

Case Study Series – GST Advance Ruling

The crux of the case:

Taxability of membership/ subscription fees paid by the members to the club

Authority	Maharashtra Authority For Advance Ruling
Legal Name of Applicant	M/s Navi Mumbai Sports Association
Details of Application	GST ARA, Application NO.16 Dated:02.09.2020

Facts of the case:

- The applicant (Navi Mumbai Sports Association) is a Non-Government Sports organization and a charitable trust registered under section 12AA of the Income tax Act.
- Any person who is interested in joining the association is required to pay one time admission/entrance fees based on the type of membership and the same shall form part of corpus of the applicant trust/association.
- Apart from the admission fees, the association also collects various fees which are pooled together for convenience and the applicant does not expect to generate any surplus from it.
- At present, the applicant is charging and collecting GST on all receipts/fees except on fees received for training and coaching services provided in various sports in view of exemption under entry no. 80 of notification 12/2017 CTR dated 28th June, 2017.
- The applicant wants to know if GST is applicable on the following,
 - Fees collected from the members by way of
 - Entrance/ Admission fees which forms part of the corpus
 - Annual subscription fees
 - Annual maintenance fees
 - Fees collected for sports activities relating to Football/basketball/ athletic/ cricket & swimming, summer coaching/dance coaching/karate/physical fitness

Applicant's view:

- The applicant has claimed that GST will not be applicable on the membership/subscription fees collected from its members by virtue of the **principle of mutuality**.
- Principle of mutuality essentially means that there exists no difference between two persons (i.e. they are one and the same). The

applicant is claiming that the members and the club/association should be considered as a single entity and since there are no two parties, the fees collected will not amount to supply.

- Further, GST is not applicable on collection of annual subscription and annual maintenance charges as it is merely for discharging the administrative, operational and management expenses of the club.

Discussions and Findings:

- As per section 7(1)(aa) (which is quoted below), a member and its club should be treated as two distinct persons.
- Extracts of Section 7(1)(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;*
- Since the act expressly treats a member and a club as two separate entities, principle of mutuality shall not apply and hence any transaction between the member and the club is liable to GST.
- Additionally, the term “business” includes the provision of facilities to members of a club/associations.
- In order to constitute a supply, there should be two distinct or related persons, consideration should be transferred from one person to another and the activities shall be in the course of furtherance of business which are all fulfilled in the current scenario and hence the membership/subscription fees is a taxable supply on which GST will be applicable.
- Further, benefit of exemption as per entry no 80 of notification 12/2017 CTR dt.28/06/2017 will be applicable only on the fees collected for Football/Basketball/Athletic/Cricket/Swimming Coaching & dance.
- Summer coaching/ personal fitness fees will be taxable since the exemption notification does not cover the same.

Order:

• **Whether the following amount collected by the applicant from its members is liable to GST?**

- a. **Entrance/Admission fees which forms part of Corpus funds**
- b. **Annual subscription fees**
- c. **Annual maintenance fees**

- Yes, GST is applicable

• **Whether the amount/fees collected towards rendering training/coaching in recreational and sports activities are exempt from payment of GST under entry no. 80 of notification 12/2017 CTR dated 28th June, 2017?**

- a. **Football/Basketball/Athletic/Cricket/Swimming Coaching fees.**
- b. **Summer Coaching Fees**
- c. **Dance Coaching Fees**
- d. **Karate/ Physical Fitness**

- The benefit of exemption will be available to the applicant only with reference to **Football/Basketball/Athletic/Cricket/Swimming Coaching fees**

Key Take away from the above decision:

- Principle of mutuality will not apply to the services rendered by a club/association to its members against membership/subscription fees by virtue of amendment to section 7 of the CGST Act, 2017 by way of insertion of a new sub clause S.7(1)(aa).