

**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

(2) Shri Pankaj Kumar, Joint Commissioner of Central Tax

GSTIN Number, if any/ User-id		Un-Registered
Legal Name of Applicant		The Banking Codes and Standards Board of India
Registered Address/ Address provided while obtaining user id		C - 7, Bandra Kurla Complex, Reserve Bank of India Building, Bandra (East), Mumbai 400 051
Details of application		GST-ARA, Application No. 24 Dated 16.02.2018
Concerned officer		
Nature of activity(s) (proposed / present) in respect of which advance ruling sought		Collecting Annual Membership Fees and registration fees from its Members i.e. Scheduled Banks for the Corpus Fund and for spending on its objects and office expenses.
A	Category	Service Provision
B	Description (in brief)	Description of the Business is detailed below.
Issue/s on which advance ruling required		(v) determination of liability to pay tax on any goods or services or both (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 The Banking Codes and Standards Board of India, the applicant, seeking an advance ruling in respect of the following question :

*Whether GST is liable to be paid on the contribution made by Members towards "Annual Membership Fees and registration fees" to the Corpus Fund of BCSBI and recurring expenditure being incurred.*

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 RELEVANT FACTS HAVING A BEARING ON THE QUESTION(S) RAISED:**

**FACTS:**

1. The Applicant, Banking Codes & Services Board of India is a Society registered under the Societies Registration Act, 1860 and is also registered as a "Public Trust" under the Maharashtra Public Trust Act, 1950. The Applicant Board was formed in the year 2006 by the Reserve Bank of India (RBI) in pursuance of the Report of the Taraporewala Committee for the purpose of creating awareness and ensuring the correct following of the Codes and Standards for Services by the Banks in India. For the first 5 years i.e. from 2006 to 2011, it was fully funded by the Reserve Bank of India and the Applicant started to raise its own Corpus Fund for its activities from the Member Banks from 2007 by way of Annual Subscription Fees depending on the Gross Domestic Assets of the member Bank.  
From the year 2010-11 to 2014-15, the RBI has funded the Applicant Board to the extent of the shortfall between the expenditure and interest income of the Corpus.  
The Annual Subscription is collected only to run the day-to-day activities in the interest of Consumer Protection. Major part of the expenditure is spent on creating consumer awareness of their rights and the balance is towards overhead and salaries. No service is provided by the Applicant to the Member Banks. The Membership is voluntary. However, the Member Banks are required to follow the Codes mandatorily.  
The Annual Subscriptions collected are directly credited to the Corpus and capitalized. The entire operations are carried out only through the interest income and the Corpus is left untouched at present.
2. Most of the Scheduled Banks are members of the Applicant and they pay the required Registration Fee and Annual Membership Fees towards the Corpus Fund of the Board as per the Gross Domestic Assets of the Member Bank. This contribution of the Member Banks, which is collected by way of Annual Membership Fees and registration fee is deposited in Banks and only the interest of this deposit is used at present for carrying out various activities for its Member Banks as detailed below:

**THE ACTIVITIES OF THE APPLICANT:**

- i. To plan, evolve, prepare, develop, promote and publish voluntary comprehensive Codes and Standards for Banks, for providing for fair treatment to their customers.
- ii. To function as an independent and autonomous watchdog to monitor and to ensure that the banking Codes and Standards voluntarily adopted by Banks are adhered to in true spirit by Banks in delivering the services, as promised, to their customers.
- iii. To conduct and undertake research of the Codes and Standards currently in vogue in and outside India.
- iv. To enter into covenants with Banks on observance of the codes and standards and for that purpose to train employees of such Banks about the Banking Codes.
- vi. To advertise and publish promotional literature in newspapers and otherwise about the Codes and Standards for the guidance and knowledge of the public through Web site, advertisements in the newspapers, magazines, journals, TV/Radio, hoardings or any other mode which the Society may deem fit.
- vii. To take up specific assignments, if any, in the areas coming under the Society's objects as projects, turnkey solutions or on any other terms of contracts with in-house resources or with the participation of outside agencies in order to fully implement the Code.
- viii. To organize teaching and training courses, conferences, seminars, lectures and similar other activities relating to the Codes and Standards or implementation of the said Codes and Standards.
- ix. To publish journals, reports, pamphlets, books, booklets, research papers in furtherance of the objects of the Society.
- x. To maintain close contacts with Indian Banks' Association, other similar institutions, Boards & organizations having similar objects or allied objects by way of subscription, enrolment as a member thereof, financial or other kind of assistance, collaboration, cooperation and in any manner as the Society may deem fit.
- xi. To initiate, establish and participate in collaborative activities with other institutions/ organizations having similar objects within and outside the country.
3. The Applicant raises annual invoices upon its member banks for contributing to the Corpus by way of Annual Membership Fees and registration fee out of which the Applicant carries out the various activities as detailed above.
4. Further, the moot question about the very taxability of the activity of the Applicant under the Goods & Services Tax arises on account of the following facts:
  - a. The definition of 'Supply' as per Section 7 of the Central Goods & Services Tax Act, 2017 and whether the activity of the same would be covered under the term 'Supply'.
  - b. The definition of 'Consideration' as per Section 2 (31) of the Central Goods & Services Tax Act, 2017 and whether the amount received by way of contribution to the Corpus from Member Banks would be covered under the term 'Consideration'.
  - c. The activity of the Applicant Board is squarely covered under the 'Principle of Mutuality'. The various High Courts and Tribunals have consistently held that the activity of Clubs & Associations for its own members does not amount to 'Service' and the moneys collected by way of Membership Subscription, does not amount to 'Consideration'.  
The 'Principle of Mutuality' has been held as a cogent ground for non-taxability of an activity across various taxes such as VAT, Sales Tax as well as Service Tax in several cases.  
The 'Principle of Mutuality' would, therefore, be applicable even in respect of applicability of Goods & Services Tax to the activity of the Applicant, which is akin to those, where the Honorable Courts & Tribunals have held identical activity to be non-taxable.





#### STATEMENT REGARDING INTERPRETATION OF LAW:

1. The Activity carried out by the Applicant does not fall within the definition of 'Supply' as per Section 7 of the CGST Act, 2017 nor under the definition of 'Business' as per Section 2 (17) of the CGST Act, 2017. The contribution collected does not fall within the definition of 'Consideration' as defined under Section 2 (31) of the CGST Act, 2017. Under the CGST Act, 2017 and the Rules made thereunder, GST is levied on Supply of goods or services or both.

Section 7 of the CGST Act, 2017 defines the term "Supply" as under:

#### **SUPPLY:**

"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) import of services for a consideration whether or not in the course or furtherance of business;
- (c) the activities specified in Schedule 1, made or agreed to be made without a consideration; and
- (d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II.

(2) Notwithstanding anything contained in sub-section (1), –

- (a) activities or transactions specified in Schedule III; or
- (b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, shall be treated neither as a supply of goods nor a supply of services.

(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 –

- (a) a supply of goods and not as a supply of services; or
- (b) a supply of services and not as a supply of goods."

From an analysis of the above definition of scope of the term "Supply", it is essential that there has to be a supply of goods or services by a person and that too for a consideration in the furtherance of business.

In this backdrop, the term 'Consideration' has been defined under Section 2 (31) of the CGST Act, 2017 as under:

#### **CONSIDERATION:**

"(31) "consideration" in relation to the supply of goods or services or both includes –

- (a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;
- (b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply;"

The term "Business" is defined in Section 2 (17) of the CGST Act, 2017 as under:

#### **BUSINESS:**

"(17) "business" includes –

- (a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;
- (b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);
- (c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;
- (d) supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;
- (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) admission, for a consideration, of persons to any premises;
- (g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;
- (h) services provided by a race club by way of totalisator or a licence to book maker in such club; and
- (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;"

A sum total of the analysis of the terms "Supply", "Consideration" and "Business" would make it clear that the activity of the Applicant does not fall under either of them, as discussed herein under:

#### **SUPPLY:**

It is clear from the definition of 'Supply' that firstly the same involves all forms of supply of goods or services. In this regard, there is no question of any goods in this case. As such, it is to be seen whether any service is provided by the Applicant. As already stated above, applicant is collecting Corpus Fund from Member Banks and the entire activity is related to public awareness about the codes & standards followed by member Banks. This entire activity, including the salaries of the staff is paid only through the interest earned at present from the Corpus Fund, which is capitalized.

There is no facility or benefit of any kind offered by the Applicant to Member Banks for their contribution to the Corpus Fund. Also, the entire activity of public awareness programmes and salaries is funded only through the interest earned by the Applicant at present. As such, there is no element of any supply by the Applicant to anyone including the Member Banks. The activity of the Applicant does not get covered under any of the Schedules I, II or III of the CGST Act, 2017 to constitute a





'Supply'. Basically, GST is leviable only on Supplies. Once any activity is not within the scope of supply, there cannot be levied any GST on the same.

#### CONSIDERATION:

The definition of 'Supply' clearly states that the supply of goods or services or both should be against 'consideration'. In this regard, the Applicant wishes to submit that the only income for the Applicant is by way of contribution to the Corpus collected from Member Banks in the form of Annual Subscription and registration fee. Further, the entire amount so collected is capitalised as 'Corpus Fund' and the activity is carried out only from the interest earned from such 'Corpus Fund' at present. In view of the same, there is no 'Consideration' collected against which any supply of service is provided to the Member Banks. It is their own fund, which is used for creating public awareness and consumer guidance/protection programmes regarding their banking rights.

#### BUSINESS:

The Applicant is not doing any activity in the nature of any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity so as to constitute 'Business'. Further, even if we consider clause (e) of the definition of 'Business' i.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", then too, the activity of the Applicant is not covered in as much as there is no any kind of facility, benefit or service given to the Member Banks by the Applicant. The entire fund collected by way of contribution from Member Banks is towards the Corpus and only the interest earned from this Corpus is used for public awareness programmes and day-to-day expenses of the Applicant Board. Thus, there is no activity, which amounts to 'business' to attract GST.

#### 1. The entire activity of the Applicant is squarely covered under the 'Principle of Mutuality' and not exigible to GST:

The Applicant is registered as a 'Charitable Institute' and there is no activity such as a 'Supply' or 'business' carried out by them, as discussed above. However, even in cases, where Clubs and Associations have collected subscriptions from their members and have provided facilities to such members, various High Courts and Tribunals have held such activities not eligible to Tax on the Principle of Mutuality. Principle of Mutuality is guided by the gospel that "No man can trade with himself; he cannot make, in what is its true sense or meaning, taxable profit by dealing with himself". Mutuality principle offers a tax shelter, as long as its character of a mutual association is retained, with its income not tainted by commerciality. A formal organization indicating mutuality as between members with bye-laws spelling out mutuality may, however, be necessary as proof of claim to mutuality either as a society or a company registered under Section 25 of the Companies Act, 1956, or even as managed by a public trust, with such activities primarily intended to be confined to its members.

#### What is Principle of Mutuality?

Often, we come across situations where a group of people forms an association (could be formal or informal) and pool in their surplus income in the association's common fund. The fund so collected is then used for the benefit of the members when needed.

Take for e.g. where the members associate themselves together for the purpose of insuring each other's life on the principle of mutual assurance, that is to say, they contribute annually to a common fund out of which payments shall be made, in the event of death, to the representatives of the deceased members.

Thus, should this monies received by the member be taxed? The answer is No, as principle of mutuality would be applicable.

This doctrine rests on the principle that a person cannot make a profit from himself. An amount received from oneself is not regarded as income and is therefore not subject to tax. In short, since there is no commercial element impeded in such transaction, they are exempted from being taxed.

Even in circumstances where surplus money is raised than what is needed to be pursued for the common purpose it would simply mean be an increase of the common fund and hence would neither be considered as income nor it would be taxable.

#### Essential Conditions of the Principle of Mutuality:

A. That there must be a complete identity between the contributors and participators.

B. The actions of the participators and contributors must be in furtherance of the mandate of the association.

C. There must be no scope of profiteering by the contributors from a fund made by them which could only be expended or returned to themselves. Based on these conditions and relying on a number of Indian and foreign case laws the Apex Court went ahead to determine whether the Associations or clubs functioned within the four boundaries of the above mentioned principal conditions of the doctrine of mutuality. In fact, the Principle of Mutuality applies to all taxes i.e. Income Tax, VAT/ Sales Tax and Service Tax, alike.

The more important case laws are as below:

Principle of Mutuality was considered in C. I. T. V Bankipur Club 1998 (109) STC 427 (SC). These principles are applicable and have been applied by the Calcutta High Court in Saturday Club Ltd. (2005 (180) E.L.T. 437 (Cal.)) as concurred to in Dalhousie Institute (2005 (180) E.L.T. 18 (Cal.)). (EXHIBIT A-1 to A-3).

**2012 (26) S.T.R. 401 (Jhar.) IN THE HIGH COURT OF JHARKHAND AT RANCHI, Prakash Tatia, CJ. and Aparesk Kumar Singh, J. RANCHI CLUB LTD. Versus CHIEF COMM. OF C. EX. & S.T., RANCHI ZONE**  
**W.P. (T) No. 2388 of 2007, decided on 15-3-2012**

Club - Incorporated as Company and formed on principle of mutuality - Liability to Service tax for services utilised by members of club, viz. mandap keeper, etc. - HELD : In view of mutuality, if club provides any service to its members, it is not a service by one legal entity to another, and is not liable to Service tax - Explanation to Section 65 of Finance Act, 1994 that 'taxable service includes any taxable service provided or to be provided by any unincorporated association or body or persons to a member', found to be similar to Explanation-1 to Section 2(n) of Madras General Sales Tax Act, 1959 including within definition of sale any transfer of property by club to its members, considering which Apex Court in Young Men's Indian Association (1970 (1) SCC 462) had held supply of preparations by club to its members was not a sale as there was no transfer of property from one to another, and even though club had distinct legal entity, it was acting only as an agent for its members - Sections 65(66) and 65(67) of Finance Act, 1994. [para 18].

Sale and service - Nature of - Sale entails transfer of property whereas service does not - However, both transactions requires





existence of two parties - Sale requires seller and buyer, and Service requires service provider and service receiver. [para 18]  
**Petition allowed**

**2013 (31) S.T.R. 645 (Guj.) IN THE HIGH COURT OF GUJARAT AT AHMEDABAD, Ravi R. Tripathi and R.D. Kothari, JJ, SPORTS CLUB OF GUJARAT LTD. Versus UOI, Special Civil Application Nos. 13654-13656 of 2005, decided on 25-3-2013**

Club - Finance Act, 1994 - Sections 65(25a), 65(105) (zzze) and 66 - Service Tax on club rendering service to its members - HELD : It was ultra vires and beyond legislative competence of Parliament - There was no loss of mutuality of club members even if club was incorporated under Companies Act, 1956 - Ranchi Club Ltd. [2012 (26) S.T.R. 401 (Jhar.)) applied - Department's plea that they have not accepted this judgment, rejected - Persuasive value of this judgment was not lost, more so because it had relied on a Full Bench decision of High Court. [paras 7, 7.1, 8].

Precedent - Judgment of High Court - Relying on decision of a Full Bench of its own High Court - Its persuasive value is not lost for other High Courts merely because it was accepted by Department. [para 7].

**Petitions allowed**

**2009 (14) S.T.R. 171 (Tri. - Ahmd.) IN THE CESTAT, WEST ZONAL BENCH, AHMEDABAD, [COURT NO. II] Ms. Archana Wadhwa, Member (I) and Shri B.S.V. Murthy, Member (T), AHMEDABAD MANAGEMENT ASSOCIATION Versus COMMR. OF S.T., AHMEDABAD, Final Order No. A/44/2009-WZB/AHD, dated 27-11-2008 in Appeal No. ST/118/2007.**

Commercial Training or Coaching service - Charitable trust - Profits earned cannot be distributed among members of appellant - Surplus to be given to similar body on dissolution - Members required to contribute towards liability but no share of surplus given nor any dividend given - Memorandum of association showing appellant not a commercial concern - Programmes conducted in the nature of continuing education - Objective is professional development and not to impart skills for particular job or examination - Programmes not covered under commercial training or coaching - Appellant not covered under relevant service - Sections 65(26), 65(27) & 73 of Finance Act, 1994. [paras 4.5, 4.7, 4.10].

Club or Association service - Receipts without return - Member not entitled to any specific service in return - Institutions also become members - Membership fee to be paid without expecting any return - Revenue not brought out the services or advantages received by members on paying fees or other amount - Service tax not leviable on amounts received from members, member-institutions and trade - Sections 65(25a) and 73 of Finance Act, 1994. [paras 4.11, 4.12].

Convention service - Commercial concern - Service tax liability attracted only if Convention service rendered by commercial concern prior to 1-5-2006 - Impugned demand pertaining to period prior to 1-5-2006 - Appellant held as not a commercial concern while holding non-liability under Commercial Training or Coaching service - Demand not sustainable under Convention service for impugned period - Sections 65(32) and 73 of Finance Act, 1994. [para 4.13].

**Appeal allowed**

The Tamilnadu Sales Tax Tribunal in Cosmopolitan Club V. State 1999 (115) STC 183 has summarized the principles in the context of the "clubs". In all cases it was held that "In the case of clubs, it cannot be treated as a trader and the commercial venture is totally absent".

As regards the Principle of Mutuality in Service Tax matters, which is now replaced by GST, the issue is now pending before the Honorable Supreme Court of India (Constitution Bench). As such, till such time as the issue is settled by the Apex Court, the Principle of Mutuality should be extended to the levy of GST and no GST is leviable on the activity of the Applicant under the Principle of Mutuality even under the CGST Act, 2017 and the Rules made thereunder.

#### **STATEMENT REGARDING INTERPRETATION OF FACTS:**

The following facts pertaining to the Applicant's organization and its activities are relevant to consider the activity of the Applicant as not eligible to GST:

- The Applicant Board is registered as a "Charitable Public Trust" under the Maharashtra Public Trust Act, 1950 and also registered as a "Society" under Societies Registration Act, 1860.
- For the initial 5 years from 2006 to 2011, the Applicant was totally funded by the Reserve Bank of India. Thereafter, the RBI was funding the Applicant to the extent of short fall between expenditure and interest income till 2014-15.
- The income of the Applicant Board is only in the form of Corpus Fund from Member Banks, collected as Annual Subscription & Registration fees and which is totally deposited in the bank and capitalized.
- The entire activities of the Applicant Board as well as the day to day expenses are met only through the interest income of the Corpus Fund at present.
- The sole purpose of the Applicant Board is to ensure to adhere to the codes and standards for the service by Banks as per the code which are drafted by applicant. For this, the Applicant Board conducts Public Awareness Programmes across India. The expenses of which are from the interest earned from corpus fund at present.
- No any kind of benefit or facility is extended to the Member Banks by the Applicant Board.

In view of the above facts, the Applicant is of the view that their activity is not covered under "Supply" and the contribution to the Corpus Fund received by them does not fall within the purview of "Consideration". Also, in identical cases of taxation under various statutes such as Income tax, VAT/Sales Tax and Service Tax the various High Courts and Tribunals have held that no tax is leviable on services provided by Associations and Clubs to its own Members out of the subscription collected, on the Principles of Mutuality. The above facts, therefore, support the contention of the Applicant Board that they are not liable to Goods and Services Tax.

#### **Additional Submission in Advance Ruling Application for "Banking Codes And Standards Board of India"**

We are thankful for the patient hearing given on 25-04-2018. Our Clients have made submissions in their Advance Ruling Application pertaining to their activity i.e. collecting Membership Fees from all its Member Banks, which is neither falling under the definition of "Supply" nor under "Consideration" or under the definition of "Business" as provided under CGST Act, 2017, as explained in detail during the said hearing dated 25-04-2018.

To elaborate the said legal provisions along with the factual matrix pertaining to our Clients "Banking Codes and Standards Board of India" (hereinafter referred to as "BCSBI" for the sake of brevity), as desired, we make the additional written submissions, on the below mentioned points:





1. **THE ACTIVITY OF BCSBI IS NOT FALLING UNDER THE DEFINITION OF "SUPPLY":**

**"Supply:**

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, license, rental, lease or disposal made or agreed to be made **for a 'consideration' by a person in the course or furtherance of 'business'.**"

It may be noted that only the relevant portion of the definition of "Supply" is reproduced hereinabove. The remaining part of the definition is not relevant in the case of the Applicant.

The definition emphasis on 3 aspects. These 3 aspects are as under:

- i. Supply should be for a 'Consideration'.
- ii. It is by one person to another.
- iii. It should be in the course of or in furtherance of 'Business'.
- i. **SUPPLY SHOULD BE FOR CONSIDERATION:**

The term 'Consideration' is defined under Section 2 (31) of the CGST Act, 2017. The relevant portion is as under:

**"Consideration:**

Section 2.(31) "consideration" in relation to the supply of goods or services or both includes--

(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, **the supply of goods or services or both, whether by the recipient or by any other person** but shall not include any subsidy given by the Central Government or a State Government;"

The definition of "Consideration" thus provides that the payment should be made in respect of the "Supply" from one person to another. As such, the definition of "Consideration" is not independent and should be read alongwith the definition of "Supply", wherein the transaction is between two "Distinct Persons". As such, if the transaction under question does not fall within the ambit of "Supply", then the same cannot also come under the purview of "Consideration" as the "Consideration" has to be in consonance with Supply.

In the case of the Applicant there is no element of "Supply" as envisaged under CGST Act, 2017 as there is no transaction constituting sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made by the Member Banks to BCSBI, the Applicant herein.

Further, in the case of the Applicants, they are not receiving any "Consideration" from their "Member Banks". The Applicant issues advise of "Annual Membership Fee" to the Member Banks. Para 1 & Para 2 of the Letter written to Bank, is reproduced as under:

*"1. As you may be aware, the funding support from RBI which was available to BCSBI since its inception has ceased from 2016-17 as per arrangement agreed earlier. Accordingly, from the year 2016-17, BCSBI has to be self sufficient for meeting its expenses. We are pleased to inform you that with co-operation from all its Members, BCSBI has been able to meet all its expenses out of its own income since last two years.*

*2. In terms of Rule 5.1 of the Banking Code Rules, 'Membership fees payable by Members shall be in proportion to their gross domestic assets as on March 31, of the previous year and shall be of such amount, as the Governing Council may determine as payable by each Member. The Governing Council (GC) in its 103rd Meeting held on 31.01.2017 reviewed the financial position of BCSBI and has decided to retain the total membership subscription for 2017-18 at last year's level i.e. Rs.800 lakh. Further, as the subscription is calculated based on individual member's gross domestic assets as on 31.03.2016, the overall "Rate" for computing the Annual Membership Fee for the year 2017-18 has reduced to \*\*\*\*\*% (previous year's rate was \*\*\*\*\*%). **This annual membership amount will be credited to the Corpus Fund of BCSBI as hitherto.**"*

The Applicant, BCSBI collects contribution from its Member Banks, which is credited to their Corpus Fund. The interest earned on this amount is the only income of BCSBI (as mentioned in Para 1 above) which is spent for the activities of the BCSBI as per guidelines issued by the Reserve Bank of India.

BCSBI issues this letter and while transferring the money to BCSBI the Banks gives a specific direction to BCSBI, which is as under:

**"Annual Membership fees of BCSBI for the year 2017-18**

1. We advise having remitted an amount of Rs.....(Rupees.....only) being annual membership fee for the year 2017-18 through RTGS / NEFT (UTR No.----- dated -----). **As in the past, it is desired by us that the entire contribution made by our bank to the Banking Codes and Standards Board of India in the form of membership fees be credited to the Corpus of the Banking Codes and Standards Board of India.**

The Income Tax PAN No. of our bank is-----.

2. We would like to clarify that the direction for crediting the membership fees for 2017-18 to BCSBI's corpus and suitably investing the same in such manner that income from such investments should be sufficient to fund the future activities of the Banking Codes and Standards Board of India. Accumulating the corpus funds and generating investment income there from would thus enable BCSBI to be financially independent in public interest for meeting its objects. "

Firstly, it can be seen that the contribution of each member Bank is credited only to the Corpus Fund of BCSBI and the interest earned on such contribution is used for the activities of BCSBI. The "Corpus Fund" is needs to be understood in the right perspective, which will establish that the contribution to "Corpus Fund" by each Member will not constitute as "Consideration", in any manner and the same cannot be taxed under GST.

**CORPUS FUND:**

Corpus Fund is the fund generated and kept for the existence and sustenance of the organization. For a charitable organization, Corpus Fund are of paramount importance. Normally a corpus fund denotes a permanent fund kept for the basic expenditures needed for the administration and survival of the organization. The corpus fund is generally not allowed to be utilized for the attainment of the purposes, but the interest/dividend accrued on such fund can be utilized for its activities as well as accumulated.

Corpus funds are generally created out of corpus donation. A donation will be treated as corpus donation only if it is accompanied by a specific written direction of the donor. In the absence of any written direction of the donor, a contribution or grant cannot be transferred to Corpus Fund but for all practical purposes corpus fund is a permanently closed fund with no strings or restriction for future application attached.





As such, it can be seen that Corpus Fund, for BCSBI, which is a Public Trust/Charitable Organization, is its "Capital", which cannot be used for any of its functions. It is only the interest, if any accrued on the same, which can be used for meeting the objects of the Trust. It is in the form of a Donation and Donee i.e. 'Member Bank' gives specific direction that the contribution given by them, entirely, to be credit to the Corpus (Capital) of BCSBI.

As such, this amount cannot be termed as "Consideration" for BCSBI as they have no control on the said amount like in the manner they wish to use the said contribution. In fact, the Corpus Fund cannot be used for fulfilling the Objects of the Trust but the same has to be kept intact for all times as being "Capital" of the Trust.

Sample Copy of BCSBI Letter to Banks for Contribution and Direction of the Banks to imply their Contribution to "Corpus Fund" is annexed and marked as (EXHIBIT A-1 & A-2).

The Annual Report of the Applicant i.e. BCSBI of the F.Y. 2016-17, have already been submitted during the Final Hearing which was held on 25-04-2018, which establishes that the Contributions received from Banks is not forming part of income of the Applicant i.e. BCSBI.

In normal parlance if any person is receiving any consideration from another for any kind of "Supply", can the Service Recipient have any control how the consideration paid by him to be used by the Supplier of Service or goods, as the case may be? The answer is a rhetoric "NO". However, in this case, the Contribution made by the Banks is not Consideration at all but it is a Capital Fund/Corpus Fund of the Trust, which belongs to the Member Banks and the Member Banks have a say in the manner in which the said contribution should be or should not be used. The Applicant submits its compliance before Income Tax Department and Charity Commissioner Office, as well.

As such, it is clear from the above submission that there is no element of "Consideration", in the collection of Contribution by Member Banks to the "Corpus Fund" of Applicant Trust i.e. BCSBI.

ii. **IT IS TO BE BY ONE PERSON TO ANOTHER:**

The detailed submission on this issue has been made in the Advance Ruling Application. It is noteworthy that the Applicant & It's Member Banks are not separate from each other and they are the species of mutual undertaking, as discussed in detail in Supreme Court Order in Bankipur Club Ltd, which is decided in the year 1997. The Hon'ble Supreme Court has relied upon many English Judgments while reaching to the conclusion of "Principles of Mutuality". The said principle has its relevance in all the taxations laws i.e. Income Tax, Service Tax & VAT and has universal application. "Principle of Mutuality" has its implication in all statute as the foundation fact as there is no existence of two separate legal entities. The Applicant has relied upon various Judgments beginning from EXHIBIT A-1 to EXHIBIT B-3 and also certain latest Service Tax Judgments have been submitted during the hearing. The issue is no more res integra as decided by Hon'ble Supreme Court, various High Courts and Tribunals throughout India for all taxing Statutes. Mere change in taxing Statute cannot make change in fundamental concepts.

iii. **IT SHOULD BE IN THE COURSE OF OR IN FURTHERANCE OF BUSINESS:**

For any activity to be considered as "Supply", these 3 elements have to be fulfilled. From the submissions made above, it is clear that there is no "Consideration" involved in this activity and there is no existence of "2 persons", who will be "Supplier" & "Receiver". The third criteria is that if any activity is to be termed it as a "Supply", it has to be in the course of Business or in the furtherance of "Business". The definition of "Business" has specific mention of activities of a "Club" in a particular manner, to be considered as "Business". **Firstly, the rational of it being termed as "Business" is incorrect and is Unconstitutional as it is a cardinal Principle of Law that no man can trade with himself.**

However, without going to the nitty-gritties of Constitutional validity of the definition of "Business" to the extent it add the provision of Club to its Members, the Applicant wish to state and submit as under:

"Section 2(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;"

The detailed submission is made on this aspect in the Application, as well. Any Supply is meant to be in the course of business or furtherance of the same. As such, the definition of "Business" is very vital. In case of the Applicant Section 2 (17) (e) will be applicable. It provides that if any provision is made by Club, Association or similar Body, which should be for Subscription or other consideration and for provision of any facility or benefit to its Members.

In this backdrop, the nature of activity of Applicant and facts of the issue at hand are to be appreciated, which are as under: The Applicant is not collecting any consideration from its Members, which has been established, above.

Further, the Applicant is not providing any facility or benefit to its Members. The Applicant is an Association, which frames Codes of Bank's commitment to Customers for its Member Banks. If any Bank Opts to be a Member (this Membership is Optional and not mandatory to all Banks) of the Applicant they have to adhere to the Codes and guidelines as prescribed by the Applicant. The RBI is a Governing Body on the entire Banking Sector in India. RBI provides for guidelines, which are mandatory on each and every Bank i.e Co-Operative Bank, Scheduled Banks, Non-Scheduled Banks, Nationalized Banks, Foreign Banks who have their Branches in India. The Applicant prepares the Codes of Banks commitment to Customers, which is in consonance with the basic frame line provided by the RBI related to consumer protection. While becoming a Member of the Applicant, the Banks undertake to adhere to the Codes of Banks commitment to Customers and guidelines prescribed by the Applicant. These guidelines are for the benefit of people who undertake any transaction with banks such as their Account Holders etc. This is an obligation on the Banks and the Applicant Association is not providing for any benefit or facility to them being a Member, in any manner. The Applicant Association undertakes research and related work to prepare the Codes of Banks commitment to Customers that are mandatory on their Member Banks. There is no provision of any benefit or facility provided by the Applicant to its Members.

From the above submissions, it is amply clear that the activity of the Applicant does not fall under the ambit of "Business", at all.

In view of the detailed submission made herein above and the submission made in the Application and the submissions made during the hearing in the matter, it is evident that the activity of the Applicant does not fall under the definition of "Supply" by any parameter and as such the Applicant are not required to obtain registration for such activity.

In this backdrop, the issues which are requested to be addressed by the Advance Ruling Authority are as under:





1. Whether the activity of BCSBI i.e. The Applicant is falling under the definition of "Supply", as per Section 7 of the CGST Act, 2017?
2. Whether the contribution made by Member Banks to "Corpus Fund" can be considered as "Consideration", as per Section 2 (31) of the CGST Act, 2017, when the said is not "Income" of the Applicant?
3. Supply is meant to be between 2 persons, whether the Applicant Association/Trust and Its Members are legally distinct from each other?
4. Whether "Principle of Mutuality" hold good in GST?
5. Whether the activity of Applicant is to be termed as "Business" as provided under Section 2 (17) (e) of the CGST Act, 2017?

It is respectfully submitted that in view of the submissions made (in the Application, during the Personal Hearing and on the basis of the above additional submissions) on the facts of the case and the legal provisions related thereto, the Advance Ruling Authority may decide the above framed/referred questions and oblige.

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

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

The report in this case was called from Principal Commissioner of Central Tax, Mumbai East and Commissioner of Goods and Service Tax, Maharashtra State, Mumbai, as the applicant is un-registered. The report as received from Sh. Anil Khude, Asstt. Commr. of S.T. Mumbai received is as follows:-

Going through the submission made by M/s. The Banking Codes And Standards Board Of India (hereinafter called as BCSBI) It is observed that the BCSBI was formed in the year 2006 by the RBI and initially it was fully funded by RBI, however from 2007 the BCSBI started collecting annual subscription fees from the member banks.

BCSBI is registered under the Societies Registration Act, 1860 and also as a public trust under the Maharashtra Public Trust Act, 1950.

BCSBI undertake various activities in relation to member banks. Some of them from angle of supply of services/goods can be enumerated as follows:-

1. To advertise and publish promotional literature in newspapers and otherwise about the Codes and Standards for the guidance & knowledge of the public through Web site, advertisements in newspapers, magazines, journals, TV/Radio, hoardings or any other mode which the Society may deem fit.
2. To organize teaching and training courses, conferences, seminars, lectures and similar other activities relating to the Codes and Standards or implementation of the said Codes and Standards.
3. To publish journals, reports, pamphlets, books, booklets, research papers in furtherance of the objects of the Society.

BCSBI raises annual invoices upon its member banks and intern the member banks pays annual membership fees in monetary terms.

On the backdrop of the above it is evident that the BCSBI fulfills the ingredients as per the relevant definition under section 2 as follows:

- **Section 2(84) "person" includes --**
- society as defined under the Societies Registration Act, 1860;
- trust; and
- **Section 2(17) "business" includes--**
- **any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;**

#### Section 7

- Scope of \_\_\_\_\_ of \_\_\_\_\_ supply.
- (1) For the purposes of this Act, the expression "supply" includes--
- all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal
- made or agreed to be made for a consideration by a person in the course or furtherance of business;

#### Section 2(31)

"consideration" in relation to the supply of goods or services or both includes --

- any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of,
- the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given
- by the Central Government or a State Government;

In this submission the BCSBI emphasized the principle of mutuality and on the basis of which pleaded that its activities are not taxable under the GST Act. It is to be noted the principle of mutuality is based on the doctrine that the person cannot make profit from himself. The essence of this principle of mutuality is present only in situation wherein the group of persons forms an association (formal or informal) and pull there surplus income in the associations common fund, the fund so collected is than use for the benefit of the members when needed.

In the present case for BCSBI the member banks have not come together pulling their resources to form the board like BCSBI to be used for the benefits of the members, there is no compulsion under any enactment for the member banks to become the member of BCSBI. The member banks may voluntary live the membership at any time. It is thus evolved that the principle of mutuality is not squarely applicable in present case. The member banks are formed under The Banking Regulation Act, 1989 and has a separate legal entity.

Therefore it can be concluded that the BCSBI is a 'Person' doing 'Business' of 'Supply' of services for monetary 'Consideration' received in the form of subscription. Hence the supply of service by BCSBI is eligible to GST.





#### 04. HEARING

The case was taken up for preliminary hearing on 20.03.2018 when Ms. Kirti S. Bhoite, Advocate along with Sh. Phanraj Jain, C.A. and Sh. H. S. Sharma, Sr. V.P. appeared and made submissions orally as per details in the application and requested for admission of their ARA. No person was present from the side of Jurisdictional GST office.

The application was accepted and was scheduled for final hearing on 04.04.2018 but the applicant requested for adjournment in the matter for personal reasons. Shri Jasbir Singh, Inspector appeared and stated that they had not received copy of application, however copy of notice was received by them. The copy of application was given and he was requested to ensure appearance or submission by next date of hearing. The final hearing in the matter was held on 25.04.2018. Ms. Kirti S. Bhoite, Advocate along with Sh. Phanraj Jain, C.A. and Sh. H. S. Sharma, Sr. V.P. appeared and reiterated the contention as made in their ARA and submissions made therewith. Sh. Anil Khude, Asstt. Commr. of SGST Mumbai appeared and stated that they would be making submissions within one week. The applicant also requested to grant them further time till i.e. on 02.05.2018 for making further submissions in the matter which was considered. The applicant made further submissions on 02.05.2018.

Certain further clarifications were sought from the applicant which were received by this authority on dated 30.07.2018.

#### 05. OBSERVATIONS

We have gone through the facts of the case. The main issue before us is as to whether GST is liable to be paid on the contribution made by Members towards "Annual Membership Fees and registration fees" to the Corpus Fund of the applicant and recurring expenditure being incurred by the applicant.

The primary issue before us is as to whether the applicant is providing supply of services to their members and if so, is there any consideration received by them for such supply of services/goods. We clearly find that in the subject case at hand there is no supply of goods. Hence the discussions would be restricted to supply of services only.

Section 7 of the CGST Act, 2017 defines the term "Supply" which is as under:-

"Section 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) .....

(c) the activities specified in Schedule 1, made or agreed to be made without a consideration; and

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

(2) Notwithstanding anything contained in sub-section (1), –

(a) activities or transactions specified in Schedule III; or

(b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, shall be treated neither as a supply of goods nor a supply of services.

(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 --

(a) a supply of goods and not as a supply of services; or





(b) a supply of services and not as a supply of goods."

In the present case first we would be required to ascertain whether the applicant is providing any services to the member Banks. We find that the term 'supply' is an inclusive definition and has to be given a wide connotation. It cannot be restricted only in a narrow compass as lease, rental, barter, etc. We find that the applicant is undertaking various activities which are as under:

- i. To plan, evolve, prepare, develop, promote and publish voluntary comprehensive Codes and Standards for Banks, for providing for fair treatment to their customers.
- ii. To function as an independent and autonomous watchdog to monitor and to ensure that the banking Codes and Standards voluntarily adopted by Banks are adhered to in true spirit by Banks in delivering the services, as promised, to their customers.
- iii. To conduct and undertake research of the Codes and Standards currently in vogue in and outside India.
- iv. To enter into covenants with Banks on observance of the codes and standards and for that purpose to train employees of such Banks about the Banking Codes.
- v. To advertise and publish promotional literature in newspapers and otherwise about the Codes and Standards for the guidance and knowledge of the public through Web site, advertisements in the newspapers, magazines, journals, TV/Radio, hoardings or any other mode which the Society may deem fit.
- vi. To take up specific assignments, if any, in the areas coming under the Society's objects as projects, turnkey solutions or on any other terms of contracts with in-house resources or with the participation of outside agencies in order to fully implement the Code.
- vii. To organize teaching and training courses, conferences, seminars, lectures and similar other activities relating to the Codes and Standards or implementation of the said Codes and Standards.
- viii. To publish journals, reports, pamphlets, books, booklets, research papers in furtherance of the objects of the Society.
- ix. To maintain close contacts with Indian Banks' Association, other similar institutions, Boards and organizations having similar objects or allied objects by way of subscription, enrolment as a member thereof, financial or other kind of assistance, collaboration, cooperation and in any manner as the Society may deem fit.
- x. To initiate, establish and participate in collaborative activities with other institutions/ organizations having similar objects within and outside the country.

We find that these activities are undertaken only for and in respect of the Member Banks, who have voluntarily become their members. Hence their primary objective is to guide the public and publicise about the Codes and Standards and Commitment of their Member Banks. Hence we find that the applicant is firstly developing and publishing and then publicizing Banking Codes and Standards for the banks who are their members and after this, they are monitoring its compliance, undertaking further research with regard to codes and standards and are also training bank employees about these codes.

We also find that the applicant is also advertising and publishing promotional literature in newspapers and are also organizing, teaching and training courses, conferences, seminars and lectures and also publishing journals, pamphlets, reports, books and booklets in this regard.

Thus we find that the applicant are basically drafting certain codes and standards and are directly as well as indirectly ensuring that member banks adhere to these standards and codes and thus provide banking services as per these codes and standards and thus the credibility of services of member banks increases if they are able to provide services as per codes and standards as drafted for adherence by the applicant.





If it had not been for these common codes and standards drafted by the applicant, all the banks would have been required to formulate their own codes and standards for their services to their customers. Thus we find that a very crucial function which the banks would have been required to perform in one way or the other is being performed by the applicant on their behalf and for their benefit in terms of winning confidence of customers about their services. And because of this activity of the applicant it can be stated that it would be one of the factors that would probably lead to good business for the Bank in terms of more clients. Publishing literature, advertisements, etc representing their member banks implies that the public at large are being made aware about their member banks, which would tantamount to supply of service to the said member banks.

Secondly we are required to ascertain if these services are for a consideration or otherwise as we find that the second part of the definition says that ".....all forms of supply of goods or services ..... for a consideration....."

For performing the said activities, the applicant requires funds which are collected by them in the form of Annual Membership Fees and registration fees. Even though as per their submissions these fees are not used by them, it is clear that the said fees which are termed by them as corpus fund are used to generate interest amounts which are further used for performing their activities. In other words if there is no fee there is no corpus fund and no interest payment which can be used to fund their activities which are in the form of supply of services to their member banks. Thus here there is no doubt that consideration is flowing from Banks to the applicant in the form of Annual Membership Fee and Registration Fee which are being utilized by the applicant for generating further income as found feasible by them. Thus the consideration is clearly in the form of Annual Membership Fee and Registration Fee.

The third part of the definition says that "*all forms of supply .....for a consideration should be in the course or furtherance of business*". We find that the term "Business" is defined in Section 2 (17) of the CGST Act, 2017 as "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) .....

As per Section 2 (17) (e) of the Act, the applicant, who are registered under the Societies Registration Act, 1860 and can therefore be termed as a society, supplies service in the form of providing facilities or benefits to its Member Banks for a subscription (in this case Annual Membership Fees and registration fees). Such provision of facilities or benefits to its Member Banks, by the applicant is squarely covered under Section 2 (17) (e) of the GST Act. In their further submission, the applicant at one point has stated that "*Any supply is meant to be in the course of business or furtherance of the same. As such, the definition of "Business" is very vital in case of the Applicant Section 2 (17) (e) will be applicable*" and services provided by them to member Banks would be covered in definition of business as given in section 2(17) (e) of GST ACT. Thus there is





no doubt that their activity falls under the Section 2 (17) (e) as mentioned above.

It is clearly seen from their submissions that they are collecting Annual Membership Fees and registration fees from their member banks and one of the many activities conducted by them is framing Codes of Bank's commitment to Customers for its Member Banks. The very fact that they are framing Codes and Standards of Bank's commitment to Customers of the banks shows that they are into supply of services to their member clients who are banks and are thus promoting credibility of services of these banks to their customers. They have also submitted that membership to banks are optional which clearly implies that the Member Banks are not under any legal compulsion to become members. The obtaining of membership implies that the applicant would supply various services to Banks only on becoming members. Non-members would not be served by the applicant.

The applicant has submitted that RBI provides for guidelines, which are mandatory for each and every bank i.e Co-Operative Banks, Scheduled Banks, Non-Scheduled Banks, Nationalized Banks, Foreign Banks who have their Branches in India. The Applicant prepares the Codes of Banks' commitment to Customers, which is in consonance with the basic frame work in line provided by the RBI related to consumer protection, but this supply of service is only to member banks and not to banks who have not become members.

The applicant has also submitted that the Member Banks undertake to adhere to the Codes of Banks commitment to Customers and guidelines prescribed by the Applicant which clearly imply that adherence to codes and standards of the applicant gives further credence to the functioning and services of these banks.

We find that they have submitted that the RBI guidelines are for the benefit of people who undertake any transaction with banks such as their Account Holders etc. This is an obligation on the Banks and the Applicant undertakes research and related work to prepare the Codes of Banks commitment to Customers that are required to be adhered to, by the Member Banks. It may be mentioned here that all the Banks are obliged to follow the guidelines issued by RBI without exception and the applicant are framing codes and standards within the limits as set by RBI guidelines. Here the applicant has submitted that only those Banks who are their members will be facilitated and that too for a membership fee and annual fees. This is clearly in the form of benefit to Member Banks as opposed to non-member banks and these services are clearly with a view to enhance the credibility of their Banking services and therefore to grow their banking business.

The applicant has finally put forth a stand that their entire activity is squarely covered under the 'Principle of Mutuality' and not exigible to GST. As per their submissions and contentions that even in cases, where Clubs and Associations have collected subscriptions from their members and have provided facilities to such members, various High Courts and Tribunals have held such activities not eligible to Tax on the Principle of Mutuality, which is guided by the gospel that *"No man can trade with himself; he cannot make, in what is its true sense or meaning, taxable profit by dealing with himself"*.

We find that the applicant body was formed in the year 2006 and then went on to enlist Banks as members. This argument put forth by the applicant does not hold good for the present facts. In the subject issue the member banks have not come together to form the applicant body. The applicant body





had been formed by the RBI to prepare codes of commitment to customers of various banks and this activity is done by the applicant very selectively i.e. only to Banks who pay them some fees. The applicant is not performing any sovereign function. The essence of the principle of mutuality is present only in situations where a group of persons form an association and contribute to constitute income of the associations in the nomenclature of a common fund, which so collected is used for the benefit of the members. Here the member banks have not come together contributing their resources to form the board like that of the applicant and for the benefits of the members themselves. In the present situation there is no compulsion under any enactment for the member banks to become the member of the applicant since the membership of the applicant body is voluntary. Hence the principle of mutuality is not at all applicable in present case. It is also mentioned that Banks have been constituted as per The Banking Regulation Act, 1989 and are a separate legal entity from the applicant body. The Principal of mutuality says that a person cannot make profit from himself. It can be clearly seen that Banks in India have been in existence a lot prior to the year 2006, when the applicant body was formed for the purpose of creating awareness and ensuring the correct following of the Codes and Standards for Services by the Banks in India, but here the applicant is only creating awareness about their member banks and that too after collecting Annual Membership and Registration fees from the Banks.

With respect to the applicant's contention that "as regards the Principle of Mutuality in Service Tax matters, which is now replaced by GST, the issue is now pending before the Honorable Supreme Court of India (Constitution Bench). As such, till such time as the issue is settled by the Apex Court, the Principle of Mutuality should be extended to the levy of GST and no GST is leviable on the their activity even under the CGST Act, 2017 and the Rules made thereunder". We find that the applicant has proceeded on the assumption that there exists a principle of mutuality in their case. However, for reasons mentioned above we find that since the said principle does not exist in the case of the applicant, their request for extension of the principle to the levy of GST is not sustainable.

In view of the foregoing we find that the applicant is supplying services to their Member Banks, against a consideration received from them in the form of Annual membership fees and registration fees and their supply is in furtherance of business as defined under Section 2 (17) (e) of the Act. ("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").

06. In view of the 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-24/2017-18/B-

82

Mumbai, dt.

01.08.2018

*For reasons as discussed in the body of the order, the question is answered thus -*

Q. Whether the activity of BCSBI i.e. The Applicant is falling under the definition of "Supply", as per Section 7 of the CGST Act, 2017?

A. Answered in the affirmative.





Q. Whether the contribution made by Member Banks to "Corpus Fund" can be considered as "Consideration", as per Section 2 (31) of the CGST Act, 2017, when the said is not "Income" of the Applicant?

A. Answered in the affirmative.

Q. Supply is meant to be between 2 persons, whether the Applicant Association/Trust and Its Members are legally distinct from each other?

A. Answered in the affirmative in the present case as per detailed discussions in observations above.

Q. Whether "Principle of Mutuality" hold good in GST?

A. The "Principle of Mutuality" is non existent in the subject case.

Q. Whether the activity of Applicant is to be termed as "Business" as provided under Section 2 (17) (e) of the CGST Act, 2017?

A. Answered in the affirmative.



— sd —  
B. V. BORHADE  
(MEMBER)

— sd —  
PANKAJ KUMAR  
(MEMBER)

Copy to:-

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Chief Commissioner of CGST, Churchgate, Mumbai.

Appeal to:-

Appeal against this order would lie to The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15<sup>th</sup> floor, Air India building, Nariman Point, Mumbai – 400021.

**CERTIFIED TRUE COPY**

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