

MAHARASHTRA AUTHORITY FOR ADVANCE RULING
GST Bhavan, 8th floor, H-Wing, Mazgaon, Mumbai - 400010.
 (Constituted under section 96 of the Maharashtra Goods and Services Tax Act, 2017)
BEFORE THE BENCH OF

- (1) Shri B. Timothy, Addl. Commissioner of Central Tax, (Member)
 (2) Shri B. V. Borhade, Joint Commissioner of State Tax, (Member)

GSTIN Number, if any/ User-id		1271900000079ARJ (User ID) 27AAABR0643J1Z (GSTIN)
Legal Name of Applicant		Rotary Club of Mumbai Queens Necklace
Registered Address/Address provided while obtaining user id		B 41-45, Paragon Centre, P. B. Marg, Worli, Mumbai 400013
Details of application		GST-ARA, Application No. 118 Dated 31.01.2019
Concerned officer		Asstt. Commr. of CGST &CX Division – III- Mumbai Central
Nature of activity(s) (proposed / present) in respect of which advance ruling sought		
A	Category	Others
B	Description (in brief)	Rotary Club of Mumbai Queens Necklace (hereinafter referred to as “Rotary” or “Club”) is an un-incorporated association of individuals. The club is affiliated to Rotary International, a worldwide organization with [520+] districts, [35000+] clubs and (1.2 million plus) members. The object of Rotary is to encourage and foster the ideal of service.
Issue/s on which advance ruling required		(iv) admissibility of input tax credit of tax paid or deemed to have been paid. (v) determination of the liability to pay tax on any goods or services or both. (vi) whether Applicant is required to be registered under the Act. (vii) whether any particular thing done by the applicant with respect to any goods and/or services or both amounts to or results in a supply of goods and/or services or both, within the meaning of that term
Question(s) on which advance ruling is required		As reproduced in para 01 of the Proceedings below.



PROCEEDINGS

(Under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

The present application has been filed under section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as “the CGST Act and MGST Act”] by **Rotary Club of Mumbai Queens Necklace**, the applicant, seeking an advance ruling in respect of the following questions.

- 1.1. The questions/ issues before Your Honor for determination is whether the amount collected as membership subscription and admission fees from members is liable to GST as supply of services?

1.2. If the above receipts are liable to GST can the Club claim Input tax credit of the tax paid on Banquet and catering services for holding members meetings and various events?

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 any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, the expression 'GST Act' would mean CGST Act and MGST Act.

02. **FACTS AND CONTENTIONS – AS PER THE APPLICANT**

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

- **“Rotary Club of Mumbai Queens Necklace** (hereinafter referred to as “Rotary” or “Club”) is an un-incorporated association of individuals. The club is affiliated to Rotary International, a worldwide organization with 520+ districts, 35000+ clubs and 1.2 million plus members. The object of Rotary is to encourage and foster the ideal of service.
- Advance Ruling Application is being filed by the club i.e. **Rotary Club of Mumbai Queens Necklace**.
- For the sake of brevity, the structure of Rotary is explained as under:
 - a) **Clubs** - Rotarians are members of Rotary clubs, which in turn belong to the global association Rotary International (RI). Each club elects its own officers and enjoys full autonomy within the framework of Rotary's constitution and bylaws.
 - b) **Districts** - Clubs are grouped into RI districts, each led by a district governor. The district administration, includes District Secretary, District Treasurer, Assistant Governors and various other committees. The District guides and supports the clubs.
 - c) **Rotary International Board (RI)** - RI Board of Directors, which includes the RI president and president-elect, meets quarterly to establish policies. The RI president, who is elected annually, develops a theme and emphases for the year.
 - d) **The Secretariat** : Rotary International is headquartered in Evanston, a suburb of Chicago, Illinois, USA, with seven inter-national offices in Argentina, Australia, Brazil, India, Japan, Korea, and Switzerland. The office for RI in India, serves clubs and districts in that region.
- The normal functioning of the Rotary as a whole is summarized as under:
 - a) Rotary clubs bring together dedicated individuals to exchange ideas, build relationships, and take action.



b) **Rotary International** supports Rotary clubs worldwide by coordinating global programs, campaigns, and initiatives,

c) The Rotary Foundation uses generous donations to fund projects by Rotarians and other partners in communities around the world. As a nonprofit organization, all of the Foundation's funding comes from voluntary contributions made by Rotarians and friends who share our vision of a better world.

Together, Rotary clubs, Rotary International, and The Rotary Foundation work to make lasting improvements in our communities and around the world.

- Rotary Club work with Rotary Foundation to :
 - Promote Peace
 - Fight Diseases
 - Provide Clean Water, Sanitation and hygiene
 - Save Mothers and children
 - Support Education
- The purpose of Clubs is to promote integrity, and advance world understanding, goodwill, and peace through fellowship of leaders.
- The members come together to form a rotary club and it is not a service club. There is an annual budget of expenses and that money is pooled by the members in equal share. It is not for profit institution and neither has it rendered commercial service to its members nor does it render services to outsiders for a fee.

For the said purpose clubs receive contribution from its members for incurring expenditure on its meetings and communication. The receipts majorly comprise of:

a) Fees from members which in essence is contribution towards yearly expenses. The contribution from new members is collected on pro rata basis rounded to quarter/half year.

- b) One time admission Fees from New Members (other than who are or were Rotarians).
- The expenses are in the form of:
 - a) Meeting Expenses
 - b) Fees and contributions to District or Secretariat of Rotary
 - c) Other Administration expenses like printing, stationery, audit fees etc.
- The amounts collected by way of fees are only pooled together and it is not expected to generate any surplus. Club has not been formed to give any facilities or services to its members. The members gather under the umbrella of the club to perform socially relevant activities.



- Club in normal parlance is understood to provide goods or services to its members such as recreation, sports etc. However Rotary Club does not provide any facilities or benefits in terms of goods or services to the members.
- Copy of the Constitution Document/charter is enclosed herewith at **Annexure A** for reference. The activities relating to receiving donation etc. is carried out through a charitable trust which is registered under Bombay Public Trust Act, 1950.
- The financial statements and audited accounts enclosed at **Annexure B**. Also sample copies of invoices issued for Membership Subscription and Admission fees are enclosed at **Annexure C** respectively.
- To ensure the smooth and proper working of the club, membership subscription fees and admission fees are collected from members. The amounts collected are then utilized for administration purposes of the club.
- In order to avoid unnecessary and unwanted litigation, the Club was registered earlier under service tax vide registration number AAABRO643JSD002 and also under Goods and Services Tax (GST) having registration number as 27AAABR0643J1ZJ and is currently charging GST on the membership subscription and admission fees collected by it. The registration certificates under service tax and GST are enclosed at **Annexure D and Annexure E** respectively.
- The Club organizes events for the purpose of enabling members to meet and interact with each other. For such events the Club incurs various expenditure like banquet charges, catering services etc.
- Club also incurs expenditure like banquet and catering services for its weekly/monthly meeting.
- The copy of such Banquet charges and Catering charges are enclosed at **Annexure "F" & Annexure "G"**.

3.1

STATEMENT CONTAINING THE APPLICANT'S INTERPRETATION OF LAW AND/OR FACTS, AS THE CASE MAY BE, IN RESPECT OF THE QUESTION(S) ON WHICH THE ADVANCE RULING IS SOUGHT

➤ **SUBMISSIONS OF THE APPLICANT**

The applicant submits the following in their support:

- As per the definition of the term "Person" under section 2(84) of the CGST Act, 2017, there is no deeming fiction to treat the Club and its members as different persons. Therefore, the vital condition for a transaction to be taxable under GST, that a supplier and recipient should be different persons is not satisfied.
- The Club is an autonomous unit which collects its fees from its members to meet its administrative costs and to manage its activities. Therefore, the principle of mutuality is

applicable and since the fees so collected are only pooled together for convenience and for defraying administrative and other expenses and hence, the same should not be brought under the purview of GST.

- **Principle of Mutuality:**

1) In the case of English and Scottish Joint Co-operative Whole society Ltd. V. Commr. Agr of I. T. (1948) 16 ITR 270 (PC), there are three conditions stipulated by the judicial committee, the existence of which establishes the doctrine of mutuality:

a) *The identity of the contributors to the fund and recipients from the fund.* b) *The treatment of the company, though incorporated as a mere entity for the convenience of the members and policyholders, in other words, as an instrument obedient to their mandate, and*

c) *The impossibility that contributors should derive profits from contributions made by themselves to a fund which could only be expelled or returned to themselves.*

2) The Honorable court has also discussed the principles of mutuality in the case of CIT vs. Bankimpur Club Ltd. 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."

- **Supply:**

1) Section 9 of the CGST Act, 2017 stipulates the taxable event for levying GST as supply of goods or services.

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

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 c consideration whether or not in the course or furtherance of business;

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

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

3) Therefore, in order to tax the transaction between an association or club or Club and its members, said transaction must either fit clause (a) or(c) above.

4) **Explanation for transaction to be outside the purview of Clause (a) of section 7(1):**

► Clause (a) of section 7(1) 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.

Therefore, in order to tax the transaction, the supply must be for a consideration and it should be in the course of furtherance of business.

► **Business:**

Clause (e) of section 2(17) specifies the term "Business" to include: *"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"*

Therefore in order to satisfy the term business, there must be some benefit/facility to its members. In our case, there is no facility or benefit to the members of the Club.

► **Consideration:**

Under section 2(105), the term "supplier" has been defined as follows: *"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;*

Under section 2(93), the term recipient has been defined as follows:

"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 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;

A harmonious reading of both the above 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.

The term person 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.

Recent circular implies that "supply of services by an unincorporated association or body of persons 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."

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.

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.

5) **Explanation for transaction to be outside the purview of Clause (c) of section 7(1):**

Clause (c) of section 7(1) clause covers the 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 between in section 25, when made in the course or furtherance of business shall be taxable. Members are not covered under section 25 as distinct person. Therefore, can the Club and its members be considered as related persons?

Explanation to section 15 of the act explains the term related person as follows:

For the purposes of this Act,--

(a) persons shall be deemed to be "related persons" if--

(i) such persons are officers or directors of one another's businesses;

(ii) such persons are legally recognised partners in business;

(iii) such persons are employer and employee;

(iv) any person directly or indirectly owns, controls or holds twenty-five per cent or more of the outstanding voting stock or shares of both of them;

(v) one of them directly or indirectly controls the other;

(vi) both of them are directly or indirectly controlled by a third person;

(vii) together they directly or indirectly control a third person; or

(viii) they are members of the same family,

(b) the term "person" also includes legal persons;

C) persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other, shall be deemed to be related.

On perusal of the above definition we can conclude that there must be more than one person who can be considered as related as per the above specified conditions. As an association and its members are the same because of principle of mutuality and hence they cannot be regarded as related person.

From the foregoing analysis, we interpret that transaction between an association or club and its members is not covered in the scope of supply u/s. 7 of the CGST Act, 2017. Hence, the same shall not be taxable.

- The club also relies on Advance Ruling of "Lions Club of Poona Kothrud" where Maharashtra Authority of Advance Ruling have rules that "Club is not formed to provide any supply of goods or services to its members qua the fees received from them. There being no supply qua the fees received, there arises no occasion to visit the definition of "Supply" under the GST Act - Applicant club, as per the facts put up, does not render any "Supply" for the purposes of the GST Act. Hence registration under GST is not required". The copy of said Advance ruling is enclosed at **Annexure "H"**.

Since the transaction between the club and its members does not tantamount to supply u/s 7 of the CGST Act, 2017, no GST is applicable on membership fees collected by the club from its members.

PRAYER

In light of the above, a Ruling is sought from the Hon'ble Authority on whether subscription fees and admission fees received from members are liable to GST and if yes, whether Input tax credit on the banquet and catering services can be availed or not.

Additional submissions on 11.04.2019

During the course of hearing on 03rd April, 2019 your good office had asked for certain additional information and also given us an opportunity to rebut the reply of the jurisdictional officer. Our clarifications are as under:

1. We reiterate the submissions made while filing the application and additional submissions on 18.03.19.



2. We once again reiterate that the club has not been formed to provide any supply of goods or services to the members. The club which is nothing else but group of service oriented individuals who have come together only collects the budgeted expenses from its members to incur the meeting expenses, administrative expenses and payment to Rotary International. Holding of meeting at a good venue does not make the said collection taxable. We would also draw your attention to the Advance Ruling in the case of Lions Club of Kothrud, Pune wherein the Advance Ruling authorities in identical scenario have held that *“There being no supply qua the fees received, there arises no occasion for us to visit the definition of "Supply" under the GST Act. The applicant club as per the facts put up before us does not render any “Supply” for the purpose of GST Act.”*
3. As discussed in the course of hearing, the club invites various speakers (for which no considerations paid to them or charged to members) in its meetings. The details of speakers at some of the meetings are as under:

Sr. No.	Date of Meeting	Speaker	Topic
1	9/7/2018	Mr. Arun Shourie	Life Experiences
2	22/10/2018	Mrs. Leena Asher	Education Systems
3	19/11/2018	Enthu Suresh	Motivational Speaker
4	18/2/2019	Mr. Ujwal Nikam	LIFE EXPERIENCES

We reiterate that the said activities are not for transforming members into leaders generally but are for members to become effective while carrying out various social service activities. The Rotary could not have assisted in eradication of polio or various such other massive programs unless the members got together and learnt the art of team work and working with government and semi government bodies. Each of the speakers encourage the members to continue to do on the field of social service and at the same time share their learnings in life which in turn helps the members perform as effective social worker. The members contribute to the expenses for holding such meeting. No amount of money raised for spending on the beneficiaries or medical projects are utilized for the meeting. On the contrary, the members not only pay for holding the meetings but also donate money for the various social causes. We reiterate that the club is not formed to build and impart skills in leadership for individual benefits.

The above stand has also been affirmed by the Advance Ruling authorities in the case of Lions Club of Kothrud , Pune.

4. Clarifications on the observations of the submissions made by the jurisdictional officer in the course of personal hearing on 03.04.2019:
- a) Rotary club invites eminent personalities for guest lectures and guidance for the members to enhance their professional leadership and personal skills. Through regular meetings and events, the members of the Club will connect with other leaders towards changing the world

and expand their leadership and professional skills. There are various articles on public domain like "Why Rotary? What Our Members Receive Brad Howard, RID 2015-17" from which it can be understood that members are benefitted by these meetings with eminent personalities and their guidance while at the same time such privileges are not available to a non member. It is also said that "Rotary Club Membership allows members to sit next to people with whom he/she may have to pay \$250 an hour to meet" this clearly shows that there is furtherance of business involved.

We reiterate the submissions made in Point 3 stating the purpose of said meetings. Further the copies of audited accounts of the club have been submitted to your good offices. There is no collection of any type from members other than membership/entrance fees. As mentioned the purpose of said meetings is for members to become leaders to perform towards the causes of the clubs and not personal gains. The meeting with other NGOs or corporates is for the purpose of raising funds for the charitable objects and also showing to the corporate the effective projects for their Corporate Social Responsibility spending. Bill Gates of Microsoft or Rajashree Birla has been contributing large sums of money to Rotary for eradication of polio programs worldwide including in India and this is not possible unless the members connect with other members and corporates. The speakers who come to Rotary also support the activities of Rotary by spreading the good work to others.

b) It further appears that in Rotary Global Rewards, wherein the members get several benefits in the way of offers and discounts on various products and services. Rotary Global Rewards offers discounts on vehicle rentals, hotels, dining, and more. Products and services from companies around the world are being added every week.

Rotary Club is not providing any discounts or facilities on its own account. The said discounts are provided by the respective companies. The said rewards are similar to Credit Card reward points provided by the Credit Card companies. There is no revenue or benefit to the club for the same. Such types of reward points are offered by companies for using their products or services and not any goods or services of the Club. It is not the objective of Rotary to seek rewards. However the various organisations as part of their gesture towards the self less and hard work Rotarians carry out that they may provide additional discounts to the Rotarians or any one who approaches through Rotarians.

c) It also facilitates gathering of professional and experts locally and globally to enhance their contacts for furtherance of their business. This activity cannot be categorized as community service rather it indicates towards furtherance of one's **own cause**. We reiterate the submissions made in Point 3 & 4(a) stating the purpose of said meetings. As mentioned the purpose of said meetings is for members to become leaders to perform towards the causes of the clubs and not personal gains.



d) It also appears that Rotary club charges fees to admit a person as their member which is not used for any social cause. The same can be seen from the Balance sheet submitted by M/s. Rotary Club of Mumbai Queens Necklace. There are no funds used for any social cause. On the contrary, from tax invoice No. 166/18-19, 186/18-19 and 091/18-19 and schedules of the Balance sheet attached with the application by M/s. Rotary Club of Mumbai Queens Necklace, it is observed that M/s. Rotary Club Of Mumbai Queens Necklace had arranged "spouse events" and "spouse night expenses" which clearly amounts to recreation activity and hence it falls under tax net.

The members come together to form a rotary club and it is not an entertainment or recreational service club. There is an annual budget of expenses and that money is pooled by the members in equal share. It is a not-for-profit institution and neither has it rendered commercial service to its members nor does it render services to outsiders for a fee. The events are held by the club for holding lectures and fun raising events. None of the events are in the form of recreational events.

The club accounts are kept separate from the charitable activities which is carried out under the registered charitable Trust both under the Public Trust Act as well as Income Tax Act. The club has submitted the audited accounts of Rotary Club of Bombay Queens Necklace Charitable Trust under whose aegis all the charitable projects are carried out. All donations and charitable activities are made from the said Trust. The Trust has undertaken various activities like donation of machineries to hospitals, Cancer Screening and Detection Camps, diabetes check up camps etc. The Club members meet at their own expenses for the said purpose.

e) Input Tax Credit of banquet and catering services for holding members meetings and various events is not allowed u/s 17(5)(b) of CGST Act.

As per the provisions of CGST Act, Input Tax credit of Food & beverages, outdoor catering is not allowed u/s 17(5)(b) except where such goods or services or both is used by a registered person for making as outward taxable supply of the same category of goods or services or both or as element of a taxable composite or mixed supply. The said services are definitely used by the club for its members and hence ITC for the same should definitely be allowed.

We will be glad to provide any further details or documents your good office may require in this regard.

We request your good office to kindly take on record the above submissions and consider the social cause of the club while determining the taxability of its collections from members.”

04. CONTENTION - AS PER THE CONCERNED OFFICER

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

“M/s. Rotary Club of Mumbai Queens Necklace having GSTIN no 27AAABR0643J1ZJ are registered with CGST Division III, Range -IV, Mumbai Central Commissionerate. Further as mentioned in your letter to examine the the application filed by M/s. Rotary Club Of Mumbai Queens Necklace the undersigned is having the opinion that,-

- 1.1 Services provided by the Club & Association in lieu of consideration received as membership fees, admission fees and subscriptions are taxable as supply of services under GST. So prima facie there appears a levy of GST on the issue on above said issue.
- 1.2 According to Section 17 (5)(b) of CGST 2017 mentions various situations wherein cenvat credit can not be availed, we would like to draw special attention to section 17 (b):

“ (b) The following supply of goods or services or both

i) food & beverages, outdoor catering, beauty treatment. Health services, cosmetic & plastic surgery, leasing renting or hiring of motor vehicles, vessels or aircraft referers to in clause (a) of clause (aa) except when used for the purpose specified there in, life insurance and health insurance. Provided that the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making as outward taxable supply of the same category of goods or services or both or as as element of a taxable composite or mixed supply;

ii) membership of a club , health and fitness centre

iii) travel benefits extended to employees on vacation such as leave or home travel concessions Provided that the input tax credit in respect of such goods or services or both shall be available where it is obligatory for an employer to provide the same to its employees under any law for the time being in force. In view of the above it is to state that the Club or association can not claim input tax credit on the tax paid on catering and other such services.”

Additional submissions

In the instant case M/s Rotary Club Of Mumbai Queens Necklace have raised two queries which are as under:-

1. Whether the amount collected as membership subscription and admission fees from members is liable to GST:-

1.1 According to the Article 8 of Section 1 of Bylaws of the Rotary Club of Mumbai Queens's Necklace that club committee co-ordinates their efforts to achieve club's annual and long term

goals. Each club should have the committee listed in Article 13 section 7 of Standard Rotary club constitution. However, M /s Rotary Club of Mumbai Queens Necklace have not submitted the copies of Article 13 section 7 in their application.

Therefore, in order to ascertain the responsibilities and privileges of the Committee and their members, the department searched the literature available on internet, it has come to department's notice that Rotary clubs are involved in two kind of activities:-

i) Social Service Activities:- It is ascertained that M/s. Rotary Club of Mumbai Queens Necklace are into social services like all other Rotary clubs. Ex. Fighting diseases, Working towards education, etc.

ii) Professional and Recreational Activities:- Along with Social services, the M/s. Rotary Club of Mumbai Queens Necklace is also involved in other activities for their members which are not related to social cause and are discussed below:

a. Rotary club invites eminent personalities for guest lectures and guidance for the members to enhance their professional leadership and personal skills. Through regular meetings and events, the members of the Club will connect with other leaders towards changing the world and expand their leadership and professional skills. There are various articles on public domain like "Why Rotary? What Our Members Receive Brad Howard, RID 2015-17" from which it can be understood that members are benefitted by these meetings with eminent personalities and their guidance while at the same time such privileges are not available to a non-member. It is also said that "Rotary Club Membership allows members to sit next to people with whom he/she may have to pay \$250 an hour to meet" This clearly shows that there is furtherance of business involved.

b. It further appears that in Rotary Global Rewards, wherein the members get several benefits by the way of offers and discounts on various products and services. Rotary Global Rewards offers discounts on vehicle rentals, hotels, dining, and more. Products and services from companies around the world are being added every week.

c. It also facilitates gathering of professional and experts locally and globally to enhance their contacts for furtherance of their business. This activity cannot be categorized as community service rather it indicates towards furtherance of one's own cause.

d. It also appears that Rotary clubs charges fees to admit a person as their member which is not used for any social cause. The same can be seen from the Balance sheet submitted by M/s. Rotary Club of Mumbai Queens Necklace. There are no funds used for any social cause. On the contrary, from tax invoice No. 166/18-19, 186/18-19 and 091/18-19 and schedules of the Balance sheet attached with the application by M/s. Rotary Club of Mumbai Queens Necklace, it is observed that M/s. Rotary Club Of Mumbai Queens Necklace had arranged



“spouse events” and “spouse night expenses” which clearly amounts to recreation activity and hence it falls under tax net.

Hence on going through the above information, it appears that the Club & Association does not provide only Social Services as an NGO, but also have other functions relating to Personal Functions which clearly amounts to furtherance of business. In lieu of consideration received as membership fees, admission fees and subscriptions are taxable as supply of services under GST. So prima facie there appears a levy of GST on the issue on above said issue.

2) If receipts are liable to GST, can the club claim input tax credit of the tax paid on banquet and catering services for holding members meetings and various events?

2.1. In this regard, it appears that according to Section 17 (5)(b) of CGST Act, 2017 mentions various situations wherein ITC cannot be availed. The Section 17(5)(b) is reproduced is as under:-

Section 17(5):- Notwithstanding anything contained in Sub-Section (1) of section 16 and Sub-Section (1) of section 18, input tax credit shall not be available in respect of the following, namely:-

(b) The following supply of goods or services or both:-

- i) Food & beverages, outdoor catering, beauty treatment. Health services, cosmetic & plastic surgery, leasing renting or hiring of motor vehicles, vessels or aircraft referers to in clause (a) of clause (aa) except when used for the purpose specified there in, life insurance and health insurance. Provided that the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making as outward taxable supply of the same category of goods or services or both or as element of a taxable composite or mixed supply;
- ii) Membership of a club, health and fitness center
- iii) Travel benefits extended to employees on vacation such as leave or home travel concessions.

Provided that the input tax credit in respect of such goods or services or both shall be available where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.

In view of the above it is to state that the Club or association cannot claim input tax credit on the tax paid on catering and other such services.

Additional submissions on 01.04.2019

In the instant case M/s Rotary Club Of Mumbai Queens Necklace have raised two queries

1.1 Whether the amount collected as membership subscription and admission fees from members is liable to GST:

According to Article (8) of section (1) of bylaws of the Rotary Club of Mumbai Queens's Necklace, club committee co-ordinate their efforts to achieve club's annual and long term goals. Each club should have the committee listed in Article 13 section 7 of Standard Rotary club constitution. However, M/s Rotary Club of Mumbai Queens Necklace have not submitted the copies of Article 13 section 7 in their application.

Hence in order to ascertain the responsibilities and privileges, the department searched the literature available on internet and came to notice that Rotary clubs have two functions:-

i) social- It is ascertained that M/s. Rotary Club of Mumbai Queens Necklace are into social services like all other Rotary clubs.

ii) Personal- It was observed that Rotary members have professional meetings with other rotary members and also they use their skills and expertise and advice to further development from business point of view which clearly amounts to furtherance of business.

It appears that in Rotary Global rewards, wherein the members not only enhance their business but they learn from and identify with the leaders in their community. It is also said that " Rotary allows members to sit next to each other every week and if fails, members would otherwise had to pay \$250 an hour to meet" This clearly shows that there is furtherance of business. Also Rotary club invites eminent personalities for guest lectures and guidance for the members to enhance their professional and personal skills.

It also appears that Rotary clubs charges fees to admit a person as their member who is not used for any social cause. The same can be seen from the Balance sheet submitted by M/s. Rotary Club Of Mumbai Queens Necklace. There are no funds used for any social cause. On the contrary it is observed from tax invoice no 166/18-19, 186/18-19 and 091/18-19 and schedules of the Balance sheets attached with the application by M/s. Rotary Club of Mumbai Queens Necklace, it is observed that M/s. Rotary Club Of Mumbai Queens Necklace had arranged spouse events and spouse night expenses which clearly amounts to recreation activity and hence it falls under tax net. Hence on going through the above information, it appears that the services provided by the Club & Association in lieu of consideration received as membership fees, admission fees and subscriptions are taxable as supply of services under GST. So prima facie there appears a levy of GST on the issue on above said issue.

Through regular meetings and events, the members of the Club will connect with other leaders towards changing the world and expand their leadership and professional skills.

1. 2) If receipts are liable to GST can the club claim input tax credit of the tax paid on banquet and catering services for holding members meetings and various events?

In this connection the undersigned is of opinion that According to Section 17 (5)(b) of CGST 2017 mentions various situations wherein ITC cannot be availed, we would like to draw special attention to section 17(5)(b)

(5) Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following, namely:-

[(2) (a) motor vehicles for transportation of person having approved Seating capacity of not more than thirteen persons (including the driver), except when they are used for making the following taxable supplies, namely;-

- (A) further supply of such motor vehicles; or*
- (B) transportation of passengers; or*
- (C) Imparting training on driving such motor vehicles;*

(aa) vessels and aircraft except when they are used-

(i) for making the following taxable supplies, namely:-

- (A) further supply of such vessels or aircraft; or*
- (B) transportation of passengers; or*
- (C) imparting training on navigating such vessels; or*
- (D) imparting training on flying such aircraft;*

(ii) for transportation of goods;

(ab) services of general insurance, servicing, repair and maintenance In so far as they relate to motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa):

PROVIDED that the input tax credit in respect of such services shall be available-

(i) where the motor vehicles, vessels or clause (a) or clause (aa) are used for the purposes specified therein

(ii) where received by a taxable person engaged-

(i) in the manufacture of such motor vehicles, vessels or Aircraft; or

(ii) in the supply of general insurance services in respect of Such motor vehicles, vessels or aircraft insured by him;

(b) The following supply of goods or services or both

i) Food & beverages, outdoor catering, beauty treatment. Health services, cosmetic & plastic surgery, leasing renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) of clause (aa) except when used for the purpose specified there in, life insurance and health insurance. Provided that the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making as outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;

ii) Membership of a club, health and fitness center

iii) Travel benefits extended to employees on vacation such as leave or home travel concessions



Provided that the input tax credit in respect of such goods or services or both shall be available where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.

In view of the above it is to state that the Club or association cannot claim input tax credit on the tax paid on catering and other such services.

05. HEARING

Preliminary hearing in the matter was held on 27.02.2019. Sh. Parag Mehta, CA appeared, and requested for admission of application. Nobody from the jurisdictional Office appeared.

The application was admitted and called for final hearing on 03.04.2019. Sh. Parag Mehta, C.A, appeared made oral and written submissions. Jurisdictional Officer Ms. Manisha Rode, Suptt., appeared and made written submissions.

05. OBSERVATIONS

We have gone through the facts of the case, documents on record and submissions made by both, the applicant as well as the jurisdictional office.

The applicant has raised the following questions:

- 1.1. *The questions/ issues before Your Honor for determination is whether the amount collected as membership subscription and admission fees from members is liable to GST as supply of services?*

If the above receipts are liable to GST can the Club claim Input tax credit of the tax paid on Banquet and catering services for holding members meetings and various events?

The applicant club has stated that, (i) they are an autonomous unit which collects fees from their members to meet administrative costs and to manage their activities; (ii) the *principle of mutuality* - an amount received from oneself cannot be regarded as income so as to be liable to tax - is applicable in their case since the fees so collected are only pooled together for convenience and for defraying administrative and other expenses and such fees collected should not be liable to GST. The entire submissions made by them are in defense of their contention that the fees etc. collected by them from members are not liable to GST.

They are also relying on the decision of the Maharashtra Advance Ruling Authority in the case of "Lions Club of Poona Kothrud" where the said Authority has ruled that "*Club is not formed to provide any supply of goods or services to its members qua the fees received from them. There being no supply qua the fees received, there arises no occasion to visit the definition of "Supply" under the GST Act. - Applicant club, as per the facts put up, does not render any "Supply" for the purposes of the GST Act. Hence registration under GST is not required*".



We find that the said order of the Maharashtra Advance Ruling Authority in respect of “Lions Club of Poona Kothrud” has been overruled, on an appeal filed by the department before the Appellate Advance Ruling Authority, Maharashtra.

The Appellate Authority in the said case has observed and found as under:

- (A). As per the definition of “person” under the GST Act, 2017, there are two persons namely, the Lions Club and the other person being the “member” of the Lions Club. Hence the club and member are distinct entities.
- (B). The Rulings and Case Laws cited by the Lions Club pertained to Income Tax matters and not service tax matters.
- (C). *“The GST law has given very wide connotation for services, which will cover any activity other than which involves goods, money and securities. Therefore the activity of the respondent (Lions Club) in as much as they are conducting the leadership program exclusively for the Lions Club members can clearly be considered as service being provided by the respondents to its members”.*
- (D). *“From the above inclusive definition of the term ‘consideration’ it can decisively be construed that the membership fee collected by the club from its members is not only meant for meeting administrative expenses, but is also towards organizing the Leadership Program for the direct or indirect benefits of the members. Any leadership skills along with other skills discussed supra, imparted to any lion member is not restricted or limited to any particular project, but the overall impact of such qualities developed in any person stays for his entire life span and the benefits accrued out of such skills will undoubtedly go much beyond the Project undertaken by the Lions Club. Thus, any membership fee collected by the Lions Club from its members will definitely be understood as ‘consideration’ as the same has been paid for supply of services”.*
- (E). The Lions Club has fulfilled both the conditions prescribed by Section 7 of the CGST Act; firstly that such supply is made by them in lieu of consideration and secondly, such supply has been made in the course or furtherance of business since the term business includes provision by club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members.
- (F). *Thus, both the conditions stipulated for ‘supply’ under the GST Laws have been adequately fulfilled to lead to the conclusion that transaction between the Respondent i.e. Lions Club and its members are nothing but supply, and accordingly will attract GST*

The Appellate Authority has also observed as follows:

1. *The AAR has interpreted the definition of ‘business’ by giving the restrictive meaning of “facilities and benefits” used in the inclusive definition of business’ by comprehending*

the same to be the activities such as recreation, sport, food, etc. which are not there in the definition of 'business' provided in the CGST Act.

2. *The AAR have not followed the literal rule of construction in so far as the interpretation of the definition of 'business' under the CGST Act, 2017, is concerned.*
3. *"It is also difficult for us to comprehend the observation made by the AAR wherein they have opined that such activities as the one undertaken by the Respondent, wherein they organise the Leadership and other skill development program for their subscribed members, do not appear to be for transforming members into leaders generally but for the members to become leaders to perform towards the causes of the Club, as the objectives or the purpose for the transformation of the members into leaders is inconsequential in the context of the GST Laws, since there is no mention of term such as objective or purpose in the definition of the term "business" under the GST Act."*
4. *Under the GST Law, the intent or objective of any club or association is immaterial in so far as the levability of GST is concerned.*

In view of the above said observations made by the Appellate Authority in the appeal filed by the department, against the order of Advance Ruling Authority, in the case of Lions Club of Poona, Kothrud, the said authority has set aside the order of the AAR, which has been heavily relied upon, by the applicant, in the subject case.

Since the Applicant themselves have submitted that the facts in their case are similar to the case of Lions Club of Poona, Kothrud, which has been overruled by the Appellate Authority, the observations and findings made by the Appellate Authority in that case are squarely applicable to the instant case. In view of the above and in observance of the principles of judicial discipline, we hold that the amount collected as membership subscription and admission fees from members is liable to GST as supply of services.

Now we come to the second question raised by the applicant which is as follows;

Question :- 1.2. If the above receipts are liable to GST can the Club claim Input tax credit of the tax paid on Banquet and catering services for holding members meetings and various events?

Section 17 of the CGST Act, 2017 deals with Apportionment of Credit and blocked credit. The relevant clause (5)(b)(i) of Section 17 is reproduced as under:-

Notwithstanding anything contained in Sub-Section (1) of section 16 and Sub-Section (1) of section 18, input tax credit shall not be available in respect of the following, namely:-

(b) The following supply of goods or services or both:-

- i) Food & beverages, outdoor catering, beauty treatment, Health services, cosmetic & plastic surgery, leasing renting or hiring of motor vehicles, vessels or aircraft***

referrers to in clause (a) of clause (aa) except when used for the purpose specified there in, life insurance and health insurance. Provided that the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making as outward taxable supply of the same category of goods or services or both or as element of a taxable composite or mixed supply;

ii)

iii)

Provided that the input tax credit in respect of such goods or services or both shall be available where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.

In the subject case the applicant has submitted that "As per the provisions of CGST Act, Input Tax credit of Food & beverages, outdoor catering is not allowed u/s 17(5)(b) except where such goods or services or both is used by a registered person for making as outward taxable supply of the same category of goods or services or both or as element of a taxable composite or mixed supply. The said services are definitely used by the club for its members and hence ITC for the same should definitely be allowed".

The applicant has only submitted that their services are used for their members and hence ITC for the same should definitely be allowed. They have not given any evidence as to

how
(i) their outward taxable supply is of the same category of goods or services or both,
(ii) their outward taxable supply is as an element of a taxable composite or mixed supply.

The provisions of Section 17(5) (b) (i) are crystal clear. Unless and until the proviso to Section 17 (5) (b) (i) is satisfied the applicant is not entitled to Input Tax credit of Food & beverages, outdoor catering. The applicant, other than mentioning that they are eligible for such credit has not substantiated the same with evidentiary material. Hence we cannot accept their contention.

In view of the above, agreeing with the view of the jurisdictional office that the Club or association cannot claim input tax credit on the tax paid on catering and other such services, we hold that the Club or association, in this case, the applicant, cannot claim input tax credit on the tax paid on banquet and catering services.

05. In view of the extensive deliberations as held hereinabove, we pass an order as follows :

ORDER

(Under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

NO.GST-ARA- 118/2018-19/B-

46

Mumbai, dt. 30/04/2019

For reasons as discussed in the body of the order, the questions are answered thus –

Q. No. 1.1:- The questions/ issues before Your Honor for determination is whether the amount collected as membership subscription and admission fees from members is liable to GST as supply of services?

Answer :- Answered in the affirmative, in view of the observations/discussions made above.

Q. No. 1.2:- If the above receipts are liable to GST can the Club claim Input tax credit of the tax paid on Banquet and catering services for holding members meetings and various events?

Answer :- Answered in the negative, in view of the observations/discussions made above.



sd
B. TIMOTHY
(MEMBER)

sd
B. V. BORHADE
(MEMBER)
CERTIFIED TRUE COPY

Copy to:-

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Chief Commissioner of Central Tax. Churchgate Mumbai
5. Joint commissioner of State tax , Mahavikas for Website.


MEMBER
ADVANCE RULING AUTHORITY
MAHARASHTRA STATE, MUMBAI

Note :- An Appeal against this advance ruling order shall be made before The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India building, Nariman Point, Mumbai - 400021.