



RAJASTHAN AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX, KAR BHAWAN, AMBEDKAR
CIRCLE, NEAR RAJASTHAN HIGHCOURT
JAIPUR – 302005 (RAJASTHAN)



ADVANCE RULING NO. RAJ/AAR/2024-25/23

Mahipal Singh Additional Commissioner	:	Member (Central Tax)
Mahesh Kumar Gowla Additional Commissioner	:	Member (State Tax)
Name and address of the applicant	:	M/s Umed Club, Old Public Park, Near Gaushala Ground, Jodhpur-342006, Rajasthan
GSTIN of the applicant	:	08AAABU0007F1ZZ
Clause(s) of Section 97(2) of CGST/SGST Act, 2017, under which the question(s) raised	:	(e) Determination of the liability to pay tax on any goods or services or both.
Date of Personal Hearing	:	15.10.2024
Present for the applicant	:	Mr. Pradeep Jain C.A.
Date of Ruling	:	02.12.2024

Note 1: Under Section 100 of the CGST/SGST Act, 2017, an appeal against this ruling lies before the Appellate Authority for Advance Ruling, constituted under Section 99 of CGST/SGST Act, 2017, within a period of 30 days from the date of service of this order.

Note 2: At the outset, we would like to make it clear that the provisions of both the CGST Act and the SGST 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 SGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / SGST Act would be mentioned as being under the "GST Act".

The issue raised by M/s UMED CLUB, Old Public Park, Near Gaushala Ground, Jodhpur-342006, Rajasthan (hereinafter "*the applicant*") is fit to pronounce advance ruling as they have deposited prescribed Fee under CGST Act and it falls under the ambit of the Section 97(2) given as under:

(e) Determination of the liability to pay tax on any goods or services or both.

A. SUBMISSION OF THE APPLICANT (in brief):-

Brief facts of the case:

- The applicant is a club which is engaged in providing various services such as short term accommodation, restaurant, recreational services and is having GST registration number 08AAABU0007F1ZZ. The applicant intends to seek clarification on the applicability of GST on various services provided by club to its members in light of recent decision given by the Hon'ble Supreme Court in the case of state of west Bengal & others vs Calcutta Club Limited in civil appeal No. 4184 of 2009.

B. INTERPRETATION AND UNDERSTANDING OF APPLICANT ON QUESTION RAISED (IN BRIEF)

- The landmark decision given by the apex court is applicable for the erstwhile service tax era but since the provisions in GST laws are similar, the ratio given by the Apex Court would be applicable for GST regime too.

- Therefore, the present application for advance ruling is being filed to confirm the applicability of GST on services provided by club to its members in light of the decision given by the Apex Court.
- The analysis of the decision of the Hon'ble Supreme court in the case of of state of west Bengal & others vs Calcutta Club Limited in civil appeal No. 4184 of 2009 is as follows:-

Reasoning adopted by the Supreme Court:-

The judgement was delivered for both positive and negative list tax regime and negative list tax regime separately as follows:-

Service tax applicability for the period 16.06.2002 to 30.06.2012: - it was concluded that the definition of 'club or association' contained in section 65(25a) of the Finance Act levied tax on any person or body of persons providing services for subscription or any other amount to its members. It is pertinent to note that definition of person was not there in the Finance Act during this period. Moreover, the definition of 'club or association' under section 65(25a) of the Finance Act, specially excluded "any body established or constituted under any law for the time being in force". Hence, any body "established or constituted" by or under any law for the time being in force is not included. Therefore, it was concluded that incorporated clubs or associations (under Companies Act/Cooperative Society Act) were not included in service tax net for this mentioned period. The service tax was payable only by un-incorporated clubs.

Service tax liability post 01.07.2012:-It was held that the definition of service is very wide meaning any activity carried out by a person to another person for consideration. Furthermore, the definition of person includes association of persons or body of individuals whether incorporated or not. Now, the question before the Supreme Court was that whether the doctrine of agency, trust and mutuality as held to be applicable in the sales tax judgment of Supreme Court in Young Men's Indian Association was applicable for service tax also or not? It was however mentioned that the analogy that in member's club, there is no sale by one person to another for consideration as one cannot sell something to oneself would equally apply of services also. Thereafter, the provisions contained in the explanation 3(a) to definition of service, "an unincorporated association or a body of persons, as the case may be, and a member thereof shall be treated as distinct persons" was analysed. It was concluded that this explanation was similarly worded as Article 366(29-A)(e) of the constitution of India which reads as follows:-

(e) 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.

The Supreme Court analysed the term "body of persons" in detail in the judgment of Calcutta Club Ltd. Pertaining to sales tax and has held that according to the principle of "ejusdem generis" will apply and term body of persons used indicates reference to unincorporated body of persons. Therefore, incorporated body of persons will not be covered under the ambit of Article 366(29A) (e) of the Constitution of India. Similarly, it was held that the same principle would apply for analyzing the provisions contained in explanation 3(a) and so in the negative list era, the incorporated association or body of persons would not be liable to service tax. This is for reason that the explanation 3(a) used the term "an unincorporated association or body of persons" instead of using the terms "person" or the term an "association of persons or body of individuals, whether incorporated or not". It was concluded that the legislature has continued with the pre-2012 scheme of not taxing member's club when they are in the incorporated form. The expression "body of persons" may subsume within it persons who come together for a common purpose, but cannot possibly include a company or a registered cooperative society. Thus explanation 3(a) to the Section 65B(44) does not apply to member's clubs which are incorporated.

- The implication of the above cited decision rendered by the Supreme Court in the GST regime is discussed. It is submitted that the definition of persons is also given in section 2(84) of the CGST Act, 2017 which includes an association of persons or a body of individuals, whether incorporated or not, in India or outside India. It is pertinent to mention that the definition of person is similar to the Service Tax Laws and is wide enough to cover clubs/association of persons whether incorporated or not.

In this context, it is also pertinent to make reference to entry No. 7 of the Schedule II of the CGST Act, 2017 which reads as follows:-

7. Supply of Goods

The following shall be treated as supply of goods, namely:-

Supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.

It is also worth noting that according to amendment in Section 7 of the CGST Act, a new Sub-Section (1A) has been inserted wherein certain activities or transactions which constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of service as referred to in schedule II. This has the effect that the transactions which are specified in schedule II shall be treated as supply only if they are made by a person in course or furtherance of business for consideration. However, it is also to be noted that there is no similar entry for supply of service. Moreover, now the question arises is that whether the interpretation of term "body of persons" as taken by Supreme Courts can be made applicable in GST or not? The applicant submits that the analogy of Supreme Courts can be applied in GST regime too as the explicit mention of "unincorporated association or body of persons" indicates levy of GST only on unincorporated body of persons. Hence, it can be concluded that the purport of the legislation under erstwhile indirect taxation regime is being carried forwarded in the GST regime also.

- The applicant submits that they are also registered under Rajasthan Society Registration Act and are incorporated club. Therefore, whether the conclusion drawn by the Hon'ble Apex Court that no service tax is payable by the incorporated clubs is applicable in GST regime also is required to be answered in the present application for advance ruling filed by them.

C. QUESTIONS ON WHICH THE ADVANCE RULING IS SOUGHT:

Question:-Whether service tax is payable on the services provided by clubs to its members?

D. COMMENTS OF THE JURISDICTIONAL OFFICER: -

Comments received from the Joint Commissioner, State Tax, Special Circle-1, Jodhpur vide letter dated 11.06.2020 are as under: -

The Applicant has sought Advance Ruling to confirm the applicability of GST on Services Provided by club to its members. The applicant has taken the aid of Judgment delivered by the Hon'ble Apex Court in the case of State of West Bengal v/s Calcutta Club Limited in Civil Appeal No. 4184 of 2009. The applicant has relied on the above said judgment and has contended that as service tax was not leviable on the services provided by a club to its member under erstwhile Service tax regime, so the same will also apply in GST Regime. The applicant has also taken shelter of Section 7(1) (A) and Schedule II of CGST/RGST Act to discriminate between Goods and Services and contended that as per schedule II the Supply of Goods by the Club to its member is only a taxable event under GST Act. This misplaced Conception portrayed by the applicant is wholly bereft of any logical deduction.

It would be apposite to reproduce the definition of "services" as defined under the Goods & Services Tax Act both the Central and Rajasthan State GST. Section 2(102) reads as under:

2(102)-"services" means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.

It is also relevant here to reproduce the meaning of supply under GST Act, which is as under

Section 7 – Scope of Supply-

(1) For the purposes of this Act, the expression "supply" includes—

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

(b) import of services for a consideration whether or not in the course or furtherance of business; [and]

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

[(1A) where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either 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), (1A) 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.

The above definition of supply clearly shows that supply made by a person Registered Under GST is eligible for GST if it falls under Section 7(1) of CGST/SGST Act whether it is a supply of goods or services. The shelter sought to be invoked under Section 7(1)(A) and Schedule II of CGST/SGST Act is wholly misplaced and does not in any way impose any fetter for imposition of Goods and Service tax enacted under the Article 246A of the Constitution of India. Furthermore, the shelter of Hon'ble Apex Court decision has no relevance in new GST Regime which encompasses both Goods and Services in one Umbrella and both Centre and state have exclusive power to levy tax on same base. The Applicant has Simplistically and ingeniously in self-serving manner concluded that no tax can be sought to be levied upon the services provided by the Club to its members on the basis of ratio of Judgment given by Hon'ble Apex Court in the erstwhile Service tax regime. This contention of Applicant is utterly wishful but plainly against the clear and explicit provisions of GST Act.

So in my opinion the Service provided by the Club to its members is taxable under GST and it is humbly requested to reject the relief sought by Applicant.

In the first round of Advance Ruling, an order dated 27.9.2021 was passed by the Authority wherein it was ruled that GST is payable on the services provided by clubs to its members in terms of clause (aa) of sub-section (1) of Section 7 of the CGST Act, 2017 w.e.f. July 1, 2017.

Earlier, In the matter, after giving opportunity of personal hearing to the applicant an order was passed on dated 27.09.2021 via ADVANCE RULING NO. RAJ/AAR/2021-22/23. The finding of order is summarized as below:-

1. We have gone through the facts of the case and submission made by the applicant at the time of preliminary hearing.
2. The applicant vide application form ARA-01, sought Advance Ruling to confirm the applicability of Service Tax on Services provided by club to its members. In this regards, it is clear that this forum i.e. Authority for advance ruling (AAR) is meant for Goods & Service tax (GST) only. To decide a question pertaining to old era i.e. Service Tax is not in the scope of this Authority. However, on gone through the contention of the applicant in the instant case, the purport of the applicant is to seek advance Ruling to confirm the applicability of GST on Services provided by club to its members. Hence, we will discuss the case in light of GST only.
3. The Applicant has sought Advance Ruling to confirm the applicability of GST on Services Provided by club to its members. The applicant has taken the aid of Judgment delivered by the Hon'ble Apex Court in the case of State of West Bengal V/s Calcutta Club Limited in Civil Appeal No. 4184 of 2009. The applicant has relied on the above said judgment and has contended that as service tax was not leviable on the services provided by a club to its member under erstwhile Service tax regime, so the same will also apply in GST Regime. The applicant has also taken shelter of Section 7(1) (A) and Schedule II of CGST/SGST Act to discriminate between Goods and Services and contended that as per schedule II the Supply of Goods by the Club to its member is only a taxable event under GST Act.
4. Before we delve deep to decide the case, it would be proper in the fitment of justice to discuss the relevant provisions of the statute which are as under-

Section 2(84) of CGST Act, 2017 reads as under:-

(84) —person includes—

(a) an individual;

(b) a Hindu Undivided Family;

(c) a company;

(d) a firm;

(e) a Limited Liability Partnership;

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

(g) any corporation established by or under any Central Act, State Act or Provincial Act or a Government company as defined in clause (45) of section 2 of the Companies Act, 2013;

(h) any body corporate incorporated by or under the laws of a country outside India;

(i) a co-operative society registered under any law relating to co-operative societies;

(j) a local authority;

(k) Central Government or a State Government;

(l) society as defined under the Societies Registration Act, 1860;

(m) trust; and

(n) every artificial juridical person, not falling within any of the above;

- **Section 2(102) of CGST Act, 2017** reads as under:-

2(102)-“services” means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.

- **Section 7 of the CGST Act, 2017** reads as under:-

Scope of supply—

(1) For the purposes of this Act, the expression —supply includes—

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

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

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

(b) import of services for a consideration whether or not in the course or furtherance of business;[and]

*(c) the activities specified in Schedule I, made or agreed to be made without a consideration;[****]*

*(d) [*****].*

[(1A) where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either 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), (1A) 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

Para 7 of Schedule II of the CGST Act has been omitted by the finance Act, 2021, w.e.f. 01.07.2021.

prior to its omission paragraph read as under:

“Supply of Goods: The following shall be treated as supply of goods, namely:-

Supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.”

5. In view of the above legal provision, GST laws expanded the scope of ‘supply’ to tax supplies between the club/association and its members, to overcome the principle of mutuality.

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

6. Further, an explanation is added to say that the person and its members or constituents shall be deemed to be two separate persons and overriding effect has been given to the said explanation over anything contained in any other law for the time being in force and even to the judgements of any Court, Tribunal or any other authority. Thus, the decision given by the Hon’ble Supreme Court in State of West Bengal & Ors. v. Calcutta Club Limited for erstwhile Service tax regime, is no more applicable on account of specific overriding effect over judgments.
7. Thus, we are in conclusion that the Services provided by the Club to its members is taxable as per clause (aa) of sub-section (1) of Section 7 of the CGST Act, 2017 w.e.f. July 1, 2017.

Accordingly, rules that **“Yes, GST is payable on the services provided by clubs to its members.”**

8. On being aggrieved from the above order dated 27.09.2021 the applicant filed an appeal before APPELLATE AUTHORITY FOR ADVANCE RULING, RAJASTHAN (AAAR). The AAAR vide its ORDER NO. RAJ/AAAR/11/2023-24 DATED 20.02.2024 set aside the Ruling of AAR, Rajasthan dated 27.09.2021 and remanded the matter back to the AAR Rajasthan to decide the application afresh on merits after considering all the questions posed by the applicant in their application dated 20.02.2024.

F. Records of Hearing :

In direction of AAAR order dated 20.02.2024, a personal hearing was granted to the applicant on 15.10.2024. Mr. Pradeep Jain C.A. Authorized Representatives appeared for personal hearing on dated 15.10.2024. He reiterated the submission already made by them. Also, the applicant has submitted the additional documents during hearing which are kept on record.

G. Discussions and Findings:

1. We have carefully examined the statement of facts, supporting documents filed by the applicant along with the application, oral and written submissions made at the time of hearing and the comments of the Central Tax Authority. We have also considered the issues involved, on which advance ruling is sought by the applicant, and relevant facts. We have gone through the AAAR ORDER NO. RAJ/AAAR/11/2023-24 DATED 20.02.2024 in which they set aside the Ruling of AAR, Rajasthan dated 27.09.2021 and remanded the matter back to the AAR Rajasthan to decide the application afresh on merits after considering the question posed by the applicant.

2. The main contentions put forth by the applicant before the Appellate Authority for Advance Ruling were that the Principles of natural justice were not followed and the amendment on the basis of which the Authority of Advance Ruling decided the matter was not operational till the date when Ruling was pronounced. Therefore, before proceeding to issue to be decided, we find it imperative to discuss the contentions of the applicant, which were observed and noted by the Appellate Authority.

2.1 The applicant contended that the members who have decided the case were different than the members who have heard the case. Therefore, the applicant was again awarded the opportunity of Personal Hearing and this time the members who have heard the case are deciding the case and principles of natural justice are complied.

2.2. Further, they have contended that the amendment on the basis of which the ruling was pronounced on 27.09.2021 was brought into force vide Notification No. 39/2021-CT dated 21.12.2021 wef 01.01.2022. Thus, the case was decided on the basis of an amendment, which was made effective vide a Notification issued in future. To deep dive into the contention of the applicant, it is imperative to discuss the chain of events, which led the amendment issued vide the said Notification dated 21.12.2021.

2.2.1 Hon'ble Apex Court in the case of State of West Bengal V/s Calcutta Club Limited in Civil Appeal No. 4184 of 2009 vide their Order dated 03.10.2019, ordered that service tax was not leviable on the services provided by a club to its member under erstwhile Service tax regime. Consequent to the said judgment, to bring the services provided by the clubs to its members in the net of GST, 39th GST council in their meeting dated 14.03.2020 recommended retrospective amendment in the GST Act, so as to explicitly include the transactions and activities involving goods and services or both, by, to its members, for cash, deferred payment or other valuable consideration along with an explanation stating that for the purpose of this section, an association or a body of persons, whether incorporated or not as taxable supply w.e.f 01.07.2017. It is also proposed that such an association or a body of persons, whether incorporated or not and member thereof shall be treated as distinct persons under section 7(1) of the CGST Act. Consequently, para 7 of Schedule II of the CGST Act is proposed to be deleted. Further, It was agreed that this had become necessary to make this retrospective amendment in view of pronouncement in this regard by the Hon'ble Supreme Court in a case involving levy of service tax on supplies of taxable services by the Clubs to its Members.

2.2.2 On the recommendation of GST council, the required amendment in CGST Act, 2017 were brought vide Finance Act, 2021 dated 28.03.2021. The amendments vide Finance Act, 2021 were brought into force vide Notification No. 39/2021-CT dated 21.12.2021 wef 01.01.2022, but the amendments have been made effective from 01.07.2017 i.e. retrospectively. Thus, it is very much clear that at the time of pronouncing the last Advance Ruling i.e. on 27.09.2021, the required amendments have already been issued vide Finance Act, 2021 dated 28.03.2021 and only they were brought into force vide Notification dated 21.12.2021. But, here it is imperative to note that these amendments were made effective from 01.07.2017.

3. In view of the above, the application is being decided afresh, as the matter was de-novo remanded back by the Appellate Authority.

4. The applicant vide application form ARA-01, sought Advance Ruling to confirm the applicability of Service Tax on Services provided by club to its members. In this regards, it is clear that this forum i.e. Authority for advance ruling (AAR) is meant for Goods & Service tax (GST) only. To decide a question pertaining to old era i.e. Service Tax is not in the scope of this Authority. However, on gone through the contention of the applicant in the instant case, the purpose of the applicant is to seek advance Ruling to confirm the applicability of GST on Services provided by club to its members. Hence, we will discuss the case in light of GST only.

5. The Applicant has sought Advance Ruling to confirm the applicability of GST on Services provided by club to its members. The applicant has taken the aid of Judgment delivered by the Hon'ble Apex Court in the case of State of West Bengal V/s Calcutta Club Limited in Civil Appeal No. 4184 of 2009. The applicant has relied on the above said judgment and has contended that as service tax was not livable on the services provided by a club to its member under erstwhile Service tax regime, so the same will also apply in GST Regime. The applicant has also taken shelter of Section 7(1) (A) and Schedule II of CGST/RGST Act to discriminate between Goods and Services and contended that as per schedule II the Supply of Goods by the Club to its member is only a taxable event under GST Act.

6. Before we decide the case, it would be proper in the fitment of justice to discuss the relevant provisions of the statute which are as under-

Section 2(84) of CGST Act, 2017 reads as under:-

(84) —person includes—

(a) an individual;

(b) a Hindu Undivided Family;

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(d) a firm;

(e) a Limited Liability Partnership;

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

(g) any corporation established by or under any Central Act, State Act or Provincial Act or a Government company as defined in clause (45) of section 2 of the Companies Act, 2013;

(h) any body corporate incorporated by or under the laws of a country outside India;

(i) a co-operative society registered under any law relating to co-operative societies;

(j) a local authority;

(k) Central Government or a State Government;

(l) society as defined under the Societies Registration Act, 1860;

(m) trust; and

(n) every artificial juridical person, not falling within any of the above;

- **Section 2(102) of CGST Act, 2017 reads as under:-**

2(102)-“**services**” means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.

- **Section 7 of the CGST Act, 2017 reads as under:-**

Scope of supply—

(1) For the purposes of this Act, the expression —supply includes—

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

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

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

(b) import of services for a consideration whether or not in the course or furtherance of business;[and]

*(c) the activities specified in Schedule I, made or agreed to be made without a consideration;[*****]*

*(d) [*****].*

[(1A) where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either 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), (1A) 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

Para 7 of Schedule II of the CGST Act has been omitted by the finance Act, 2021, w.e.f. 01.07.2017.

prior to its omission paragraph read as under:

*“Supply of Goods: The following shall be treated as supply of goods, namely:-
Supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.”*

7. In view of the above legal provision, GST laws expanded the scope of ‘supply’ to tax supplies between the club/association and its members, to overcome the principle of mutuality. The scope of supply clearly ascertains that supply made by a person registered under GST is exigible to GST if it falls under section 7(1) of GST Act.

A retrospective amendment (w.e.f. July01,2017) has been made vide Finance Act, 2021 by inserting a new clause ‘(aa)’ after clause (a), in Section 7(1) of the CGST Act to widen the scope of term ‘supply’ by including therein activities or transactions of supply of goods or services or both between any person (other than individual) to its members or constituents or vice versa for cash, deferred payment or other valuable consideration. Consequently, Para 7 of Schedule II of the CGST Act has been deleted retrospectively (w.e.f. July 1, 2017) which was related to ‘supply of goods by unincorporated associations or body of persons to a member thereof for cash, deferred payment or other valuable consideration’ being activity/ transaction treated as supply of goods.

8. Further, an explanation is added to say that the person and its members or constituents shall be deemed to be two separate persons and overriding effect has been

given to the said explanation over anything contained in any other law for the time being in force and even to the judgements of any Court, Tribunal or any other authority. Thus, the decision given by the Hon'ble Supreme Court in State of West Bengal & Ors.v. Calcutta Club Limited for erstwhile Service tax regime, is no more applicable on account of specific overriding effect over judgments.


9. The clause 7(1)(aa) have been inserted and deemed to have been inserted w.e.f. 01.07.2017 by Finance Act, 2021. Thus, we are in conclusion that the Services provided by the Club to its members is taxable as per clause (aa) of sub-section (1) of Section 7 of the CGST Act, 2017 w.e.f. July 01, 2017.

10. In view of the foregoing, we rule as under:-

RULING

Question : Whether service tax is payable on the services provided by clubs to its members?

Answer : Yes, GST is payable on the services provided by clubs to its member.


(Mahipal Singh)
MEMBER
CENTRAL TAX




(Mahesh Kumar Gowla)
MEMBER
STATE TAX

F. No. AAR/SF/2024-25/ 196-201
SPEED POST

Date: 02/12/2024

To,
M/s UMED CLUB,
Old Public Park, Near Gaushala Ground,
Jodhpur-342006, Rajasthan

Copy to: -

1. The Chief Commissioner, CGST and Central Excise (Jaipur Zone), NCRB, Statue Circle, Jaipur, Rajasthan-302005
2. The Chief Commissioner, State Tax, KarBhawan, Bhawani Singh Road, Ambedkar Circle, C-Scheme, Jaipur-302005.
3. The Commissioner, Central Tax, CGST and Central Excise Commissionerate, G-105, New industrial Area, Basni, Near Diesel shed, Jodhpur-342003.
4. The Deputy/Assistant Commissioner, CGST Division-A, Jodhpur.
5. The Deputy/Assistant Commissioner, State Tax Department, Circle -D, JODHPUR-II, Zone JODHPUR, Rajasthan.

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