

**MAHARASHTRA AUTHORITY FOR ADVANCE RULING**  
**GST Bhavan, 1st floor, B-Wing, Mazgaon, Mumbai - 400010.**  
**(Constituted under section 96 of the Maharashtra Goods and Services Tax Act, 2017)**  
**BEFORE THE BENCH OF**

- (1) Shri B. Timothy, Addl. Commissioner of Central Tax, (Member)  
 (2) Shri B. V. Borhade, Joint Commissioner of State Tax, (Member)

GSTIN Number, if any/ User-id	URD /271900000172ARV
Legal Name of Applicant	Rotary Club of Mumbai Nariman Point
Registered Address/ Address provided while obtaining user id Corresponding Address	C/o Aashish Chitlangia 9, Parekh Vora Chambers, 66, N. M. Road, Fort, Mumbai - 400023.
Details of application	GST-ARA, Application No. 142 Dated 29.03.2019
Concerned officer	Division-IX, Commissionerate Mumbai South.
Nature of activity(s) (proposed / present) in respect of which advance ruling sought	
A Category	
B Description (in brief)	Rotary Clubs and Rotary Districts consists of association of persons, joined together to undertake social activities without any profit motive. Funds collected as fees are pooled together to be expended for meeting expenses & forwarding to international office for administrative expenses. Surplus if any is used for charitable activities.
Issue/s on which advance ruling required	(i) classification of goods and/or services or both (v) determination of the liability to pay tax on any goods or services or both vi) Whether applicant is required to be registered under the Act (vi) Whether any particular thing done by the applicant with respect to any goods and/or services or both amounts to or results in a supply of goods and/or services or both, within the meaning of <b>that term</b>
Question(s) on which advance ruling is required	As reproduced in para 01 of the Proceedings below.



**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"] by M/S. Rotary Club of Mumbai Nariman Point, the applicant, seeking an advance ruling in respect of the following questions.

1. Whether contributions from the members in the Administration Account, recovered for expending the same for the weekly and other meetings and other petty administrative expenses incurred including the expenses for the location and light refreshments, amounts to or results in a supply, within the meaning of supply?
2. If answer to question no. 1 is affirmative, whether it will be classified as supply of goods or services?

3. Whether the applicant would be a Taxable Person under the provisions of the Act?
4. If answer to question no.3 is affirmative, who shall be person responsible under GST, as office bearers keep on changing every year?
5. Whether the said collection of funds under common pool and spending back on the same said contributors, would entail 'supply' as defined in the law.
6. If answer to Question no.5 is affirmative, whether the same would be supply of goods or services?

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**

### **Statement of relevant facts having a bearing on the question(s) raised**

- 1) 'Rotary' is an International organization having clubs in 216 countries engaged in humanitarian and charitable services.
- 2) These services are executed through various districts comprising of many Clubs.
- 3) In order to facilitate the meetings and administration, fees are collected from members.
- 4) These amounts are then used for administration and meetings.
- 5) In some cases the amount so collected is likely to exceed Rs.20 lacs, being the threshold for registration under GST Act, 2017.

Clarification as regards to "Nature of Fees". There are three administrative layers;

1. Clubs in Rotary (like that of the Applicant).
2. District of Rotary: Comprises of many clubs, normally 100 & above where district policies for the clubs are formulated.

### **Receipts of Rotary Club can be broadly dividend into following categories:**

1. Club receiving Fees from its members: These are purely collected to defray its expenditure on meetings and communications. No facilities/benefits are provided such as recreation, etc by Individual clubs.
2. District receiving its payments from Clubs to meet the expenses of Administration since one district comprises of more than 100 clubs.

These dues are towards:

- (a) Postage, printing, communication etc and
- (b) Sending the fees to International Institution at USA for service activities and International administration. District receiving fees from its members constituted as cabinet to draft policy. Plans and give direction to Clubs in order to execute policies and



social activities. Again it is needless to mention that no facilities or benefits are provided such as recreation, etc. Thus our prayer specifically relates to non-applicability of GST on:

1. Club member fees
2. District fees collected from Clubs &
3. Any other payment being disbursed to Rotary International as annual contribution on behalf of the Members as no facilities/benefits are being provided.

In addition to that a separate Administration Account is also being run which is being managed by yearly elected members, wherein based on certain estimation done at the commencement of the year, sums are recovered from all the members for expending the same for the weekly and other meetings and other petty administrative expenses incurred. The expenses incurred for the weekly meetings include the expenses for the location and light refreshments.

These meetings are held for all the members to meet from time to time to review existing activities for keeping a tab on the same and consider new projects for execution. It is in these weekly meeting that the charitable proposals are considered, discussed and approved or rejected for taking up as a likely cause for execution by the members. The projects already executed or underway are also discussed to keep a tab on the progress of a project or to ascertain the benefit that a particular project is yielding.

These contributions collected are spent by the end of the year and generally there is a deficit which is then borne by the Office Bearers for the said year in question or Members from their pockets for the weekly meetings or a meagre surplus. The Admin Account is being managed as if it is purely an agent of the members and no actual service is being extended to the members.

Furthermore, on perusal of the Constitution & Bye-Laws (the same shall be produced at the time of the personal hearing), it clearly indicates that the administration and working of the Association and Implementation of policies are established and are implemented on the concept of mutually. Each member is equally represented with individual Identity and status thereby, establishing the fact of complete transparency i.e. the Identity between the contributors and the participators of the Association and Foundation.

For the purposes of the accounting of the said affairs of the Administration Account, the year is followed from 1st July to 30th June of the following year.

Office Bearers are all holding Honorary Posts and are holding such posts for a period of only 1 year, hence their address keeps changing each year. Our address, for correspondence is also Office of another Honorary Office Bearer who has allowed us to use his address as address for communication.

Rotary International and all it's member clubs are required to maintain two separate bank accounts, one for administrative expenses and other for donations/charity. The receipts in

donations/charity account are used exclusively for the purpose of donation/charity and no amount is utilized for administration purposes.

The receipts in our Rotary Club Administrative account are majorly comprised of the following: Receipts from Indian Member clubs

- (i) Annual collection from *Members*, (being based on the budget for the year, on the basis of collecting the sums under common pool for spending during the rest of the year)
- (ii) Entrance fees from new member (if any)
- (iii) Bank Interest (if any)

Expenses are generally in the form of:

- i) Meeting expenses
- ii) Printing of Circulars
- iii) Stationary
- iv) Postage
- v) Greetings
- vi) Fees payable to International office
- vii) Fees payable to District office

It is seen that amounts collected by way of fees are only pooled together for the sake of convenience.

We understand that the principal of mutuality applies in the present case wherein the contributions are being collected merely to spend back on the members themselves. There is no consideration whatsoever. Even in case of a visiting guest at the meetings, estimated amount of expenses recovered from the Guest thus ensuring the collections on this account are spent entirely on the members only.

There is no consideration involved in the entire process, just that the funds are collected in a common pool for meeting the expenses for the weekly meetings and other petty expenses incurred in meeting the common objective of betterment of society. Hence we are not recovering any taxes on the contribution being recovered from the members. There is no other income being earned by the said Administrative Account and generally each year is a deficit.

The purpose of holding the said meetings as per the Club is as under:

All the meetings conducted would be to promote the Five Avenues of Service being Club Service, Vocational Service, Community Service, International Service & New Generations viz. to promote charity and overall well being of society.

Further, the collection of the sums against the reimbursement of the expenses is being done as per following understanding:

The budget for the forthcoming year shall be prepared by the incoming president in consultation with his team of board members and placed before the *Members* for approval. Based on the approval towards the budget for the following year, the annual reimbursement charges to



be recovered from each member will be finalised which would then be formally communicated to each member to remit. The said reimbursement would include the reimbursement towards payment for RI per capita dues, a subscription to The Rotarian or a Rotary regional magazine, district per capita dues, towards the meetings, and any other Rotary or district per capita assessment.

Advance ruling is being sought about taxability or otherwise under the Act, of contributions received from the members in the Administration Account for expending the same for the weekly and other meetings and other petty administrative expenses.

Rotary Clubs and Rotary Districts consists of association of persons, joined together to undertake social activities without any profit motive. Funds collected as fees are pooled together to be expended for meeting expenses & forwarding to international office for administrative expenses. Surplus if any is used for charitable activities.

The Applicant, Rotary Club of Mumbai Nariman Point is a group of likeminded people from different fields and industry, working towards the betterment of the society by carrying out various charitable causes and activities through a Charitable Trust that is registered under the Bombay Public Trusts Act, 1950 and section 12AA of the Income tax Act 1961. These charitable activities are being carried out from the donation received from members, amount collected through various other channels and accruals of the corpus fund. Since services by an entity registered under section 12AA of the Income Tax, 1961 (43 of 1961) by way of charitable activities are exempted under GST, hence the Trust is not registered under GST.

In addition to that a separate Administration Account (Admin Account) is also being run which is being managed by yearly elected members, wherein based on certain estimation done at the commencement of the year, sums are recovered from all the members for expending the same for the weekly and other meetings and other petty administrative expenses incurred. The expenses incurred for the weekly meetings include the expenses for the location and refreshments.

These meetings are held for all the members to meet from time to time to review existing activities for keeping a tab on the same and consider new projects for execution. It is in these weekly meeting that the charitable proposals are considered, discussed and approved or rejected for taking up as a likely cause for execution by the members. The projects already executed or underway are also discussed to keep a tab on the progress of a project or to ascertain the benefit that a particular project is yielding.

These contributions collected are spent by the end of the year and generally there is a deficit which is then borne by the Office Bearers for the said year in question or Members from their pockets for the weekly meetings or a meagre surplus. The Admin Account is being managed as if it is purely an agent of the members and no actual service is being extended to the members.

For the purposes of the accounting of the said affairs of the Administration Account, the year is followed from 1st July to 30th June of the following year.

In the context of GST, definition of persons is provided u/s.2(84) of the CGST Act, 2017. As per said definition, there is no deeming fiction to treat association and member as different persons. Hence, in our humble opinion, the key condition to tax a transaction u/s.7(1)(a), that supplier and recipient must be different, is not satisfied. Hence the transaction of providing services by an association to its members should not be taxed u/s.7(1)(a).

Earlier in service tax regime, courts, in several cases held that in absence of deeming fiction, treating club/association & its member as distinct person, service tax shall not be payable. Thereafter to nullify the above decision w.e.f. 01/07/2012 clause (a) to Explanation 3 to Sec.65B provided that an unincorporated association or body of persons, as the case may be and member thereof shall be treated as distinct persons. Such deeming fiction, it is most respectfully submitted, is not provided under the current GST regime.

Further, the said transaction between the club and its members also does not fit into the definition of "Supply" owing to the different limbs of the definition i.e. "business" & "consideration".

Hence, it is prayed that the subscription received from Members should not be subjected to GST as it is a contribution towards common expenditure to conduct the meetings and meeting other petty administrative expenses and since no facilities or benefits of any kind are being provided out of the said sums so collected in a common pool. Thus, there is no 'supply' of any goods or services in the present case.

In view of the above, the following questions are being framed, on which, Advance Ruling is being sought:

1. Whether contributions from the members in the Administration Account, recovered for expending the same for the weekly and other meetings and other petty administrative expenses incurred including the expenses for the location and light refreshments, amounts to or results in a supply, within the meaning of supply?
  2. If answer to question no. 1 is affirmative, whether it will be classified as supply of goods or services?
  3. Whether the applicant would be a Taxable Person under the provisions of the Act?
  4. If answer to question no.3 is affirmative, who shall be person responsible under GST, as office bearers keep on changing every year?
  5. Whether the said collection of funds under common pool and spending back on the same said contributors, would entail 'supply' as defined in the law.
  6. If answer to Question no.5 is affirmative, whether the same would be supply of goods or services?
3. **Statement containing the applicant's interpretation of law and/or facts, as the case may be, in respect of the aforesaid question(s)**



Applicant believes that the principal of mutuality applies in the present case wherein the contributions are being collected merely to spend back on the members themselves. There is no other commercial consideration whatsoever. Going with principal of mutuality, two distinct persons are missing. Even in case of a visiting guest at the meetings, estimated amount of expense recovered from the Guest in the form of Guest Fees, thus ensuring the collections on this account are spent entirely on the members only.

Since, there is no commercial consideration involved in the process, just that the funds are collected in a common pool for meeting the expenses for the weekly meetings and other petty expenses incurred in meeting the common objective of betterment of society. The amount being collected from the members is reimbursement of expenses or share of contribution. We do not function on commercial basis. Hence we are not recovering any taxes including GST on the contribution being recovered from them.

The common pool is being spent back on the members only.

In absence of two distinct persons and also in absence of consideration, as defined under the Act, in our opinion, contributions received from the members in the Administration Account would not qualify as a Supply within the meaning of the term, as defined under the Act.

The applicant is of the opinion that its contributions from the members is not covered under 'supply by one to another', since the basic fact of the said transaction happening between two separate and independent persons / entities would itself be missing.

Supply has been defined to include all forms of supply of goods and/or services 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*. Accordingly the definition has the following main ingredients -

- There should be two distinct persons
- Supply should be for a Consideration
- Supply should be in the course or furtherance of *business*

Consideration in relation to the supply of goods or services has been defined to include 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 and 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.

#### PRINCIPLE OF MUTUALITY

Various case laws are here below referred: though directly not decided under the Act in questions; would help throw light on principle of mutuality:

The three conditions stipulated by the Judicial Committee in the case of *English and Scottish Joint Co-Operative Wholesale Society Ltd v. Commr. Of Agri. I.T. (1948) 16 ITR 270(PC)*; existence of which establishes the doctrine of *Mutuality*. They are as follows (page 559).

- 1) *The Identity of the contributors to the fund and the recipients from the fund.*
- 2) *The treatment of the company, though incorporated as a mere entity for the convenience of the members and policy holders, in other words, as an instrument obedient to their mandate, and*
- 3) *The Impassibility that contributors should derive profits from contributions made by themselves to a fund which could only be expended or returned to themselves."*

In the case of *CIT vs. Bankimpur Club Ltd. 226 ITR 97* also the Hon'ble Court discussed the principles of mutuality and at page 103 held as follows:

It should be noticed that in the case of a mutual society or concern (including a member's club), there must be complete identity between the class of contributors and the class of participators.

The particular label or form, by which the mutual association is known is of no consequence. The said principle which has been laid down in the leading decisions and emphasized in the leading

English text books mentioned above, has been explained with reference to Indian decisions in "The Law and Practice of Income tax" (English edition Volume 1, 1990) by Kanga and Palkhiwala at page 113 thus:

"... *The contributors to the common fund and the participators in the surplus must be an identical body. That does not mean that each member should contribute to the common fund or that each member should participate in the surplus or get back from the surplus precisely what he was paid*" *The Madras, Andhra Pradesh and the Karnataka High Court have held that the test of mutuality does not require that the contributors to the common fund should willy-nilly distribute the surplus amongst themselves; it is enough if they have a right of disposal over the surplus and in exercise of that right they may agree that non winding up the surplus will be transferred to a similar association or used for some charitable objects...*"

#### SUPPLY:

As per Sec. 9 of the Central Goods & Services Tax ("CGST") Act, 2017, levy of tax is on an event called "supply". Scope of supply is stated u/s.7. Relevant portion of said provision is reproduced below for ready reference;

"Sec.7 91) 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, license, rental lease or disposed made or agreed to be made for a consideration by a person in the course or furtherance of business



e) the activities specified in Schedule I made or agreed to be made without a consideration  
To tax the transaction between an association or club and its members, said transaction must either fit either under clause (a) or clause (c) above

Clause (a) covers 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. Hence, following ingredients must be satisfied:

- a. There must be supply of goods or services or both for a consideration
- b. And such supply must be in the course or furtherance of business

It must be noted that both the ingredients must be satisfied to tax the transactions. If only one is satisfied, transaction cannot be taxed under the referred clause.

**BUSINESS:** -

The term "business" is defined u/s.2(17). For our discussion clause (e) of said definition is relevant and hence reproduced below for ready reference;

(17) "business" includes-----

(e) provision by a club association society or any such body (for a subscription or any other consideration) of all the *facilities or benefits to its members*"

From the above definition it is clear that for getting satisfied under the term 'business', there must be *facilities or benefits to its members*'

In case of Rotary Club, as we have discussed above, the members of the club come together only for social cause and there is neither furtherance of any business of benefits or facilities to the members.

From the above it can be interpreted that, to satisfy the definition of "Business", there must be some benefit/facility to its members.

**In our case there is no benefit facility to the members** of the Rotary club,

Further it can be seen whether the supply of services between club and its members is for a consideration.

**CONSIDERATION:** -

It is worthwhile to refer to the definition of "supplier" as provided u/s.2(105) & "recipient" as provided u/s.2(93). Both the definitions are reproduced below:

Sec. 2(105) "supplier" in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied

Sec. 2(93) "recipient" of supply of goods or services or both, means:

- (a) Where a consideration is payable for the supply of goods or services or both, the person to who is liable to pay that consideration;

- (b) Where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and
- (c) Where no consideration is payable for the supply of a service, the person to whom the service is rendered, and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied.

Co-joint reading of both the definitions provides that where a consideration is involved in a transaction, the recipient is the "person" who pays the consideration to the "supplier". Hence two different persons have been envisaged in the law to tax a transaction as a supply made for a consideration.

Now the question to redress may be that whether the club and its members can be treated as different persons?

**Recent Circular: -**

"GST" is levied on Intra-State and Inter-State supply of goods and services.

According to section 7 of CGST Act, 2017, the expression "supply" includes all forms of supply or 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 further of business, and includes activities specified in Schedule II to the CGST Act, 2017.

The definition of business in section 2(17) of CGST Act states that "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.

The term persons is defined in section 2(84) of the CGST Act, 2017 to include an association of persons or a body of individuals, whether incorporated or not, in India or outside India.

Further, Schedule II of CGST Act, 2017 enumerates activities which are to be treated as supply of goods or as supply of services. It states in para 7 that supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration shall be treated as supply of goods. A conjoint reading of the above provisions of the law implies that supply of services by an unincorporated association or body of persons (AOP) to a member thereof for cash, deferred payment or other valuable consideration shall be treated as supply of services. The above entry in schedule II is analogous to and draws strength from the provision in Article 366(29A)(e) of the Constitution according to which a 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."



Following observations may be noted in reference to the above circular.

- a. Above circular has not considered the definition of "supplier" as well as "recipient" before taxing a transaction u/s.7(1)(a). There must be two different persons to tax a transaction under said provision. Merely because an association of person has been included as person u/s.2(84) does not imply that members of such association are different persons.
- b. Circular has invoked the concept of deemed sale as provided under Article 366(29A) of the Constitution. It must be noted that clause (e) of said Article only enables to tax supply of goods by an association to its members as deemed sale. It does not enable to tax supply of service as a deemed service. Even para 7 of Sch II only covers supply of goods by any unincorporated association. It does not cover supply of services unless provision similar to that of deemed sale is made either in the Constitution or the Act, services provided by an association to its members cannot be taxed.
- c. Invoking the concept of "deemed sale" shall result in countless litigation. This is because Schedule - II of the CGST Act, 2017 is at any many places in direct conflict with Article 366(29A). Hence the said circular will open Pandora's Box full of litigation.

Examining whether the transaction between an association and its member can be taxed u/s.7(1)(c). Said clause covers activities specified in Schedule I, made or agreed to be made without a consideration. If self-supply is taxable, it must be covered under Schedule I. Entry number 2 of Schedule I provides that supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in course of furtherance of business shall be taxable. Members are not covered under section 25 as distinct person. Hence only thing to be checked is whether an association and its member are related person. Explanation u/s 15 of CGST Act, 2017 defines related person. Said explanation is also reproduced below for ready reference:

**'Explanation. - For the purposes of this Act, -**

- a) Persons shall be deemed to be "related person" if-
  - i) Such persons are officers or directors of one another's business;
  - ii) Such persons are legally recognized partners in business;
  - iii) Such persons are employer and employee;
  - iv) Any person directly or indirectly owns, controls or holds twenty-five percent or more of the outstanding voting stock or shares or both of them;
  - v) One of them directly or indirectly controls the other;
  - vi) Both of them directly or indirectly controlled by a third person;
  - vii) Together they directly or indirectly control a third person; or ;
  - viii) They are the member of the same family;
- b) The term "person" also includes legal persons;
- c) Persons who are associated in the business of one another that one is the sole agent or sole distributor or sole concessionaire, howsoever described, shall be deemed to be related.'

On perusal of above list one can conclude that there must be two or more persons who can be considered as related owing to the above conditions.

From the forgoing analysis we pray to submit that transaction between an association or club and its member will not be covered within the scope of supply u/s.7 of the CGST Act, 2017. Hence the same shall not be taxable.

#### Comparative Analysis of the Purpose of Formation of the Lions Club vis-à-vis Rotary Club

Lions Club	Rotary Club of Mumbai Nariman Point
<p><u>Purpose:</u></p> <p>To create and foster a spirit of understanding among the peoples of the world. To promote the principles of good government and good citizenship. To take an active interest in the civic, cultural, social and moral welfare of the community.</p> <p>To unite the members in the bonds of friendship, good fellowship and mutual understanding. To provide a forum for the open discussion of all matters of public interest provided however that partisan politics and sectarian religion shall not be debated by club members. To encourage service minded people to serve their community without personal financial reward, and to encourage efficiency and promote high ethical standards in commerce, industry, professions, public Works and private endeavors. (Ref. Page 7 of the AAR Order passed in the case of Lions Club)</p>	<p>Pursue the object of Rotary; carry our successful service projects based on the 5 avenues of service (Club Service, Vocational Service, Community Service, International Service, Youth Service) Object is to encourage and foster the ideal of service as a basis of worthy enterprise and particularly, to encourage and foster; Development of acquaintance as an opportunity for service. High ethical standards in business and profession; recognition of worthiness of all useful occupations; dignifying each Rotarian's occupation as an opportunity to serve society; Application of the ideal of service in each Rotarian's personal, business and community life Advancement of international understanding, goodwill, and peace through a world of fellowship of business and professional persons united in the ideal of service. (Ref. internal Pages 1 &amp; 2 of the Constitution; Pages 2-3 of the Paper Book for Admin Documents)</p>



#### Comparative Analysis of the Charitable / Welfare Activities of the Lions Club vis-à-vis Rotary Club

Lions Club	Rotary Club of Mumbai Nariman Point Charitable Trust
<p>Charitable Activities :</p> <p>Diabetes awareness rally</p> <p>Swachh Bharat Activities</p> <p>Various activities taken for physically disabled students</p> <p>Distribution of school bags and school dress, school kits to needy students</p> <p>Eye checkup camps and vision related activities for the public.</p> <p>Rehabilitation of street beggars and distribution of various items to generate income like weighing scales</p> <p>Medical Checkup camps, Blood donation camps.</p> <p>Motivating leas for activity for the public.</p> <p>Distribution of Jaipur Foots to the handicapped.</p> <p>Ref. Page 9 of the AAR Order passed in the case of Lions Club)</p>	<p><u>Medical Relief Projects:</u> Annam (free food for the needy children), Blood checking for dialysis, Blood donation camp, Hearing aids for children, Medical aid reimbursement, Medical Camps (Nirog), Organ Donation awareness drive, Donating Medical Equipment at Government Hospital, Contribution towards Polio Eradication</p> <p><u>Educational Projects:</u> Restoration of school, Computer donation, Education assistance for kids with hearing disability, Literacy program for children, Awarding scholarships, Talent contest for mentally challenged students, Vocational awards, Seminar for awareness on micro credit for women.</p> <p><u>Community Welfare Projects:</u> Anna Dhan Project (Free food for patients' relative / companion), Dongri Remand Home support, Coolers and Benches at Railway Station, Marathon Support for needy candidates (from Ladhak), Toilet Blocks Talent Show for Senior Citizens, etc. (Ref. Page 18 of the Paper Book for Trust Documents, being the list of activities carried out in F.Y. 2017-18)</p> <p><u>Purpose / Objects as per Trust Deed:</u></p>



Affording all type of Medical relief and aid in terms of money, hospitalisation, consultations and conferences including setting up of hospitals or other medical institutions and running them or granting of subscriptions and donations in them for administering medical relief to the poor and needy. Affording all types of help in providing cash, food, clothing and shelter to the poor and needy including orphans and widows. Establishing or affording all types of help for sufferings, social unhappiness, poverty, helplessness or to any institution for the alleviation of human suffering. Promoting the social and economic uplifting, welfare of the public in rural areas and more particularly covering various activities in the socio-economic, agriculture, animal husbandry, veterinary, medical and education fields. Giving assistance for education and setting up of schools, colleges or other educational institutions and running them or granting donation to them. Promoting programmes of upliftment of artisans, workers, technical and other personnel engaged in industrial sector including activities of training and development of skills and their socio economic upliftment. Establishing, maintenance and support of libraries, museums and reading room for advancement of education and knowledge in general. Giving financial assistance to people affected by natural calamities such as earthquakes, floods and droughts or to any organisation engaged in providing such relief. Giving financial assistance to poor and needy people in the form of interest free loans for maintenance and support. Carrying on scientific research in the fields on industry, medicine and / or agriculture. Subscription, contribution and / or donation to any public charitable trusts or funds or institutions, associations, societies, organisations or bodies for promotion of any of the aforesaid objects and, Any other object of general public utility.

- These activities are carried out by Rotary Club of Mumbai Nariman Point in separate entity being Rotary Club of Mumbai Nariman Point Charitable Trust which is registered and recognized u/s. 12A / u/s.80G of the Income Tax Act 1961 Charitable Trust and also registered with Charity Commissioner and recognized as such.

04. **CONTENTION - AS PER THE CONCERNED OFFICER**

No written submissions have been made by the jurisdictional office.

05. **HEARING**

The Preliminary hearing in the matter was held on 23.04.2019. Sh. Sheetalprakash Khandelwal, C.A. & Sh. Aditya Nemani, C.A., appeared, & requested for admission of their application. Jurisdictional Officer was not present.

The application was admitted and called for final hearing on 02.08.2019, Sh. Sheetalprakash Khandelwal, C.A. Sh. & Sh. Aditya Nemani, C.A. appeared, made oral and

written submissions. Jurisdictional Officer Sh. Rahul Dhingra , Asstt. Commr. of CGST, Division - IX, Mumbai South Commissionerate also appeared and made oral submissions.

#### 06. OBSERVATIONS

We have gone through the facts of the case, documents on record and submissions made by both, the applicant as well as the jurisdictional office.

Applicant has stated that they are an organization which collects fees from their members in order to facilitate their meetings and for administrative purposes. The expenses incurred for the weekly meetings include the expenses for the location and light refreshments. These meetings, where charitable proposals are considered, discussed and approved/rejected are held for all the members so as review existing projects/activities and also to consider new projects for execution. They have further submitted that their prayer specifically relates to non-applicability of GST on : 1. Club member fees; 2. District fees collected from Clubs & 3. Any other payment being disbursed to Rotary International as annual contribution on behalf of the Members. They have also submitted that Admin Account is being managed by them as a pure agent of the members and no actual service is being extended to the members. They have stressed that the principle of mutuality exists in their case and therefore they are not liable for GST on the fees/ amounts received by them. According to their submissions, they are required to maintain two separate bank accounts, one for administrative expenses and other for donations/charity. The receipts in donations/charity account are used exclusively for the purpose of donation/charity and such amounts are not utilized for administration purposes.

We find, as per their submissions that, their receipts majorly comprise of (i) Annual collection from Members, (ii) Entrance fees from new member (if any) and (iii) Bank Interest (if any). We also find that Expenses are generally in the form of: i) Meeting expenses, ii) Printing of Circulars, iii) Stationary, iv) Postage, v) Greetings, vi) Fees payable to International office and vii) Fees payable to District office.

We also observe that the applicant has submitted that the meetings are conducted to promote the Five Avenues of Service being Club Service, Vocational Service, Community Service, International Service & New Generations viz. to promote charity and overall well-being of society. We also find that funds collected as fees are pooled together to be expended for meeting expenses & forwarding to international rotary office for administrative expenses and only surplus, if any, is used for charitable activities. It has been submitted that the applicant and their members are not two distinct persons; there is absence of consideration in their case, and therefore contributions received from the members in the Administration Account would not qualify as a Supply within the meaning of the term, as defined under the Act.





The entire submissions made by them are in defense of their contention that the fees etc. collected by them from members are not liable to GST and the principle of mutuality exists between the applicant and its members.

The applicant has raised the following questions:

1. Whether contributions from the members in the Administration Account, recovered for expending the same for the weekly and other meetings and other petty administrative expenses incurred including the expenses for the location and light refreshments, amounts to or results in a supply, within the meaning of supply?
2. If answer to question no. 1 is affirmative, whether it will be classified as supply of goods or services?
3. Whether the applicant would be a Taxable Person under the provisions of the Act?
4. If answer to question no.3 is affirmative, who shall be person responsible under GST, as office bearers keep on changing every year?
5. Whether the said collection of funds under common pool and spending back on the same said contributors, would entail 'supply' as defined in the law.
6. If answer to Question no.5 is affirmative, whether the same would be supply of goods or services?

We find that as per the definition of "person" under the GST Act, 2017, there are two persons namely, the applicant and the other person being the "member" of the applicant. Hence the club/organization and member are distinct entities. The GST law has given very wide definition for services, which will cover any activity other than which involves goods, money and securities. Therefore the activity of the applicant in as much as they are striving to set high ethical standards in business and profession, recognition of worthiness of all useful occupations, dignifying each Rotarian's occupation as an opportunity to serve society, application of the ideal of service in each Rotarian's personal, business and community life, exclusively for their members can clearly be considered as service being provided by the respondents to its members.

Under the GST ACT consideration in relation to the supply of goods or services has been defined to include 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 and 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.

From the above inclusive definition of the term 'consideration' it can decisively be construed that the membership fee collected by the club from its members is not only meant for meeting administrative expenses, but is also towards setting high ethical standards in business and profession, recognition of worthiness of all useful occupations, dignifying each Rotarian's occupation as an opportunity to serve society, application of the ideal of service in each Rotarian's



personal, business and community life, exclusively for their members. Thus, any membership fee collected by the applicant from its members will definitely be understood as 'consideration' as the same has been paid for supply of services".

Applicant has fulfilled both the conditions prescribed by Section 7 of the CGST Act; firstly that such supply is made by them in lieu of consideration and secondly, such supply has been made in the course or furtherance of business since the term business includes provision by club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members.

Thus, both the conditions stipulated for 'supply' under the GST Laws having been adequately fulfilled leads to the conclusion that transaction between the applicant & its members are nothing but supply, and accordingly will attract GST. Under the GST Law, the intent or objective of any club or association is immaterial in so far as the leviability of GST is concerned.

As per Section 2(17) of CGST Act, "business" includes-

- (a) any trade, commerce, manufacture, profession, vocation, adventure, wager 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 sub-clause (a);
- (c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;
- (d) supply or acquisition of goods including capital goods 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;
- (f) admission, for a consideration, of persons to any premises;
- (g) 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;
- (h) activities of a race club including by way of totalisator or a license to book maker or activities of a licensed book maker in such club; and
- (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.

In the context of the GST Laws the objectives or the purpose of the applicant is inconsequential, since there is no mention of term such as objective or purpose in the definition of the term "business" under the GST Act."

The facts in the subject case are similar to the facts in the case of M/s Rotary Club of Queens Necklace, which has been decided by us earlier. In view of the above observations made by this Authority and also in view of the observations made in case of M/s Rotary Club of Queens Necklace, we are of the opinion that the amount collected as membership subscription and admission fees from members is liable to GST as supply of services.

06. In view of the extensive deliberations as held 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)

NO.GST-ARA-142/2018-19/B- 88 Mumbai, dt. 13/05/2019

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

**Question 1:-** Whether contributions from the members in the Administration Account, recovered for expending the same for the weekly and other meetings and other petty administrative expenses incurred including the expenses for the location and light refreshments, amounts to or results in a supply, within the meaning of supply?

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

**Question 2:-** If answer to question no. 1 is affirmative, whether it will be classified as supply of goods or services?

**Answer :-** It will be classified as supply of services

**Question 3:-** Whether the applicant would be a Taxable Person under the provisions of the Act?

**Answer :-** Answered in the affirmative, subject to provisions of Section 22 of the GST Act.

**Question 4:-** If answer to question no.3 is affirmative, who shall be person responsible under GST, as office bearers keep on changing every year?

**Answer :-** The applicant is liable to pay GST and not the office bearers.

**Question 5:-** Whether the said collection of funds under common pool and spending back on the same said contributors, would entail 'supply' as defined in the law.

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

**Question 6:-** If answer to Question no.5 is affirmative, whether the same would be supply of goods or services?

**Answer :-** It will be classified as supply of services



—st—  
B. TIMOTHY  
(MEMBER)

—st—  
B. V. BORHADE  
(MEMBER)

**Copy to:-**

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

**CERTIFIED TRUE COPY**

  
**MEMBER**  
**ADVANCE RULING AUTHORITY**  
**MAHARASHTRA STATE, MUMBAI**

**Note :-** An Appeal against this advance ruling order shall be made before The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15<sup>th</sup> floor, Air India building, Nariman Point, Mumbai – 400021.