



Dimensions – 39th Edition

Ruling under GST era:

1. Assistant Commissioner v. Lions Club of Poona Kothrud - Maharashtra¹

Issue for Consideration	Whether the membership & registration fees collected by the Club (Respondent) from its members for meeting the administrative expenses & organising programmes, can be regarded as 'consideration', and thereby liable to GST?
Discussion & Order	<p>Discussion:</p> <ul style="list-style-type: none"> • The Club is engaged in humanitarian and charitable activities. The Club collects membership fees from its members to meet its various expenses. It also collects registration fees for organising various programmes / workshops for its members. • The Authority for Advance Ruling (Authority) vide its order² had held that the Club is not required to pay GST on the amount collected from the members since there is no supply made to the members. • The Department approached the Appellate Authority for Advance Ruling (Appellate Authority) which vide its order³ (original order) set aside the order of the Authority and held as follows: <ul style="list-style-type: none"> - Club and its members are a distinct entity; - Conduct of leadership program by the Cub for its members is a supply of service: - Membership fee collected by the Club is a consideration for the supply of such services. • The Club approached the Appellate Authority to contend that there was a mistake apparent on record and stated as follows:

¹ Order no. MAH/AAAR/SS-RJ/32A/2018-19 dated August 14, 2019

² Order no. GST-ARA-33/2018-19/B-100 dated August 28, 2019

³ Order no. MAH/AAAR/SS-RJ/32/2018-19 dated April 23, 2019



	<ul style="list-style-type: none">- The membership fee collected was only used for administrative purpose such as printing of circulars, stationery, postage, meeting expenses;- The Club submitted the Declaration of Body of Individuals (BoI), wherein it was declared that the membership fees could only be used for meeting administrative expenses.- Separate registration fee was collected for the conduct of leadership programs. <ul style="list-style-type: none">• The Appellate Authority observed as follows:<ul style="list-style-type: none">- There is no cogent evidence or ground to insinuate that the membership fee collected by the Club is also appropriated towards training programmes/ leadership skills, etc.;- The flyers in respect of the various programmes separately contain the registration fees associated with such programmes;- The Club has agreed to pay the GST on the leadership programmes, etc. subject to their annual turnover exceeding the threshold limit; <p>Order:</p> <ul style="list-style-type: none">• Membership fees collected for meeting administrative expenses will not be considered as 'consideration' under GST;• Registration fees collected for organising programmes / workshops will be regarded as 'consideration' for a supply and liable to GST.
Dhruva Comments / Observations	<ul style="list-style-type: none">• In a similar case of <i>Rotary Club of Mumbai Western Elite</i>⁴, the Authority observed that the expenses incurred towards the administrative purpose was much more than the fees collected in respect of the same and such excess expenditure was met from membership fees collected. Accordingly, relying upon the original order, it was held that the membership fees collected was liable to GST.• The Authority has previously passed rulings⁵ based on the original order (supra) and held that the membership fees is chargeable to GST. Accordingly, such rulings would need reconsideration considering that the Appellate Authority has modified its Original Order (supra).• It would be interesting to have a relook at Corporate / Society / Trust structures considering recent Supreme Court judgment in case of Calcutta Club and examine applicability or otherwise of GST.

2. M/s. Toyota Tsusho India Private Ltd. – Karnataka⁶

Issue for Consideration	Whether the restriction on refund of IGST paid on exports of goods or services contained in Rule 96(10) of the CGST Rules, would apply to all exports done on payment of IGST, even when the Applicant procures only a certain quantity of goods at a concessional rate of 0.10% under Notification No. 40/ 2017 – Central Tax (Rate) dated October 23, 2017?
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⁴ Order no. GST-ARA-12/2019-20/B-106 dated October 4, 2019

⁵ Rotary Club of Mumbai Queens Necklace [Order no. GST-ARA-118/2018-19/B-46 dated April 30, 2019

⁶ Order no. KAR ADRG 52/2018-19 dated September 18, 2019



Discussion & Ruling

Discussion:

- The Applicant currently procures various goods such as motor cars, automobile parts, etc. on payment of GST and exports the same under a Letter of Undertaking (LUT) without payment of IGST.
- The Applicant now proposes to undertake additional transactions whereby it would:
 - Export the goods on payment of IGST, and
 - Export a small quantity of the goods under LUT which would be procured at a concessional rate of 0.10% (i.e. as a merchant exporter) in terms of Notification No. 40/ 2017 (*supra*).
- The Applicant approached the Authority to contend that it should be eligible to claim the refund of IGST paid on the export of goods which were procured on full payment of tax irrespective of the restriction under Rule 96(10) of CGST Rules. The Applicant's arguments in this regard are as follows:
 - The intent of Rule 96(10) of the CGST Rules is to ensure that the exporter does not utilize the ITC availed on other domestic supplies for making the payment of IGST. The said intent is also clarified vide Circular no. 45/19/2018-GST dated May 30, 2018. Further, the said circular also states that the restriction under Rule 96(10) is not applicable to an exporter who has procured goods from those suppliers who have not availed the benefit of Notification no. 40/2017.
 - Accordingly, the Applicant is claiming the refund of only those goods which have been procured from suppliers who have not availed the benefit of concessional rate of tax under Notification no. 40/2017;
 - The denial of refund of IGST paid on all exports merely because certain supplies were received by availing the benefit of Notification no. 40/2017 would be a grossly narrow interpretation of the law and against the principle of natural justice.
 - Furthermore, even if an assumption was made as to the intention of the legislature is to restrict the refund of IGST for procuring even a small portion of goods by availing the benefit of the aforesaid notification, the fact that the law does not prescribe a time limit upto which such restriction will apply, makes such an interpretation unviable.
- The Authority observed as follows:
 - The restriction under Rule 96(10) is very clear which states that the refund of IGST paid would not be eligible where the person has received the supplies on which the benefit of Notification no. 40/2017 has been taken and is not related to individual transactions;
 - A person can always claim the refund of ITC by clearing the exports under LUT;
 - Further, the scheme of Merchant Exports was brought into effect from October 23, 2017 vide Notification no. 40/ 2017 and Rule 96(10) also came into effect from the same date. Hence, there is an alignment of the Merchant Exports scheme and the refund of IGST paid on exports.



	<p>Ruling:</p> <p>The persons who have procured goods by availing the benefit of Notification no. 40/2017 are not eligible to claim refund of the IGST paid on all exports, irrespective of the other transactions made by such persons.</p>
<p>Dhruva Comments / Observations</p>	<p>The provisions originally cast a restriction on the supplier to the exporter for not claiming concessional rate of GST, which subsequently got retrospectively amended to place restriction on the exporter for claiming refund of GST paid on exports, if goods were purchased at a concessional rate of GST. The restriction under Rule 96(10) of CGST Rules, has been inserted to restrict the utilization of accumulated ITC where the exports are made on payment of tax. Further, the restriction applied in the Rule is qua the person and not qua the transaction.</p>



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