

## **GST on Societies/ Clubs and its Members – Is History repeating Itself or a new chapter in the making?**



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### **Introduction:**

The transactions between society/ clubs and its members have seen unending litigation under the erstwhile Indirect Taxes regime and the same is also continuing in the GST regime. Taking cue of the judicial precedents and the principles enunciated in the past, the article aims to cover the review the taxability of transactions/ activities carried out between a member and a club/ societies and whether it constitutes a supply as per section 7 of the GST Act and whether the same passes the tests of constitutionality to be eligible for levy of tax under GST.

Say for instance whether a contribution or capital provided by a member in the capacity of a shareholder of a society, club, association or any such body should be subject to the levy of GST under the GST Act?

### **Brief History:**

In the above regard, before we proceed to understand the nuances of the said transactions between the members and the society, clubs or associations, it is

imperative to understand the background what led to the challenging of constitutional validity of the provision under the GST Act when the same transaction was already discussed in the previous regime i.e. during the service tax regime.

The principle of mutuality is a concept borrowed from the 'English decisions' and has been adopted and refined over a long period of time by the courts in India. The principle of mutuality has been mainly held to be applicable in the context of levy of income tax as well as the erstwhile sales tax regimes.

In a landmark decision by the larger bench of the Supreme Court in the case of ***State of West Bengal & Ors. vs. Calcutta Club Limited, Civil Appeal No. 4184 of 2009 [reported in 2019-TIOL-449-SC-ST-LB]***, it was held that the supply / sale of goods or rendering of services by incorporated / unincorporated associations or clubs to their members are not liable to sales tax / service tax by application of the principle of mutuality even after the 46th Amendment to the Constitution. Further, the Supreme Court also held that the judgement in ***C.T.O. vs. Young Men's Indian Association (1970) 1 SCC 462*** which applied the doctrine of mutuality continues to hold the field even after the 46th Amendment.

The Court observed that in the Young Men's Indian Association case, it had held that sale of goods by an incorporated entity to its members is sale to self and hence, does not amount to sale of goods for levy of sales tax. The Court clearly stated that the Constitution Bench in Young Men's Indian Association placed reliance on two English decisions (***Graff vs. Evans & Trebanog Working Men's Club and Institute Ltd. vs. MacDonald***) which pertained to incorporated clubs and hence the concept of mutuality would be applicable to incorporated clubs or associations also.

## Discussion and Analysis of the Legal Position under the GST law:

1. Central Goods and Services Tax Act has come into effect from 01.07.2017. Chapter III of the said Act provides for levy and collection of GST. The term “**Supply**” is defined under section 7 of the Act to include all forms of supply such as **sale**, transfer, barter, exchange, license, rental, lease or disposal of goods or services or both, made or agreed to be made in the **course or furtherance of business** and for a **consideration** and
  - a. Includes activities mentioned in Schedule I to the Act which are made or agreed to be made **without consideration**.
  - b. Excludes activities or transactions specified in Schedule III which are neither to be treated as a supply of goods nor supply of services.Further, any supply, **whether is a good or service** would be identified from **Schedule II** to the Act, which deems certain activities to be a supply of goods or supply of services, as mentioned therein. That is, if any supply under such a schedule is deemed to be a supply of goods or supply of service, then such activity would be of such nature i.e., goods or services for the purpose of GST.
2. As per section 7(1) of the GST law “**supply**” includes all forms of supply of goods or services or both such as sale, transfer, barter, etc. made or agreed to be made for a **consideration** by **a person in the course or furtherance of business**.
3. From the above meaning of the term ‘Supply’, one can state that, for a transaction to be taxable under GST, the following key essential ingredients must be present:
  - Supply must be for a “**consideration**”
  - Supply should be made by a “**person**”
  - Such supply must be in the course or furtherance of “**business**”

4. The term '**person**' is defined under section 2(84) of the Act which includes an **association of persons or a body of individuals whether or not incorporated and trust**.
5. Further, the term business is defined under u/s 2(17) of the Act to include (only relevant clause extracted below):
  - (a) *any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activities **whether or not for a pecuniary benefit.***
  - (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.***
6. Let us analyse what are the activities or transactions that would fall under clause 'a' mentioned above to constitute a supply as per section 7. The meaning of the terms trade, commerce, manufacture, etc. are not defined in the GST law. Therefore, we would refer to the dictionary meaning to understand the terms:
  - a) Trade: *The business of buying and selling or bartering goods or services. (Blacks' Law Dictionary)*
  - b) Commerce: *The exchange of goods or services, especially on a large-scale involving transportation between cities, States, and nations. (Blacks' Law Dictionary)*
  - c) Manufacture: As per section 2(72) of the Act "*means processing of raw material or inputs in any manner that results in emergence of a new product having a distinct name, character and use....*"
  - d) Profession: *A vocation requiring advanced education and training especially one of the three traditional learned professions – law, medicine, and the ministry. (Blacks' Law Dictionary)*

- e) *Vocation: A persons' regular calling or business; one's occupation or profession.* (Blacks' Law Dictionary)
- f) *Adventure: A commercial undertaking that has an element of risk.* (Blacks' Law Dictionary)
- g) *Wager: Money or other consideration risked on an uncertain event; a bet or gamble.* (Blacks' Law Dictionary)

7. Since, the objective of a club, association, society, or any such body is not trading of goods or providing services to third parties for money, but it has been incorporated for a common purpose i.e., to provide fellowship among the members, it can be said that it is per se not involved in any trade, commerce or profession. Thereby, the contribution collected does not fall under clause 'a' mentioned above.
8. Now let us analyse whether the activities of club, association, society, or any such body would be covered under clause 'e' mentioned above. The activities are in the nature of facilities being made available **to the members** and could be covered under the said clause and would thereby be business.
9. The next important aspect that needs to be looked into is, even though GST law has considered the provision of facilities/benefits to its members as a business activity, but the basic question remains whether the association and its members are two different persons?
10. For there being a supply there must be two persons one being the supplier and other being the recipient, one cannot do a supply to himself. The principle of mutuality provides that the clubs/associations and its members are one and the same and not two different persons.

11. Whether the provision of GST defeats this concept of mutuality that exists between a club/association and its members and thereby such fiction in the law cannot lead to taxing the present activity? In this regard we would refer to certain decided cases under VAT/Sales Tax, Income Tax and the Service Tax law.

a. The Hon'ble Supreme Court, in the case of **State of West Bengal & Ors Versus Calcutta Club Limited and CCE and Service & Ors Versus M/s. Ranchi Club Ltd [2019 (10) TMI 160]** and Joint Commercial Tax Officer v. **The Young Men's' Indian Association [1970 (1) SCC 462]**, had examined, whether the club rendering service or selling any commodity to its members for a price, would be a sale or not and held that:

- i. Doctrine of mutuality still exists even after 46<sup>th</sup> Amendment to the Constitution, which will apply to both incorporated and unincorporated members' clubs.
- ii. There is no sale or service provided by one person to another as valuable consideration requires the promisor and the promisee and one cannot sell something to oneself.

Even though the Madras General Sales Tax Act, 1959 declared

- i. The club as a dealer, and
- ii. Specifically, that the "sale" or "supply or distribution of goods by a club" to its members whether or not in the course of business would be deemed to be a "sale", It was still held by the Supreme Court that it is a mutuality which constitutes the club and, therefore, sale by a club to its member and its services rendered to the members, **is not a sale** by club to the members. In sum and substance, the ratio is that for a transaction of sale, **there must be two persons.**

- b. Full Bench judgment of **Commissioner of Income Tax v. Ranchi Club Limited** reported in 1992 (1) PLJR 252 (Pat) (FB) while considering an identical issue in the matter of imposition of income-tax, observed that no one can earn profit out of himself on the basis of principle of mutuality and held that income-tax cannot be imposed on the transaction of the club with its members.
  - c. Further aspect to be noted is that such 46<sup>th</sup> amendment to the Constitution is in relation to supply of goods and not on supply of services to the members. Thereby, it could be said that such an amendment does not affect the concept of mutuality w.r.t supply of services to the members.
12. From the above it can thereby be seen that under the earlier laws, where the sale or service was made or provided by the club to its members, the concept of mutuality was considered to be existing leading to no levy of tax even though there were enabling provisions in such law to levy tax.
13. Further, under GST, section 7(1) (a) of the Act mentions that the supply should be made for a consideration by the person, which indicates the express requirement that a supply should be made between two or more persons with respect to taxing supplies between different registrations of the same person/entity, there is a specific deeming fiction that is created vide section 25(4) of the Act to treat such registrations as distinct persons and thereby enable the levy.
14. However, there is no such deeming fiction w.r.t. club/association and its members. Hence, it could have been said that the decisions under the earlier laws as discussed above could still hold good and the levy itself could fail under GST in this regard.

### **Amendment of Section 7 of CGST Act, 2017:**

15. While the above is the understanding prior to the amendment carried out in section 7 of the CGST Act, 2017, however, in the wake of the Hon'ble Supreme Court's decision in the case of Calcutta Club, wherein the GST Council was confronted with the question of levy of GST on the clubs, associations, etc.

16. The issue was thereafter discussed at the 39<sup>th</sup> Meeting of the Council. The relevant abstracts of the minutes of the Meeting are reproduced below:

*"25.8. Next, Table Agenda No. II (viii) was taken up for discussion by PC, GSTPW. It was explained that the proposal as for amendment in the CGST Act so as to explicitly include the transactions and activities involving goods and services or both, by, to its members, for cash, deferred payment or other valuable consideration along with an explanation stating that for the purpose of this section, an association or a body of persons, whether incorporated or not as taxable supply w.e.f 01.07.2017, It is also proposed that such an association or a body of persons, whether incorporated or not and member thereof shall be treated as distinct persons under section 7(1) of the CGST Act. Consequently, para 7 of Schedule II of the CGST Act is proposed to be deleted. It was informed that this had become necessary to make this retrospective amendment in view of pronouncement in this regard by the Hon'ble Supreme Court in a case involving levy of service tax on supplies of taxable services by the Clubs to its Members. PC, GSTPW informed that this had also been agreed to in the Officers' Committee meeting held on 13.03.2020."*

17. The final decision of the Council on this Agenda Item was recorded as under:



*"26. For Agenda Item 11, the Council: -*

*"viii. Approved amendment in the CGST Act, subject to vetting by the Union Law Ministry, so as to include the supply of goods and services or both, between an association or a body of persons, whether incorporated or not, to its members, for cash, deferred payment or other valuable consideration under the ambit of GST."*

18. Accordingly, vide the Finance Act, 2021 the above Section 7 is amended to insert the following clause after clause (a) of sub-section (1) thereof:

*"(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."*

19. This amendment has been given retrospective effect from 01<sup>st</sup> July 2017.
20. On examination of the above section, it is clear that in order to attract GST, the person has to provide an activity or transaction to its members for cash, deferred payment or valuable consideration.
21. From the above clause, one can state that, for a transaction to be called as supply under the said clause, the following essential ingredients must be present:
- There shall be an activity or transaction,

- Above activity or transaction shall be carried on by a person other than an individual,
- Activity or transaction shall be undertaken for members,
- Such Activity or transaction shall be for **cash, deferred payment or valuable consideration.**

22. The term “cash” and “deferred payment” is not defined under the provisions of the CGST Act, 2017. Therefore, we would refer to the dictionary meaning to understand the terms.

- a. Cash- Money in the form of a notes and coins, rather than cheques or credit cards (Cambridge Dictionary).
- b. Deferred payment- Temporary postponement of the payment of an outstanding bill or debt, usually involving repayment by installments (Lexico).

23. The term “Cash” & “deferred payment” is accompanied by the term valuable consideration. It is a well-known rule of construction that words in such entries had to be construed with reference to the words found in immediate connection with them.

24. When two or more words which were capable of being understood in an analogous manner were coupled together, they had to be understood in the common analogous sense and not in the general sense. This rule of *noscitur a sociis* was applied by the Madras High Court in **Boak Roberts and Co. (India) Limited V/s Board of Revenue (C.T.)** reported at **Madras 1942 STC 370.**

25. Reference may also be invited to the judgment of the Hon’ble Punjab and Haryana High Court in the case of **Assessing Authority V/s Amir Chand Om Parkash** reported at **33 STC 120**, wherein the High Court considered

whether 'dhoop' and 'aggarbatti' fell within the ambit of the said Entry No. 16. It held that they did not for two reasons. The first of the two reasons is no longer valid by reason of a subsequent amendment, but the second reason is still valid. The Punjab & Haryana High Court said:

*"So far as dhoop and aggarbatti are concerned, there is another way of looking at the matter. The entry (i.e., Entry No. 16) is cosmetics, perfumery and toilet goods ...." The context in which the word "perfumery" occurs shows that what is meant by all the three general items "cosmetics, perfumery and toilet goods" are articles which are used for personal hygiene or pleasure. The items which are excepted from this entry are "toothpaste, tooth powder, soap and kum-kum." This exception also points to the same conclusion, viz., that only those articles of luxury, which are used for personal hygiene and pleasure were intended to be included in this entry. So the word "perfumery" in this context would not include dhoop and aggarbatti, which are never used for personal hygiene or pleasure, but are primarily used for religious ceremonies."*

26. Thus, the word "cash" and "deferred payment" would draw color from the term "Valuable consideration" used in the section. It is pertinent to note that the term indicates that activity and transaction has to be for consideration. Therefore, if consideration is missing then the said activity cannot be termed as supply under GST.

### **Consideration:**

27. The term "consideration" has been defined under section 2(31) of the Act. The same reads thus:

Consideration in relation to the supply of goods or services 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, 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, **whether or not voluntary**, in respect of, in response to, or for the inducement of, the supply of goods or services, 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 the deposit as consideration for the said supply.

- 28. Thus, it is clear that term “consideration” is 1) payment or money. 2) a vital element in the law of contracts, consideration is a benefit which must be bargained for between the parties and is the essential reason for a party entering into a contract. Consideration must be of value (at least to the parties) and is exchanged for the performance or promise of performance by the other party (such performance itself is consideration). In a contract, one consideration (thing given) is exchanged for another consideration.
- 29. The definition of consideration employs the word “inducement”. According to **Black's Law Dictionary**, Eighth Edition, '*inducement*' is defined as "*the act or process of enticing or persuading another person to take a certain course of action.*" **Merriam-Webster Dictionary** defines '*inducement*' as "*a motive or consideration that leads one to action or to additional or more effective actions*".
- 30. Based on the above, it can be said that a person can be said to have induced another person to act in a particular way or not to act in a

particular way if on the basis of facts and statements made by the first person the second person commits an act or omits to perform any particular act.

31. For example, A restaurateur offered 'free' meals to drivers of buses carrying passengers as an inducement to bring potential customers to his business premise. Since the meals were not given to drivers of empty buses, there is a direct link between the act of bringing passengers to the food outlet and the provision of the free meals. The consideration here is the free meals provided.
32. Further, one must also note from the above meaning of the term 'consideration' that if the monies are collected that are to be refunded back, then such monies collected in the nature of refundable deposits have been categorically kept out of the scope of the term 'consideration'.
33. From the above, one thing can be deduced that even after the retrospective amendment in the CGST Act, the transaction or an activity by associations/ clubs would be taxable if it satisfies the test of consideration. In other words, if there is no consideration in a transaction, then it cannot be qualified to be a 'supply'.

**Constitution validity of deeming provisions based on recent judgement between Indian Medical Association vs Union of India, State of Kerala and others [2025 (4) TMI 872 - KERALA HIGH COURT] [W.A.Nos.1659 & 1487/24 & 468/25]:**

34. Article 246A – Special Provision for GST:

*“Notwithstanding anything in Articles 246 and 254, Parliament and State Legislatures have power to make laws with respect to goods and services tax.”*

Article 366(12A) – Definition of Goods and Services Tax:

*“Goods and services tax means any tax on supply of goods or services or both except taxes on the supply of alcoholic liquor for human consumption.”*

Article 265 – Taxation Only by Authority of Law:

*“No tax shall be levied or collected except by authority of law.”*

35. In the above regard, Kerala HC noted that, Article 246A of the Constitution empowers both the Union and States to make laws concerning GST on "supply" of goods and services, but the word “supply” is not defined in the Constitution, nor is it given an artificial or deeming meaning.
36. Contrast this with the 46th Amendment Act, 1982 when a deeming provision was introduced to the Constitution, where transactions (like club-to-member sales) were explicitly deemed to be “sales” for the purpose of sales tax, by amending Article 366(29A). The court points out that no such constitutional amendment has been made under Article 246A for GST to similarly deem such club-member transactions as "services." Thus, fictionally creating a supply between an entity and itself (i.e., members = club) violates Article 366(12A). Therefore, deeming such non-existent transactions as “supply” exceeds the legislative field under Article 246A.
37. Similarly in order to enable taxation on such transaction the Constitution of India needs to be amended first to bring out the deeming fiction in order to levy GST on the same.
38. Kerala HC read this to mean that taxation must be:
  - a) Constitutionally valid,
  - b) Within legislative competence, and

c) Not arbitrary or unreasonable.

39. The retrospective levy from 2017 was seen as violating fairness and reasonableness, especially when:

a) There was no clarity in law during the prior period.

b) Clubs didn't collect GST from members.

c) It created an impossible compliance burden post-facto.

Thus, retrospective application without legal certainty violated Article 265.

40. Principle of Mutuality:

In law, a club and its members are treated as one and the same entity. This principle was affirmed in the Supreme Court decision in ***State of West Bengal v. Calcutta Club Limited (2019)***. The **Kerala HC** stated that the 2021 amendments tried to override this doctrine without amending the Constitution. Unless the Constitution itself is amended to treat clubs and members as distinct, Parliament cannot simply override mutuality by statute.

41. Retrospective Application Declared Unjust:

The High Court was particularly critical of retrospective taxation for the following reasons:

a) Violates Rule of Law — entities were taxed for periods where they were not aware of liability.

b) No Opportunity to Collect Tax — clubs couldn't pass on the tax to members post-facto.

c) Creates Financial and Legal Hardship — huge liabilities suddenly imposed for past periods.

Thus, even though the Court didn't go into the formal validity of retrospective effect, it agreed with the single judge that retroactive taxation in this context is illegal and violates fairness.

42. Final Declaration by the Court:

Sections 2(17)(e) and 7(1)(aa), and the Explanation thereto of the CGST and KGST Acts, are declared unconstitutional and void as they are ultra vires Articles 246A, 366(12A), and 265 of the Constitution of India.

43. Unconstitutional, Ultra Vires Articles 246A, 366(12A), and 265 and Void:

In conclusion, the Kerala High Court declared that Section 2(17)(e), Section 7(1)(aa), and the Explanation thereto of the CGST and KGST Acts are unconstitutional and void, as they are ultra vires Articles 246A, 366(12A), and 265 of the Constitution of India. This judgment has wide-ranging implications.

- a) Firstly, no GST is applicable on services provided by clubs or associations to their own members so long as the principle of mutuality applies.
- b) Secondly, any attempt by tax authorities to retrospectively recover GST from such associations for the period beginning 1 July 2017 is invalid.
- c) Lastly, unless the Supreme Court overturns or stays this judgment, the amendments brought by the Finance Act, 2021, stand void.

**Conclusion:**

- Based on the foregoing analysis of the legal provisions, it is our considered view that transactions between members and clubs, associations, or societies, whether incorporated or not should not be subject to GST, considering the principle of mutuality as rightly upheld by the Kerala High



Court. Having said this, the department would challenge the decision before Hon'ble Apex court.

- Also, since trusts/ clubs are not commercial concerns, hence it becomes altogether important for them to decide on whether to contest the legality of these levies or to collect and remit the taxes to buy peace, since input credit becomes available.
- A more tailored approach should be adopted, taking into account the specific structure and the nature of transactions in each case.

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