



INDIRECT TAX UPDATE- JULY 2020-  
2<sup>ND</sup> ISSUE FOR JULY

**S.K.KANODIA & ASSOCIATES**  
**CHARTERED ACCOUNTANTS**

# CONTENTS

RECENT CASE LAWS  
NOTIFICATIONS

GST ON MEMBERSHIP FEES COLLECTED BY CLUBS- AN  
ANALYSIS OF CONFLICTING AAR JUDGMENTS

CONTACT US





# RECENT CASE LAWS

## RECENT CASE LAWS

**HC: Rejects request for presence of an Advocate during search & seizure proceedings -**

**Subash Joshi & Anr. vs. Director General of GST Intelligence (DGGI) & Ors.**

MP HC rejects the request of Petitioner to carry out the search and seizure operation in the presence of its Advocate; Apprehending that search may not be carried out in a fair manner and its confession may be recorded under pressure, Petitioner sought directions for carrying out search in presence of an Advocate; Points out that **Petitioner has failed to point out any statutory provision or any legal right in its favour**; Relies on ratio of **SC in Poolpandi case as followed by Delhi HC in recent case of Sudhir Kumar Aggarwal**; While perusing section 67 (10) of the CGST Act, notes that the provisions of search and seizure as contained in section 100 (4) of the CrPC is applicable which provides for presence of two or more independent and respectable inhabitants of the locality as witness to the search; Highlights that the search is yet to take place in the present case and the counsel for Revenue has duly assured this court that the aforesaid provision will be complied with therefore, no direction in this regard at this stage is required; Distinguishes judgment of P&H HC in case of Akhil Krishan Maggu & Anr. Relied upon by Petitioner: **Madhya Pradesh HC**

Contd...

## RECENT CASE LAWS

**HC: Rejects request for presence of an Advocate during search & seizure proceedings -**

**Subash Joshi & Anr. vs. Director General of GST Intelligence (DGGI) & Ors.**

### **SKKA COMMENTS**

The above judgment by HC highlights the fact that during search and seizure, GST law provides for following the procedure stated in section 100(4) of CrPC which doesn't requires presence of lawyer for conducting search and seizure . Thus, merely claiming that search and seizure may not be held in true and fair manner isn't considered as valid petition in the eyes of law. Thus failing to point out any legal right, the submission of petitioner was rejected.

## RECENT CASE LAWS

**HC: Dismisses writ seeking release of property sealed for GST default by tenant, parties governed by lease terms**

**Poonam Anand Kishore Vachhani vs. Assistant Commissioner of Commercial Taxes**

**Karnataka HC** dismisses petition for handing over of premises to the Petitioner (landlord) sealed u/s 67(4) of the CGST Act w.r.t. proceedings initiated against tenant; Noting that tenant defaulted in payment of monthly rent, holds that prayer cannot be granted in writ proceedings as parties shall be governed by terms of lease; Accordingly, holds that petition is “misconceived”; Nonetheless, clarifies that dismissal of petition does not come in the way of Petitioner seeking recovery of possession of the leased premises by approaching appropriate forum in appropriate proceedings: Karnataka HC (Bengaluru)

### **SKKA Comments**

**The above judgment of the HC dismissed the writ and therefore didn't pass order in favor of landlord since the premises is in possession of tenant and the parties are governed by the terms of lease.**

**Also, it should be noted that HC has pointed that dismissal of writ doesn't block the right of landlord for seeking recovery of possession by approaching appropriate forum in appropriate proceedings. Thus, landlord interest has been taken care of on the ruling.**

## RECENT CASE LAWS

**HC: Directs release of goods being perishable in nature, orders confiscation proceedings to continue.**

### **Shri Durga Traders vs State Tax Officer**

**Gujarat HC** directs release of goods and conveyance confiscated u/s 130 subject to the deposit of tax and penalty as well as furnishing of bank guarantee by the Petitioner; Observes that the consignment truck carrying groundnuts was intercepted and on inspection of invoices and E-way bill, Respondent found few discrepancies in the documents; Accordingly the Petitioner was served with notice of confiscation of goods and conveyance in form GST MOV 10; Proposes not to go into the merits of the matter and directs the authority concerned to continue with the adjudication in accordance with law; However, noting that confiscated goods (groundnuts) are perishable in nature, orders releasing them subject to depositing the amount of tax and furnishing bank guarantee for the additions proposed to be imposed: Gujarat HC

### **SKKA Comments**

**The above judgment of the HC directed that the goods being of perishable nature should be released on furnishing bank guarantee but, the confiscation proceedings shall proceed further on its own merits in accordance with the law.**

**Thus, the judgment comes as a relief to the petitioner from facing dual loss i.e. payment of penalty and loss of goods due to perishable nature.**



# NOTIFICATIONS



**NOTIFICATION  
NO. 59/2020  
– CENTRAL  
TAX DATED  
13<sup>TH</sup> JULY,  
2020**

By the said notification, the CBIC has notified the extension in **time limit filing of annual GSTR 4 return by composition tax payers for the FY 2019-20 upto 31/08/2020** from the current extended date of 15/07/2020.



GST ON MEMBERSHIP FEES COLLECTED  
BY CLUBS- AN ANALYSIS OF  
CONFLICTING AAAR JUDGMENTS

## MEMBERSHIP OF CLUB- AAAR JUDGMENTS

Recently it has been read in various newspapers cuttings that membership fee collected by clubs is not subjected to GST as per ruling of the Maharashtra AAAR in the case of Rotary Club of Mumbai Queen Necklace. Also, a contrasting ruling was passed by the WB AAAR in the case of The Association of Inner Wheel Clubs of India wherein it was held that membership fee is taxable to GST. In this write up, we would analyse the basis of the two different AAAR judgments of WB and Maharashtra.

### **WEST BENGAL APPELLATE AUTHORITY OF ADVANCE RULING 11/WBAAAR/Appeal/2018 dated 21.12.2018**

**Applicant – The Association of Inner Wheel Clubs of India**

#### **Facts of the Case –**

The Association of Inner Wheel Club of India, who is not registered under GST regime sought a ruling on whether the activities that are undertaken by them termed as “business” and “supply of service” under WBGST Act, 2017 and CGST Act, 2017.

The AAR ruled that –

- Consideration received in the form of subscription and membership fees shall be considered as supply of service classifiable under SAC heading 99959. Services under SAC 99836 are also supplied.
- The sale of souvenirs is considered as supply of goods

The Appellant has filed an appeal to AAAR to set aside/modify the impugned ruling passed by AAR and pass such order as it may deem fit and proper. Ground provided by the applicant were as follows –

11

contd...

## MEMBERSHIP OF CLUB- AAAR JUDGMENTS

- Members of the association provides annual membership fees to the association and in lieu of that, only privilege that the members get is attend the conventions/meeting for the furtherance of objectives of the organization and it does not provide any personal facilities or benefits to the members.
- Activities of association are restricted to social welfare activities.
- Privilege to attend such meetings/conventions are not allowed to non-members.
- Awards are given for outstanding service of individual members which has no link with the payment of subscription.
- Appellant further submits that its activities neither qualifies as business nor as supply under the said law.

### **Observation by AAAR –**

- Only members of the associations are granted various facilities or benefits of attending meetings and conventions of associations for furtherance of objectives of organization. Such facilities are not available to non-members.
- The Balance Sheet of Appellant has no indication of expense made towards social work except some expense towards “Relief Fund for Cyclone”. Hence, the club has no regular social activity and also not segregated fund for the said purpose.
- The Appellant did not categorically state the details of charitable work undertaken by them and whether those qualifies under definition of “Charitable Activities” (as per item 2(r) under definition appended to the notification no. I 136-FT dated 28/07/2017 under WBGST ACT, 2017)
- Activities of Appellant qualifies “business” under section 2(17) of CGST Act which states that business includes provision by a club, association, society or any other body (for subscription) of the benefits or facilities to its members.

## MEMBERSHIP OF CLUB- AAAR JUDGMENTS

- Appellant qualifies the definition of “person” under section 2(84) of the said act.
- Thus the activities of appellant qualifies as supply (sec 7) as made in course of business.
- Schedule II provides supply of goods by unincorporated association or body of person to its members is considered as supply of goods. Thus, a conjoint reading of above implies that, supply of services by the said person to its members will be considered as supply of service.

### **Order Passed –**

**The main activity of club is charitable work as claimed by the Appellant has no firm base to stand on.**

**The AAAR find no infirmity in the ruling pronounced by the West Bengal Authority of Advance Ruling.**

**The appeal thus fails and stands disposed of accordingly.**



## MEMBERSHIP OF CLUB- AAAR JUDGMENTS

### **MAHARASTRA APPELLATE AUTHORITY OF ADVANCE RULING FOR GOODS AND SERVICE TAX**

**MAH/AAAR/SS-RJ/15/19-20 dated 06.11.2019**

**Applicant – Rotary Club of Mumbai Queen Necklace**

#### **Facts of the Case –**

The Appellant is an un-incorporated association of individuals whose object is to encourage and foster the ideal of service. Appellant work with the Rotary Foundation to:

- Promote Peace
- Fight Disease
- Provide clean water, sanitization and hygiene
- Save mothers and children
- Support education.

The purpose of the club is to promote integrity, and advance world understanding, goodwill and peace through fellowship of leaders.

There is an annual budget of expenses and that money is pooled by the members in equal share. Club has neither rendered commercial service to its members nor does it renders service to outsiders for fees.

Receipt of the club mainly consists of

- Fees from members which in essence is contribution towards yearly expenses.
- One time fees from new entrants.

## MEMBERSHIP OF CLUB- AAR JUDGMENTS

The expense are in form of:

- Meeting expenses
- Fees and contribution to District or Secretary of Rotary
- Other administrative expenses like printing, stationery, audit fees, etc.

To ensure smooth functioning of the club, admission fees/subscription are collected from the member. The amounts collected are utilized for administrative purpose of the club. Club is not formed to give any facilities to its members but the members gather under the umbrella of the club to perform social relevant activities.

The activities relating to donations etc. is carried out through a charitable trust which is registered under Bombay Public Trust Act, 1950.

Club organizes events for the purpose of enabling members to meet and interact with each other. For such events the club incurs expenditures like banquet charges, catering services etc. GST amount paid for such expenses to vendors is substantial.

**Questions raised –**

**The amount collected as membership subscription and admission fees from the members is liable to GST as supply of services? – (Held Yes by AAR)**

**If the above receipts are liable to GST, can the appellant claim ITC of tax paid on banquet and catering for holding member's meetings at various events? – (ITC disallowed by AAR)**

## MEMBERSHIP OF CLUB- AAAR JUDGMENTS

### Observation by AAAR –

- GST will apply **only if the membership subscription and admission fees collected by club is in lieu of any supply made to its members.**
- Sec 2(17) of CGST Act, 2017 provides business includes – provision by club, association, society, or any such body (for subscription or any other consideration) of the facilities or benefits to its members.
- **The entire fees collected by the club is utilized solely towards meetings, communications and other administrative expenses.** They have categorically submitted that that they do not provide any facility to member against the fees received which is also supported by its financial statement.
- They further submitted that **object of club is to promote peace, provide clean water, sanitization etc. which is also supported by its financial statement.**
- Thus, on perusal of the above submission and financial statements, it is found that **club is not providing any specific service or facilities to its members in lieu of fees received. Thus, it can be concluded that firm is not doing any business as envisaged in sec 2(17) of the act.**
- Thus, the activities undertaken by the appellant does not fall under the scope of supply under sec 7(1).

## MEMBERSHIP OF CLUB- AAAR JUDGMENTS

On the contrary, if the bench holds the activities of Appellant as supply, then the fees collected which is purely in the nature of reimbursement for meeting and administrative activities incurred by the appellant to sustain their inherent programs, **would be subject to double taxation as the amount incurred towards meeting and administrative expenses are already subject to GST at the hands of suppliers.** Thus, doing so would clearly be against the legislature's intension of the formulation of GST, which certainly does not embrace the idea of double taxation.

### **Order Passed –**

The ruling of AAR has been set aside and the AAAR held that – the amount collected as membership subscription and admission fees is not liable to GST as supply of service.

### **SKKA COMMENTS**

**Thus on reading both the above judgments, it is clear that both the judgments have pronounced correct proposition of law as the Maharashtra AAAR has ruled that the fees collected is not for supply to members as the club is formed for the object of promoting peace and other social objects whereas in the WB AAAR case, the fees was collected for services to members perse and hence the same was made taxable and rightly so.**



CONTACT US





**THANK YOU**

**S.K.Kanodia & Associates | Chartered Accountants**

**HO: 13/C, Balak Dutta Lane (Near Ram Mandir)**

**Kolkata- 700007, WB, INDIA.**

**BO: 39A, Jorapukur Square Lane (Behind Girish Park),**

**Room # 202, Kolkata- 700006, WB, INDIA**

**033-4065-8215**

**9831543580**

**[INFO@SKKASSOCIATES.COM](mailto:INFO@SKKASSOCIATES.COM)**

**[ANKIT@SKKASSOCIATES.COM](mailto:ANKIT@SKKASSOCIATES.COM)**