GST is to be levied on charges collected from Members by Co-operative Housing Societies

The Hon'ble AAAR, Maharashtra, in the matter of ***Apsara Co-operative Housing Society Ltd. [Order No. MAH/AAA/RS-SK/28/2020-21, dated November 5, 2020]*** upheld an earlier order of the AAR, that GST is to be levied on maintenance charges collected by cooperative housing societies if the monthly subscription or contribution charged from members is more than Rs 7,500 per month and the annual aggregate turnover is Rs 20 lakh or more. The Hon'ble AAAR finds that various sorts of activities undertaken like management, maintenance, administration of the society property etc. amounts to supply under the Central Goods and Services Tax Act, 2017 (**"CGST Act"**), provisions.

Facts:-

The **Apsara Co-operative Housing Society Ltd.** (**"Society/ Appellant"**) is a Co-operative Housing Society, whose main objects as per the Bye-laws are enumerated as under:

a) To obtain the conveyance from the promoter, in accordance with the provision of the Ownership Flats Act and the Rules made thereunder, of the right, title and interest, in the Land with buildings thereon;
b) To manage, maintain and administer the property of the Society;
c) To raise funds for achieving the objective of the Society;
d) To undertake and provide for, on its own account or jointly with Co-operative Institution, social, cultural, or recreative activities;
e) To do all things necessary or expedient for the attainment of the objects of the Society, specified under the Bye-laws.

For the purpose of obtaining these objectives, the Society raises fund by collecting contributions from the members by charging property taxes, water charges, common electricity charges contribution to repair and maintenance fund, contribution to the sinking fund, services charges, car parking charges, interest on the default charges, non-occupancy charges, insurance charges, lease charges, lease rent, non-stop agricultural tax, or any other charges (**"charges"**), on monthly or quarterly basis by issuing invoices and uses the said charges for the specified purposes as enumerated in the Bye-laws.

This appeal has been filed against the advance ruling passed by the Hon'ble Maharashtra AAR, wherein it was held that the activities carried out by the Appellant for consideration

is in the course or furtherance of business, would amount to supply in terms of Section 7(1)(a) of the CGST Act, and accordingly would attract GST, as provided under Section 9 of the CGST Act.

Issues:-

- Whether the stated activities carried out by the Appellant would amount to supply, and whether the same are liable to the GST?
- Whether they are correctly discharging the GST liability, for which they provided the illustrative invoices raised on the members of the society?

Held:-

The Hon'ble AAAR, Maharashtra, in ***Order No. MAH/AAA/RS-SK/28/2020-21*** held as under:

- The activities performed by the Appellant are entirely oriented towards providing facilities, benefits or convenience to its members, which are shared jointly by all the members of the society. The Appellant is undertaking various sorts of activities, which inter-alia includes the management, maintenance, administration of the society property, payment of various statutory taxes like payment of electricity bill of the common area of the society, water tax levied by the local authority, etc. along with organising various social, cultural, and recreational events for the members of the society against the contribution called "society charges", which can reasonably be construed as "consideration" in terms of Section 2(31) of the CGST Act.

- Also, provision of any facilities or benefits by a club, association, or society to its members against a subscription or any other consideration would be construed as "business" in terms of its definition provided under Clause (e) of Section 2(17) the CGST Act.

- Observed that, the provisions under the CGST Act - definition of 'person', 'business' and 'supply' are now self-contained, unqualified and wide enough to

include the supply by both-incorporated and unincorporated clubs to its members and by their extensiveness completely does away with the principle of mutuality.

- Upheld the order of AAR, Maharashtra to hold that the they do not find any reason to interfere with the ruling passed by the AAR, Maharashtra in ***Order No.- GST-ARA-21/2019-20/B-34 dated March 17, 2020***. Since, the Appellant is providing services to its members against the consideration, named as 'society charges' is in the course or furtherance of business, therefore, the activities carried out by the Appellant would amount to supply in terms of Section 7(1)(a) of the CGST Act, and the same would be liable for GST subject to the condition that the monthly subscription / contribution charged by the society from its members is more than ₹ 7500/- per month per member and the annual aggregate turnover of the society by way of supplying of services and goods is also ₹ 20 lakhs or more.

Comments:-

The Appellate AAR, Maharashtra, in the case of ***M/S. Rotary Club of Mumbai Queens Necklace (Order No.- MAH/AAAR/SS-RJ/15/2019-20, dated November 6, 2019)*** held that no GST is payable on the subscription/membership/admission fees collected since the entire such amount collected by the club is expended towards meeting and administrative expenditures and no facilities and benefits are being provided to members specifically out of it, therefore, there is no business under Section 2(17) of the CGST Act and hence no supply. If it is held that the activities constitute supply then, the membership fees collected by the club, which is purely in the nature of reimbursement for the meetings and administrative expenditures incurred by it, would be subject to double taxation as the amount spent towards meetings and administrative expenditures is already subject to GST at the hands of suppliers of these input services or goods used in the meeting or events and would be clearly against the legislature's intention of forming GST, as it clearly doesn't embrace the idea of double taxation.

Conversely, AAAR, West Bengal in ***Re: Association of Inner Wheel Clubs of India [Appeal Case No. 11/WBAAAR/2018 dated 20.03.2019]*** has upheld the decision of AAR West Bengal in ***Re: Association of Inner Wheel Clubs in India [2019 (20) G.S.T.L. 119 (A.A.R. - GST)],*** wherein members were granted various facilities and/or benefits, enabling them to attend conventions/meetings for furtherance of organization's objectives against subscriptions or fees, renewable annually. Thus, held that applicant is doing "business" as

defined under sec 2(17)(e) of the CGST Act. Moreover, applicant also providing space for advertisements, raising sponsorship, etc., and transactions regarding these activities are business transactions within the meaning of sec 2(17)(b) ibid, being transactions undertaken in connection with or incidental or ancillary to its social welfare activities and are supplies in terms of sec 7(1) of the CGST Act. Therefore, GST is leviable on such membership fees.

Further, Appellate AAR, Maharashtra, in the case of ***Lions Club of Poona Kothrud (Order No.- MAH/AAAR/SS-RJ/32A/2018-19, dated, August 14, 2019)***, wherein it was held that the membership fees collected are not only meant for administrative expenses but also for organizing leadership programs for direct benefits of the members. Therefore, GST is leviable on the amount collected by the club.

Considering the landmark judgment of Hon'ble SC in the cases of ***State of West Bengal & Ors. v. Calcutta Club Limited [Civil Appeal No. 4184/2009]*** and ***Chief Commissioner of Central Excise and Service & Ors. v. Ranchi Club Ltd. [Civil Appeal No. 7497/2012]*** which upheld the doctrine of mutuality to settle the unresolved issue of taxability of transactions between the members and clubs under the Sales Tax laws as well as under the Service Tax law, the same should hold true for the GST, which replaced service tax.

Ratio of the above judgment can be applied in GST regime as well to say that as per the doctrine of mutuality, it follows that supply made to self and consideration made to self would not qualify as consideration.

Moreover, no deeming fiction can be created arbitrarily in GST law to the effect of treating a club or association and its members as distinct persons.

Further, as held in the case of **Rotary Club** *(supra)* taxing subscription/membership/admission fees collected by clubs/societies from its members would amount to double taxation and the same would unmistakably be against the lawmaking body's intention of the enactment of GST, which absolutely doesn't grasp double taxation.

It can be said that the taxability of supply between clubs and its members are questionable issue as the tax authorities and professionals fail to appreciate the significance of presence of two distinct persons required for a valid consideration which

is missing in the event of a clubs. There is a necessity for clarification required on the matter in order to avoid any litigation.

Relevant Provisions:-

Section 2(17) of the CGST Act:

""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) activities of a race club including by way of totalisator or a license to book maker or activities of a licensed book maker in such club; and

(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;"

Section 2(31) of the CGST Act:

""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;"

Section 2(1) of the CGST Act:

"Scope of 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 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."

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