

## GST on Clubs - Doctrine of Mutuality

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Taxation of sale and services by a club to its members has always been a susceptible matter for litigation. In GST regime also, the stance is no different. Given the extensive reach of taxation, it is no wonder that tax agencies try to tax the internal transactions and in house contributions of these groups.

One such principle which is of paramount importance in case of clubs is the Doctrine of Mutuality. This doctrine claims that there is no accrual of income when two or more persons come together and contribute funds for a common objective for benefit of all contributors. When contributors to the fund only enjoy and use the funds for some objective, they themselves are the participators to such fund. Being the same person, they cannot earn any surplus from themselves.

In erstwhile indirect taxes, we all know that for a sale or service to occur, there must be a seller/service provider and a purchaser/service receiver. However, based on the Doctrine of Mutuality, as clubs and its members are one person only, there cannot be any sale/provision of service between themselves, hence there should be no sales/service tax. However, statutes have sought to tax the sales/services by a club to its members time and again and it still remains a matter of dispute. In indirect tax, '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. However, whether the ingredients of above clause i.e. 'Supply of goods'; 'Valuable consideration' are satisfied in case of sale by club to its members is a contentious question.

A landmark judgement **State of West Bengal v. Calcutta Club Ltd. (2019) (SC) [TS-779-SC-2019-VAT]** threw light on these issues. In this, the Apex Court held that clause consists of the words 'valuable consideration'. Thus consideration is vital for the force of this clause. The definition of consideration in Indian Contract Act, 1872 envisages the existence of two persons, the promisor and the promisee between whom the consideration should flow, however since the club is not distinct from its members there cannot be any flow of consideration between a club and its members. Thus, this judgement has in effect nullified the impact of a deeming provision laid down in the Constitution by interpretation of the word consideration in the light of the Doctrine of Mutuality.

In GST law, we all know that any activity done by a club for its members would need to qualify the definition of Supply for falling under the GST tax net. As per the GST Act, 'supply' includes: 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. It can be perceived from the above definition that for a 'Supply', a 'consideration' should be involved and the supply should be in the 'course or furtherance of business.

A club is nothing but a group of members undertaking various activities for them like organising workshops, providing food by way of a restaurant, health facilities like swimming pool, gym etc. Now 'Business' includes 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. Thus provision of any facility by a club to its members for a subscription or any other consideration would fall within the purview of business.

Further, 'Consideration' in relation to the supply of goods or services or both includes 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; It is apparent from the above definition that consideration has to be paid by the recipient or any other person to the supplier. Thus existence of two persons i.e. recipient and supplier is necessary for the consideration to flow from one person to another.

Thus on conjoint reading of the definition of supply, business and consideration, it can be said that for business there should be a consideration and for supply there should be element of business and consideration both. However, since the club is not a distinct person from its members according to Doctrine of Mutuality, a consideration cannot be said to flow from the member to the club. As consideration is missing, the transaction cannot be covered within the scope of business and supply as well.

It is also important to highlight here that the definition of person as given in Section 2(84) includes an 'association of persons or a body of individuals, whether incorporated or not, in India or outside India' and also other persons like 'Individuals', 'HUF', 'LLP' within its list. However, it nowhere implies that an 'association of persons' and its 'members' are distinct persons. Moreover, no deeming provision exists for treating the association and their members as distinct persons.

In case of Lions Club, the **Appellate Authority for Advance Ruling vide amended order (AAAR-Maharashtra)[[TS-1299-AAAR-2019-NT](#)]**, held that the membership fees used for administrative purposes would not be liable to GST since it is not business. It however added that the Registration fees received separately for the Leadership programmes conducted for members would be taxable as it is a benefit to a member.

In yet another case of **Rotary Club Mumbai Queens Necklace AAAR** held that since the membership subscription charged by the Club is used only for meetings and social causes like Clean Water and no facilities and benefits are being provided to members specifically out of it, there is no business and hence no supply.

In conclusion it can be said that the taxability of supply between clubs and its members are disputable issue as tax officers and tax professionals fail to appreciate the importance of existence of two distinct persons required for a valid consideration which is absent in case of a club.