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/RS-SK/28 /2020-21** **Date-** 05.11.2020

**BEFORE THE BENCH OF**

**(1) Shri Rakesh Kumar Sharma, MEMBER (Central Tax)**

**(2) Shri Sanjeev Kumar, MEMBER (State Tax)**

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| Name and Address of the Appellant: | M/s. Apsara Co-operative Housing Society Ltd., N.C.P.A. Complex, Nariman Point, Mumbai-400021. |
| GSTIN Number | 27AAAAA4393H1ZS |
| Clause(s) of Section 97(2) of CGST/SGST Act, 2017, under which the question(s) raised: | Clause (e) determination of the liability to pay tax on any goods or services or both<br>Clause (g) whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term; |
| Date of Personal Hearing: | 22.10.2020 |
| Present for the Appellant: | Shri Rahul Thakkar, Advocate |
| Details of appeal | Appeal No. MAH/GST-AAAR-02/2020-21 dated 07.08.2020 against Advance Ruling No. GST-ARA-21/2019-20/B-34 dated 17.03.2020 |
| Concerned Officer | Deputy/Assistant Commissioner of CGST & C.Ex., Division-VIII, Mumbai South Commissionerate. |

**(Proceedings under Section 101 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)**

1. 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.

2. 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 "the MGST Act" respectively]** by **M/s. Apsara Co-operative Housing Society Ltd.**, N.C.P.A. Complex, Nariman Point, Mumbai-400021 **(herein after referred to as "the Appellant")** against the Advance Ruling No. **GST-ARA-21/2019-20/B-34 dated 17.03.2020,** passed by the Maharashtra Authority for Advance Ruling **(hereinafter referred to as the MAAR).**

## BRIEF FACTS OF THE CASE

3.1 The Appellant is a Co-operative Housing Society, registered under the Maharashtra State Co-operative Society Act1960.The main objects of the Appellant as per the By-laws are enumerated as under:

(a) To obtain the conveyance from the promoter, in accordance with the provision of the Ownership Flats Act and the Rules made thereunder, of the right, title and interest, in the Land with buildings thereon;

(b) To manage, maintain and administer the property of the Society;

(c) To raise funds for achieving the objective of the Society;

(d) To undertake and provide for, on its own account or jointly with Co-operative Institution, social, cultural, or recreative activities;

(e) To do all things necessary or expedient for the attainment of the objects of the Society, specified under the Bye-laws.

3.2 For the purpose of obtaining the above objectives of the Society, the Appellant raises fund by collecting contributions from the members of the Society, which are also called "charges" in terms of the Bye-laws.

3.3 The Society charges include property taxes, water charges, common electricity charges contribution to repair and maintenance fund, contribution to the sinking fund, services charges, car parking charges, interest on the default charges, non-occupancy

charges, insurance charges, lease charges, lease rent, non-stop agricultural tax, or any other charges.

3.4 The said charges are collected by the Society on monthly or quarterly basis by issuing invoices and uses the said for the specified purposes as enumerated in the Bye-laws.

3.5 After the introduction of the GST law w.e.f. 01.07.2017, owing to the assumption that the activities of the Society undertaken for its members would amount to supply, had obtained registration under the GST.

3.6 In view of the above facts and circumstances, the Appellant had filed an Advance Ruling application before the Maharashtra Advance Ruling Authority (MAAR), seeking clarifications on the following issues:

(i) Whether the said activities carried out by the Appellant would amount to supply, and whether the same are liable to the GST.

(ii) Whether they are correctly discharging the GST liability, for which they provided the illustrative invoices raised on the members of the society.

3.7 Thereafter, the Maharashtra Advance Ruling Authority, vide their order GST-ARA-21/2019-20/B-34, dated 17.03.2020, passed the ruling, wherein it was held that the activities carried out by the Appellant, as detailed herein above, would amount to supply in terms of Section 7(1)(a) of the CGST Act, 2017, and accordingly would attract GST, as provided under Section 9 of the CGST Act, 2017. For arriving at the aforesaid conclusion, they have referred to Section 2(17) and Section 2(31) of the CGST Act, 2017 to conclude that the said activities have been carried out by the Appellant for consideration in the course or furtherance of business, and hence the same would qualify as "Supply" in terms of Section 7(1)(a) of the CGST Act, 2017.

3.8 As regards the second question asked by the Appellant, it was held by the MAAR that the same cannot be answered in terms of Section 97(2) of the CGST Act, 2017, as this question, asked by the Appellant, is not covered under Section 97(2) of the CGST Act, 2017, which encompasses the set of questions, in respect of which an Advance Rulings can be sought by the Appellant under the CGST Act, 2017.

3.9 Being aggrieved by the aforesaid Advance Ruling passed by the MAAR, the Appellant has filed the present appeal before this Appellate Authority for Advance Ruling.

## GROUNDS OF APPEAL

4. The Appellant in its Appeal has, interalia, mentioned the following grounds of Appeal:

4.1 The Advance Ruling Order has been passed without considering all the submissions made by the Appellant, which inter alia included Hon'ble Supreme Court Judgement dated 3rd October, 2019 in the case of State of West Bengal & Ors. Vs. Calcutta Cub Limited in Civil Appeal No.4184 of 2009, which was directly relevant to the subject case. The said Apex court judgement, though noted by the Authority, was not discussed in the order.

4.2 The Appellant have further contended that the Advance Ruling Authority have based their Ruling merely on the Circular and Notifications issued by CBIC, under the GST law, thereby concluding that Government intends to tax all the transactions between the Housing society and its members. They have further contended that the Advance Ruling Authority has failed to appreciate the subject case independently under the provisions laid out under the CGST Act, 2017.

4.3 The Appellant is not carrying out any business in terms of Section 2(17) of the CGST Act, 2017, as the Appellant, being in the nature of Co-operative Housing Society with the main object of maintenance of the society and is not engaged in any trade, commerce, manufacture, profession, vocation, adventure, wager, or any other similar activity. Further, they are also not providing any benefits or facilities to its members against any subscription or consideration, paid by the members. Thus, they are not carrying out any business in terms of Section 2(17) of the CGST Act, 2017, and hence their activities cannot be considered as "Supply", as envisaged under Section 7(1) of the CGST Act, 2017.

4.4 The Appellant have further contended that they are not receiving any "Consideration" in terms of Section 2(31) of the CGST Act, 2017, from their members as they are not

engaged in any supply of goods or services or both to their members. They have further submitted that for there to be consideration, it should flow from one person to another in lieu of the supply of goods or services or both, which is not the case here as it is held under various Rulings pronounced by the Hon'ble Supreme Court and Hon'ble High Courts that the society and its members are not distinct persons. The absence of two distinct persons in the subject transaction clearly shows that the society charges, paid by the members, will not be construed as "Consideration" in terms of Section 2(31) of the CGST Act, 2017, and therefore, would not attract GST.

4.5 The Appellant have relied upon the Rulings pronounced by the Maharashtra Appellate Authority for Advance Ruling in the case of ***M/s. Lions Club of Poona Kothurd and M/s. Rotary Club of Mumbai Western Elite*** to assert that the Society charges, which are meant toward meeting the administrative expenses of the society, are similar to the membership fee collected by the club from its members, and hence the same would also not be construed as "Consideration". Therefore, the said Society charges would not be subject to GST.

4.6 The Appellant have further contended that they cannot be said to be doing business or supplying any goods or services to its members in view of the Principle of Mutuality in light of the Hon'ble Supreme Court Judgement dated 03.10.2019 in the case of ***State of West Bengal & Ors. Vs. Calcutta Club Limited in Civil Appeal No. 4184 of 2009,*** wherein the Hon'ble Apex Court held that services by a member's club to its members would amount to services to itself, and hence would not qualify as service as defined under the Finance Act,1994. It has further been submitted by the Appellant that the definition of the services under the erstwhile, the Finance Act, 1994 is essentially the same as supply of services as understood under the CGST Act, 2017. Hence, the ratio of the aforesaid Apex Court Judgement would clearly be applicable to the present case. Accordingly, the activities carried out by the Appellant would not qualify as "Supply", and hence would not attract GST.

4.7 The Appellant have placed reliance on various Court Judgements to underscore the applicability of Principle of Mutuality in case of clubs as well as the Co-operative Housing Society, thereby leading to the conclusion that clubs or the housing society and its members are the one and same, and therefore these clubs or societies cannot do

any business with its members. By placing reliance on these judicial pronouncements, the Appellant argued that they are not doing any business with its members. Accordingly, the society charges would not attract GST.

4.8 The Appellant, in their favour, also referred to the following High Court Judgements to contend that the activities carried out by them would not amount to "Supply", and hence the charges are not liable to GST:

(a) **Hon'ble Calcutta High Court Judgment in the case of Saturday Club Limited Vs. Asstt. Commissioner, Service Tax Cell, Calcutta & Ors. (2005) 180 ELT 437(Cal HC).**

(b) **Hon'ble Gujarat High Court Judgement in the case of Sports Club of Gujarat Limited Vs. Union of India (2010) 35 VST 375 (Gujarat HC).**

4.9 The Appellant have contended that a particular transaction, which cannot be considered as business under the Income Tax law, cannot be considered as business even under the GST law.

4.10 As regards the Ruling pronounced by the MAAR in respect of the question no.(ii) asked by the Appellant in their Advance Ruling application, wherein the Authority have refrained to answer the said question by observing that the said question, regarding the correctness of the GST liability discharged by them on the basis of illustrative invoices presented by the Appellant, is not covered under Section 97(2) of the CGST Act, 2017, the Appellant have contended that the said question no.(ii), posed by them before the Advance Ruling Authority, is adequately covered under Clause (e) of Section 97(2) of the CGST Act, 2017, which specifically covers the determination of the liability to pay tax on any goods, services, or both.

## RESPONDENT'S / DEPARTMENT'S SUBMISSION

5. The submission made by the Department/Respondent is reproduced as under:

5.1 as regards the Hon'ble Supreme Court ruling, dated 3rd October 2019, in the case of **State of West Bengal & Ors. Vs. Calcutta Club Limited** in Civil Appeal No. 4184 of 2009, cited by the Appellant, the Respondent has submitted that the matter, in the

aforesaid case, pertains to sales tax regime wherein the concept of the term *"supply"* was not prevalent. Therefore, the ratio of the said Apex Court judgement will not be applicable.

5.2 that the Appellant is a service provider/supplier. The word **"Supply"**, under the CGST Act, is crucial and significant, as it has got very wide connotation due to the presence of the clause ***"all forms of supply of goods or services or both".***

5.3 that on perusal of the above definition of the term **"business"**, it can clearly be concluded that the said term has wide meaning and the performance of various activities by the Appellant for the benefit of its members stands covered under the term "business."

5.4 that the Appellant collects fees from their members on monthly or quarterly basis by issuing invoices for attainment of various objects of their society as enumerated in their society By-Law, and is nothing but **"business"** as provided under Section 2(17) of, the CGST Act, 2017. The contention, put forth by the Appellant, that it does not receive any subscription or consideration and no facilities or benefits are provided, is distortion of facts. They do receive subscription from members and they do provide facilities.

5.5 that the activities carried out by the Appellant for its members do amount to "supply" in terms of Section 7 (1) of the CGST Act, 2017. As a result, the same are liable for GST.

5.6 that the membership fee collected by the Co-op. Housing Society from its members is not only meant for meeting the administrative expenses, but is also towards attaining various objects of the society. Thus, any membership fee collected by the Appellant from its members will definitely be understood as "consideration', as the same has been paid for the supply of services / benefits / facilities.

5.7 that the Members of the Society are different from the Society. The Society is a separate legal entity and hence both are essentially distinct persons. Therefore, to

consider both of them as one and the same just for evading tax is not proper, legal and correct.

5.8 that since the Society and Members are two separate and distinct legal entities, there is no substance in the argument put forth by the Appellant that *one cannot be said to be doing business with one self.*

5.9 that the cases M/s. Lions Club of Poona Kothrud and M/s. Rotary Club of Mumbai Western Elite, referred by the Appellant, are not squarely applicable as the circumstances are different. In the instant case, specific facilities and benefits are provided by the Appellant to its members. Moreover, in both the aforesaid cases, it has been held that the Appellants are liable for registration. It is also pertinent to note that only some portion has been considered as exempt from levy of GST.

5.10 As stated herein above, the profit motive or the pecuniary benefit are immaterial. Further, it is also to be noted that Income Tax case law may not be relevant to GST matters.

5.11 that there is no clarity in the contention about **"common law Principle of Mutuality",** hence the same is not fit for consideration.

5.12 that it is incorrect to say that the definition of the "service" under the erstwhile, the Finance Act,1994, is essentially the same as the definition of the term 'Supply" under Section 7 of the CGST Act, 2017. The term supply is essentially wider than service.

5.13 that as regards the Advance Ruling Authority, refraining from passing any ruling on the question pertaining to the correctness of GST in the illustrative invoice, put forth by the Appellant in the Advance Ruling application filed by them, the Respondent has submitted that Section 97(2) Clause (e) specifically covers determination of the liability to pay tax on any goods or services or both but does not cover the quantification or the modalities or the methodology to compute it. Thus, there is no error in the order passed by MAAR in holding that the said question cannot be answered.

## PERSONAL HEARING

6. A personal hearing in the matter was held on 22.10.2020, which was attended by Shri Rahul Thakkar, Advocate, as the representative of the Appellant, and Shri Vinod Nautiyal, Assistant Commissioner, in the capacity of the Respondent/Jurisdictional Officer in the subject appeal.

6.1 During the Course of the said personal hearing, Shri Thakkar, reiterated the earlier submissions filed before us. He primarily relied upon the ratio laid down by the Hon'ble Supreme Court Judgment in the case of ***State of West Bengal & Ors. Vs. Calcutta Club Limited in Civil Appeal No. 4184 of 2009,*** and contended that since the Principle of Mutuality laid down by the Hon'ble Supreme Court in the said case is squarely applicable in the present appeal, the activities carried out by the Appellant would not amount to ***"Supply"*** in terms of Section 7(1)(a) of the CGST Act, 2017, and accordingly the society charges/contribution collected by the Appellant would not attract GST. He also sought permission to file rebuttal/rejoinder to the submissions made by the jurisdictional officer/Respondent, which was granted to him.

6.2 As regards the second question asked by the Appellant to the extent of the determining the correctness of the GST liability discharged by them on the basis of illustrative invoices, he contended that the said question is adequately covered under Clause (e) of Section 97(2) of the CGST Act, 2017, which specifically covers the determination of the liability to pay tax on any goods, services, or both. Therefore, the said question is liable to be answered in terms of the aforesaid Advance Ruling provision.

6.3 Shri Vinod Nautiyal, A.C., appearing for the Department, reiterated the earlier submissions made before us. He primarily relied upon the CBIC Circular No.-109/28/2019 -GST, dated 22.07.2019, which provided the clarification on the issues related to GST on monthly subscription/contribution charged by Residential Welfare Association from its members. Relying upon the said CBIC Circular, He averred that the said Circular clearly revealed that the intention of the Government was to levy GST on the contribution charged by the Housing Society from its members. Therefore, the society charges/contribution collected by the Appellant will be leviable to GST.

6.4 The Appellant also filed the rejoinder dated 29.102020 to the written submissions made by the Department in the subject appeal, the extracts of which are being mentioned herein under:

(i) That Revenue's contention, that the judgment of the Hon'ble Supreme Court in the Calcutta Club Case is not relevant for the present matter as the said judgment pertain to sales tax regime, is mis-founded. The concept of "supply" has been considered by the Hon'ble Supreme Court in Calcutta Club's case and held that the common law principle of mutuality will apply with equal force to supply of sale as well as supply of service.

(ii) That GST is nothing but essentially a merger of sales tax and service tax laws prevalent in India prior to introduction of GST.

(iii) That it is settled law that the Notifications and Circulars issued under the parent act cannot go beyond the charging provision or the taxable event; that merely because there is an entry under the Exemption Notification or a Circular issued by CBIC does not make a transaction as deemed supply under the CGST Act, 2017.

(iv) That the reliance in this regards has been placed on the judgment of Hon'ble Supreme Court in the case of **Laghu Udyog Bharti and Others Vs. Union of India and Others – (1999) 6 SCC (418) (SC)** wherein the attempt of the Government to affix the liability to pay the service tax on recipient of GTA and Clearing and Forwarding services by way of amendment in Rules was struck down by the Hon'ble Court as being ultra vires the charging Section in Section 66 of the Finance Act, 1994.

(v) That the definition of 'service' provided under Section 65B (44) of the Finance Act, 1994 has been considered and interpreted by the various High Courts and Hon'ble Supreme Court to hold that the transaction between society and its members or member's club and its member's do not amount to service. The same analogy is applicable to the supply definition with equal force.

(vi) That on a plain reading of Clause (e), the Appellant shall be said to be in business only if the Appellant is providing any facilities or benefits for a subscription or consideration. The said clause will be applicable in cases where a club, association or society provides any benefit or facilities to its members for a subscription or a

consideration. For example, when a club allows its members to use the gym for a monthly subscription or where a professional association provides intensive study sessions to its members for a consideration. Those kind of club, association or co-operative societies would fall under the Clause (e) and can be said to be carrying out business for the purpose of GST laws.

(vii) That there is a subtle but important difference between a commercial society and a co-operative housing society. In case of a commercial society, generally a person can become a member of the society by paying a nominal amount and thereafter the said member can enjoy the benefits or facilities of the society by paying specific subscription or additional fees towards the required individual facilities or benefits provided by the commercial society. The important point of distinction over here is that the member is not obligated to participate in all or any of the facilities or benefits provided by the commercial society, whereas, in the present case, the Appellant Society is not charging any charges to its members for allowing the use of any of the facilities of the society. In the present case, the Appellant Society is charging money by way of contribution for maintaining the properties and facilities of the Society. The said contributions are obligatory in nature and is not optional for any of the members of the Society

(viii) That the said Society acts for and on behalf of the members only. The said society does not receive any subscription or any other consideration from its members for providing any benefits or facilities to its members. Neither the Appellant provides any facilities or benefits to its members. Thus, the said clause (e) is also not applicable in the present case.

(ix) That the Revenue's contention that only part of the society charges is collected towards administrative expenses is factually incorrect. The Revenue in their contention has merely made assumptions that the part of the society charges is collected towards facilities and benefits provided to the society without actually identifying the facilities or benefits provided by the Society to its members.

(x) That, in the present case, the Appellant has sufficiently proved that the Appellant is utilizing the charges collected from members for meeting the administrative expenses only. As against this, the Revenue has failed to the show any utilization of the charges for other than administrative expenses.

*(xi)* That the question of whether a society and its members are distinct persons has been settled by the Hon'ble Supreme Court in catena of decisions. In this regard, the

reference has been made to the Hon'ble Supreme Court judgment in the case of ***Income Tax Officer Vs. Venkatesh Premises Co-operative Society Limited (2018) 15 SCC 37 (SC).***

(xii) That the similar question has been decided by the Hon'ble Calcutta High Court in the case of ***Saturday Club Ltd. Vs. Assistant Commissioner, Service Tax Cell (2005) 180 ELT 437 (Cal HC),*** wherein, the Hon'ble High Court held that there is no service provided by the club to its members.

(xiii) That there is no such provision similar to Explanation 3(a) to Section 65B (44) which deems the society and its members as a distinct person. Thus, as per as the GST law is concerned, the law laid down by the Hon'ble Supreme Court in **Calcutta Club's** case will be applicable.

## DISCUSSIONS AND FINDINGS

7. We have carefully gone through the appeal memorandum encapsulating the facts of the case and the grounds of the appeal along with the other relevant documents. We have also examined the impugned ruling passed by the MAAR, wherein it was held that charges, collected by the Appellant from the members of the society for the performance of the various activities specified under the Society's Bye-laws, were liable for GST. The aforementioned ruling passed by the MAAR was attributed to the findings that the Appellant were providing facilities or benefits to the members of the society by undertaking various activities mentioned in the Society's Bye-laws against the consideration in the form of the 'contribution charges', thereby, rendering "Supply" in terms of the Section 7(1)(a) read with the Section 2(17) and Section 2(31) of the CGST Act, 2017. The MAAR has observed that the activities undertaken by the Appellant would be squarely covered under the meaning and scope of the term "business" as provided under Clause (e) of Section 2(17) of the CGST Act, 2017, which is reproduced herein under:

***Section 2(17) "business" includes-***

***(a)*** .....

***(b)*** .....

.....

***(e) 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;***

8. On perusal of the facts of the present case and the Advance Ruling passed by the MAAR, the moot issues before us are as under:

(i) whether the activities undertaken by the Appellant would be construed as "business" in terms of its definition provided under Section 2(17) of the CGST Act, 2017.

(ii) whether the contribution charges collected by the Appellant from the members of the society would be construed as "consideration" in terms of Section 2(31) of the CGST Act, 2017.

9. At the outset, we would like to visit the nature of the activities carried out by the Appellant, which are mentioned in the By-laws of the Appellant Society. They are being reproduced herein under:

(a) To obtain the conveyance from the promoter, in accordance with the provision of the Ownership Flats Act and the Rules made thereunder, of the right, title and interest, in the Land with buildings thereon;

(b) To manage, maintain and administer the property of the Society;

(c) To raise funds for achieving the objective of the Society;

(d) To undertake and provide for, on its own account or jointly with Co-operative Institution, social, cultural, or recreative activities;

(e) To do all things necessary or expedient for the attainment of the objects of the Society, specified under the Bye-laws.

10. On careful consideration of the aforementioned activities performed by the Appellant, it is amply revealed that the activities performed by the Appellant are entirely oriented towards providing facilities, benefits or convenience to its members, whether it is obtaining the conveyance of the right, title or interest from the promoter, or management, maintenance or administration of the property of the society, which are shared jointly by all the members of the society, or undertaking various social, cultural and recreational activities for the members. Therefore, all these activities would rightly get covered under the definition of the term "business" as provided under Section 2(17)(e) of the CGST Act, 2017, which unequivocally stipulates that

***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 would be included under the meaning of the term business.***

11. However, the Appellant have referred to the Hon'ble Supreme Court judgment, dated 3rd October, 2019 in the case of ***State of West Bengal & Ors. Vs. Calcutta Cub Limited in Civil Appeal No.4184 of 2009*** to contend that the society cannot be said to be doing any business with its members as both the society and its members are the one and same, owing to the common law Principle of the Mutuality, which have been upheld by the Hon'ble Supreme Court and Hon'ble High Courts in many of their judgments pertaining to such clubs, association, or society. As regards the aforementioned judgment of the Hon'ble Supreme Court, it is clearly observed that this judgment by the Hon'ble Supreme Court has been pronounced in the matter of the Sales Tax the provisions of which are entirely different and distinct from the provisions of the GST law, which have been rolled out with effect from 1st July, 2017, after subsuming into it all the erstwhile indirect taxes, where the term "supply" has been envisaged in place of the term "sale", which was prevalent under the erstwhile Sales Tax laws, for the purpose of the taxability of any transaction. It is worth mentioning here that the term "supply", as envisaged under Section 7 of the CGST Act, 2017, has been rendered very wide scope, which is evident from the expressions used therein. Here, we would like to set out the definition of the term "supply", as provided under Section 7 of the CGST Act, 2017. The relevant portion of the same 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, licence, rental, lease or disposal made or agreed to be "made for a consideration by a person in the course or furtherance of business."***

12. Now, to understand the term "supply", we need to refer to the term "service", the meaning of which is provided under Section 2(102) of the CGST Act, 2017. The relevant portion of the said term is reproduced herein under:

> ***"service" means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other***

***mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged;***

13. Thus, on perusal of the above definition of the term "service", it is adequately clear that the term "service" under the CGST Act, 2017 has been rendered a very wide connotation, which is evident from the presence of the expression "anything other than goods, money and securities". In view of this, it is clear that the activities undertaken by the Appellant would rightly be covered under the scope of the term "service". Now, we would examine the term "business" defined under Section 2(17) of the CGST Act, 2017, the relevant portion of which is being reproduced herein under:

***Section 2(17) "business" includes-***

***(a)*** .....

***(b)*** .....

.....

***(e) 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;***

14. Now, on plain reading of the above provisions, it is understood beyond doubt that the legislature wanted to bring the activities of clubs, association, society or any such body under the ambit of GST law. Therefore, this clause (e) under Section 2(17) has been categorically carved out under the CGST Act, 2017. Thus, provision of any facilities or benefits by a club, association, or society to its members against a subscription or any other consideration would be construed as business. It is needless to elaborate that any society is formed with the sole objective to provide help, benefits or facilities to its members by way of undertaking management, maintenance and proper administration of the society property, which are owned jointly by the society members. Thus, each and every member of the society is benefitted by the formation and functioning of the society. In the present case also, the Appellant is undertaking various sorts of activities, which inter-alia includes the management, maintenance, administration of the society property, payment of various statutory taxes like payment of electricity bill of the common area of the society, water tax levied by the local authority, etc. along with organising various social, cultural, and recreational events for the members of the society against the contribution called "society

charges", which can reasonably be construed as "consideration" in terms of Section 2(31) of the CGST Act, 2017. Thus, looking at all these activities undertaken by the Appellant for the benefits of its members, it is clear beyond doubt that under the provisions of the CGST Act, 2017, the Appellant is doing "business" in terms of its definition provided under Clause (e) of Section 2(17) the CGST Act, 2017. Since, the Appellant is providing services to its members against the consideration, named as 'society charges' in the course or furtherance of business, therefore, the activities would be construed as "supply" in terms of Section 7(1)(a) of the CGST Act, 2017, and accordingly will be liable for GST.

15. As the judgement of the Hon'ble Supreme Court in the case of ***Calcutta Club*** (cited supra) has been time and again extensively quoted by the Appellant, we find it necessary to discuss it elaborately. A careful reading of the said judgement in the case of ***Calcutta Club (cited supra)*** shows that there are major differences in the provisions existing under the West Bengal Sales Tax Act and the Service Tax Act under the provisions of which the judgement is given. The definition of 'deemed sales' under the Sales Tax laws was borrowed from the 46th Amendment in the Constitution which enacted Article 366 (29-A) of the Constitution. The Article 366 (29-A) (e) says the following:-

> **(e)** ***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.'***

The Hon'ble Supreme Court has referred to the Statement of Objects and Reasons which led to the 46th Amendment to see whether the doctrine of mutuality propounded in the judgement in the case of Young Men Indian Association has been done away with by the 46th Amendment. The Statement of Objects and Reason says,

> ***'Similarly, while sale by a registered club or 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 as such club or association , in law, has no separate existence from that of the members.'***

The Hon'ble Supreme Court, by referring to the above, observed the following '

> ***''Quite obviously, the Statement of Objects and Reasons has not read the case of Young Men's Indian Association (supra) in its correct perspective. As has been noticed hereinabove, Young Men's Indian Association (supra)***

***had three separate appeals before it, in one of which a company was involved. To state, therefore, that under the law as it stood on the date of the 46th Amendment, a sale of goods by a club having a corporate status to members is taxable, is wholly incorrect. Proceeding on this incorrect basis, what the 46th Amendment sought to do was to then bring to tax sales by clubs which have no separate existence from that of their members. In so doing, the 46 th Amendment used the expression "any unincorporated association or body of persons". This expression, when read with the Statement of Objects and Reasons, makes it clear that it was only clubs which are not in corporate form that were sought to be brought within the tax net, as it was wrongly assumed that sale of goods by members' clubs in the corporate form were taxable''.***

Thus, the Hon'ble Supreme Court has concluded with reference to the 46th Amendment and the provisions of the West Bengal Sales Tax Act that the Article 366(29-A) was inadequate to take care of sales conducted by the club to its members in **incorporated** clubs as it referred to only unincorporated clubs while incorrectly assuming that sales by incorporated clubs to its members is taxable. Therefore, the Hon'ble Supreme Court has observed that the amendment could not do away with the principle of mutuality as the deeming fiction brought in was inadequate as only 'supplies by unincorporated associations' is mentioned in Article 366 (29-A), while the words 'incorporated 'is absent.

16. Further, while examining the provisions of the Finance Act, 1994, as it existed during the period from 15th June 2005 uptil 1st July 2012, the Hon'ble Supreme Court has observed that the definition of 'club or association contained in Section 65(25a) of the Finance Act, 1994 which sought to tax 'services by a person of body of persons to its members, expressly excluded 'clubs established or constituted by law i.e. incorporated clubs. Therefore, the Hon'ble Court concluded that incorporated clubs were specifically excluded from taxation under the Finance Act. After the amendments w.e.f. 1st July 2012, the Legislature sought to correct the situation and the definition of 'person' was expanded to include 'an association of persons or body of individuals whether incorporated or not.' Therefore, incorporated clubs were brought under the tax net. But an explanation – Explanation 3 to Section 65 of the Finance Act, was inserted which defined 'taxable service' to 'include any taxable

service provided or to be provided by any unincorporated association or **body of persons** to a member thereof, for cash, deferred payment or any other valuable consideration'. By comparing this definition to the Article 366 (29-A) the Apex Court observed that though an explanation was added, it contains the words 'unincorporated association or body of persons' and the term 'body of persons' does not include a body constituted under any law and therefore it does not include 'incorporated clubs' which are constituted under a law. Thus, though post -2012 the word 'person' was widely defined to include both individuals, association of persons/ bodies of individuals, whether incorporated or not, the explanation 3 to Section 65 instead of using the expression 'person' or bodies of individuals, whether incorporated or not' uses the expression ''a body of persons'' when juxtaposed with 'an unincorporated association. 'It therefore concluded that as the term 'body of persons does not include any body constituted under any law, the explanation though amended includes only unincorporated associations and the legislature continued with the pre-2012 scheme of not taxing members clubs when they are in the incorporated form.

17. Thus, it is essentially observed that both the amendments, i.e., amendment made in the Article 366(29-A) of the Constitution, and that made in the Finance Act, 1994 w.e.f. 1st July, 2012, were inadequate in doing away with the principle of mutuality and the deeming provisions fell short of taxing sales or service by incorporated clubs. But such is not the case under the CGST Act, 2017. The definition of 'person' under it reads as follows:-

Section 2(84) 'person' includes

**(f)** An association of persons or a body of individuals, **whether incorporated or not, in India or outside India.**

18. Thus, the definition clearly includes both **incorporated and unincorporated** clubs. Further, the definition of 'business' includes 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. The word **'club' is not qualified** and therefore should be taken in the sense it conveys –that it includes both 'incorporated 'and 'unincorporated' clubs'. Both these deeming fictions, unlike the inadequate deeming fictions introduced in the West Bengal Sales Tax Act and the Finance Act, 1994, comprehensively convey the intention of the legislature to do away with the principle of mutuality by including **supplies by both incorporated 'and 'unincorporated' clubs to its members**. This is where the difference between the earlier laws and

CGST lies and therefore the Supreme Court judgement in the case of Calcutta Club (cited supra) does not apply to the facts of this case. On the contrary, we would say that the judgement helps the case of the revenue. The Supreme Court has referred as examples to the provisions of the Income Tax Act to show how a deeming fiction can be introduced to tax profits and gains made by a mutual insurance company and capital gains arising from a transfer by way of conversion by the owner of a capital asset despite the fact that there is no transfer in law by the owner of a capital asset to another person. By contrasting these provisions of the Income Tax Act with those of Article 366 (29-A) it again reiterated that the said Article does not do away with the principle of mutuality. However, such is not the case now. The provisions under the CGST law –definition of 'person', 'business' and 'supply' are now self-contained, unqualified and wide enough to include the supply by both-incorporated and unincorporated clubs to its members and by their extensiveness completely does away with the principal of mutuality.

19. As regards the Hon'ble Calcutta High Court Judgement in the case of ***Saturday Club Limited Vs. Asstt. Commissioner, Service Tax Cell, Calcutta & Ors. (2005) 180 ELT 437(Cal HC)***, and the Hon'ble Gujarat High Court Judgement in the case of ***Sports Club of Gujarat Limited Vs. Union of India (2010) 35 VST 375 (Gujarat HC),*** we are of the view that the ratio of the aforesaid judgments, which have been pronounced under the erstwhile the Finance Act, 1994, are not applicable in the facts and circumstances of the case under consideration, as the term 'supply' under the GST law, for the purpose of taxation, has been envisioned differently and distinctly from the term 'services', enshrined under the erstwhile Finance Act, 1994. Further, the term "business", which has been defined under the CGST Act, 2017, and which categorically include the provision of facility or benefits by a club, association, society under its ambit, clearly indicating the legislature's intent to tax such body, was not prevalent under the erstwhile Finance Act, 1994. Hence, the judgments cited above are of no assistance to the Appellant.

20. The appellant has filed a rejoinder and in it has again referred to the ***Calcutta Club judgement (cited supra)***. We have already in detail distinguished the judgement. The appellant has referred to the SC judgement in the case of ***Laghu Udyog Bharti (1999 -6 SCC (418) SC)*** to drive home their point that notifications and circulars cannot go beyond the charging provision. It has already been discussed in this order as to how the definition of 'business', covers supply by a club to its members. The

definition of 'supply' under the CGST Act (Section 7(1)) refers to the words 'supply by a person' and the definition of 'person' under the CGST Act includes at 9 (f) 'an association of persons or a body of individuals, **whether incorporated or not**, in India or outside India.' Thus, as said earlier, the provisions are adequate enough to say that the supply by clubs /society is taxable. The appellant has further attempted to distinguish between a commercial society and a co-operative society and has argued that the appellant society is not charging any charges to its members for allowing the use of any of the facilities and the payment of the charges is not optional but obligatory. We do not see how this argument can be of any help to the appellant. The society takes maintenance from its members as it provides a service. The fact that the payment is obligatory does not change the nature of the consideration. The society maintains the premises, looks after the day to day maintenance of - lifts, stairwell, security, car parking, manages the staff/ property in order to ensure the smooth functioning and charges for it. It cannot be therefore said that no services are provided.

21. As regards the Appellant's contention that a particular transaction, which cannot be considered as business under the Income Tax law, cannot be considered as business even under the GST law is not acceptable as the definition of the term 'business' provided under the CGST Act, 2017 is much wider than the definition of the term 'business' provided under the Income Tax Act, 1961. Therefore, any law declared by any Hon'ble Court under the Income Tax Act,1961 is not compulsorily applicable even under the CGST Act, 2017.

22. We would also like to explore the intention of the legislature on this aspect as to whether the society charges are liable to GST or not. For this purpose, we would refer to the clause (c) of Sl. 77 of the Notification No. 12/2017-C.T. (Rate), dated 28.06.2017 as amended by the Notification No. 2/2018-C.T. (Rate), dated 25.01.2018, which stipulates that the service by an unincorporated body or a non-profit entity registered under any law for the time being in force, to its own members by way of reimbursement of charges or share of contribution up to an amount of seven thousand five hundred rupees per month per member for sourcing of goods or services from a third party for the common use of its members in a housing society or a residential complex is exempt from the levy of GST. Thus, it can clearly be inferred from the provisions of the aforesaid notification that any amount, exceeding seven thousand five hundred rupees per month per member, charged by the housing society from its

members, for the supply of goods or services for the common use of its members, would be subject to GST provided that the aggregate turnover of such society in a financial year exceed twenty lakh rupees. It is noteworthy that the said exemption limit of seven thousand five hundred rupees would not include the statutory dues/taxes, such as property tax, water tax, electricity charges, collected by the society from its members on behalf of the statutory authorities.

23. As regards the Rulings pronounced by this Appellate Authority in the case of the Lions Club and Rotary Club, which have been relied upon by the Appellant to support their contention, it is apparent that the facts and circumstances of the aforesaid cases are clearly different from the present case in as much as the activities undertaken by the clubs in those cases, for which they have been charging 'membership fee' in the form of the reimbursement of the expenditures incurred by them while performing the charitable activities, were purely administrative in nature and no benefits and facility, whatsoever, have been provided by those clubs, which is not the case here. Here, the objectives of the formation of the 'Society' is the mutual benefits, interest and convenience as discussed above.

24. Now, as regards the second question raised by the Appellant as to whether they are correctly discharging their GST liability for which they had furnished the illustrative invoices, we agree with the ruling pronounced by the MAAR, wherein they have ruled that the said question regarding the computation of the GST liability on the basis of the illustrative invoices raised by the Appellant cannot be answered as the said question is outside the purview of Advance Ruling in terms of the Section 97(2) of the CGST Act, 2017. Even though the Appellant have contended that the said question can be categorized under Clause (e) of Section 97(2) of the CGST Act, 2017, which deals about the determination of the liability to pay tax on any goods or services or both, it is stated that the Clause (e) does not speak about the computation or assessment of the tax liability of any transaction, but only the determination of the liability as to whether any supply of goods or services or both are liable for GST or otherwise. Hence, the contention put forth by the Appellant is not acceptable.

25. Now, in view of the above discussions, we pass the following order:

## ORDER

26. We do not find any reason to interfere with the ruling passed by the Maharashtra Advance Ruling Authority, vide their Order No. GST-ARA-21/2019-20/B-34 dated 17.03.2020, in light of the above stated reasons. Accordingly, it is held that activities carried out by the Appellant would amount to supply in terms of Section 7(1)(a) of the CGST Act, 2017, and the same would be liable for GST subject to the condition that the monthly subscription/contribution charged by the society from its members is more than Rs. 7500/- per month per member and the annual aggregate turnover of the society by way of supplying of services and goods is also Rs. 20 lakhs or more. Further, their second question regarding correctness of the GST liability on the basis of the illustrative invoices cannot be answered on account of the above stated reasons.

**(SANJEEV KUMAR)**
**MEMBER**

**(RAKESH KUMAR SHARMA)**
**MEMBER**

**Copy to the: -**

1. **Appellant;**
2. **AAR, Maharashtra;**
3. **Pr. Chief Commissioner, CGST and C.Ex., Mumbai, Zone;**
4. **Commissioner of State Tax, Maharashtra;**
5. **Commissioner of CGST & C.Ex., Mumbai South**
6. **Jurisdictional Officer/Concerned Officer;**
7. **Web Manager, WWW.GSTCOUNCIL.GOV.IN;**
8. **Office copy.**