



**APPELLATE AUTHORITY FOR
ADVANCE RULING, RAJASTHAN
GOODS AND SERVICES TAX
NCR BUILDING, STATUE CIRCLE, C-SCHEME
JAIPUR - 302005 (RAJASTHAN)
Email : aaaripr@gmail.com**



Before the AAAR comprising of :

1. Sh. Mahendra Ranga, Member (Central Tax)
2. Dr. Ravi Kumar Surpur, Member (State Tax)

ORDER NO. RAJ/AAAR/ 11/2023-24 DATED 20.02.2024

Name and address of the Appellant	M/s Umed Club, Gaushala Ground, Old Public Park Road, Jodhpur-342001
GSTIN/ UID of the Appellant	08AAABU0007F1ZZ
Issues under Appeal	Taxability of goods or services or both
Date of Personal Hearing	10.01.2022 & 13.02.2024
Present for the Appellant	Shri Pradeep Jain, CA
Details of Appeals	Appeal No. RAJ/AAAR/APP/11/2021-22 against Advance Ruling No. RAJ/AAR/2020-21/23 dated 27.09.2021

(Proceedings under Section 101 of the Central GST Act, 2017 read with Section 101 of the Rajasthan GST Act, 2017)

At the outset, we would like to make it clear that the provisions of both the Central GST Act, 2017 and the Rajasthan GST Act, 2017 are same barring a few exceptions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central GST Act, 2017 would also mean a reference to corresponding provisions of Rajasthan GST Act, 2017.

The present appeal has been filed under Section 100 of the Central Goods & Service Tax Act, 2017 (hereinafter also referred to as 'the CGST Act') read with Section 100 of the Rajasthan Goods & Services Tax Act, 2017 (hereinafter also referred to as 'the RGST Act') by the Appellant on the portal on 20.11.2021 against AAR, Rajasthan Ruling Order No. RAJ/AAR/2021-22/23 dated 27.09.2021. The Appellant submitted that they were to file an appeal by 01.11.2021 but were unable to file it within a period of thirty days from the date of communication of the Order. As per the Appellant, their club was not in operation since recreational activities were not permitted by the government for a long period. As such, they were unable to file the appeal within the stipulated period of 30 days.

The Appellant have contended that on account of suo-moto extension of the limitation by the Hon'ble Supreme Court in Miscellaneous Application No. 665 of 2021, the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 02.10.2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15.03.2020, if any, shall become



available with effect from 03.10.2021. This period was extended up to 28.02.2022 by virtue of Hon'ble Apex Court judgment in Miscellaneous Application No. 665 of 2021 in suo- moto Writ Petition (C) No. 3 of 2020. In this judgment, Hon'ble Apex Court held that the period from 15.03.2020 to 28.02.2022 shall be excluded while computing the time limit for filing the appeal.

In view of the aforementioned Order of the Apex Court, they have requested for the delay to be condoned as there was justifiable reason for the same.

BRIEF FACTS OF THE CASE

1. M/s Umed Club (hereinafter referred to as the "Appellant" also), Jodhpur are engaged in providing various services such as short-term accommodation, restaurant, recreational services and have GST registration No. 08AAABU0007F1ZZ. They are interalia registered under Rajasthan Society Registration Act and are incorporated club.
2. The appellant sought Advance Ruling as to whether the services such as short-term accommodation, restaurant and recreational services provided by them to its members are taxable.
3. The Authority for Advance Ruling, Rajasthan in their Order dated 27.09.2021 concluded that service provided by the club to its members is taxable as per clause (aa) of sub-Section (1) of Section 7 of the CGST Act, 2017 w.e.f. July 1, 2017 and pronounced that GST is payable on the services provided by clubs to its members.
4. The appellates are now in appeal before this authority.

GROUND OF APPEAL

5(i) The Appellant have mainly placed reliance upon the Hon'ble SC judgment in the case of State of West Bengal VS Calcutta Club Limited [Civil Appeal No. 4184 of 2009] and have contended that as service tax was not leviable on the services provided by a club to its member under erstwhile service tax regime and the same analogy should also apply in GST regime. The Appellant have also taken shelter of Section 7(1)(A) and Schedule II of CGST/ RGST Act to discriminate between Goods and Services and contended that as per Schedule II, only the supply of goods by the club to its members is a taxable event under GST Act. In this respect, the Appellant submitted that the analogy adopted by the Apex Court is equally relevant and applicable in the GST era.

5(ii) that the contentions of Service Tax Authorities before the Supreme Court in [Civil Appeal No. 4184 of 2009] were that the reliance placed by the Jharkhand and Gujarat High Court on the decision given by the Apex Court in the case of Young Men's Indian Association is misplaced as in service tax laws, the principle of mutuality in case of incorporated entities has been dispensed with. The Appellant submitted that it was pleaded by the authorities that with the introduction of negative list in service tax w.e.f. 01.07.2012, the term 'person' was defined under Section 65B(37) of Finance Act, wherein person includes "an association of persons or body of individuals, whether incorporated or not". Likewise, according to Section 65B (44)



of Finance Act, service means any activity carried out by a person for another for consideration and includes declared service.

5(iii) According to the Appellant, two persons are necessary for an activity to be termed as service. Moreover, according to the Explanation 3(a) to the definition of service, "an unincorporated association or a body of persons, as the case may be, and a member thereof shall be treated as distinct persons". It was concluded by the Hon'ble SC that incorporated clubs or associations (under Companies Act/Cooperative Society Act) were not included in service tax net for this mentioned period. The service tax was payable only by un-incorporated clubs. *It was held that from 2005 onwards, Finance Act does not purport to levy service tax on incorporated clubs.*

5(iv) that the analogy of the above discussed Supreme Court decision should be applied in GST regime too as the explicit mention of "unincorporated association or body of persons" indicates levy of GST only on unincorporated body of persons.

5(v) it can be concluded that the purport of the legislation under erstwhile indirect taxation regime has been carried forward in the GST regime also. The Appellant submitted that they are also registered under Rajasthan Society Registration Act and are incorporated club. Therefore, no GST is required to be paid by them in light of the decision rendered by the Supreme Court as discussed above. Hence, the Order passed by the AAR, Rajasthan is not tenable and the same deserves to be set aside.

5(vi) The Appellant submitted that the impugned Order has placed reliance on the various provisions of the Statue. Reference is made to definition of person given under Section 2(84) of the CGST Act, 2017 which reads as follows:-

Person includes-

- (a) an individual;
- (b) a Hindu Undivided Family;
- (c) a company;
- (d) a firm;

(e) a Limited Liability Partnership;

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

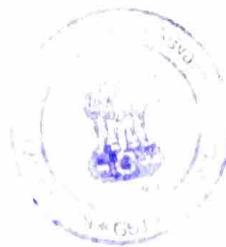
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5(vii) that the definition of person as produced above is exactly the same as was existing in the erstwhile Service Tax regime. The appellant submitted that the Hon'ble Apex Court has ruled that no service tax is leviable on the services provided by **incorporated clubs** to its members by analyzing the said definition and so the interpretation adopted by the Supreme Court is squarely applicable in the GST regime also. They levy of GST is not correct and the impugned Order pronounced by AAR, Rajasthan deserves to be quashed.

5(viii) that the impugned Order has also placed reliance on the proposed amendment to Section 7 of the CGST Act, 2017 which reads as follows:-

Section 7 Scope of supply -

- (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;

(aa) the activities or transactions, by a person, other than an individual, to its members or constituents or vice versa. For cash, deferred payment or other valuable consideration.

Explanation.- For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or Order of any Court, Tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another.

5(ix) that the impugned Order has held that a retrospective amendment (w.e.f. July 1, 2017) has been made vide Finance Act, 2021 by inserting a new clause (aa) after clause (a) in Section 7(1) of the CGST Act to widen the scope of term 'supply' by including therein activities or transactions of supply of goods or services or both between any person (other than individual) to its members or constituents or vice versa for cash, deferred payment or other valuable consideration. Consequently, Para 7 of Schedule II of the CGST Act has been deleted retrospectively (w.e.f. July 1, 2017) which was related to 'supply of goods by unincorporated associations or body of persons to a member thereof for cash, deferred payment or other valuable consideration' being activity/transaction treated as supply of goods.

The appellant submitted that the retrospective amendment as proposed by the Finance Act, 2021 was not operational till the date of Advance Ruling and so the said proposed amendment could not have been made a basis to rule that GST is payable on the services provided by club to its members.

5(x) that for an amendment to be effective in the CGST Act, it is required to receive the assent of the President and is also required to be passed by all State Assemblies which is a very lengthy procedure. Consequently, even if the amendment is proposed to have retrospective effect, the same cannot be made operational until it has been passed by both the houses of the Parliament. As such, the reliance placed by the Authority for Advance Ruling, Rajasthan on the proposed retrospective amendment is not at all tenable and the same deserves to be quashed.

PERSONAL HEARING

6. A virtual hearing in the matter was held on 10.01.2022. Sh. Pradeep Jain, CA and Authorized Representative of the appellant attended it. He reiterated the submissions already made under grounds of appeal and added the following additional points during the hearing.

- The application for Advance Ruling was filed on 02.03.2020 and decision in this case was taken on 27.09.2021. As per Section 98(6) of CGST Act, 2017, Advance Ruling should pass the decision within 90 days from the date of receipt of application. But it has been passed after almost one and half year from the date of receipt of application. Even the hearing took place on 15/07/2020. Hence, such a decision is not legally sustainable.



- The hearing took place on 15.07.2020 and it was heard by Member (Central Tax) Sh. J. P. Meena and Member (State Tax) Sh. Hemant Jain. But the decision was pronounced by Sh. J.P. Meena, Member (Central Tax) and Sh. M.S. Kavia, Member (State Tax). Thus, the decision has not been taken by the members who heard the case. Hence, it is against the principal of natural justice, thus, the impugned Advance Ruling is not legally maintainable and liable to be set aside.

7. Consequent upon change of both members of the Appellate Authority for Advance Ruling, another personal hearing was held on 13.02.2024 which was attended by Sh. Pradeep Jain, CA and authorized representative of the appellant. He reiterated the submissions made in the previous hearing as enumerated above. He added the following submissions vide their letter dated 13.02.2024:

- The Advance Ruling has held that the retrospective amendment has been made vide Finance Act 2021 by adding a new clause (aa) after clause (a) in section 7(1) of CGST Act 2017 wherein the scope of the supply was widened. Though this amendment was retrospective, however, it was not passed by all state assemblies as well as it was not operational till the date of ruling. This amendment was notified w.e.f. 1.1.2022. However, the Advance Ruling has been passed on 27.09.2021 on basis of an amendment which was not operational as on the date of pronouncing Ruling. Such a Ruling is not sustainable and deserves to be quashed. He also contended that the Order was passed by a bench different from which had heard them in person.

DISCUSSION AND FINDINGS

8. We have carefully gone through the material evidence available on record as well as oral submissions made by the authorized representative of the appellant at the time of personal hearing held on 10.01.2022 & 13.02.2024.

9. We observe that the appellant sought Advance Ruling to ascertain whether or not the services of short-term accommodation, restaurant and recreational services provided by them to its members are taxable. The Authority for Advance Ruling, Rajasthan in their Order dated 27.09.2021 held that as per clause (aa) of sub-Section (1) of Section 7 of the CGST Act, 2017 w.e.f. July 1, 2017 the services provided by the club to its members are taxable and GST is payable on it.

10. At the outset we note that limitation in the matter stands extended by the Hon'ble Supreme Court Order. Therefore, the appeal is being taken up for decision. We further note that the authorized representative during the hearing held on 10.01.2022 reiterated the submissions already furnished and submitted two more supplemental points. Firstly, they were unappeased that the ruling was passed after almost one and half year from the date of receipt of application whereas Authority Advance Ruling should have passed the decision within 90 days from the date of receipt of application. Secondly, they asserted that the constituent members of the AAR when the personal hearing in the matter was held were different from the members forming the AAR at the time the decision was pronounced. The decision was not taken by same members who heard the case. The appellant expressed their strong opinion that it was against the principal of natural justice.




11. We note the contention of the appellant that though the said amendment was retrospective, however, it was not passed by all state assemblies as well as it was not operational till the date when the Ruling was pronounced. This amendment was brought into force vide Notification No. 39/2021 – Central Tax dated 21.12.2021 w.e.f. 1.1.2022. The Advance Ruling has been pronounced on 27.09.2021 on the basis of an amendment which was not operational as on the date of pronouncing Ruling. The appellant avers that such a Ruling is not sustainable and deserves to be quashed. We feel that the AAR need to take note of the contentions & pass a speaking order with reference to them.


We also note that the decision was not taken by same members of AAR who have heard the case. This is a violation of the principles of natural justice.

12. In light of above, we pass the following order:

ORDER

The Ruling of the AAR, Rajasthan dated 27.09.2021 is set aside and the matter is remanded back to AAR to decide the application de-novo after considering all the contentions of the appellant.


(Mahendra Ranga)
Member (Central Tax)
(Mahendra Ranga)
Member, AAAR (Central Tax)
SPEED POST


(Dr. Ravi Kumar Surpur)
Member (State Tax)
(Dr. Ravi Kumar Surpur)
Member, AAAR (State Tax)

To

M/s Umed Club
C/o Shri Pradeep Jain, CA
"SUGYAN", H - 29,
SHASTRI NAGAR, JODHPUR (RAJ.) – 342003

F. No. IV (16)11/AAAR/RAJ/2021-22/478

Date. 21.02.2024

Copy to:-

1. The Chief Commissioner of CGST (Jaipur Zone), NCR Building, Statue Circle, Jaipur.
2. The Chief Commissioner of SGST, Rajasthan, Kar Bhawan, Bhawani Singh Road, Ambedkar Circle, Jaipur-302005.
3. The Principal Commissioner, CGST Commissionerate, Jaipur
4. The Commissioner, CGST Commissionerate, Jodhpur, G-105, Road No. 5, Behind AIIMS Hospital, New Industrial Area, Basni, Near Diesel Shed, Jodhpur – 342003.
5. The Member, Rajasthan Authority for Advance Ruling, Goods and Service Tax, Kar Bhawan, Bhawani Singh Road, Ambedkar Circle, Jaipur-302005.

6. Assistant Commissioner, Division-A, 4, Narpat Niwas, Near Officer Mess, Airforce Road, Jodhpur-342011.
7. Assistant Commissioner, Circle – D, Jodhpur Zone – II, SGST (Sales Tax Office) Room 303, Kar Bhawan, Commercial taxes Department, High Court Campus, Paota, Jodhpur
8. M/s Umed Club, Gaushala Ground, Old Public Park Road, Jodhpur-342001
9. The web-manager - www.gstcouncil.gov.in
10. Guard File.

