MAHARASHTRA AUTHORITY FOR ADVANCE RULING

GST Bhavan, Room No.107, 1st floor, B-Wing, Old Building, Mazgaon, Mumbai – 400010.

(Constituted under Section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

(1) Shri. Rajiv Magoo, Additional Commissioner of Central Tax, (Member)

(2) Shri. T. R. Ramnani, Joint Commissioner of State Tax, (Member)

ARN No.		**AD2702200201016**
GSTIN Number, if any/ User-id		**27AABCP1272B1ZW**
Legal Name of Applicant		**M/s. The Poona Club Limited**
Registered Address/Address provided while obtaining user id		6, The Poona Club Ltd, Bund Garden Road, Pune -411001.
Details of application		GST-ARA, Application No. 123 Dated 13.03.2020
Concerned officer		**Division-VI, Commissionerate PUNE-I.**
Nature of activity(s) (proposed/present) in respect of which advance ruling sought		
A	Category	**Service Provision**
B	Description (in brief))(As per applicant)	Poona Club collects membership fees at the time of giving membership. All members have to pay annual subscription and annual games fees. Services and facilities provided to members are charged at rates determined by the club from time to time and are collected from members whenever they use the facilities or services.
	e/s on which advance ruling quired	➢ Determination of the liability to pay tax on any goods or services or both ➢ Whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods 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.

NO.GST-ARA- 123/2019-20/B- 12 **Mumbai, dt.** 31/01/2022

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" respectively] by **M/s. The Poona Club Limited,** the applicant, seeking an advance ruling in respect of the following questions.

1. **Whether membership fee collected from members at the time of giving membership is liable to tax under CGST/SGST Act?**

2. **Whether the annual subscription and annual games fee collected from members of club is liable to tax under CGST/SGST Act?**

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.

2. **FACTS AND CONTENTION – AS PER THE APPLICANT FACTS**:

The submissions made by **M/s. The Poona Club Limited,** the applicant, are as under:-

2.1 As per the Clauses of Articles of Association (Definition clause 2) : Member means and includes: i) Permanent Member but shall not include a Subsidiary Member, (ii) Life Member but shall not include a Subsidiary Member. " Subsidiary Member" means and includes: (i) Corporates Member ; (ii) Gymkhana Subscriber (iii) Honorary Member ; (iv) Spouse Subscriber ; (v) Games playing subscriber ; (vi) Visiting subscriber ; (vii) N.R. I Subscriber ; (viii) Lady Subscriber

Club dues are defined in sub clause (d) as : "Club Dues" in relation to a Member, means & include, aggregate amount outstanding against such Member on the date of billing on account of any one or more of the following: (i) Fees prescribed as periodical subscription. (ii) Fees prescribed for any game, sport or facility made available by the Club, including fees for guest, reservations for functions etc. (iii) Charges for food, provisions or Stores purchased from the Club or Contractor appointed by the Club.

2.3 All services or goods supplied/provided to all types of members are charged specifically at rates determined by club, as and when the members utilize any facility of the club. The capital funds are raised exclusively through membership fee at the time of giving membership. As per article 9C, 60% of the membership fees received shall be put in club's cash reserves. As a policy balance 40% is transferred to general reserves. Thus membership fee collected from all members is capitalised as corpus funds of the club and are either invested in financial assets or are mainly spent for creation of assets of the club.

2.4 Life members are exempted from payment of annual subscription, but are required to pay annual games fee. All categories of members (except Honorary Members & life members) are required to pay annual subscription. Moreover, all members have to pay Annual Game Fees also. Annual subscription is spent mainly for office & administrative expenses such as

salaries, security, labour charges, electricity etc. and not for providing any specific service or goods to members.

B. STATEMENT CONTAINING APPLICANT'S INTERPRETATION OF LAW

2.5 The term 'business' as defined u/s 2(17) of CGST Act 2017 includes –

(a) Any trade, commerce, manufacture, profession, vocation or any other similar activity, whether or not it is for a pecuniary benefit;

(b) Any activity or transaction in connection with or incidental or ancillary to (a) above;

(c) Any activity or transaction in the nature of (a) above, whether or not there is volume, frequency, continuity or regularity of such transaction;

(d) Supply or acquisition of goods including capital assets and services in connection with commencement or closure of business;

(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, as the case may be;

(f) Admission, for a consideration, of persons to any premises; and services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;

Explanation:- Any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities shall be deemed to be business."

2.6 Sub-clause (e) is a specific clause made for associations, clubs and societies. Therefore, the general terms of sub-clause (a) cannot apply on the basis of the principle that the specific clause ousts the general clause. It is to be seen that sub-clause (a) specifically speaks of profit motive, but sub-clause (e) does not. Therefore, the intention of the Legislature is clear that profit motive is not ousted from sub-clause (e) though it is ousted from sub-clause (a).

2.7 Assuming but not admitting that profit motive is not required in sub-clause (e), it is well settled that where the main objects of the entity is not of a "commercial nature", then that activity cannot be called "business", whether or not the Legislature makes profit motive irrelevant. The very term "business" requires commercial character. Sub-clause (e) ultimately occurs within the definition of "business" and therefore there must be some underlying commercial nature to the main objects of the club. As the main objects of club is promotion of sport activities, there is no commercial nature. Therefore, the club cannot be said to be covered by sub-clause (e). For the same reasons, the club also cannot be covered by sub-clause (a), assuming without admitting

that sub-clause (a) applies in the present case. Sub-clause (a) also requires commercial nature, whether or not profit motive is proved.

2.8 Furthermore, the club and its members have the same identity. Therefore the principle of mutuality would lead to the conclusion that there cannot be any "business" or even a "supply" by one person with his own self. Even if an activity comes within the definition of "business", it must also come within the definition of "supply" and "goods" or "services". Otherwise, there cannot be any levy of tax. The word "supply as well as "services" requires two persons and there cannot be supply or service by one person to himself. Therefore, the principle of mutuality cannot be said to be ousted from the definition of "business".

2.9 Even the definition of "consideration" in Section 2(31) shows that there is required to be a "recipient". The word "recipient" in Section 2(93) again uses the word "consideration" as well as makes it clear that the recipient is the one who receives the goods or services.

2.10 Any doubt regarding requirement of two persons will be cleared by the definition of "composite supply" in Section 2(30) which specifically speaks of "a supply made by a taxable person to a recipient". The definition of "mixed supply" in Section 2(74) goes one step further and uses the word "price" which requires two distinct entities. It is impossible that one person can pay price to himself. Applicant clarifies that it is not required to determine the rate of tax or whether the supply in the present case is a composite or a mixed supply. This discussion on "composite" and "mixed" supply is limited to the extent of showing that ultimately the principle of mutuality is not ousted from the charging section.

2.11 Membership associations like Poona clubs are formed for creation of common infrastructure for members, maintain the same and administer the club. There are two distinct activities. One purpose is administration of the club and maintenance. There cannot be any "provision...of facilities or benefits" as required in sub-clause (e) of Section 2(17) in such a case or a "supply" or "service" as required under charging section 7 where mere internal maintenance and administration is done. Second purpose is to provide the facilities and services to members for which members are charged as and when members use the facilities and to the extent of use. This has no nexus to the membership fees charged in the present case which do not give any right to use facilities of the Poona club.

2.12 The activity of pooling resources by members for the club by way of membership fee (contribution to corpus), is one-time payment and there is no nexus with any particular goods or services as required in the charging section. The funds raised do not entitle anyone to claim

any facility or benefit from the club. There is no element of service which is given in reciprocation of the contribution. The entire membership fees are capitalized. It is similar to capital contribution by partners in case of Partnership firm or share capital in case of Companies or sinking funds and reserves created in a co-operative housing society and **therefore appellant's view is that the initial contribution i.e. membership fee is not a supply of either goods or any service and not liable for levy of GST.** In the case of Prestige South Ridge AAR Karnataka has held that corpus or sinking fund collected from members is not liable for levy of GST. Such initial contribution cannot qualify as a "consideration" as defined in the Act.

2.13 Further, whenever the members use any facilities of the club, they have to pay for it and GST is charged to members for such supply of services or goods.

2.14 The principle of mutuality is also applicable to Annual subscription and annual game fee collected by club from its members as the same is used for administration of club.

2.15 In the case of Lions club of Pune Kothrud, the Appellate authority for advance Ruling – Maharashtra as per amended order dated 14/08/2019 has held that membership fees collected from members to be spent on administration of club will not be construed as consideration for supply for levy of GST.

WRITTEN SUBMISSIONS OF APPLICANT DATED 08.12.2021:-

2.16 Applicant has taken over the assets and liabilities of the earlier unincorporated associations known as "Poona Gymkhana Club" and "Lloyd Polo Club". This can be seen from Clause 3(a) of the Memorandum of Association which is attached to these submissions.

2.17 The main object of the Applicant as expressed in Clause 3(b), is to promote sports and encourage social intercourse between its members.

2.18 The ordinary meaning of "business" requires profit motive to be established [State of **AP v H. Abdul Bakshi (1964) 15 STC 644** (SC)). Sub-clause (a) of Section 2(17) overrides the judgment of **State of AP v H. Abdul Bakshi** (supra) by using the words "whether or not...for pecuniary benefit". However, it can be seen that these words making profit motive irrelevant are used only in sub clause (a) of Section 2(17) and not in any of the other sub-clauses. Applicant's case is covered, if at all, by sub-clause (e). It is submitted that where Parliament has deliberately made profit motive irrelevant in sub-clause (a) and not in any of the other sub-clauses, the intention is clearly that profit motive is not made irrelevant in other sub-clauses.

2.19 Applicant-association is not formed for profit motive. Applicant states that assuming but not admitting that profit motive is irrelevant in sub-clause (e) of Section 2(17) also, it is submitted that the definition has not made "commercial object test" irrelevant. In the earlier Sales Tax era, the Supreme Court has held in Commissioner of Sales Tax v Sai Publication Fund [(2002) 4 SCC 57] that even after making profit motive irrelevant in the definition of "business" in the Bombay Sales Tax Act, 1959, the Legislature has not made commercial object test irrelevant. The Supreme Court had specifically held that the question of profit motive being irrelevant by statute does not mean that the activity automatically becomes a "business". It was held that if the main object of the trust is not commercial in nature, then the fact that the incidental objects require sale and purchase of goods is irrelevant. Thus, if the main object is not commercial in nature, then the entire activity falls outside the definition of "business".

2.19 It is submitted that, if the intention of the Legislature was to tax every supply, then there was no necessity to place the limitation of "in the course or furtherance of business" in the charging section. This shows that the definition of "business" in Section 2(17) is to be read in a restrictive sense and not in an expansive sense.

2.20 The association as a formal entity is merely an agent for carrying out the directions and will of the members as a whole. Giving money to an agent to be used in accordance with the directions of the principal, for the benefit of the principal, is not a "supply", much less a "supply for consideration". The Applicant Association does not receive any charges as "consideration" for its services of carrying out the will of the members and acting as an agent. The subscription received is entirely at the disposal of the members, who act through the general body. There is no "supply" at all of anything, the members having merely pooled their own money (which is capital in nature) to run the association and the managing body of the association merely acting as an agent of the members.

2.21 In sub-clause (e) of the definition of "business", the requirement of "consideration" is present. It has been held in State of West Bengal v Calcutta Club [(2019) 19 SCC 107] – Paras 39, 40, in identical provision in Article 366(29A) of the Constitution, that the legal requirement of there being two distinct entities is not satisfied even if the association is an incorporated one and is therefore technically separate.

2.22 The Applicant submits that Section 7(1)(aa) was inserted by Section 108 of the Finance Act, 2021 and as per the same Sections 108 to 123 shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint. No such notification is

issued under CGST/MGST Act, 2017 till date. The amendment is therefore not relevant at all. However, even otherwise, the amendment in Section 7(1) (aa) does not say that the definition of "business" is irrelevant. Secondly, the words used again are "for cash, deferred payment or other valuable consideration" in Section 7(1)(aa) which are explained in Paras 39 and 40 of the Calcutta Club (supra) judgment.

2.23 Hence, Applicant is not liable to be taxed to the extent it carries on its activities for the benefit of members. Both the annual subscription as well as the annual game fees are covered by the principle of mutuality. In any case, the principle of CST v Sai Publication Fund applies in the present case and the Applicant association is not carrying on any commercial activity and hence is not covered by the definition of "business".

03. CONTENTION – AS PER THE CONCERNED OFFICER:

The jurisdictional/concerned officer has not made any submissions.

04. HEARING

4.1 Preliminary e-hearing in the matter was held on 08.06.2021. The applicant was represented by Authorized Representatives Shri. G. Y. Patwardhan, Advocate, Shri. Ishaan Patkar, Advocate, Smt. Swati Mokashi, Applicant Side. Jurisdictional officer was absent. The Authorized Representatives made oral submission with respect to admission of their application.

4.2 The application was admitted and called for final e-hearing on 26.11.2021. The Authorized representative of the applicant, Shri. Ishaan Patkar, learned advocate, Shri. G. Y. Patwardhan, learned advocate and Smt. Swati Mokashi, employee were present. Jurisdictional officer was absent.

4.3 Heard the matter

05. DISCUSSIONS AND FINDINGS:

5.1 We have perused the documents on record and considered the oral and written submissions made by the applicant.

5.2 The applicant has submitted that, *"Membership associations like Poona Clubs are formed for creation of common infrastructure for members, maintain the same and administer the club. There are two distinct activities. One purpose is administration of the club and maintenance. Second purpose is to provide the facilities and services to members for which members are charged as and when members use the facilities and to the extent of use.* In view of this

submission we are of the opinion that the purpose of the applicant club is also the same as mentioned.

5.3 The questions raised by the applicant are **whether membership fee collected from members at the time of giving membership is liable to tax under CGST/SGST Act; and whether the annual subscription and annual games fee collected from members of club are liable to tax under CGST/SGST Act?**

5.4.1 The applicant is of the opinion that the said membership fee, annual subscription and annual games fee collected from members of club are not liable to tax under CGST/SGST Act. The primary reason given by the applicant in support of their contention is that, the principle of mutuality is applicable in their case because the club and its members have the same identity. Applicant has made exhaustive submissions in the said context and has, in support, cited the decision of the Hon'ble Supreme Court in **State of West Bengal v Calcutta Club** [(2019) 19 SCC 107].

5.4.2 Further, according to the applicant, there is no profit motive in their case and the fee is collected for meeting the administrative and maintenance expenses and for the provision of facilities and services to its members. Further, according to applicant, it does not function on a profit basis because the common pool is being spent back on the members only and in the absence of two distinct persons and also in absence of consideration, as defined under the Act, fees received from its members does not qualify as a Supply within the meaning of the term, as defined under the Act.

5.4.3 The term "supply" is defined under Section 7 of the CGST Act and was amended last, in the Budget 2021. Prior to the amendment "supply" was defined as :

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

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

.....

(3) Subject to the provisions of sub-sections (1) and (2), the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as—

1. *a supply of goods and not as a supply of services; or*
2. *a supply of services and not as a supply of goods.*

5.4.4 Vide clause 99, an amendment was proposed in the CGST Act, 2017, whereby, in section 7, in sub-section (1), after clause (a), the following clause was to be inserted and deemed to have been inserted with effect from the 1st day of July, 2017, namely:

"(aa) the activities or transactions, by a person, other than an individual, to their 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 their 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;"***.

5.4.5 The amendment mentioned above has received the assent of the President of India on the 28th March, 2021 and in view of the same the issue of principles of mutuality in the case of clubs, like the applicant, has been settled.

5.4.6 As per clause (aa) of Section 7 (1) of the CGST Act, the activities or transactions, by a person, other than an individual, to their members or constituents or vice versa, for cash, deferred payment or other valuable consideration. The said clause (aa) clearly specifies that all or any activities or transactions by a person (in this case, the applicant) to their members will be treated as 'supply' and therefore, fees/contributions from the members, recovered for expending the same for the administration of the club, its maintenance and for provision of the facilities and services to its members amounts to or results in a supply, in the subject case.

5.4.7 As per section 2(84) the term *"person" includes*

(a) an individual and as per section 2(84)

.....

(f)an association of persons or a body of individuals, whether incorporated or not, in India or outside India.

5.4.8 Therefore, in view of the amended Section 7 of the CGST Act, 2017, we find that the applicant club and its members are distinct persons and the fees received by the applicant, from its members are nothing but consideration received for supply of goods/services as a separate entity. The principles of mutuality, which has been cited by the applicant to support its contention that it is not rendering any supply to its members and GST is not leviable on the fees

collected from its members, is not applicable in view of the amended Section 7 of the CGST Act, 2017 and therefore, the applicant has to pay GST on the said amounts received from its members.

5.4.9 The reliance placed by the applicant on the orders of the Appellate Authority for Advance Ruling in the case of Lions Club of Pune Kothrud, is not proper as said order was passed prior to amendment. The words *'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'* cover all types of activities/transactions of the present applicant. There is no list or limit or any restriction prescribed in this respect in this amendment. The fees, collected by the applicant, is nothing but the "consideration" for "supply of services/goods" and is covered by the scope of the term "business". The club and the member are two distinct persons. The principle of mutuality has no application after this amendment. All the other case laws relied upon, also do not provide any guidance on the legal situation, particularly after the amendment.

5.5.1 Applicant has submitted that, the ordinary meaning of "business" requires profit motive to be established. The applicant has reproduced the definition of the term "business" defined u/s 2(17) of CGST Act 2017 and has stated that even though clause (e) of the said Section 2 (17) mentions that the '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 as the case may be', is termed as "business", it is clear that profit motive is not ousted from the said sub-clause (e). Further the applicant has also submitted that assuming but not admitting that profit motive is not required in sub-clause (e), it is well settled that where the main objects of the entity is not of a "commercial nature", then that activity cannot be called "business", whether or not the Legislature makes profit motive irrelevant. The very term "business" requires commercial character. Sub-clause (e) ultimately occurs within the definition of "business" and therefore there must be some underlying commercial nature to the main objects of the club. As the main objects of club is promotion of sport activities, there is no commercial nature. Therefore, the club cannot be said to be covered by sub-clause (e).

5.5.2 To discuss the said point we reproduce the relevant definition of the term "business" as under:-

The term 'business' as defined u/s 2(17) of CGST Act 2017 includes –

(a) Any trade, commerce, manufacture, profession, vocation or any other similar activity, whether or not it is for a pecuniary benefit;

(b) Any activity or transaction in connection with or incidental or ancillary to (a) above;

(c) Any activity or transaction in the nature of (a) above, whether or not there is volume, frequency, continuity or regularity of such transaction;

(d) .....;

(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, as the case may be;

(f) .....;

(g) .....;

(h) .....;

(i) Any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities.

5.5.3 Applicant has submitted that, the ordinary meaning of "business" requires profit motive to be established. Probably the applicant has understood the meaning of the word "pecuniary benefit" (used in clause (a) above) to mean profit motive.

5.5.4 Black's Law Dictionary defines the term "pecuniary benefit" as : *"Monetary benefits. An award or compensation or benefit that is quantifiable in monetary terms."*

Therefore, undertaking of a commercial activity, whether or not the same is for pecuniary benefit (used in clause (a) above), implies that whether or not such activity yields the benefit which can be quantifiable in monetary terms or not. Hence the intent behind the said clause (a) is to even cover the commercial transactions which are in the nature of barter or exchange wherein the benefit is in non-monetary terms.

Thus, the interpretation of the applicant that 'pecuniary benefit' means 'profit' is not correct.

Further, Sub-clause (e) is a specific clause made for associations, clubs and societies and the same does not talk about any profit motive to be attributed to any club for the activities to be considered as 'business'. The said clause only speaks of Provision by a club, association, society, or any such body of the facilities or benefits to its members for a subscription or any other consideration. Therefore the question whether profit motive is ousted or not, does not arise in this case at all.

5.6 The applicant has substantially borrowed from the observation/decision of the Hon'ble Supreme Court, made in the case of Commissioner of Sales Tax v Sai Publication Fund [(2002) 4 SCC 57]. We find that the issue in the said case was related to the erstwhile Bombay Sales Tax Act, 1959 and is therefore not applicable under the GST Laws.

5.7 The applicant has also submitted that the amendment to Section 7 of the CGST Act, 2017, mentioned above, was brought about by Section 108 which was not yet notified as on the date of the final hearing.

We find that, Notification No. 39/2021–Central Tax dated: 21st December, 2021 has been issued whereby the Central Government has appointed the 1st day of January, 2022, as the date on which the provisions of sections 108, 109 and 113 to 122 of the said Act shall come into force.

Hence we find that the relevant amendment has been notified by the Central Government.

06. In view of the discussions made 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)

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

Question 1: - Whether membership fee collected from members at the time of giving membership is liable to tax under CGST/SGST Act?

Answer: - **Answered in the affirmative.**

Question 2: - Whether the annual subscription and annual games fee collected from members of club is liable to tax under CGST/SGST Act?

Answer: - **Answered in the affirmative.**

MEMBER ADVANCE RULING AUTHORITY * MAHARASHTRA STATE, MUMBAI *

PLACE Mumbai
DATE 01/2/22

RAJIV MAGOO
(MEMBER)

T. R. RAMNANI
(MEMBER)

Copy to:-

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

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. Online facility is available on **gst.gov.in** for online appeal application against order passed by Advance Ruling Authority.