

GST payable on membership/ subscription fee received from members of a club

The AAR, Maharashtra in the matter of *M/S the Poona Club Limited [Advance Ruling No. GST-ARA-123/2019-20/B-12 dated January 31, 2022]* held that, club of membership association and its members are distinct persons and the **membership/ subscription fee, and annual fee, received** from its members are consideration for supply of goods/services as a separate entity covered by the scope of the term 'business' and, **thus, principle of mutuality is not applicable. Hence, GST would be payable on** amounts received from club members.

Facts:

M/s. the Poona Club Limited ("**the Applicant**") is a membership association formed for creation of common infrastructure for members, maintain the same and administer the club, for which the Applicant receives the capital funds, raised exclusively through membership fee from its members. Certain members are required to pay annual subscription that is spent mainly for office & administrative expenses such as salaries, security, labour charges, electricity etc. and not for providing any specific service or goods to members. Moreover, all members have to pay Annual Game Fees also.

The Applicant contended that, the membership fee, annual subscription and annual games fee collected from members of club are not liable to tax under the Central Goods and Services Tax Act, 2017 ("**the CGST Act**") as the club and the members are considered as same identity and hence the principle of mutuality is applicable and there cannot be any business or supply by one person with its own self. Further contended that, under Section 2(31) of the CGST Act i.e. the definition of consideration, there should be a recipient who receives the goods and services and the ordinary meaning of 'business' requires profit motive to be established.

Issue:

Whether the membership fee, annual subscription fee, annual games fee collected by the Applicant from its members are **liable to tax under CGST Act?**

Held:

The AAR, Maharashtra in *Advance Ruling No.GST-ARA-123/2019-20/B-12 dated January 31, 2022* held as under:

- Observed that, as per the amended Section 7 of the CGST Act, the Applicant and its members are distinct persons and the fees received by the Applicant, from its members are nothing but consideration received for supply of goods/services as a separate entity.
- Opined that, the principle of mutuality is not applicable in view of the amended Section 7 of the CGST Act.
- Analysed Section 7 of the CGST Act and noted that, undertaking of a commercial activity, whether or not the same is for pecuniary benefit, which implies that whether or not such activity yields the benefit which can be quantifiable in monetary terms or not. Further, it covers the commercial transactions which are in the nature of barter or exchange wherein the benefit is in non-monetary terms.
- **Held that,** the club and its members are distinct persons and the fees received by the Applicant, from its members are consideration received for supply of goods/services as a separate entity covered by the scope of the term 'business', and therefore, the Applicant has to pay GST on the said amounts received from its members.

Relevant Provisions:

Section 7 of the CGST Act

"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;

(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.”

(Author can be reached at info@a2ztaxcorp.com)

DISCLAIMER: The views expressed are strictly of the author and A2Z Taxcorp LLP. The contents of this article are solely for informational purpose and for the reader's personal non-commercial use. It does not constitute professional advice or recommendation of firm. Neither the author nor firm and its affiliates accepts any liabilities for any loss or damage of any kind arising out of any information in this article nor for any actions taken in reliance thereon. Further, no portion of our article or newsletter should be used for any purpose(s) unless authorized in writing and we reserve a legal right for any infringement on usage of our article or newsletter without prior permission.