MAHARASHTRA AUTHORITY FOR ADVANCE RULING

GST Bhavan, Room No.107, 1st floor, B-Wing, Old Building, Mazgaon, Mumbai – 400010.

(Constituted under Section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

(1) Shri. Rajiv Magoo, Additional Commissioner of Central Tax, (Member)

(2) Shri. T. R. Ramnani, Joint Commissioner of State Tax, (Member)

ARN No.		**AD270620011070W**
GSTIN Number, if any/ User-id		**27AAAJR1327H1Z8**
Legal Name of Applicant		**M/s. Rotary Club of Mumbai Elegant.**
Registered Address/Address provided while obtaining user id		Ground Floor, Parijat 10, Road No. 10,Vile Parle (West), Mumbai, Maharashtra –400056
Details of application		GST-ARA, Application No. 26 Dated 11.09.2020
Concerned officer		**MUM-VAT-C-137, Nodal Division-09**
Nature of activity(s) (proposed/present) in respect of which advance ruling sought		
A	Category	**Service Provision**
B	Description (in brief)(as per applicant)	Rotary Clubs and Rotary Districts consists of association of persons, joined together to undertake social activities without any profit motive. Funds collected as fees are pooled together to be expended for meeting expenses & forwarding to international office for administrative expenses. Surplus if any is used for charitable activities.
Issue/s on which advance ruling required		➢ Determination of the liability to pay tax on any goods or services or both. ➢ 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.
Question(s) on which advance ruling is required		As reproduced in para 01 of the Proceedings below

NO.GST-ARA- 26/2020-21/B- 108 **Mumbai, dt.** 09/12/2021

PROCEEDINGS

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

The present application has been filed under Section 97 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" respectively] by **M/s. Rotary Club of Mumbai Elegant,** The applicant, seeking an advance ruling in respect of the following questions.

1. **Whether the activity of the applicant i.e. collecting contributions and spending towards meeting and administrative expenditures only, is 'business' as envisaged u/s 2(17) of the CGST Act, 2017?**

2. **Whether contributions from the members, recovered for expending the same for the weekly and other meetings and other petty administrative expenses incurred including the expenses for the location and light refreshments, amounts to or results in a supply, within the meaning of supply?**

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 any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, the expression 'GST Act' would mean CGST Act and MGST Act.

2. FACTS AND CONTENTION – AS PER THE APPLICANT

The submissions made by the applicant are as under

2.1 The applicant, Rotary Club of Mumbai Elegant is a group of people who carry out various charitable causes and activities from donations received from members, amount collected through various other channels and accruals of the corpus fund. Donations/charity received are used exclusively for the purpose of donation/charity and no amount is utilized for administration purposes. In addition to that, sums are recovered from all the members for expending the same for the weekly and other meetings and other petty administrative expenses incurred which include the expenses for the location and refreshments.

2.2 These meetings are held for the members to review existing activities and consider new projects for execution. In these meetings, the charitable proposals are considered, discussed & approved or rejected for taking up as a likely cause for execution. No facilities/benefits are provided such as recreation etc. by club.

2.3 Furthermore, the administration and working of the Association and Implementation of policies are established and implemented on the concept of mutuality.

2.4 Apart from donations/charity the receipts are Receipts from Indian Member clubs (if any); Annual collection from Members; Entrance fees from new member and Bank Interest. Expenses are generally in the form of: i) Meeting Expenses; ii) Printing of Circulars; iii) Stationary; iv) Postage. v) Greetings. vi) Fees payable to International & District office.

2.5 The applicant believes that the doctrine of mutuality applies in the present case wherein the contributions are being collected merely to spend back on the members themselves. There is no

other commercial consideration whatsoever. Going with doctrine of mutuality, two distinct persons are missing. There is no commercial consideration involved in the process. The amount being collected from the members is reimbursement of expenses or share of contribution.

2.6 *In absence of two distinct persons and also in absence of consideration, as defined under the Act, contributions received from the members does not qualify as a Supply within the meaning of the term, as defined under the Act.*

DOCTRINE OF MUTUALITY

Various case laws referred below would help throw light on doctrine of mutuality:-

2.7 *In the case of **CIT vs. Bankimpur Club Ltd. 226 ITR 97,** the Hon'ble Court discussed the principles of mutuality and at page 103 held 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.

2.8 *Recently in the case of **State of West Bengal vs. Calcutta Club Ltd.,** Larger Bench of the Hon'ble Supreme Court vide its judgement dated 3rd October, 2019, a service tax matter, observed that 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.*

2.9 *To tax the transaction between an association or club and its members, said transaction must either fit either under clause (a) or clause (c) of Section 7 of the CGST Act, 2017, which defines the term "supply". As per Clause (a) there must be supply of goods or services or both for a consideration and such supply must be in the course or furtherance of business.*

BUSINESS:-

2.10 *The term "business" is defined u/s 2(17) and reproduced below for ready reference;*

(17) "Business" includes-----

*(e) Provision by a club association society or any such body (for a subscription or any other consideration) of all the **facilities or benefits to its members".** In applicant's case, members of the club come together only for social cause and there is neither furtherance of any business of benefits or facilities to the members. Hence, applicant is not doing any business as envisaged under section 2(17) of the CGST Act, 2017.*

2.11 *Applicant also relies Orders of the Appellate Authority of Advance Ruling, Maharashtra in the case of 'Rotary Club of Mumbai Nariman Point' as well as 'Rotary Club of Mumbai Queen Necklace' where the said Authority have 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 meeting and administrative expenditures only Hence, Appellant is not doing any business as envisaged under section 2(17) of the CGST Act, 2017 and since, 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 and held that the amount collected as membership subscription and admission fees from members is not liable to GST as supply of services".*

2.12 *Co-joint reading of the definitions of a supplier [Section 2(105) of the CGST Act, 2017] and a receiver [Section 2(93) of the CGST Act, 2017] provides that, where a consideration is involved in a transaction, recipient is the "person" who pays consideration to the "supplier". Hence two different persons have been envisaged in law to tax a transaction as a supply made for a consideration.*

2.13 *From the forgoing analysis, applicant prays that transaction between the applicant, Rotary Club of Mumbai Elegant and its members will not be covered within the scope of supply u/s 7 of the CGST Act, 2017. Hence the same will not be liable for GST.*

Applicant Submission in Final Hearing dt. 29.10.2021.

2.14 *If applicant's activities are held to be supply, then membership fees collected by the Applicant, which is purely in the nature of a reimbursement for the meetings and administrative expenditures incurred to sustain and propagate their inherent programs, would be subject to double taxation as the amount spent towards 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 applicant. In this regard, reliance is placed on the finding of Hon'ble Maharashtra Appellate Authority for Advance Ruling for GST, in the cases of Rotary Club of Mumbai Queens Necklace (Order 06.11.2019) and Rotary Club of Mumbai Nariman Point (Order No. MAH/AAAR/SS-RJ/20/2019-20, dt. 11.12.2019)*

2.15 *No effect of new clause (aa) in sub-section (1) of Section 7 of the CGST Act*

A new clause (aa) was inserted in Section 7(1) of the CGST Act, with retrospective effect from 1st July, 2017, to provide levy of tax on activities or transactions involving supply of goods or

services by any person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration.

2.16 *Applicant submits that insertion of said clause doesn't alter case of Rotary Club, because of 'Agency principle' and reasoning of AAAR in the cases of in the cases of Rotary Club of Mumbai Queens Necklace and Rotary Club of Mumbai Nariman Point.*

3. CONTENTION – AS PER THE CONCERNED OFFICER:

The submissions made by the officer are as under:-

3.1 *As to applicant, it is noticed that collection is made separately for administrative expenses as Subscription dues. Further social services are funded separately by raising separate fund for the projects. Major portion of Administrative expenses spend from Subscription dues is for providing facility of meetings to members. Direct purpose of meetings & gatherings as per information on website of Rotary seems to facilitate personality development of members through opportunities of better communication, promoting friendship, trainings, entertainment, activities participation etc. These facilities are not available to non-members. Certainly personality development of members indirectly supports a service which is main objective of Rotary. Hence it is incorrect to say that Rotary doesn't provide any facility to members.*

3.2 *The term "business" under Section 2(17) (e) of the GST Act includes, "Provision by a club, association, society, or any other body (for a subscription or any other consideration) of the **facilities** or benefits to its members. It is, thus, clear that the Applicant is doing "business" as defined under section 2(17) (e) of the GST Act. And subscription dues are to be considered as consideration for the supply of such services, which are classifiable under SAC Heading 99959 under the category 'Services furnished by other membership organization'.*

As per the definition of the term "business" under the GST Act, subscription and fellowship dues are to be considered as consideration for the Taxable supply of such services.

3.5 *The activity of the Applicant, therefore, is to be considered in the light of Section 7(1)(a) of the GST Act. The language used therein is '**all forms of supply** of goods or services or both **such as** .....'. The expression 'such as' is meant to illustrate and covers the supplies made by club to its members even though a specific mention was not made therein.*

3.6 *The various provisions in GST read collectively makes it clear that the legislature's intention was always to treat association and its members as different entities which is also endorsed by amendment in Finance Act 2021.*

3.7 *Subscription & Fellowship dues collected from members for activities of applicant are in the furtherance of "business" as termed in section 2(17) and taxable as "supply of services" in section 7(1)(a) of GST act."*

04. HEARING

4.1 Preliminary e-hearing in the matter was held on 13.07.2021. Authorized representative of the Applicant, Shri. Sheetal Prakash Khandelwal was present. Jurisdictional officer was absent. The Authorized representative made oral submissions with respect to admission of their application.

4.2 The application was admitted and called for final e-hearing on 29.10.2021. The Authorized representative of the applicant, Shri. Sheetal Prakash Khandelwal, CA was present. The Jurisdictional officer Smt. Neeta Kadam, STO, MUM-VAT-C-137, Nodal-9 was also present. The Applicant made oral and written submissions. The jurisdictional officer requested for time file written submissions and was allowed three working days.

4.3 The matter was heard.

05. DISCUSSIONS AND FINDINGS:

5.1 We have perused the documents on record, facts of the matter and submissions made by the applicant as well as the jurisdictional officer.

5.2 The applicant also collects fees from its members which is used for its own administration purposes as well as for facilitation of meetings of its members.

5.3 The fees collected from members is pooled together to be spent for meeting/administration expenses & for making payments to the DOR/International Office, for administrative expenses. The applicant has submitted that, it is a group of persons working which carries out various charitable activities for which it receives amounts as donations/charity and no amount is utilized for administration purposes. Thus, meetings/ administration expenses are incurred from the fees received from its members. The applicant has strongly argued that the principle of mutuality is applicable in its case and therefore tax is not leviable on the fees received from members.

5.4 In view of the above we now take up both the questions raised by the applicant.

5.5 **The first question is whether the activity of the applicant i.e. collecting contributions and spending towards meeting and administrative expenditures only, is 'business' as envisaged u/s 2(17) of the CGST Act, 2017.** The second query of the applicant is whether **contributions from its members, recovered for expending the same for the weekly and**

other meetings and other petty administrative expenses amounts to or results in a supply, within the meaning of 'supply'.

5.6.1 The term "supply" is defined under Section 7 of the CGST Act and was last amended in the Budget 2021. Prior to the amendment "supply" was defined as :

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

(b) the activities specified in Schedule I, made or agreed to be made without a consideration; and

(c) the activities to be treated as supply of goods or supply of services as referred to in Schedule II.

.....

(3) Subject to the provisions of sub-sections (1) and (2), the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as

1. a supply of goods and not as a supply of services; or

2. a supply of services and not as a supply of goods.

5.6.2 Vide clause 99, an amendment was proposed in the CGST Act, 2017, whereby, in section 7, in sub-section (1), after clause (a), the following clause was to be inserted and deemed to have been inserted with effect from the 1st day of July, 2017, namely:

"(aa) the activities or transactions, by a person, other than an individual, to their 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 their 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;".***

5.6.3 The amendment mentioned above has received the assent of the President of India on the 28th March, 2021 and in view of the same the issue of principles of mutuality in the case of cooperative societies like the applicant has raised, been settled.

5.6.4 As per section 2(84) the term *"person" includes*

(a) an individual

.....

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

5.6.5 Therefore, in view of the amended Section 7 of the CGST Act, 2017, we find that the applicant society and its members are distinct persons and the contribution received by the applicant, from its members is nothing but consideration received for supply of goods/services as a separate entity. The principles of mutuality, which has been cited by the applicant to support its contention that GST is not leviable on the contribution collected from its members, is not applicable in view of the amended Section 7 of the CGST Act, 2017 and therefore, the applicant has to pay GST on the said amounts received from its members.

5.7.1 According to applicant, there is no commercial consideration involved in the process, just that the funds are collected in a common pool for meeting the expenses for the weekly meetings and other petty expenses incurred in meeting the common objective of betterment of society. According to applicant, the amount being collected from the members is reimbursement of expenses or share of contribution. According to applicant, it does not function on commercial basis. The common pool is being spent back on the members only. According to applicant, in the absence of two distinct persons and also in absence of consideration, as defined under the Act, contributions received from the members in the Administration Account does not qualify as a Supply within the meaning of the term, as defined under the Act.

5.7.2 We find that the entire dispute raised by the applicant in respect of fees received from its members is settled by the above mentioned amendment made to Section 7 of the CGST Act, 2017 and therefore, fees received by the applicant from its members for expending the same for the weekly and other meetings and other petty administrative expenses incurred including the expenses for the location and light refreshments, amounts to 'supply' as defined under the GST Act.

5.8.1 As per clause (aa) of Section 7 (1) of the CGST Act, the expression "supply" includes *the activities or transactions, by a person, other than an individual, to their members or constituents or vice versa, for cash, deferred payment or other valuable consideration.*

5.8.2 The said clause (aa) clearly specifies that all or any activities or transactions by a person (in this case, the applicant) to their members will be treated as 'supply'. The meetings conducted by the applicant which include food, refreshment, etc. are nothing but activities carried out by the applicant for its members and therefore we hold that, contributions from the members, recovered for expending the same for the weekly and other meetings and other petty

administrative expenses incurred including the expenses for the location and light refreshments, amounts to or results in a supply, in the subject case.

5.9.1 Further, the term "business" is defined u/s 2(17). Clause (e) of said definition is relevant and hence reproduced below for ready reference;

(17) "business" includes----- (e) provision by a club association society or any such body (for a subscription or any other consideration) ***of all the facilities or benefits to its members"***

5.9.2 From a plain reading of the above definition, it is clear that the activities of the applicant falls under the ambit of "business" as per the section 2(17) of the GST Act.

5.10 From the above facts, the definitions and the legal provisions, it is clear that the member and the club are two distinct persons and hence, any activities and transactions between them will be supply between separate/distinct persons. After the retrospective amendment as mentioned above, there remains no doubt that the activities involved in present case are nothing but 'supply', as defined under the Act. Thus, in view of the above the amount collected as membership subscription and admission fees from members is liable to GST as supply of services. The reliance placed by the applicant on order of Hon AAAR in the cases of in the cases of Rotary Club of Mumbai Queens Necklace and Rotary Club of Mumbai Nariman Point is not proper as said order was passed prior to the afore mentioned amendment to Section 7 of the CGST Act, 2017. The words *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* cover all types of activities/transactions of the present applicant. **There is no list or limit or any restriction prescribed in this respect in this amendment. The fees/donation/subscription/ amount/contribution (by whatever name called), collected by the applicant, is nothing but the "consideration" for the such "supply" and is covered by the scope of the term "business".** The club and the member are two distinct persons. The principle of mutuality has no application after this amendment. The applicant merely contended that the position does not change after the amendment but failed to explain the said proposition of law. The applicant has further failed to explain as to for what purpose or to remove which particular mischief or cover which particular aspect or transaction was the said amendment brought about. All the other case laws relied, also do not provide any guidance on the legal situation, particularly after the amendment.

5.11.1 Further, the applicant has also submitted that a Co-joint reading of the definitions of a "supplier" and a "recipient" as per the GST Act provides that, where a consideration is involved in a transaction, the recipient is the "person" who pays the consideration to the "supplier" and

hence two different persons have been envisaged in the law to tax a transaction as a supply made for a consideration.

5.11.2 The amendment to Section 7 (mentioned above) clearly treats the applicant and its member as two different persons where there is a supply of services from the applicant to its members and thus as per the applicant's own submission that two different persons have been envisaged in the law to tax a transaction as a supply made for a consideration, we find that in the instant case there is a supply by the applicant to its members and consideration is received in the form of "fees".

5.12 The applicant further submitted that they are also doing charitable activities. However applicant's questions do not pertain to the so called charitable activities done by them and the same are not discussed.

06. In view of the extensive deliberations as held hereinabove, we pass an order as under:

ORDER

(Under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

For reasons as discussed in the body of the order, the questions are answered thus –

Question 1:- **Whether the activity of the applicant i.e. collecting contributions and pending towards meeting and administrative expenditures only, is 'business' as envisaged u/s 2(17) of the CGST Act, 2017?**

Answer:- **In the affirmative.**

Question 2:- **Whether contributions from the members, recovered for expending the same for the weekly and other meetings and other petty administrative expenses incurred including the expenses for the location and light refreshments, amounts to or results in a supply, within the meaning of supply?**

Answer:- **In the affirmative.**

RAJIV MAGOO
(MEMBER)

T. R. RAMNANI
(MEMBER)

MEMBER, ADVANCE RULING AUTHORITY MAHARASHTRA STATE, MUMBAI

PLACE - Mumbai
DATE - 09.12.2024

Copy to:-

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Pr. Chief Commissioner of Central Tax, Churchgate, Mumbai
5. The Joint Commissioner of State Tax, Mahavikas for Website.

Note:-An Appeal against this advance ruling order shall be made before, The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India Building, Nariman Point, Mumbai – 400021. Online facility is available on **gst.gov.in** for online appeal application against order passed by Advance Ruling Authority.