

## MAHARASHTRA AUTHORITY FOR ADVANCE RULING

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

### BEFORE THE BENCH OF

- (1) Shri B. V. Borhade, Joint Commissioner of State Tax, (Member)  
(2) Shri Pankaj Kumar, Joint Commissioner of Central Tax, (Member)

GSTIN Number, if any/ User-id		271800000726ARI/URD
Legal Name of Applicant		LIONS CLUB OF POONA KOTHRUD
Registered Address/Address provided while obtaining user id		201, 2ND FLOOR, LOTUS RESIDENCY, OPPO TO LANE JOSHIS RAILWAY MUSEUM, KOTHRUD, PUNE 411 038
Details of application		GST-ARA, Application No. 33 Dated 31.05.2018
Concerned officer		ASSTT. COMMISSIONER, CENTRAL TAX (DIVISION-IV) PUNE-II CGST COMM RATE, PUNE
Nature of activity(s) (proposed / present) in respect of which advance ruling sought		
A	Category	
B	Description (in brief)	Lions Clubs and Lions Districts consist 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		(vi) whether applicant is required to be registered under the Act
Question(s) on which advance ruling is required		As reproduced in para 01 of the Proceedings below.

### 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"] by LIONS CLUB OF POONA KOTHRUD, the applicant, seeking an advance ruling in respect of the following ISSUE.

*Since the amount collected by individual Lions clubs and Lions District is for convenience of Lion members and pooled together only for paying Meeting expenses & communication expenses and the same is deposited in single bank account. As there is no furtherance of business in this activity and neither any services are rendered nor are any goods being traded. Whether registration is required?*

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 provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / MGST Act would be mentioned as being under the "GST Act".

#### 02. FACTS AND CONTENTION - AS PER THE APPLICANT

The submissions, as reproduced verbatim, could be seen thus-

#### **STATEMENT OF THE RELEVANT FACTS HAVING A BEARING ON THE QUESTIONS :**

- 1) Lions Clubs is an International organization having clubs in 210 countries engaged in humanitarian and charitable services.
- 2) These services are executed through various districts comprising of many Clubs.
- 3) In order to facilitate the meetings and administration fees are collected from members.
- 4) These amounts are then used for administration and meetings.



5) In some cases the amount so collected is likely to exceed Rs. 20 lacs, being the threshold for registration under GST Act, 2017.

Clarification as regards to "Nature of Fees":-There are three administrative layers:

1.Clubs in Lions

2.District of Lions:-Comprises of many clubs, normally 100 & above where district policies for the clubs are formulated.

3.Cabinet of District:- Comprises of various member from Lion fraternity, who are head of various committee that conduct social activities.

**Receipts of Lions Club can be broadly divided into following categories-**

1) Club receiving Fees from its members. These can be purely said to be collected to defray its expenditure on meetings and communication. No facilities/benefits are provided such as recreation, etc by Individual clubs.

2) District receiving its payment from Clubs to meet the expenses of Administration since one district comprises of more than 100 clubs.

These dues are towards:

(a) Postage, printing ,communication, etc. and

(b) Sending the fees to international institution at Chicago for service activities and International administration.

District receiving fees from its members constituted as cabinet to draft policy, plans and give direction to Clubs in order to execute policies and social activities. Again it is needless to mention that no facilities/benefits are provided such as recreation, etc. Thus our prayer specifically relates to non-applicability of GST on:

1) Club member fees

2) District fees collected from Clubs &

3) Cabinet member fees as no facilities/benefits are being provided.

#### **STATEMENT CONTAINING APPLICANTS INTERPRETATION OF LAW IN RESPECT OF THE QUESTIONS RAISED**

In the context of GST, definition of persons is provided u/s 2(84) of the CGST Act 2017. As per said definition, there is no deeming fiction to treat association and members as different persons. Hence the key condition to tax a transaction u/s 7(1)(a), that supplier and recipient must be different, is not satisfied. Hence the transaction of providing services by an association to its members should not be taxed u/s 7(1) (a). Earlier in Service Tax regime Court in several cases held that in absence of deeming fiction, treating club/association & its members as distinct person, service tax shall not be payable. Thereafter to nullify the above decision w. e. f. 01.06.2012 clause (a) to Explanation 3 to Sec. 65B provided that an unincorporated association or body of persons, as the case may be and a member thereof shall be treated as distinct persons. Such deeming fiction is not provided under the current GST regime.

#### **WRITTEN SUBMISSION MADE BY APPLICANT AT THE TIME OF HEARING ON 08/08/2018 -- ISSUE UNDER CONSIDERATION:-**

Lions Clubs are autonomous units those collect fees from their members in order to meet their administrative costs. Similarly Lions Districts collect fees from Clubs and Cabinet Members to manage District activities.

Lions Clubs and Lions District (assemblage of individual clubs area wise) are proposing to levy GST as per CGST/MGST ACT 2017, on the member's fees if they cross the threshold limit as applicable. It is felt that under the principle of mutuality and since the fees so collected are only pooled together for convenience and for defraying meeting expenses and Administrative expenses should not be brought under the purview of GST.

#### **HISTORY & PRESENT STATUS--**

India is the second largest community and the fastest growing community of Lions Clubs volunteers in the world. Lions Clubs established its presence in India in 1956 and today has 2,40,000 members across 6,400 Clubs. Lions volunteers reach out to help anywhere across the country, even in the remotest locations.

From providing instant assistance during sudden disasters such as the recent **Malin, Pune, landslide, helping over 50,000 people** see again or taking over the education of abandoned families, Lions have created a huge impact on Indian society. The Lions Clubs International Foundation has provided US\$ 901 million in grants globally of which India is the recipient of US\$ 84 million for 1535 projects. Through programs like **Sight-First, Lions Quest and Opening Eyes**, the Foundation provides essential grant funding to Lions Clubs so they can carry out ambitious projects.

Currently the **three major projects** running in India are **Measles & Rubella, Diabetes and Sight First**. India is the home to the most diverse of cultures, but each one of them has one thing in common- acceptability. Naturally, Lions India has been successful in building symbiotic growth systems among Lions across the country. As a result, strenuous activities such as raising awareness, organising camps, fundraising etc. have become simpler.

- Membership is open to all people of the community in good standing
- Clubs may either provide service or raise funds
- 100% of funds donated by the public are directed to the project for which they are intended

The activities of District are comprise of administering the functioning of each and every member club ("Lions Club") and co-ordinating their activities. All individual members are required to pay dues (in the form of entrance fees, membership fees etc.) The annual dues which are received from the Lion Members are used by Clubs to defray subscription price of the Lion Magazine. Administrative and Annual convention costs of Lions Clubs International and similar District costs also holds Programs, Seminars and Institutes for Leadership Development and other forums



and these programs are only for Lion members and non-lions are not allowed to take part. Thus, funds received from members are utilized for mutual benefit of members.

Furthermore, on perusal of the Articles/Memorandum/Constitution & By- Laws, it clearly indicates that the administration and working of the Association and implementation of policies are established and are implemented on the concept of mutuality. Each member is equally represented with individual identity and status thereby, establishing the fact of complete transparency i.e. the identity between the contributors and the participators of the Association and Foundation.

#### **Facts and Background –**

1. The International Association of Lions Clubs also known as Lions Clubs International (LCI) is a non-profit making organization registered in Illinois, United States of America (USA) and has many members all over the globe.
2. Lions Club International Foundation (LCIF), charitable grant making arm of LCI is also a non-profit making charity organization registered in the State of Illinois USA.
3. LCI pursues its charitable objective through LCIF in multifarious ways by building / running hospitals, clinics, schools, playgrounds, etc. other health care, charitable activities.
4. LCI and all its member clubs are required to maintain **two separate bank accounts**, one for administrative expenses and other for donations / charity. The receipts in donation/charity account are used exclusively for the purpose of donation / charity and no amount is utilized for administration purposes.

**The receipts in LC administrative account are majorly comprised of the following:**

**Receipts from Indian Member clubs**

- (i) Annual membership fees,
- (ii) Entrance fees from new member clubs.
- (iii) Bank Interest

**Expenses are generally in the form of:-**

- i) Meeting Expenses
- ii) Printing of Circulars
- iii) Stationery
- iv) Postage
- v) Greetings
- vi) Fees payable to International office
- vii) Fees payable to Multiple office.

It can be seen that the amounts collected by way of fees are only pooled together for the sake of convenience.

#### **PRINCIPLE OF MUTUALITY**

Various case laws are here below referred; *though directly not decided under the Act in question*; would help throw light on principle of mutuality:-

The three conditions stipulated by the Judicial Committee in the case of **English and Scottish Joint Co-operative Wholesale Society Ltd. v. Commr. Of Agrl. I.T. (1948) 16 ITR 270 (PC)**; existence of which establishes the doctrine of mutuality. They are as follows (page 559):

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

In the case of **CIT vs. Bankimpur Club Ltd. 226 ITR 97** also 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. The said principle which has been laid down in the leading decisions and emphasized in the leading English text books mentioned above, has been explained with reference to Indian decisions in "The Law and Practice of Income-tax" (English edition, Volume I, 1990) by Kanga and Palkhivala at page 113, thus :

"..... The contributors to the common fund and the participators in the surplus must be an identical body. That does not mean that each member should contribute to the common fund or that each member should participate in the surplus or get back from the surplus precisely what he was paid.' The Madras, Andhra Pradesh and the Karnataka High Courts have held that the test of mutuality does not require that the contributors to the common fund should willy-nilly distribute the surplus amongst themselves: it is enough if they have a right of disposal over the surplus, and in exercise of that right they may agree that non winding up the surplus will be transferred to a similar association or used for some charitable objects....."

#### **SUPPLY:-**

As per Sec. 9 of the **Central Goods & Services Tax ("CGST") Act, 2017**, levy of tax is on an event called 'supply'. Scope of supply is stated u/s 7. Relevant portion of said provision is reproduced below for ready reference:

**'Sec. 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
- c. the activities specified in Schedule I, made or agreed to be made without a consideration'

To tax the transaction between an association or club and its members, said transaction must either fit either under clause (a) or clause (c) above.



Clause (a) covers 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. Hence following ingredients must be satisfied:

- a. There must be supply of goods or services or both **for a consideration**
- b. And such supply must be in the course or **furtherance of business**

It must be noted that both the ingredients must be satisfied to tax the transaction. If only one is satisfied, transaction cannot be taxed under the referred clause.

#### **BUSINESS:-**

The term 'business' is defined u/s 2(17). For our discussion 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 the facilities or benefits to its members'*

From the above definition it is clear that for getting satisfied under the term "business", there must be **facilities or benefits to its members**.

In case of Lions Club, as we have discussed above, the members of the club come together only for social cause and there is neither furtherance of any business or benefits or facilities to the members.

From the above it can be interpreted that, to satisfy the definition of "Business", there must be some benefit / facility to its members.

**In our case there is no benefit facility to the members of the lions club.**

Further it can be seen whether the supply of services between club and its members is for a consideration.

#### **CONSIDERATION:-**

It is worthwhile to refer to the definition of "supplier" as provided u/s 2(105) & "recipient" as provided u/s 2(93). Both the definitions are reproduced below:

Sec. 2(105) "supplier" in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied

Sec. 2(93) "recipient" of supply of goods or services or both, means –

- (a) where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;
- (b) where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and
- (c) where no consideration is payable for the supply of a service, the person to whom the service is rendered, and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied

Conjoint reading of both the definitions provides that where a consideration is involved in a transaction, the recipient is the "person" who pays the consideration to the "supplier". Hence two different persons have been envisaged in the law to tax a transaction as a supply made for a consideration.

Now the question remains that whether the club and its members can be treated as different persons?

#### **Recent Circular:-**

"GST is levied on intra-State and inter-State supply of goods and services. According to section 7 of CGST Act, 2017, 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, and includes activities specified in Schedule II to the CGST Act, 2017. The definition of "business" in section 2(17) of CGST Act states that "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 term person is defined in section 2(84) of the CGST Act, 2017 to include an association of persons or a body of individuals, whether incorporated or not, in India or outside India. Further, Schedule II of CGST Act, 2017 enumerates activities which are to be treated as supply of goods or as supply of services. It states in para 7 that supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration shall be treated as supply of goods. A conjoint reading of the above provisions of the law implies that supply of services by an unincorporated association or body of persons (AOP) to a member thereof for cash, deferred payment or other valuable consideration shall be treated as supply of services. The above entry in Schedule II is analogous to and draws strength from the provision in Article 366(29A)(c) of the Constitution according to which a tax on the sale or purchase of goods includes a tax on the supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration."

Following observations may be noted in reference to the above circular:

a. Above circular has not considered the definition of "supplier" as well as "recipient" before taxing a transaction u/s 7(1)(a). There must be two different persons to tax a transaction under said provision. **Merely because an association of person has been included as person u/s 2(84) does not imply that members of such association are different persons.**

b. Circular has invoked the concept of deemed sale as provided under Article 366(29A) of the Constitution. It must be noted that clause (e) of said Article **only enables to tax supply of goods** by an association to its members as deemed sale. It does not enable to tax supply of service as a deemed service. Even para 7 of Schedule II only covers supply of goods by any unincorporated association. **It does not cover supply of services. Unless provision similar to that of**





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

c. Invoking the concept of "deemed sale" shall result in countless litigations. This is because Schedule - II of the CGST Act, 2017 is at any many places in direct conflict with Article 366(29A). Hence the said circular will open Pandora's Box full of litigation.

**Now, let us examine whether the transaction between an association and its members can be taxed u/s 7(1)(c).**

Said clause covers the activities specified in Schedule I, made or agreed to be made without a consideration. If self-supply is taxable, it must be covered under Schedule I. Entry number 2 of Schedule I provides that supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business shall be taxable. Members are not covered under section 25 as distinct person. Hence only thing to be checked is whether an association and its members are related person.

Explanation u/s 15 of CGST Act, 2017 defines related person. Said explanation is also reproduced below for ready reference:

*'Explanation. — For the purposes of this Act, —*

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

*(i) such persons are officers or directors of one another's businesses;*

*(ii) such persons are legally recognised partners in business;*

*(iii) such persons are employer and employee;*

*(iv) any person directly or indirectly owns, controls or holds twenty-five per cent or more of the outstanding voting stock or shares of both of them;*

*(v) one of them directly or indirectly controls the other;*

*(vi) both of them are directly or indirectly controlled by a third person;*

*(vii) together they directly or indirectly control a third person; or;*

*(viii) they are members of the same family;*

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

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

On perusal of above list one can conclude that there must be two or more persons who can be considered as related owing to the above conditions. As an association and its members are the same because of principle of mutuality they cannot be regarded as related person.

From the foregoing analysis we conclude that transaction between an association or club and its members will not be covered within the scope of supply u/s 7 of the CGST Act, 2017. Hence the same shall not be taxable.

#### **PRAYER---**

Lions Clubs and Lions Districts consist 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.

In the context of GST, definition of persons is provided u/s 2(84) of the CGST Act, 2017. As per said definition, there is no deeming fiction to treat association and members as different persons. Hence the key condition to tax a transaction u/s 7(1)(a), that supplier and recipient must be different, is not satisfied. Hence the transaction of providing services by an association to its members should not be taxed u/s 7(1)(a).

Earlier in Service Tax regime Court in several cases held that in absence of deeming fiction, treating club/association & its members as distinct person, service tax shall not be payable. Thereafter to nullify the above decision w. e. f. 01.06.2012 clause (a) to Explanation 3 to Sec. 65B provided that an unincorporated association or body of persons, as the case may be and a member thereof shall be treated as distinct persons. Such deeming fiction is not provided under the current GST regime.

Further, the said transaction between the club and its members also does not fits into the definition of "Supply" owing to the different limbs of the definition i.e. "business" & "consideration" as elaborated above.

So it is prayed that, Subscription received from members or cabinet should not be subjected to GST as it is a contribution towards common expenditure to conduct the meeting etc. and because no facilities or benefits are being provided out of this subscription.

#### **03. CONTENTION - AS PER THE CONCERNED OFFICER**

The submission, as reproduced verbatim, could be seen thus-

M/s Lions Club of Poona, Kothrud, has submitted the letter bearing date 29-05-18 addressed to the Advance Ruling Authority, Mumbai, under which they have applied for advance ruling under ARA-01.

The said application has been examined by this office. In this regard views of this office against Sr. No. 14 & 16, are as under:

Para no. 14 : The question(s) on which advance ruling is required.

*"Since the amount collected by individual Lions clubs & Lions Districts is for convenience of Lions members & pooled together only for paying Meeting expenses & communication expenses & the same is deposited in a single bank account. As there is no furtherance of business in this activity and neither any services are rendered nor any goods are being traded. Whether registration is required?"*

*Legal position upto from 01-07-12 to 30-06-17: There seems to be a fact that the club and members are not distinct persons, levy of service tax on such clubs/ associations may not be warranted. Principally, there should be existence of two sides/entities for having transaction as against consideration. in u members club, were is no question of two sides - Members and club, both are*



same entity. With effect from 1-7-2012, the word "service" has also been defined under Section 65B (44) of the Finance Act, 1994. Explanation 3a) to said Section states that for the purposes of this Chapter, an unincorporated association or a body of persons, as the case may be, and a member thereof shall be treated as distinct persons. Therefore, deeming provision has been introduced with effect from 1-7-2012 to the effect that the club and members are decided to be separate persons. in view of these and under the given situation, applicant agrees that club and its members are two distinct persons, at that time.

Air introduction of CST WC.A.01-07-17, the definition of "business" under sub section (e) of Section 2(17) of CGST Act states that

"business" includes provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or

Thus the definition is enough comprehensive to include a service by way of a subscription to its members by a "club" in the term "business".

Moreover, the "business", i.e. "furtherance of business" is duly incorporated in the definition of "scope of supply", as defined sub section (a) of Section 7 of the Central Goods and Services Tax Act, 2017 which is reproduced as under-

"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."

Therefore, there is no force in the submission of the Applicant that there is no furtherance of business in the activity and neither any services are rendered nor any goods are being traded. Consequentially, a prayer that there is no registration is required, has no leverage and legal backing.

Para No. 16 Statement containing the applicant's interpretation of law and or facts, as the case may be, in respect of the aforesaid questions.

As the activity is more appropriately covered, as explained above, under "scope of supply", Applicant's plea is not acceptable as the same is not supported by the statutory provision.

Also the term "person" is defined in section 2(84) of the CGST Act, 2017 to include an association of persons or a body of individuals, whether incorporated or not, in India or outside India. This definition also is sufficient enough to cover the activity of the Applicant under the GST regime.

It is pertinent to mention here that the various case laws on the above issue ; are in respect of the provisions of the Finance Act, 1994; which existed prior to 1.07.2012 and hence not relevant during the GST regime.

#### **Additional submissions on 07.08.2018**

The Applicant in this case had earlier filed copy of GST ARA-1 on 31-5-18 and as per the request made by the Applicant, the extension was granted to them to file additional submission in this case by the ARA, Mumbai. The Applicant has made available the following additional documents :

- 1) Sample Financial Accounts in case of other Lions Club
- 2) Lions Club - Constitution and by laws
- 3) District Club -- Constitution and by laws
- 4) Circular No. 35/9/2018-GST dated 05-03-2018.

Para No.1: The sample Financial Accounts now made available pertains to the Malegaon Sapphire District Club. Hence no comments are offered.

Para No. 2 and Para No. 3: The documents show the Club Constitution, i.e. club's vision , mission, procedure for membership, their mode various activities etc. Hence no comments are offered.

Para No. 4: The said set of document was perused by this office. The Applicant has relied upon the Circular No. 35/9/2018-GST dated 05-03-2018, The circular is applicable to "Joint Venture- taxable services provided by the members of the Joint Venture (JV) to the JV and vice versa and inter se between the members of the JV". The relevant portion of the circular is reproduced below:

"GST is levied on intra-State and inter-State supply of goods and services. According to section 7 of CGST Act, 2017, 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, and includes activities specified in Schedule II to the CGST Act, 2017. The definition of "business" in section 2(17) of CGST Act states that "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 term person is defined in section 2(84) of the CGST Act, 2017 to include an association of persons or a body of individuals, whether incorporated or not, in India or outside India. Further, Schedule II of CGST Act, 2017 enumerates activities which are to be treated as supply of goods or as supply of services. It states in para 7 that supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration shall be treated as supply of goods. A conjoint reading of the above provisions of the law implies that supply of services by an unincorporated association or body of persons (AOP) to a member thereof for cash, deferred payment or other valuable consideration shall be treated as supply of services....."

Therefore, the above said circular is irrelevant and inapplicable in the present situation. Hence the instructions in the said circular claimed to be applicable to them by applicant, is incorrect.

Para No. 5 - It is also submitted that the Applicant have nowhere expressly submitted and committed that they are not engaged in the activities which may amount to "facilities" or "benefits" to its members. This is very much essential to decide whether the Applicant falls in/out of purview of the definition under "business", as envisaged under section 2(17) of CGST Act, 2017. On the contrary, the written submission states that the Seminars and Institutes for Leadership Development and other forums only for Lion members and non lions are not allowed to take part. Thus, funds received from members are utilized for mutual benefit of members" / last para of page no. 2 refers ).



**Para No. 6 -** Therefore, there is no force in the submission of the Applicant that there is no furtherance of business in the activity and neither any services are rendered nor any goods are being traded. Consequentially, a prayer that there is no registration is required, has no legal backing.

**04. HEARING**

The case was taken up for Preliminary hearing on dt. 04.07.2018 when Sh. Abhay Shatri, the Applicant and one of the member of club appeared and stated that present application is filed in individual capacity. It was informed to Sh. Abhay Shatri that present application is not tenable in individual capacity and some executive person of the club duly authorized has to file the application. At oral request of Sh. Abhay Shatri, it was allowed that they will revise this application and ensure it is filed in the name of proper authorized person. Jurisdictional Officer, Sh. P.G. Gotkhinde, Asstt. Commr, Cental Tax, (DIV -IV) Pune-II CGST COMMM'RATE, Pune appeared and made written submissions. The applicant has filed revised application on 18.07.2018.

The application was admitted and called for final hearing on 08.08.2018, Sh. Abhay Shatri, C.A. Vice District Governor of the club, duly authorized appeared and stated that they are not providing any facilities to their members and made written submissions. Jurisdictional Officer, Sh. P.G. Gotkhinde, Asstt. Commr, Cental Tax, (DIV -IV) Pune-II CGST COMMM'RATE, Pune appeared and made written submissions.

**05. OBSERVATIONS**

We have gone through the facts of the case. The issue before us is the requirement of registration and the applicability of the GST Act quo the receipt of fees from members by the Lions Club of Poona, and the applicant. We reproduce herein the purpose and activities as seen in their Constitution and bylaws as below:

**Article II - Purposes:**

**The purposes of this club shall be:**

- a) To create and foster a spirit of understanding among the peoples of the world.
- b) To promote the principles of good government and good citizenship.
- c) To take an active interest in the civic, cultural, social and moral welfare of the community.
- d) To unite the members in the bonds of friendship, good fellowship and mutual understanding.
- e) To provide a forum for the open discussion of all matters of public interest; provided, however, that partisan politics and sectarian religion shall not be debated by club members.
- f) To encourage service-minded people to serve their community without personal financial reward, and to encourage efficiency and promote high ethical standards in commerce, industry, professions, public works and private endeavors.

**Article XII -Club Funds**

**Section 1. PUBLIC (ACTIVITY) FUNDS.-** All funds raised from the public must be returned to public use, including money accumulated from invested public funds. The only deductions that may be made from the activity account are the direct operating expenses of the fund raising activity. Money accumulated from interest must also be returned to public use.

**Section 2. ADMINISTRATIVE FUNDS.-** Administrative funds are supported through contributions from members through dues, fines and other individual contributions.

As per the Standard District constitution of the clubs, the following purposes are,

#### Article II - Purposes,

The purposes of this district shall be:

- a) To provide an administrative structure with which to advance the Purposes of Lions Clubs International in this district.
- b) To create and foster a spirit of understanding among the people of the world.
- c) To promote the principles of good government and good citizenship.
- d) To take an active interest in the civic, cultural, social and moral welfare of the community.
- e) To unite the members in the bonds of friendship, good fellowship and mutual understanding.
- f) To provide a forum for the open discussion of all matters of public interest; provided, however, that partisan politics and sectarian religion shall not be debated by club members.
- g) To encourage service-minded people to serve their community without personal financial reward, and to encourage efficiency and promote high ethical standards in commerce, industry, professions, public works and private endeavors.

#### ARTICLE VII --CONVENTION FUND-

Section 1. CONVENTION FUND TAX. In lieu of or in addition to a district convention registration fee, an annual district convention fund tax of (insert value in national currency \_\_\_\_ ) may be levied upon each member of each club in the district and shall be collected and paid in advance by each club, except newly chartered and reorganized clubs, in two (2) semiannual payments as follows: (insert value in national currency \_\_\_\_ ) per club member on September tenth of each year to cover the semi-annual period July 1 to December 31; and (insert value in national currency \_\_\_\_ ) per club member on March tenth of each year to cover the semi-annual period January 1 to June 30, with billings of said tax to be based upon the roster of each club as of the first days of September and March, respectively. Any club which is chartered or reorganized in a current fiscal year shall collect and pay said convention tax for said fiscal year on a pro-rata basis from the first day of the second month following the date of its organization, as the case may be.

This tax shall be collected from the clubs by, and be remitted to, the cabinet secretary or cabinet treasurer (or secretary-treasurer), who shall deposit the monies so collected in a special account in a bank or other depository chosen by the district governor. The fund so collected shall be used exclusively for defraying expenses of district conventions and shall be expended only by district checks drawn and signed by the cabinet treasurer and countersigned by the district governor.

Section 2. REMAINING FUNDS. In any fiscal year, any balance remaining in the convention fund after payment of all convention administrative expenses in that year shall remain in said convention fund and become available for future convention expenses and be treated as income in any fiscal year in which expended or otherwise budgeted for payment of such expenses.

Section 3. FEE COLLECTION. Such fee as the district governor shall set may be collected, under procedures set by the district governor, from each delegate, alternate, and guest attending the district convention to defray the actual cost of convention meals and entertainment.

#### Article VIII -DISTRICT ADMINISTRATION FUND



Section 1. DISTRICT REVENUE. To provide revenue for approved district projects and to defray the administrative expenses of the district, an annual district administrative fund tax of (set out value in national currency \_\_\_\_ ) is hereby levied upon each member of each club in the district and shall be collected and paid in advance by each club in two (2) semi-annual payments as follows: value in national currency \_\_\_\_ ) per club member on September tenth of each year to cover the semi-annual period July 1 to December 31; and (value in national currency \_\_\_\_ ) per club member on March tenth of each year, to cover the semi-annual period January 1 to June 30, with billings of the same to be based upon the roster of each club as of the first days of July and January, respectively. Said tax shall be paid to the cabinet secretary or cabinet treasurer (or secretary-treasurer), by each club in the district, except newly chartered and reorganized clubs, which shall collect and pay said tax on a pro-rata basis from the first day of the second month following the date of their organization or reorganization, as the case may be. Said tax shall be disbursed only for administrative expenses of the district and only upon approval by the district governor's cabinet. Disbursement therefrom shall be by checks drawn and signed by the cabinet treasurer and countersigned by the district governor.

Section 2. REMAINING FUNDS. In any fiscal year, any balance remaining in the district administrative fund after payment of all district administrative expenses in that year shall remain in said district administrative fund and become available for future district administrative expenses and be treated as income in any fiscal year in which expended or otherwise budgeted for payment of such expenses.

#### ACTIVITIES AND SOCIAL WELFARE CAMPS ORGANISED BY THE CLUB

1. Diabetes awareness rally arranged with Appollo Hospital on World Diabetes day .
2. A rally arranged and white canes were distributed on white cane day to the Blind persons.
3. Swachha Bharat Activities on various places in district .
4. Various activities taken for physically disabled students like swimming completion, mini marathon, cultural program etc.
5. Distribution of school bags and school dress , school kits to needy students.
6. Eye checkup camps and vision related activities for the public,
7. Rehabilitation of street beggars & distribution of various items to generate income like weighing scales.
8. Medical check-up camps, Blood donation camps,
9. Motivating leos for activity for the public.
10. Distribution of Jaipur foots to the handicapped .

We have been informed of the activities carried on by the applicant. These have been reproduced hereinabove. These purpose of receipt of subscription fees and the utilization thereof has to be interpreted in terms of the provisions of the GST Act. *Does the applicant club engage in any form of supply of goods or services to its members? Whether the collection of 'fees' from the members is for any supply by the Club to the members?* We have seen the earlier submission where the applicant has extensively argued against the applicability of the provisions of the GST Act. A look at the above along with the earlier submission makes us observe that the question put forth for our consideration would have to be answered in the negative. We proceed to record our reasons.



We restrict our discussion herein below to the activities of the applicant in relation to its members qua the receipt of fees from them. We are not called upon to discuss the activities of the applicant in general. The definition of business for the purposes of the GST Act reads thus-

## Section 2 -Definitions

(17) "business" includes--

- (a) .....
- (b) .....
- (c) .....
- (d) .....
- (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;*
- (f) .....
- (g) .....
- (h) .....; and
- (i) *activities of a race club including by way of totalisator or a license to book maker or activities of a licensed book maker in such club; and"; [this clause is substituted for the earlier clause by the Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018]*
- (i) *any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities;*

We see that clause (e) speaks about subscription. But this subscription is for the facilities or benefits that would be provided. The definition requires that the *club, association, society, or any such body* has to provide facilities or benefits to its members. And these facilities or benefits are to be provided for a *subscription or any other consideration*. In the facts of the instant case, the amounts collected as 'fees' from the members are not for the purposes of making any 'supply'. All are aware that the definition of 'supply' under the provisions of the GST Act is an inclusive one. However, it is one for 'supply' and the 'supply' is of goods or services. The definition of 'supplier' under section 2 (105) of the GST Act would help clear what we intend to put across -

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

As can be seen, a supplier is one who provides goods or services, whether on his own or on behalf. In the present case, the club is not formed to provide any facilities or benefits to its members. The fees collected are used for social causes and to meet the expenses incurred in furtherance of the objectives of the Club. The Club is not formed to provide services to members but people gather under the umbrella of the Club to perform socially relevant activities. A club, association or society as understood under section 2(17) is one which would provide goods or services or both to its members such as recreation, sports, food, etc. We have made it clear earlier that we are not on the activities of the applicant club in general but there should be no dispute that applicant club does not supply any facilities or benefits in terms of goods or services to its members. At the cost of repetition, we reproduce herein the clauses relating to the use of funds-

- i) Meeting Expenses
- ii) Printing of Circulars
- iii) Stationery
- iv) Postage
- v) Greetings
- vi) Fees payable to International office
- vii) Fees payable to Multiple office.



As can be seen, the club is not formed to provide any supply of goods or services to its members qua the fees received from them. There being no supply qua the fees received, there arises no occasion for us to visit the definition of 'Supply' under the GST Act. The applicant club as per the facts put up before us does not render any 'Supply' for the purposes of the GST Act. Having observed so, we refrain from any further discussion.

We find that the Departmental officer holds a different opinion. We would want to deal with one aspect discussed by the official about seminars for Leadership Development as organized for the members. Such activities does not appear to be for transforming members into leaders generally but for the members to become leaders to perform towards the causes of the club. Thus, here too, the amounts spent are for building and empowering a human resource to help perform the activities of the Club in a better way. The members pay fees to act as volunteers in the social causes. Besides, the club is not formed to build and empower or impart skills in leadership such that people would get themselves enrolled for acquiring the skills. By no means could it be said that the members pay fees to acquire services of training in leadership development.

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

**ORDER**

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

NO.GST-ARA- 33/2018-19/B-

100

Mumbai, dt.

28/8/2018

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

*Question :- Since the amount collected by individual Lions clubs and Lions District is for convenience of Lion members and pooled together only for paying Meeting expenses & communication expenses and the same is deposited in single bank account. As there is no furtherance of business in this activity and neither any services are rendered nor are any goods being traded. Whether registration is required?*

*Answer :- Answered is in Negative .*



*—st—*  
B. V. BORHADE  
(MEMBER)

*—st—*  
PANKAJ KUMAR  
(MEMBER)

**CERTIFIED TRUE COPY**

**Copy to:-**

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

*—st—*  
**MEMBER**  
**ADVANCE RULING AUTHORITY**  
**MAHARASHTRA STATE, MUMBAI**

**Note :-** An Appeal against this advance ruling order shall be made before The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15<sup>th</sup> floor, Air India building, Nariman Point, Mumbai - 400021.