed the following order:

- (i) **The amount collected as membership, subscription and admission fees from members is liable to GST as supply of services.**
- (ii) **Input tax credit of tax paid on Banquet and catering services cannot be availed.**

20. Aggrieved by the above rulings passed by the AAR, the appellant has preferred appeal on the basis of the grounds mentioned herein under:

**Grounds of Appeal**

- 21. The appellants are filing the present appeal on the following grounds, which are urged herewith without prejudice to one another.
- 22. **Ground No. 1:** - On the facts of the case and in law, Advance ruling authority has erred in holding that the amount collected as membership subscription and admission fees from members is liable to GST as supply of services.





**Detailed submissions:**

- I. As per the definition of the term "Person" under section 2(84) of the CGST Act, 2017, there is no deeming fiction to treat the appellant and its members as different persons. Therefore, the vital condition for a transaction to be taxed under GST, that a supplier and recipient should be different persons is not satisfied.
- II. Appellant is an autonomous unit which collects its fees from its members to meet its administrative costs and to manage its activities. Therefore, the principle of mutuality is applicable and since the fees so collected are only pooled together for convenience and for defraying administrative and other expenses and hence, the same should not be brought under the purview of GST.

**III. Taxability of contribution received by club from its members:**

- a) Section 9 of the CGST Act, 2017 stipulates the taxable event for levying GST as supply of goods or services.
- b) Section 7 of the CGST Act, 2017 reads as under:
  7. (1) *For the purposes of this Act, the expression "supply" includes—*
    - (a) *all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;*
    - (b) *import of services for a consideration whether or not in the course or furtherance of business;*
    - (c) *the activities specified in Schedule I, made or agreed to be made without a consideration; and*
    - (d) *the activities to be treated as supply of goods or supply of services as referred to in Schedule II.*
- c) Therefore, in order to tax the transaction between an association or club and its members, said transaction must either fit clause (a) or (c) above.
- d) **Explanation for transaction to be outside the purview of Clause (a) of section 7(1):**
  - i. Clause (a) of section 7(1) covers all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license,





rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business.

- ii. Therefore, in order to tax the transaction, the supply must be for a consideration and it should be in the course of furtherance of business.

**(a) Business:**

- Appellant is not engaged in any activity in nature of trade, commerce, manufacture, profession, vocation or adventure or any similar activity so as to constitute a business.

- Clause (e) of section 2(17) specifies the term "Business" to include:

*"provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members"*

- Therefore, in order to satisfy the term business, there must be some benefit/facility provided to its members. In appellant's case, there is no facility or benefit provided to the members.

The appellant cannot be said to be in business. The object of the appellant is to promote peace, Fight Diseases, Provide Clean Water, Sanitation and hygiene, Support Education, etc. It does not tantamount to business activity carried out by the appellant.

**(b) Consideration:**

- Under section 2(105), the term "supplier" has been defined as follows:

*"Supplier" in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied;*

- Under section 2(93), the term recipient has been defined as follows:

*"recipient" of supply of goods or services or both, means—*





(a) where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;

(b) where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and

(c) where no consideration is payable for the supply of a service, the person to whom the service is rendered, and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied;

- Harmonious reading of both the above definitions provides that where a consideration is involved in a transaction, the recipient is the “person” who pays the consideration to the supplier. Hence, two different persons have been envisaged in the law to tax a transaction as a supply made for a consideration.
- The term person is defined in section 2(84) of the CGST Act, 2017 to include an association of persons or a body of individuals, whether incorporated or not, in India or outside India.

Further, Schedule II of CGST Act, 2017 enumerates activities which are to be treated as supply of goods or as supply of services.

It states in para 7 that supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration shall be treated as supply of goods.

- Recent circular implies that “supply of services by an unincorporated association or body of persons to a member





*thereof for cash, deferred payment or other valuable consideration shall be treated as supply of services.*

Above entry in Schedule II is analogous to and draws strength from the provision in Article 366(29A)(e) of the Constitution according to which a tax on the sale or purchase of goods includes a tax on the supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration." It does not enable to tax supply of service as a deemed service.

Above circular has not considered the definition of "supplier" as well as "recipient" before taxing a transaction u/s 7(1)(a).

- There must be two different persons to tax a transaction under said provision. Merely because an association of person has been included as person u/s 2(84) does not imply that members of such association are different persons.

Unless provision similar to that of deemed sale is made either in the Constitution or the Act, services provided by an association to its members cannot be taxed.

### iii. **Concept of Mutuality**

#### **(a) Foreign Jurisprudence:**

In the case of English and Scottish Joint Co-operative Whole Society Ltd. V. Commr. Agr of I. T. (1948) 16 ITR 270 (PC), there are three conditions stipulated by the judicial committee, the existence of which establishes the doctrine of mutuality:

- *The identity of the contributors to the fund and recipients from the fund.*
- *The treatment of the company, though incorporated as a mere entity for the convenience of the members and policyholders, in other words, as an instrument obedient to their mandate, and*
- *The impossibility that contributors should derive profits from contributions made by themselves to a fund which could only be expelled or returned to themselves.*

#### **(b) Indian Jurisprudence:**





- Income Tax Law:

Honorable court has also discussed the principles of mutuality in the case of CIT vs. Bankimpur Club Ltd. as follows:

*"It should be noticed that in the case of a mutual society or concern (including a member's club), there must be complete identity between the class of contributors and the class of participators. The particular label or form, by which the mutual association is known, is of no consequence."*

- Service Tax Law:

- Principle of mutuality was always a point of debate in service tax regime prior to 01.07.2012. Whether club and its member can be regarded as two separate taxable person was the issue of concern.

- Honorable Jharkhand High court in case of Ranchi Club Ltd. v. Chief Commissioner [2012] 26 S.T.R. 401(Jhar.) examined the concept of mutuality. Main contention before the court was that considering the concept of mutuality, a club/association cannot provide services to itself. Only service provided to another person is taxable. In absence of deeming fiction treating club/association and its member as distinct person, service tax shall not be payable.

- High Court accepted the contention of petitioner and held that the levy is ultra vires to the extent of money collected from members. Relevant extract is reproduced below:

*'It is true that sale and service are two different and distinct transaction. The sale entails transfer of property whereas in service, there is no transfer of property. However, the basic feature common in both transactions requires existence of the two parties; in the matter of sale, the seller and buyer, and in the matter of service, service provider and service receiver. Since the issue whether there are two persons or two legal entity in the activities of the members' club has been already considered and decided by the Hon'ble*





*Supreme Court as well as by the Full Bench of this Court in the cases referred above, therefore, this issue is no more res integra and issue is to be answered in favor of the writ petitioner and it can be held that in view of the mutuality and in view of the activities of the club, if club provides any service to its members may be in any form including as mandap keeper, then it is not a service by one to another in the light of the decisions referred above as foundational facts of existence of two legal entities in such transaction is missing. However, so far as services by the club to other than members, learned counsel for the petitioner submitted that they are paying the tax.'*

- Subsequently Hon. Gujarat High Court in the case of Sports Club of Gujarat Ltd v. UOI [2013] 40 STT 486 (Guj.) concurred with Hon. Jharkhand High Court and held that club and members are not distinct persons, levy of service tax on such clubs/associations is ultra vires.

**To nullify the effect of above judgements w.e.f. 01.07.2012, clause (a) to explanation 3 to Section 65B(44) was inserted to provide that an unincorporated association or a body of persons, as the case may be, and a member thereof shall be treated as distinct persons.**

- iv. As per the definition of 'person' provided u/s 2(84) of the CGST Act, 2017, **there is no deeming fiction to treat association and members as different persons.** 'Principle of mutuality' has its relevance in all taxation laws i.e. Income Tax Act, Service Tax Act, VAT laws, etc. Appellant is of the considered view that in absence of deeming fiction under GST legislation, decisions of Jharkhand High Court as well as Gujarat High Court shall squarely apply in the context of GST. Association or club and its members cannot be treated as different persons. Hence key condition to tax a transaction u/s 7(1)(a), that supplier and recipient must be different, is not satisfied.





Therefore, transaction of providing services by an association to its members cannot be taxed u/s 7(1)(a).

**e) Explanation for transaction to be outside the purview of Clause (c) of section 7(1):**

- i. Clause (c) of section 7(1) clause covers the activities specified in Schedule I, made or agreed to be made without a consideration. If self-supply is taxable, it must be covered under Schedule I.
- ii. Entry Number 2 of schedule I provides that supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business shall be taxable.
- iii. Members are not covered under section 25 as distinct person.
- iv. Explanation to section 15 of the act explains the term related person as follows:

*For the purposes of this Act, —*

*(a) persons shall be deemed to be “related persons” if—*

- (i) such persons are officers or directors of one another’s businesses;*
- (ii) such persons are legally recognized partners in business;*
- (iii) such persons are employer and employee;*
- (iv) any person directly or indirectly owns, controls or holds twenty-five per cent or more of the outstanding voting stock or shares or both of them;*
- (v) one of them directly or indirectly controls the other;*
- (vi) both of them are directly or indirectly controlled by a third person;*
- (vii) together they directly or indirectly control a third person; or*
- (viii) they are members of the same family;*

*(b) the term “person” also includes legal persons;*





*(c) persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other, shall be deemed to be related.*

On perusal of the above definition we can conclude that there must be more than one person who can be considered as related as per the above specified conditions.

As an association and its members are the same because of principle of mutuality, they cannot be regarded as related person.

From the foregoing analysis, we interpret that transaction between an association or club and its members is not covered in the scope of supply u/s. 7(1)(c) of the CGST Act, 2017.

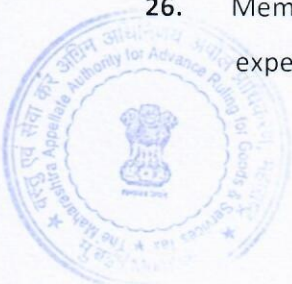
Since the transaction between the appellant and its members does not tantamount to supply u/s 7 of the CGST Act, 2017, GST is not leviable on membership fees collected by the appellant from its members.

23. **Ground No. 2:** On the facts of the case and in law, Advance ruling authority has erred in holding that Input tax credit of the tax paid on Banquet and catering services for holding members meetings and various events cannot be claimed.

**Detailed submissions:**

**Assuming (but not admitting) and without prejudice to above grounds, if your honor holds membership fees charged from members is taxable supply liable to GST, then appellant should be entitled to claim ITC in respect of banquet and catering services:**

24. As stated earlier, the objects of the appellant are to promote peace, fight diseases, provide clean water, sanitation and hygiene, support education, etc.
25. For the smooth functioning of the association and obtaining donations, the appellant conducts various meetings at hotels which are attended by members. Such meetings may be in the form of cultural programs followed by Lunch or Dinner.
26. Membership fees charged by appellant to the members covers such meeting expenses, other administration charges such as printing and stationery, audit





fees, etc. The membership fees are towards recovery of expenses, one of which is banquet and catering services. Membership fees are collected by appellant well in advance from the members.

27. Since a bundle of expenses are recovered in name of 'membership fees' from members, reference to the concept of 'composite supply' under CGST Act, 2017 is required:

(30) "composite supply" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;

28. All the expenses of appellant are recovered well in advance from members in name of membership fees. To determine natural bundling, Education Guide issued by CBEC in 2012 provides that whether services are bundled in the ordinary course of business would depend upon the normal or frequent practices followed in the area of business.

Such normal and frequent practices adopted in a business can be ascertained from several indicators some of which are listed below –

- a) The perception of the consumer or the service receiver  
(In appellant's case it would be the perception of members)
- b) Majority of service providers in a particular area of business provide similar bundle of services.  
For example, bundle of catering on board and transport by air is a bundle offered by a majority of airlines.
- c) If the nature of services is such that one of the services is the main service and the other services combined with such service are in the nature of incidental or ancillary services which help in better enjoyment of a main service.

29. That above indicators being applied in the appellant's case it evidently appears that the membership fees charged by the applicant to the members represents bundle of benefits / facilities granted to the members.

30. Further, principal supply is defined as under:





*"principal supply" means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary;*

31. The primary factor to determine the principal supply is the essential nature of the composite supply and element of the supply imparts that essential nature to the composite supply.

32. Section 8 of Central Goods and Services Tax Act, 2017 provides as under:

*The tax liability on a composite or a mixed supply shall be determined in the following manner, namely: -*

- a. a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply; an*
- b. a mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax.*

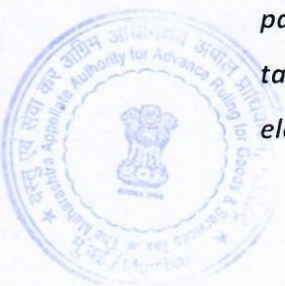
33. Hence, the composite supply provided by the appellant to the members shall be treated as a supply of club / association service by the appellant. Organization of meetings, banquet and outdoor catering services will all form part of ancillary services provided to its members.

34. To determine input tax credit on food and beverages supplied by outside caterers, Section 17(5) of GST Act, 2017 (as amended) provides as under: -

*(5) Notwithstanding anything contained in sub-section (1) of section 16 and subsection (1) of section 18, input tax credit shall not be available in respect of the following supply of goods or services or both, namely: -*

- (i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause(a) or clause (aa) except when used for the purposes specified therein, life insurance and health insurance:*

***Provided that the input tax credit in respect of such goods and services or both shall be available where an inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;***





35. Appellant procures various supplies such as services of professionals, auditors, banquet hall services, outdoor catering services, etc. in order to provide benefits / facilities to its members and to achieve the objects of Rotary. All such expenses are recovered from members in form of membership / subscription fees on which appropriate GST liability is being discharged by the appellant.
36. Appellant is availing banquet and catering services, professional's services, auditor's services, etc. for providing outward composite supply in nature of club membership / subscription fees. Club membership / subscription fees is a taxable composite supply liable to GST.
37. Further the invoice raised by the appellant on its member clearly mentions that the membership contribution is towards Meetings, Banquet, Catering and other expenses.

**Sample copy of invoice raised by the appellant on its member is attached herewith.**

38. While going through the above provisions of Section 17(5), it can be concluded that ITC of tax paid on food and beverages should be available to the appellant because it will use such inward supply as an element of an outward supply of club membership which is a taxable composite supply.
39. Advance ruling authority in the case of **All Rajasthan Corrugated Board and Box Manufacturers Association** has held that *"ITC of tax paid on food and beverages will be available to the applicant because the applicant will use such inward supply as an element of an outward supply of event organization which is a taxable composite supply."*

#### Personal Hearing

40. A personal Hearing in the matter was conducted on **04.11.2019**, which was attended by Mr. Parag G Mehta and Mr. Ashok N. Shah, on behalf of the Appellant, wherein they reiterated the written submissions previously filed before us as well as the additional written submissions filed on the date of the personal hearing. In the aforesaid hearing, the Department was represented by Shri Durgesh Salunke,





Deputy Commissioner Division III, CGST, Mumbai Central, who also reiterated the written submissions, filed before us.

**Appellant's Additional Submission dt.04.11.2019**

**41. Ground No 1: Taxability of Contributions received by Club from its Members:**

- a) Appellant reiterates the submissions made on Page 7 to 12 of the Appeal Memo.
- b) Further, the issue of taxability of Contributions/Collections received by Club from its Members is squarely covered under the Recent Supreme Court Judgement in the case of Calcutta Club Limited / Ranchi Club Limited.

**c) Views of Honorable Supreme Court on applicability of Sales Tax: -**

- The Supreme Court referred to the sixty first Law Commission Report, which made recommendations on the forty sixth amendment to the Constitution. It expressed that the Constitution was not specifically amended to bring clubs within the tax net. It relied on the three reasons in this report, viz. (a) the number of such clubs and associations would not be very large; (b) taxation of such transactions might discourage the cooperative movement; and (c) no serious question of evasion of tax arises, as a member of such clubs consumes his own goods.
- The Statement of Objects and Reasons for the forty sixth amendment to the Constitution observed that while sale by registered club or other association of persons (the club or association of persons having corporate status) to its members is taxable, sales by an unincorporated club or association of persons to its members is not taxable. This is because such club or association, in law, has no separate existence from that of its members.
- The Statement of Objects and Reasons for the forty sixth amendment to the Constitution observed that while sales by a registered club to its members is taxable, sales by an unincorporated club to its members is not taxable. Therefore, as the club or association has no separate existence from its members, the forty sixth amendment to the Constitution did not overcome the decision in the Young Men's Indian Association and the doctrine of mutuality remains applicable even after the amendment.





- For the supply of goods by incorporated and unincorporated associations or body of persons to its members, the requirement of consideration is not fulfilled, as in case of supply of goods to self, there exists no consideration as per the provisions of the Contract Act, 1872. The club is acting as an agent of its members, with no element of transfer in the supply of food by it to the members. Hence, there is no “seller” or “buyer” relationship in the passing of consideration.

d) **Views of Honorable Supreme Court on applicability of Service Tax:**

- Post 1 July 2012, the definition of “person” under section 65B (37) of the Finance Act, 1994 was changed to include any association of persons or body of individuals whether incorporated or not. However, the definition of “services” under section 65B (44) of the Finance Act, 1994 requires the provision of services by one person to another, and the doctrine of mutuality, which is applicable to clubs qua sales tax for supplies to members, was equally applicable “on all fours to services.” **Consequently, services by a members’ club to its members amounts to services to self and would not qualify as a service that attracts tax. This position was validated for both the pre- and post-negative list.**

- e) In view of the fact that the concept of mutuality is being upheld by the Hon. Supreme Court during the service tax regime, the same principle will also be applicable in the GST regime also as there is no change in the legal position.
- f) The comparative chart of definition of services & supply under Service Tax & GST are enclosed herewith. It can be observed that there are no differences in the said definition. In fact, under service tax there was a deeming clause i.e. “*An unincorporated association or a body of person, as the case may be, and a member thereof shall be treated as distinct person*”. The said clause is missing under GST. The intent in GST was never to treat club and members as separate persons.
- g) Further unlike other clubs which offer facilities like swimming, restaurant, gymnasium etc., Rotary Club does not have any premises for the said services. It conducts only meetings from third party premises and does not offer any facilities. Hence the Rotary Club cannot be covered under the Clause (e) of





Section 2(17) of GST Act which defines business to include "Provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;".

h) Further the deeming fiction created under Entry 7 to Schedule II of the CGST provides that goods supplied by unincorporated associations or body of persons to a member thereof for cash, deferred payment or other valuable consideration shall be classified as goods under the GST Law. No such deeming fiction has been created under Schedule II with respect to supply of services.

i) Hence following the ratio of the judgement, it can be strongly held that: -

- Supply of goods and services by incorporated entities to its members would not be taxable under GST
- Supply of services by an unincorporated entity to its members would not be taxable under GST

j) Further even the provisions of Indian Contract Act, 1872 require consideration to be paid by one person to the other. However, in this case, applying the doctrine of mutuality, it follows that supply made to self and consideration made to self would not qualify as consideration.

k) The GST Act, defines "Person" under Section 2(84) to include:

(a) .....

(b) .....

.....

(f) an association of persons or a body of individuals, whether incorporated or not, In India or otherwise;

.....

However, as per the said definition, there is no deeming fiction to treat association and its members as different persons. Hence the key condition to tax a transaction U/s 7(1)(a) and to treat it as a Supply, the supplier and recipient must be different, is not satisfied. Hence the transaction of providing services by an association to its members cannot be taxed U/s 7(1)(a).





l) Under Service tax there was a deeming fiction under Clause (a) to Explanation 3 to Section 65B which provided that an unincorporated association or body of persons, as the case maybe and member thereof shall be treated as distinct persons. Such deeming fiction is not provided under the GST Regime.

m) In spite of the said deeming fiction the Honorable Supreme Court has dismissed the revenue appeal and held that services provided by associations to members is not liable to Sales Tax / Service Tax on grounds of mutuality.

Hence in the absence of any mechanism to treat the appellant and its members as separate persons the said service does not tantamount to supply u/s 7 of the CGST Act, 2017, GST is not leviable on membership fees collected by the appellant from its members.

**42. Ground No 2: Assuming (but not admitting) and without prejudice to above grounds, if your honor holds membership fees charged from members is taxable supply liable to GST, then appellant should be entitled to claim ITC in respect of banquet and catering services:**

a) Appellant reiterates the submissions made on Page 13 to 15 of the Appeal Memo.

b) Further it can be observed from the invoices that the Appellant is collecting the charges as under:

- Contribution Towards Monday Meetings, Banquet Hall Charges and Spouse Events &
- Contribution towards Club Activities, Rotary International Fees & Rotary Magazine Subscription

c) Since a bundle of expenses are recovered in name of 'membership fees' from members, reference to the concept of 'composite supply' under CGST Act, 2017 is required:

*(30) "composite supply" means a supply made by a taxable person to a recipient*

*consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction*





with each other in the ordinary course of business, one of which is a principal supply;

- d) To determine input tax credit on food and beverages supplied by outside caterers, Section 17(5) of GST Act, 2017 (as amended) provides as under: -

*(5) Notwithstanding anything contained in sub-section (1) of section 16 and subsection (1) of section 18, input tax credit shall not be available in respect of the following, namely: -*

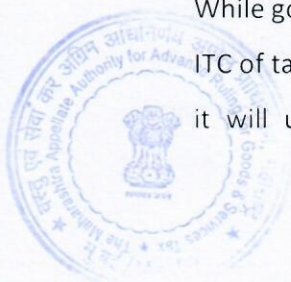
*(b) the following supply of goods or services or both-*

*(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause(a) or clause (aa) except when used for the purposes specified therein, life insurance and health insurance:*

***Provided that the input tax credit in respect of such goods and services or both shall be available where an inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;***

- e) Appellant is availing banquet and catering services, professional's services, auditor's services, etc. for providing outward composite supply in nature of club membership / subscription fees. Club membership / subscription fees is a taxable composite supply liable to GST.
- f) Advance ruling authority in the case of **All Rajasthan Corrugated Board And Box Manufacturers Association** has held that ***"ITC of tax paid on food and beverages will be available to the applicant because the applicant will use such inward supply as an element of an outward supply of event organization which is a taxable composite supply."***

While going through the above provisions of Section 17(5), it can be concluded that ITC of tax paid on food and beverages should be available to the appellant because it will use such inward supply as an element of an outward supply of club





membership which is a taxable composite supply and it is not a blocked credit as normally envisaged.

**Respondent's Submission dt.04.11.2019**

**43.** In the instant case M/S Rotary Club of Mumbai Queens Necklace has raised two queries which are as under: -

**1.** Whether the amount collected as membership subscription and admission fees from members is liable to GST: -

**1.1** According to the Article 8 of Section 1 of Bylaws of the Rotary Club of Mumbai Queens's Necklace that club committee co-ordinates their efforts to achieve club's annual and long-term goals. Each club should have the committee listed in Article 13 section 7 of Standard Rotary club constitution. However, M /s Rotary Club of Mumbai Queens Necklace have not submitted the copies of Article 13 section 7 in their application. Therefore, in order to ascertain the responsibilities and privileges of the Committee and their members, the department searched the literature available on internet, it has come to department's notice that Rotary clubs are involved in two kind of activities: -

i) Social Service Activities: - It is ascertained that M/S. Rotary Club of Mumbai Queens Necklace are into social services like all other Rotary clubs. Ex. Fighting diseases, Working towards education, etc.

ii) Professional and Recreational Activities: - Along with Social service activities, the M/S. Rotary Club of Mumbai Queens Necklace is also involved in other activities for their members which are not related to social cause and are discussed below:

a. Rotary club invites eminent personalities for guest lectures and guidance for the members to enhance their professional leadership and personal skills. Through regular meetings and events, the members of the Club will connect with other leaders towards changing the world and expand their leadership and professional skills. There are various articles on public domain like "Why Rotary? What Our Members Receive Brad Howard, RID 2015-1 T' from which it can be understood that members are benefitted by these meetings with eminent personalities and their guidance while at the same time such privileges are not available to a non-member. It is also said that 'Rotary Club Membership allows members to sit next to people with whom he/she may





have to pay \$250 an hour to meet" This clearly shows that there is furtherance of business involved.

- b. It further appears that in Rotary Global Rewards, wherein the members get several benefits by the way of offers and discounts on various products and services. Rotary Global Rewards offers discounts on vehicle rentals, hotels, dining, and more. Products and services from companies around the world are being added every week.
- c. It also facilitates gathering of professional and experts locally and globally to enhance their contacts for furtherance of their business. This activity cannot be categorized as community service rather it indicates towards furtherance of one's own cause.

It also appears that Rotary clubs' charges fees to admit a person as their member which is not used for any social cause. The same can be seen from the Balance sheet submitted by M/S. Rotary Club of Mumbai Queens Necklace. There are no funds used for any social cause. On the contrary, from tax invoice No. 166/180, 186/18-19 and 091/18-19 and schedules of the Balance sheet attached with the application by M/S. Rotary Club of Mumbai Queens Necklace, it is observed that M/S. Rotary Club of Mumbai Queens Necklace had arranged "spouse events" and "spouse night expenses" which clearly amounts to recreation activity and hence it falls under tax net.

Hence on going through the above information, it appears that the Club & Association does not provide only Social Services as an NGO, but also have other functions relating to Personal Functions which clearly amounts to furtherance of business. In lieu of consideration received as membership fees, admission fees and subscriptions are taxable as supply of services under GST. So, prima facie there appears a levy of GST on the issue on above said issue.

- 2.** If receipts are liable to GST, can the club claim input tax credit of the tax paid on banquet and catering services for holding members meetings and various events?

**2.1.** In this regard, it appears that according to Section 17 (5)(b) of CGST Act, 2017 mentions various situations wherein ITC cannot be availed. The Section 17(5)(b) is reproduced is as under: -





Section 17(5): - Notwithstanding anything contained in Sub-Section (1) of section 16 and Sub-Section (1) of section 18, input tax credit shall not be available in respect of the following, namely: -

(b) The following supply of goods or services or both: -

- i. Food &, beverages, outdoor catering, beauty treatment, Health services, cosmetic &, plastic surgery, leasing renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) of clause (aa) except when used for the purpose specified there in, life insurance and health insurance. Provided that the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making as outward taxable supply of the same category of goods or services or both or as element of a taxable composite or mixed supply;
- ii. Membership of a club, health and fitness centre
- iii. Travel benefits extended to employees on vacation such as leave or home travel concessions.

Provided that the input tax credit in respect of such goods or services or both shall be available where it is obligatory for an employer to provide the same to its employees under any law for the time being in force. In view of the above, it is to state that the Club or association cannot claim input tax credit on the tax paid on catering and other such services.

#### Discussions and Findings

44. Heard both the parties. We have also gone through the entire case records including the facts of the case, rulings pronounced by AAR, and the written submissions made by the Appellant as well as by the Respondent.

On perusal of the entire case records, the moot issue in the present case is whether the membership/subscription fees, admission fees collected by the Appellant from its members will be subject to GST or not. In other words, whether the transaction between the Appellant and its members can be construed as supply as envisaged under section 7 of the CGST Act, 2017, or otherwise.





45. At the outset, we would like to discuss the scope of term "supply" as envisaged under Section 7 of the CGST Act, 2017, the relevant portion of which has been reproduced herein under:

(1) For the purposes of this Act, the expression "supply" includes-

*"all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be "made for a consideration by a person in the course or furtherance of business."*

Thus, on perusal of the aforesaid definition of supply, it is revealed that for any activity/transaction to be qualified as supply, the same should be undertaken in the course or furtherance of business. Now, before applying the above condition in the context of the impugned transaction, we would like to discuss the meaning of "business" as provided under section 2(17) of the CGST Act, 2017, the relevant extract in the context of the instant case is reproduced herein below:

(17) "business" includes-

(a).....

(b).....

.....

(e) provision by club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;

.....

In the instant case, it has been submitted by the Appellant that entire subscription/membership amount collected by the Appellant from its members is utilized solely towards expenditures incurred in the meetings, communication and other administrative expenses like printers, stationeries etc. They have categorically submitted that they do not provide any facility or benefit to any of its members against the said subscription or membership fee. They further submitted that the object of the appellant-club is to promote peace, fight Diseases, provide Clean Water, sanitation and hygiene, Support Education, etc. Further, they have also furnished financial statements pertaining to the year 2016-17 & 2017-18, which reveals that the entire amount of membership subscription and admission fees collected by the Appellant is almost spent towards meetings and administrative expenditures of the Appellant.





46. Thus, on perusal of the above submissions and the financial statements, it is observed that the Appellant is not providing any specific facility or benefits to its members against the membership subscription charged by it, as the entire subscription amount is spent towards meetings and administrative expenditures only. Thus, we conclude that the Appellant is not doing any business as envisaged under section 2(17) of the CGST Act, 2017.
47. Now, once it has been established that the Appellant is not doing any business in terms of section 2(17) of the CGST Act, 2017, it can be deduced that activities carried out by the Appellant would not come under the scope of supply as envisaged under section 7(1) of the CGST Act, 2017.
48. On the contrary, if we hold the impugned activities of the Appellant to be supply, then the membership fee collected by the Appellant, which is purely in the nature of a reimbursement for the meetings and administrative expenditures incurred by the Appellant to sustain and propagate their inherent programs, would be subject to the double taxation as the amount spent towards the meetings and administrative expenditures is already subjected to GST at the hands of the suppliers of these input services or goods used in the meetings, events and other administrative functions of the Appellant. Thus, doing so would clearly be against the legislature's intention of the formulation of GST, which certainly does not embrace the idea of double taxation.
49. Since, it has been held herein above that impugned activities of the Appellant will not be construed as supply, question regarding the availment of ITC on the input services like catering services, banquet services, etc. does not arise.
50. In view of the above discussions and findings, we set aside the rulings pronounced by AAR and pass the following order:

#### ORDER

We, hereby, hold that the amount collected as membership subscription and admission fees from members is not liable to GST as supply of services.

  
(RAJIV JALOTA)  
MEMBER



  
(SUNGITA SHARMA)  
MEMBER