

BEFORE THE BENCH OF

(1) Smt. Sungita Sharma, MEMBER

(2) Shri Rajiv Jalota, MEMBER

GSTIN Number	271900000172ARV
Legal Name of Appellant	Rotary Club of Mumbai Nariman Point
Registered Address	Rotary Club of Mumbai Nariman Point, C/o, Aashish Chitlangia 9, Parekh Vora Chambers, 66, N.M. Road, Fort, Mumbai-400023
Details of appeal	Appeal No. MAH/GST-AAAR-20/2019-20 dated 12.09.2019 against Advance Ruling No. GST-ARA-142/2018-19/B-88 dated 13.08.2019
Jurisdictional Officer	Dy./Asstt. Commissioner CGST & C.Ex., Division IX, Mumbai South

PROCEEDINGS

(Under Section 101 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

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 provisions under the MGST Act.

The present appeal has been filed under Section 100 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 Rotary Club of Mumbai Nariman Point (herein after referred to as the "Appellant") against the Advance Ruling No. GST-ARA-142/2018-19/B-88 dated 13.08.2019.



### Brief Facts of the Case

1. "Rotary" is an International organization having clubs in 216 countries engaged in humanitarian and charitable services. These services are executed through various districts comprising of many Clubs. In order to facilitate the meetings and administration, reimbursements are collected from members. These amounts are then used for administration and meetings. In some cases, the amount so collected is likely to exceed Rs.20 lacs, being the threshold for registration under GST Act, 2017.
2. Clarification as regard to "Nature of Reimbursements".
3. There are three administrative layers;
  - i) Clubs in Rotary (like that of the appellants).
  - ii) District of Rotary: Comprises of many clubs, normally 100 & above where district policies for the clubs are formulated.
  - iii) Avenues of District: Comprises of various member from Rotary fraternity, who are head of various committees that conduct social activities.
4. Receipts of Rotary Club can be broadly divided into following categories: -
  - i). Club receiving Reimbursements from its members: These are purely collected to defray its expenditure on meetings and communications. No facilities/benefits are provided such as recreation, etc. by Individual clubs.
  - ii). District receiving its payments from Clubs to meet the expenses of Administration since one district comprises of more than 100 clubs.
5. These dues are towards:
  - (a) Postage, printing, communication etc. and
  - (b) Sending the fees to International Institution at USA 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 or benefits are provided such as recreation, etc. Thus, Appellant's prayer specifically relates to non-applicability of GST on:
    1. Club member fees
    2. District fees collected from Clubs &
    3. Any other payment being disbursed to Rotary International as annual contribution on behalf of the Members as no facilities/benefits are being provided.
6. A separate Administration Account is also being run which is being managed by yearly elected members, wherein based on certain estimation done at the commencement of the year, sums are recovered from all the members for expending the same for the weekly and other meetings and other petty administrative expenses incurred. The expenses incurred for the weekly meetings include the expenses for the location and light refreshments.



7. These meetings are held for all the members to meet from time to time to review existing activities for keeping a tab on the same and consider new projects for execution. It is in these weekly meeting that the charitable proposals are considered, discussed and approved or rejected for taking up as a likely cause for execution by the members. The projects already executed or underway are also discussed to keep a tab on the progress of a project or to ascertain the benefit that a particular project is yielding.
8. These contributions collected are spent by the end of the year and consistently there is a deficit which is generally borne by the Office Bearers for the said year in question or Members from their pockets for the weekly meetings or a meagre surplus. The Admin Account is being managed as if it is purely an agent of the members and no actual service is being extended to the members.
9. Furthermore, on perusal of the Constitution & Bye-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 mutually. 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.
10. For the purposes of the accounting of the said affairs of the Administration Account, the year is followed from 1<sup>st</sup> July to 30<sup>th</sup> June of the following year.
11. Office Bearers are all holding Honorary Posts and are holding such posts for a period of only 1 year, hence their address keeps changing each year. Our address, for correspondence is also office of another Honorary Office Bearer who has allowed us to use his address for communication.
12. Rotary International 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 donations/charity account are used exclusively for the purpose of donation/charity and no amount is utilized for administration purposes.
13. **The receipts in a Rotary Club Administrative account are majorly comprised of the following:**

**Receipts from Indian Member clubs**

- (i) Annual collection from members, (being based on the budget for the year, on the basis of collecting the sums under common pool for spending during the rest of the year)
- (ii) Entrance reimbursements from new member clubs (if any)
- (iii) Bank Interest (if any)

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

- i) Meeting Expenses
- ii) Printing of Circulars
- iii) Stationary



- iv) Postage
  - v) Greetings
  - vi) Reimbursements payable to International office
  - vii) Reimbursements payable to District office
14. It can be seen that the amounts collected by way of reimbursements are only pooled together for the sake of convenience.
15. We understand that the principal of mutuality applies in the present case wherein the contributions are being collected merely to spend back on the members themselves. There is no consideration whatsoever. Even in case of a visiting guest at the meetings, estimated amount of expenses recovered from the Guest thus ensuring the collections on this account are spent entirely on the members only.
16. There is no consideration involved in the entire process, just that the funds are collected in a common pool for meeting the expenses for the weekly meetings and other petty expenses incurred in meeting the common objective of betterment of society. Hence, we are not recovering any taxes on the contribution being recovered from the members. There is no other income being earned by the said Administrative Account and generally each year is a loss.
17. The purpose of holding the said meetings as per the Club is as under:  
*All the meetings conducted would be to promote the Five Avenues of Service being Club Service, Vocational Service, Community Service, International Service & New Generations viz. to promote charity and overall well-being of society.*
18. Further, the collection of the sums against the reimbursement of the expenses is being done as per following understanding:  
*The budget for the forthcoming year shall be prepared by the incoming president in consultation with his team of board members and placed before the Members for approval.*
19. Based on the approval towards the budget for the following year, the annual reimbursement charges to be recovered from each member will be finalised which would then be formally communicated to each member to remit. The said reimbursement would include the reimbursement towards payment for RI per capita dues, a subscription to The Rotarian or a Rotary regional magazine, district per capita dues, towards the meetings, and any other Rotary or district per capita assessment.
20. Appellants decided to seek advance ruling about taxability or otherwise under the Act, of contributions received from the members in the Administration Account for expending the same for the weekly and other meetings and other petty administrative expenses.



21. Accordingly, on 29.03.2019 appellants filed application for advance ruling u/s.97 of the Central Goods and Services Tax Act, 2017, seeking an advance ruling in respect of the following questions: -
1. Whether contributions from the members in the Administration Account, recovered for expending the same for the weekly and other meetings and other petty administrative expenses incurred including the expenses for the location and light refreshments, amounts to or results in a supply, within the meaning of supply?
  2. If answer to question no. 1 is affirmative, whether it will be classified as supply of goods or services?
  3. Whether the applicant would be a taxable person under the provisions of the Act?
  4. If answer to question no. 3 is affirmative, who shall be person responsible under GST, as office bearers keep on changing every year?
  5. Whether the said collection of funds under common pool and spending back the same on said contributors, would entail 'supply' as defined in the law?
  6. If answer to Question No. 5 is affirmative, whether the same would be supply of goods or services?
22. The preliminary hearing in the matter was held on 23.04.2019. The appellants appeared for preliminary hearing. Appellants' interpretation of law and/or facts, as the case may be, in respect of the aforesaid questions was reiterated and submission of supporting documents was made.
23. The application was admitted and called for final hearing on 02.08.2019. The appellants appeared for final hearing. Appellants submitted that there is a time limit of 90 days fixed by the Statute as per the express provisions of section 98(6) of the CGST Act' 2017 which reads as under:
- 98(6): The Authority shall pronounce its advance ruling in writing with ninety days from the receipt of application.*
24. In the present case, the ARA Application had been filed on 29.03.2019. Accordingly, it was humbly submitted that the necessary order ought to have been passed not later than 27.06.2019 when the prescribed period of 90 days lapsed. Hence, in the present case, the application would be deemed to have been accepted and no order can presently be passed since the issue has become barred by limitation of time as specified in the statute / Act itself with no exceptions or alterations prescribed for the same.
25. Without prejudice to the above fact that the said Application had been deemed to have been accepted since no final hearing was fixed for the same and order passed within 90 days of the filing of the same, thus rendering it deemed accepted as on date as per the provisions of section 98(6) of the CGST Act' 2017 and on the basis of what has been stated above, appellants reiterated earlier submissions and also made the written submissions to that effect.



26. The Hon'ble Authority for Advance Ruling, vide impugned Order No. GST-ARA-142/2018-19/B-88 Mumbai dated 13.08.2019, Maharashtra State, Mumbai has answered the questions as under:-

**Question 1** - Whether contributions from the members in the Administration Account, recovered for expending the same for the weekly and other meetings and other petty administrative expenses incurred including the expenses for the location and light refreshments, amounts to or results in a supply, within the meaning of supply?

**Answer** - Answered in the affirmative.

**Question 2** - If answer to question no. 1 is affirmative, whether it will be classified as supply of goods or services?

**Answer** - It will be classified as supply of services.

**Question 3** - Whether the applicant would be a taxable person under the provisions of the Act?

**Answer** - Answered in the affirmative, subject to provisions of Section 22 of the GST Act.

**Question 4** - If answer to question no. 3 is affirmative, who shall be person responsible under GST, as office bearers keep on changing every year?

**Answer** - The applicant is liable to pay GST and not the office bearers.

**Question 5** - Whether the said collection of funds under common pool and spending back the same on said contributors, would entail 'supply' as defined in the law?

**Answer** - Answered in the affirmative.

**Question 6** - If answer to Question No. 5 is affirmative, whether the same would be supply of goods or services?

**Answer** - It will be classified as supply of services

Advance Ruling dated 13.08.2019 passed by AAR, Maharashtra

27. The AAR passed the Advance Ruling No. GST-ARA-142/2018-19/B-88 dated 13.08.2019 in respect of the six questions enumerated above.
28. Aggrieved by the above rulings passed by the AAR, the appellant has preferred appeal on the basis of the grounds mentioned hereinunder:

Grounds of Appeal

The appellants are filing the present appeal on the following grounds, which are urged herewith without prejudice to one another.

**A. No GST applicable since the AAR application having been deemed accepted.**

- A.1 At the onset, we have to humbly submit that the application in the present case was filed on 29.03.2019. Thereafter, hearing was held on 23.04.2019 for admission of the said application. The said ARA Application was admitted for final hearing on said date. Thereafter, notice dt. 25.07.2019 had been issued for final hearing in the matter and the date for hearing was fixed for 02.08.2019.



A.2 In this regard, your Honour's kind attention is invited to the section 98 of the CGST Act' 2017 dealing with the procedure on receipt of application for Advance Ruling, and more particularly, the provisions of section 98(6) of the CGST Act' 2017 which reads as under:

*"98(6): The Authority shall pronounce its advance ruling in writing with ninety days from the receipt of application."*

A.3 Thus, there is a time limit of 90 days fixed by the Statute, commencing from the date of filing of the ARA Application within which the Authority (shall) has to pronounce its order in writing.

A.4 In the present case, the ARA Application had been filed on 29.03.2019. Accordingly, it is humbly submitted that the necessary order ought to have been passed not later than 27.06.2019 when the prescribed period of 90 days got over.

A.5 Hence, we have to humbly submit that in the case, the application would be deemed to be accepted and no order could be passed beyond the date when 90 days since the application made had passed, since the issue had become barred by limitation of time as specified in the statute / Act itself with no exceptions or alterations prescribed for the same.

A.6 In this regard, reliance is placed on the decision of the Hon'ble Supreme Court, rendered in the case of *Commissioner of Income Tax, Kanpur & Ors. Vs. Society for The Promn. Of Edn., Allahabad (Civil Appeal No.1478 of 2016 [@ SLP(C) No.9705 of 2009]; Order dt. 16.02.2016)*.

A.6 The issue in this appeal was related to deemed registration of an application u/s.12AA of the Income Tax Act' 1961 since the same was not responded to within the statutorily prescribed period of 6 months from the date of application. The Hon'ble Allahabad High Court had held in this case that under said circumstances, it would be taken that the application is (deemed) registered under the said provisions. The Hon'ble Allahabad High Court had held that the registration of the said petitioner would be deemed to have been granted since the Income Tax Department failed to act within the prescribed time line to examine and grant or reject its application for the said registration. The Hon'ble Supreme Court has concurred with the decision of the Hon'ble Allahabad High Court and dismissed the appeal of the Income Tax Department.



A.7 To lend support to the same, we are reproducing the provisions of section 12AA(2) of the Income Tax Act' 1961 which reads as under:

*"12AA(2): Every order granting or refusing registration under clause (b) of sub section (1) shall be passed before the expiry of six months from the end of the month in which the application was received under clause (a) [or clause (aa) {or clause (ab)}] of sub section (1) of section 12A.]"*

A.8 Perusal of the above section would reveal that it is identical to the provisions of section 98(6) of the CGST Act' 2017 which actually applies to the present case and accordingly, this decision of the Apex Court would have direct application to the present case before Your Honours.

A.9 Strong reliance is being placed on the above decision of the Hon'ble Apex Court, which it is humbly submitted is directly applicable to the present case and the same would be binding on all lower authorities to follow. It would be pertinent to note here that Article 141 of the Indian Constitution states that "law declared by Supreme Court to be binding on all courts within territory of India."

A.10 Hence, in view of the above facts and circumstances of the case and the position of law supported by the judicial pronouncement of the Hon'ble Supreme Court which would be binding on the lower authorities to follow, we have to humbly submit that the case, having been time barred as per provisions of section 98(6) of the CGST Act' 2017, no order could presently be passed since, even if passed, the same is bad in law and void ab initio and accordingly, the application filed by the Appellant and issues raised therein as per the SOF, would be deemed to have been accepted in the present case.

A.11 Accordingly, we have to submit that under the given circumstances, the application and the issues covered therein including the SOF have to be treated as deemed to have been accepted in the case of the appellants.

A.12 The Authority for Advance Ruling has not considered submission made by the appellants in this regard. The cases laws relied upon by the appellants have also not been considered by them. The application of the same to the facts of the present case has been dismissed without giving any proper reasoning. Hence, the impugned order is liable to be set aside on this ground as being passed in violation of principles of natural justice.





B. No GST applicable on the Principal of Mutuality

- B.1 The appellants believe that the principal of mutuality applies in the present case wherein the contributions are being collected merely to spend back on the members themselves. There is no other commercial consideration whatsoever. Going with principal of mutuality, two distinct persons are missing. Even in case of a visiting guest at the meetings, estimated amount of expense at cost are recovered from the Guest in the form of Guest Reimbursements, thus ensuring the collections on this account are spent entirely on the members only.
- B.2 Since, there is no commercial consideration involved in the process, just that the funds are collected in a common pool for meeting the expenses for the weekly meetings and other petty expenses incurred in meeting the common objective of betterment of society. The amount being collected from the members is reimbursement of expenses or share of contribution. We do not function on commercial basis and there is no business or other activity that the Appellant is engaged in. Hence, we are not recovering any taxes including GST on the contribution being recovered from them.
- B.3 The common pool is being spent back on the members only. In absence of two distinct persons and also in absence of consideration, as defined under the Act, in our interpretation, contributions received from the members in the Administration Account is not a Supply within the meaning of the term, as defined under the Act.
- B.4 The appellants are of the opinion that its contributions from the members is not covered under 'supply by one to another', since the basic fact of the said transaction happening between two separate and independent persons / entities would itself be missing.
- B.5 Supply has been defined to include all forms of supply of goods and/or services 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*. Accordingly, the definition has the following main ingredients –
- There should be two distinct persons
  - Supply should be for a Consideration
  - Supply should be in the course or furtherance of *business*
- B.6 Consideration in relation to the supply of goods or services has been defined to include 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, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government and the monetary value of any act or forbearance, whether or not voluntary, in respect of, in response to, or for the inducement of, the supply of goods or services, 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.7 Various case laws are here below referred: though directly not decided under the Act in questions; 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 Agri. 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 policy holders, 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."*

B.8 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 1, 1990) by Kanga and Palkhiwala 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 Court 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...."*

**C. No GST applicable since there is no Supply of any goods or services**

C.1 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 91) 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 disposed 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.

C.2 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 license 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 transactions.

If only one is satisfied, transaction cannot be taxed under the referred clause.

**D. No GST applicable since there is no Business**

D.1 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 all the *facilities or benefits to its members*".



D.2 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 Rotary 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.

D.3 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 Rotary club.** Further it can be seen whether the supply of services between club and its members is for a consideration.

**E. No GST applicable since there is no Consideration involved**

E.1 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 to 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."

E.2 Co-joint 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.



E.3 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, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or further 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 "persons" 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)(e) 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."

E.4 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 litigation. 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.
- E.5 Now, let us examine whether the transaction between an association and its member can be taxed u/s.7(1)(c).

"Said clause covers 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 course of 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 member are related person."

- E.6 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 person" if –
  - i) Such persons are officers or directors of one another's business;
  - ii) Such persons are legally recognized partners in business;
  - iii) Such persons are employer and employee;
  - iv) Any person directly or indirectly owns, controls or holds twenty-five percent or more of the outstanding voting stock or shares or both of them;
  - v) One of them directly or indirectly controls the other;
  - vi) Both of them directly or indirectly controlled by a third person;



- vii) Together they directly or indirectly control a third person; or;
- viii) They are the member of the same family;
- b) The term "person" also includes legal persons;
- c) Persons who are associated in the business of one another that one is the sole agent or sole distributor or sole concessionaire, howsoever described, shall be deemed to be related.'

E.7 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.

#### PRAYER

In view of the foregoing, it is respectfully prayed that this Hon'ble Appellate Authority may be pleased to:—

- (a) set aside the Order No. GST-ARA-142/2018-19/B-88 dated 13.08.2019 passed by the Hon'ble Advance Ruling Authority, Maharashtra State, Mumbai (to the extent it is against the appellants) and allow the present appeal in full with consequential relief to the appellants;
- (b) order that transaction between an association or club and its member will not be covered within the scope of supply u/s.7 of the CGST Act, 2017. Hence the same shall not be taxable;
- (c) grant a personal hearing/ grant an out of turn hearing; and
- (d) pass such other order or orders as may be deemed fit and proper in the facts and circumstances of the case.

#### Personal Hearing

1. A personal Hearing in the matter was conducted on 09.12.2019, which was attended by Aditya B Nemani, on behalf of the Appellant, wherein he reiterated the written submissions, and relied upon various legal provisions and judicial pronouncement in support of their contentions. In the aforesaid hearing, the Department was represented by Shri Rahul Dhingra, Asst. Commissioner, who tendered oral submissions to counter the Appellant's contention.



Discussions and Findings

2. We have gone through the facts of the case, documents on record, and the entire oral and written submissions made by both the appellant as well as jurisdictional officer. We have also perused the ruling pronounced by the Advance Ruling Authority, wherein the AAR inter observed that the membership subscription and admission fees collected by the Appellant from its members is liable to GST as supply of services.

On perusal of the entire case records, the moot issue in the present case is whether the membership/subscription fees, admission fees collected by the Appellant from its members will be subject to GST or not. In other words, whether the transaction between the Appellant and its members can be construed as supply as envisaged under section 7 of the CGST Act, 2017, or otherwise.

3. At the outset, we would like to discuss the scope of term "supply" as envisaged under Section 7 of the CGST Act, 2017, the relevant portion of which has been reproduced herein under:

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

Thus, on perusal of the aforesaid definition of supply, it is revealed that for any activity/transaction to be qualified as supply, the same should be undertaken in the course or furtherance of business. Now, before applying the above condition in the context of the impugned transaction, we would like to discuss the meaning of "business" as provided under section 2(17) of the CGST Act, 2017, the relevant extract in the context of the instant case is reproduced herein below:

*(17) "business" includes-*

*(a).....*

*(b).....*

*.....*





*(e) provision by club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;*

.....  
In the instant case, it has been submitted by the Appellant that entire subscription/membership amount collected by the Appellant from its members is utilized solely towards expenditures incurred in the meetings, communication and other administrative expenses like printers, stationeries etc. They have categorically submitted that they do not provide any facility or benefit to any of its members against the said subscription or membership fee.

Thus, on perusal of the above submissions, it is observed that the Appellant is not providing any specific facility or benefits to its members against the membership subscription charged by it, as the entire subscription amount is spent towards meetings and administrative expenditures only. Thus, we conclude that the Appellant is not doing any business as envisaged under section 2(17) of the CGST Act, 2017.

4. Now, once it has been established that the Appellant is not doing any business in terms of section 2(17) of the CGST Act, 2017, it can be deduced that activities carried out by the Appellant would not come under the scope of supply as envisaged under section 7(1) of the CGST Act, 2017.
5. On the contrary, if we hold the impugned activities of the Appellant to be supply, then the membership fee collected by the Appellant, which is purely in the nature of a reimbursement for the meetings and administrative expenditures incurred by the Appellant to sustain and propagate their inherent objectives and programs, would be subject to the double taxation as the amount spent towards the meetings and administrative expenditures is already subjected to GST at the hands of the suppliers of these input services or goods used in the meetings, events and other administrative functions of the Appellant. Thus, doing so would clearly be against the legislature's intention of the formulation of GST, which certainly does not embrace the idea of double taxation.
6. Once the core issue regarding the taxability of the membership subscription fee has been decided by us, the answers to the other issues/questions posed by the Appellant vide their advance ruling application will follow and the same do not warrant separate discussions.



7. In view of the above discussions and findings, we set aside the rulings pronounced by AAR and pass the following order:

**ORDER**

We, hereby, hold that the amount collected as membership subscription and admission fees from members is not liable to GST as supply of services.

  
(Rajiv Jalota)  
Member



  
(Sungita Sharma)  
Member

- Copy to- 1. The Appellant  
2. The AAR, Maharashtra  
3. The Pr. Chief Commissioner, CGST and C.Ex., Mumbai  
4. The Commissioner of State Tax, Maharashtra  
5. The Jurisdictional Officer  
7. The Web Manager, [WWW.GSTCOUNCIL.GOV.IN](http://WWW.GSTCOUNCIL.GOV.IN)  
8. Office copy.