

**WEST BENGAL APPELLATE AUTHORITY FOR ADVANCE RULING
AT 14, BELIAGHATA ROAD, KOLKATA-700015**

Before:
Mr. A.P.S Suri, Member
Ms. Smaraki Mahapatra, Member

In the matter of

Appeal Case No. 07 /WBAAAR/Appeal/2019 dated 29.04.2019

- And -

In the matter of:

An Appeal filed under Section 100(1) of the West Bengal Goods and Services Tax Act, 2017/ Central Goods and Services Tax Act, 2017, by The Bengal Rowing Club, 13/2 Baroj Road, Rabindra Sarobar, Kolkata- 700 029

Present for the Appellant: Sri Shovendu Banerjee, Advocate

Present for the Respondent: Sri Debdut Das, Superintendent,
CGST & CX, Tollygunge Division

Matter heard on: 17.06.2019

Date of Order: 08.07.2019

1. This Appeal has been filed by The Bengal Rowing Club (hereinafter referred to as “the Appellant”) on 29.04.2019 against Advance Ruling No. 48/WBAAAR/2018-19 dated 28.03.2019, pronounced by the West Bengal Authority for Advance Ruling (hereinafter referred to as the WBAAR) in the matter of The Bengal Rowing Club.
2. The Bengal Rowing Club located at 13/2 Baroj Road, Rabindra Sarobar, Kolkata- 700 029, holding GSTIN 19AABCT1321M1ZC, stated to be a non-profit making company, is engaged in providing its members privileges and amenities such as swimming facility, gymnasium, indoor games, restaurant service, etc.
3. The Appellant sought an advance ruling under section 97 of the West Bengal Goods and Services Tax Act, 2017/ the Central Goods and Services Tax Act, 2017, (hereinafter collectively referred to as “the GST Act”) on the following questions:

- (a) The classification and rate of tax on various services provided by the Appellant which are listed below:

Sl. no.	Supply name
1	Supply of food from restaurant
2	Other services provided in restaurant like booking of personal dining area
3	Supply of food at events organised in the club premises like get-togethers and parties hosted by members of the Club
4	Supply of other services being part of organising the get-togethers and parties in the club premises like valet parking charge, decoration charge, music charge, etc.
5	Other services provided by the club

- (b) The admissible proportion of input tax credit for services other than the supply of food.
4. The WBAAR observed that the Appellant's services could be broadly classified into two categories, namely, supply of food, by way or as part of the services provided at its restaurant or at social events organised in the club premises and the other services to the members and the guests that are not bundled with the supply of food and are charged separately. The WBAAR further observed that the supply of food, by way or as part of any service or any other manner whatever, was a composite supply. The WBAAR clarified that reference to "food" in its ruling includes articles of human consumption and drink, whether or not alcoholic liquor. The WBAAR pronounced its advance ruling by an order dated 28.03.2019 as under:

- (a) The supply of food, by way or as part of any service or any other manner whatever, from the Appellant's restaurant are classifiable under SAC 9963 and taxable under Sl. No. 7(i) or 7(iii) of the Notification no. 11/2017-C.T (Rate) dated 28-06-2017 under the Central Goods and Services Tax Act, 2017 & Notification No. 1135-FT dated 28-06-2017 under the West Bengal Goods and Services Tax Act, 2017 (hereinafter referred to as "the Rate Notification") depending on the criteria mentioned therein.
- (b) If food is supplied by way of or as a part of the services associated with organisation of social events at the club premises, it will be classifiable under SAC 9963 and taxable under Sl. no. 7(vii) of the Rate Notification.
- (c) All other services offered by the Appellant are classifiable under SAC 9995 and taxable under Sl. no. 33 of the Rate Notification.
- (d) The provisions under sub-section 2 and sub-section 16 of section 17 of the GST Act read with Rules 42 and 43 of the GST Rules are applicable for reversal of input tax credit, treating supplies, if any, taxable under Sl. No. 7(i) of the Rate Notification as exempt supplies.

5. The Appellant has filed the instant Appeal against the above Advance Ruling with the prayer to set aside/modify the impugned Advance Ruling passed by the WBAAR or pass any such further or other orders as may be deemed fit and proper in the facts and circumstances of the case on the following grounds:
 - (a) The WBAAR failed to appreciate that food supplied for social gatherings cannot be categorised as composite services and taxable @ 18%. The club raises separate bills for food and beverages for social gatherings. Further as per the Rate notification all restaurant services are to be taxed @ 5% with no input tax credit.
 - (b) The Appellant is a members' club and not a proprietary club. In the instant case a group of people formed a club to provide some facilities to themselves and for this purpose they contribute to a common fund. There is a complete identity between the contributor and participator and any surplus fund resulting from excess contribution is not a profit. This is in contrary to a proprietary club where services or facilities are provided by the proprietor to the members for a subscription or other amount by way of consideration with an intention of profit making. In a proprietary club, the proprietor or the club is a separate and distinct entity from the members. A members' club should be excluded from taxation under the GST Act on the principle of mutuality.
 - (c) The Appellant states that no person other than a member or the guests accompanied by a member or the spouse of the member can avail the facilities of the Club. The members can only pay for their guests. The guests do not have any independent right to use or pay for the club facilities. No part of surplus fund arising out of the activities of the Club is distributed to any member by way of dividend or otherwise.
6. During the course of hearing the Appellant reiterated the points as stated in the Grounds of Appeal. The Appellant stated that the Club follows two types of pricing policy for the members enjoying restaurant facility.
 - (i) Members are charged item-wise separately following a price list as per order;
 - (ii) For group meals especially for large gatherings they are charged per plate. There are various rates depending on number of heads or choice of meal type. Rates also vary if served on weekends.

But whether it is a set meal (either sit-down or buffet) or an a la carte menu, food is served to the members in the restaurant. If there is space crunch in the restaurant, chair and tables are placed in portico, lawn, hall, etc. The Appellant submitted that for small gatherings of 10-15 people, they are accommodated in the restaurant itself even if the meal ordered is charged per plate, but for larger get-togethers, a separate hall is designated for the party where required tables and chairs are placed. The Appellant stated that places other than restaurant on the club premises are converted into makeshift restaurant as per requirement.

7. The Appellant further argued that though social events like get-togethers take place regularly events like banquets, conferences, birthday parties, engagements, etc. are not allowed on the club premises and no space is rented out for holding events. Further being on the shores of Rabindra Sarovar Lake there are restrictions on construction, lighting and sound levels. No decorations are done for these members' get-togethers. Further the per plate pricing (set meals) do not have added rentals of chair/table/space, etc., in it. The Appellant furnished price lists and sample invoices to supplement his argument. The price list for group meals show a variety of rates for breakfast, lunch, high tea and dinner depending on number of heads, meal type, day of the week and place of service. Meals on weekends or served in the portico or loft have higher tariff rate. The Appellant emphasized that the social events are usually members' get-togethers and stated that they have a special meal called "Silver Thali Raj" sometimes served at members' events where the food is served on silver utensils.
8. The Appellant submitted order dated 14.09.2017 passed by Hon'ble Calcutta High Court in WP No. 534 of 2006 in the matter of Bengal Rowing Club –vs- Commissioner of Service Tax, Kolkata where the Hon'ble Calcutta High Court held that the petitioner namely Bengal Rowing Club was a members' club and the concept of mutuality applied with regards to transactions between a member and the Club and thus the petitioner was not liable to pay service tax under the Finance Act, 1994 as amended by the Finance Act, 2005.
9. The Respondent disputed the Appellant's argument regarding Bengal Rowing Club being a members' club and submitted that the club charged annual subscriptions on the members and additional charges are levied for other services like use of restaurant, swimming pool, valet parking, etc. Further, goods and services provided to club members falls within the ambit of definition of supply under the GST Act.
10. The matter is examined and written and oral submissions made before us are considered. As the ruling of the WBAAR is restricted to the question of rate of tax on food supplied at social gatherings, the discussion in this forum is also restricted to this issue only. The issue of applicability of taxation on a members' club under the GST Act is not taken up for discussion.
11. The Appellant in his written submission before the WBAAR stated at one point that the Club organised parties and along with supply of foods also provided services such as valet parking, decoration, music, etc. The Appellant further stated that the Club was charging tax @ 5% on the food served at such parties but on services provided in relation to catering such as valet parking, decoration, music, etc., they were charging tax @ 18%. However, in contrast to this submission made before the WBAAR, the Appellant in the course of hearing of this appeal categorically stated that no decorations were done at any social event organised by the members and there were restrictions on

sound level. The appellant thus made contradictory submissions before the two Authorities.

12. For the sake of clarity the two entries of the Rate Notification are reproduced below:

Entry at serial No. 7(v) (SAC 9963):

*Supply, by way of or as part of any service, of goods, being food or any other article for human consumption or any drink, at Exhibition halls, Events, Conference, Marriage Halls and **other outdoor/indoor functions** that are **event based and occasional in nature**.*

Entry at serial No. 7(vii) (SAC 9963):

Supply, by way of or as part of or as part of any service or in any other manner whatsoever, of goods, including but not limited to food or any other article for human consumption or any drink (whether or not alcoholic liquor for human consumption), where such supply of service is for cash, deferred payment or other valuable consideration, in a premises (including hotel, convention center, club, pandal, shamiana or any other place, specially arranged for organizing a function) together with renting of such premises.

13. It is clear from the entry under serial no. 7(vii) of the Rate Notification that if any rental is paid associated with the supply of food and beverages at social events then it will be classified under this entry. On going through the ruling of the WBAAR dated 28.03.2019 we find that the WBAAR has opined only on this point. If the Appellant is not charging anything for renting space to hold the social event and the price does not include any rental or ancillary charges, other than the food and beverages served, then it would unquestionably not fall under serial no. 7(vii) of the Rate Notification. The WBAAR in its ruling is clear on the point that any food, by way of or as part of any service when supplied at the Appellant's restaurant will be taxable @ 5% only. The Appellant himself distinguished between the two supplies and sought ruling before the WBAAR on,

- (i) the food supplied as a part of restaurant service; and
- (ii) the food supplied at a social event like a members' get-together or a party.

The first entry is a regular service provided by the Club and the second one is occasional by nature.

14. Under the provisions of serial no. 7(v) of the Rate Notification it is seen that any supply of food or beverage at any event, whether or not served at an outdoor or an indoor function, squarely falls under the said category. A social get-together held at the Club premises as explained by the Appellant, is "an event or a function" of occasional nature. An "event" is a planned public or social occasion whereas, a "function" means an official ceremony or a formal social event, such as a party or a special meal, at which a

lot of people are usually present. The provisions of serial no. 7(v) of the Rate Notification is not restricted to Exhibition Halls or Marriage Halls and includes all indoor and outdoor functions. Unlike the provisions of serial no. 7(vii) of the Rate Notification there is no restrictive clause as to rental of the premises where the event is being held. Further the phrase, "*outdoor/indoor functions that are event based and occasional in nature*" includes all functions which are occasional by nature irrespective of whether these are held indoor or outdoor. The qualifying criteria are that firstly, it must be an event based function and secondly, it must be occasional in nature. The social get-togethers and parties are special social functions and definitely occasional in nature. The services provided by the Club at these social get-togethers are not regular restaurant services as envisaged from the submissions made by the Appellant. So, the food supplied at events which are occasional in nature like the social get-togethers arranged at the Club premises will unambiguously fall under serial no. 7(v) of the Rate Notification.

In view of above discussion it is held that supply of food at events organised by the Appellant in the club premises is taxable under serial no. 7(v) of the Notification no. 11/2017-C.T (Rate) dated 28-06-2017 under the Central Goods and Services Tax Act, 2017 & Notification No. 1135-FT dated 28-06-2017 under the West Bengal Goods and Services Tax Act, 2017 and taxed @ 18%. We found no other infirmity in the order of the WBAAR considering the written and oral submission of the Appellant.

Accordingly, the Advance Ruling No. 48/WBAAR/2018-19 dated 28.03.2019 is modified to this effect and the Appeal stands disposed of as above.

Send copy of this order to the Appellant and the Respondent for information.

Sd/-
(Smaraki Mahapatra)
Member
West Bengal Appellate Authority
for Advance Ruling

Sd/-
(A.P.S Suri)
Member
West Bengal Appellate Authority
for Advance Ruling