

**THE AUTHORITY FOR ADVANCE RULINGS
IN KARNATAKA
GOODS AND SERVICES TAX
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD
GANDHINAGAR, BENGALURU - 560 009**

Advance Ruling No. KAR ADRG 27 / 2021

Date : 22-04-2021

Present:

1. Dr.M.P.Ravi Prasad
Additional Commissioner of Commercial Taxes Member (State)
2. Sri.Mashhood Ur Rehman Farooqui,
Joint Commissioner of Customs & Indirect Taxes, Member (Central)

1.	Name and address of the applicant	M/s Bowring Institute, No. 19, St. Mark 's Road Bengaluru-560001.
2.	GSTIN or User ID	29AAAAB1735G1Z1
3.	Date of filing of Form GST ARA-01	27-10-2020
4.	Represented by	Sri K B S Manian, Advocate
5.	Jurisdictional Authority - Centre	The Commissioner of Indirect Taxes, Bangalore North Commissionerate, Bengaluru (Range-BND1)
6.	Jurisdictional Authority - State	LGSTO-20, Bengaluru
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs.5,000/- under CGST Act and Rs. 5,000/- under KGST Act vide CIN No. ICIC20102900531402 dated.24.10.2020.

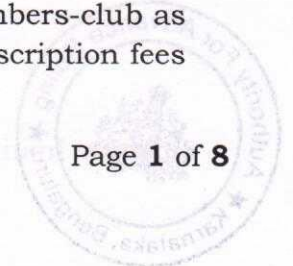
**ORDER UNDER SECTION 98(4) OF THE CGST ACT, 2017
AND UNDER SECTION 98(4) OF THE KGST ACT, 2017**

M/s. Bowring Institute (herein after referred to as 'the applicant'), No. 19, St. Mark's Road, Bengaluru- 560001 having GSTIN 29AAVFG2223Q1ZN, have filed an application for Advance Ruling under Section 97 of the CGST Act, 2017, read with Rule 104 of CGST Rules 2017 and Section 97 of KGST Act, 2017 read with the KGST Rules 2017, in FORM GST ARA-01 discharging the fee of Rs.5,000/- each under the CGST Act and the KGST Act.

2. The applicant is a club is and a non-profit organization established by the British in the year 1868 as a literary and scientific society. It is a members-club as opposed to a proprietary club. The members contribute by way of subscription fees



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and infrastructure development fund which is used for the purposes of provision of services and goods and a reading room, library, chambers for accommodating family and guests, a bar and sports facilities. In addition to the subscription fees at the time of admission of the member to the Applicant, an admission fee as an infrastructure development fund is collected. In addition, the applicant outsources catering services who supply foods and beverages and run a super market within the premise of the applicant. These facilities are only available for use by the members. These outsourced agencies charge GST on their supplies of food, beverages and sale of goods to members. The applicant bears the cost of such goods and services from the subscription fees paid by the members. The applicant receives contribution from its members as under:

- Subscription fees from members
- One time admission fees from members (in the form of Infrastructure Development Fund) at the time of membership admission.

In view of the above, the applicant sought advance ruling on the following questions:

- i. Whether amount collected as membership subscription fees paid by the members of the applicant towards facilities provided by the applicant are liable as supply of service under GST?
- ii. Whether amount collected as infrastructure development fund for the development and maintenance of the facilities provided by the applicant are liable as supply of service under GST?

2. Statements of relevant facts having a bearing on the questions raised:

2.1 The applicant club is a non profit organisation established by the British in the year 1868 as a literary and scientific society. Its a members club as opposed to proprietary club. The applicant is collecting GST on subscription fee and infrastructure development fund from its members. However, the Hon'ble Supreme Court in State of West Bengal vs Calcutta Club [AIR 2019 SC 5310] upheld the judgments of Hon'ble High Court of Jharkhand reported in Ranchi Club Ltd vs Chief Commissioner of Central Excise and Service Tax[(2012) 3 AIR Jhar R 255:(2012)51 VST 369] and that of High Court of Gujarat Ltd. Vs Union of India [2013 64 VST 191] and held that doctrine of mutuality applied to these clubs; (which are similar to that of applicant) and that the levy of admission fee and subscription fee are not exigible to service tax under the Finance Act, 1994. The Supreme Court further held that the judgment in Young Men's Indian Association[(1970)1 SCC 520] continue to hold the field.



2.2 The applicant submits that the provisions of CGST Act, 2017, in so far as it seeks to cover member's clubs as opposed to proprietary clubs are illegal in the light of the Supreme Court judgment in the case of M/s. Calcutta Club. Further, Supreme Court in Bangalore Club vs Commissioner of Income Tax reported in [(2013) 5 SCC 509] set out the essential conditions for the doctrine of mutuality, which are as under:

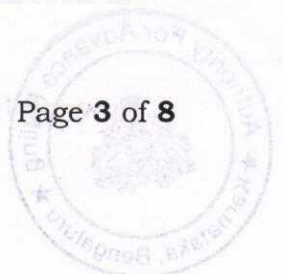
- There must be complete identity of contributors to the fund and recipients :the label or form by which organisation is known is of no significance.
- The action of the organisation must be in furtherance of its mandate for the benefit of its members. Determination of Mandate can be identified by the articles or MoA.
- When a club receives a surplus amount and if there is no direct benefit to the customers or members and such surplus amount is used for customers or members, that can be considered to be in furtherance of mandate;
- Impossibility of profits being derived by such contributions made by Members.

3. APPLICANT'S INTREPRETATION OF LAW:

3.1_ It is submitted that as per clause 59 of the bye laws, the applicant club can be dissolved in as per the procedure laid down in Section 22 of the Karnataka Societies Registration Act. Section 22 of the Karnataka Societies Registration Act reads as under:-

22. Provision for dissolution of societies and adjustment of their affairs.- Any number not less than three-fourths of the members of any society may determine that it shall be dissolved and thereupon it shall be dissolved forthwith, or at the time then agreed upon, and all necessary steps shall be taken for the disposal and settlement of the property of the society, its claims and liabilities, according to the rules of the said society applicable thereto, if any, and if there are no such rules, as the governing body shall find expedient, provided that, in the event of any dispute arising among the said governing body or the members of the society, the adjustment of its affairs shall be referred to the principal court of original civil jurisdiction of the district in which the registered office of the society is situate; and the court shall make such order in the matter as it shall deem requisite:

Provided that no society shall be dissolved unless three-fourths of the members shall have expressed a wish for such dissolution by their votes delivered in



person, or where proxies are allowed, by proxy, at a special general meeting convened for the purpose:

Provided further that whenever the State Government is a member of, or a contributor to, or otherwise interested in any society registered under this Act, such society shall not be dissolved without the consent of the State Government.

23. Upon dissolution, no member to receive profit.- (1) If upon the dissolution of any society registered under this Act, there shall remain, after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the members of the said society or any of them, but shall be given to some other society, to be determined by the votes of not less than three-fifths of the members present personally or where proxies are allowed, by proxy at the time of the dissolution, or in default thereof, by the principal civil court of original jurisdiction of the district.

(2) Notwithstanding anything contained in sub-section (1), it shall be lawful for the members of any society dissolved, to determine by a majority of the votes of the members present personally or where proxies are allowed, by proxy, at the time of dissolution of such society that any property whatsoever remaining after the satisfaction of all its debts and liabilities shall be given to the State Government to be utilised for any of the purposes referred to in section 3.

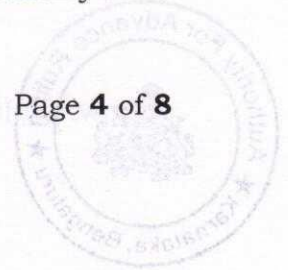
Therefore, in the event of dissolution of the society the members of the club will not be entitled to profits of the club and the same shall be given to other society.

3.2 It is also relevant to mention that the membership of the club is limited to Life & Permanent Members, Corporate Associates, Long Term Associates. There are total 5,000 life permanent member and only 500 corporate associate and long terms associate. Corporate Associate and Long term Associates are not considered as members of the club.

3.3 The Hon'ble Supreme Court in the case of **Joint Commercial Tax Officer, Harbour Division, II-Madras v. The Young Men's Indian Association reported in (1970) 1 SCC 462** ; interpreting similar provisions of the Madras General Sales Tax Act, 1959, which had tried to rope in members-clubs held that :-

"Thus in spite of the definition contained in Section 2 (n) read with Explanation I of the Act if there is no transfer of property from one to another there is no sale which would be eligible to tax."

3.4 The Hon'ble Jharkhand High court in case of **Ranchi Club Ltd. v. Chief Commissioner [2012] 26 S.T.R. 401(Jhar.)** examined the concept of mutuality in



the contest of levy of Service tax under the earlier Finance Act 1994. The Hon'ble High Court accepted the contention of petitioner and held as under :

"It is true that sale and service are two different and distinct transactions. The sale entails transfer of property whereas in service, there is no transfer of property. However, the basic feature common in both transactions requires existence of the two parties: in the matter of sale, the seller and buyer, and in the matter of service, service provider and service receiver. Since the issue whether there are two persons or two legal entity in the activities of the members' club has been already considered and decided by the Hon'ble Supreme Court as well as by the Full Bench of this Court in the cases referred above, therefore, this issue is no more res integra and issue is to be answered in favour of the writ petitioner and it can be held that in view of the mutuality and in view of the activities of the club, if club provides any service to its members, may be in any form including as mandap keeper, then it is not a service by one to another in the light of the decisions referred above as foundational facts of existence of two legal entities in such transaction is missing. However, so far as services by the club to other than members, learned counsel for the petitioner submitted that they are paying the tax.'

3.5 Following the Jharkhand High Court ruling the Gujarat High Court in the case of Sports Club of Gujarat Ltd v. UOI [2013] 40 STT 486 (Guj.) concurred with Hon. Jharkhand High Court and held that club and members are not distinct persons, levy of service tax on such clubs/associations is ultra vires.

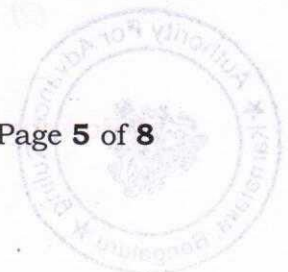
3.6 It is submitted that Hon'ble Supreme Court in State of West Bengal v Calcutta Club Ltd.(Supra) upheld the Judgments of the High Courts of Jharkhand reported in Ranchi Club Ltd. vs Chief Commissioner of Central Excise and Service Tax ; (2012) 3 AIR Jhar R 255 : (2012) 51 VST 369 and that of the High Court of Gujarat reported in Sports Club of Gujarat Ltd vs Union of India; (2013) 64 VST 191 and reiterating the decision of the constitution bench of the Supreme Court in Young Men's Indian Association; 1970 (1) SCC 462 held that the doctrine of mutuality applied and these clubs which are similar to that of the Applicant are not exigible to service tax.

Therefore, applying the principle of mutuality, this Hon'ble Authority may please to allow this petition in the interest of justice and equity.

PERSONAL HEARING: / PROCEEDINGS HELD ON 29-01-2021

4. Sri. K B S Manian, Advocate & Authorized Representative appeared for personal hearing proceedings held on 29-01-2021 before this authority and reiterated their arguments and also furnished written submissions.

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FINDINGS & DISCUSSION

5. At the outset we would like to make it clear that the provisions of CGST, Act 2017 and KGST, Act 2017 are in *parimateria* and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the KGST Act.

6. We have considered the submissions made by the applicant in their application for advance ruling as well as the submissions made by Sri. Manian, Advocate and Duly Authorized Representative of the applicant during the personal hearing. We also considered the issues involved, on which advance rulings are sought by the applicant, relevant facts and the applicant's interpretation of law.

7. We observe that the Hon'ble Supreme Court judgment in the case of M/s. Calcutta Club Limited [AIR 2019 SC 5310] is fully applicable on the applicant. We also observe that Section 108 of Finance Act 2021 brought in a retrospective amendment in Section 7 of CGST Act, 2017, which is reproduced below:

108. Amendment of section 7.

In the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the Central Goods and Services Tax Act), in section 7, in sub-section (1), after clause (a), the following clause shall be inserted and shall be 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 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;”.

Further, Section 1 of Finance act, 2021 is also reproduced below:

1. Short title and commencement.

(1) This Act may be called the Finance Act, 2021.

(2) Save as otherwise provided in this Act,—



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- (a) sections 2 to 88 shall come into force on the 1st day of April, 2021;
- (b) sections 108 to 123 shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

8. We observe that Finance Act, 2021 has over ruled what the Courts have held till now and has countered the Principle of Mutuality by way of Explanation which states that the members or constituents of the club and the club are two separate entities and persons for the purpose of Section 7 of CGST Act, 2017 which defines Supply.

9. We also note that by virtue of Section 1 of Finance Act, 2021, the amendment brought in Section 7 of CGST Act, 2017 by way of Section 108 of Finance Act, 2021, will only come into effect on the date when Central Govt notifies the same and then the same will be notified with the corresponding amendments passed by the respective States and Union territories in respective SGST/ UTGST Act.

10. Therefore, we conclude that unless the amended Section 7 of CGST Act, 2017 is notified, the applicant is not liable to pay GST on subscription fees and Infrastructure development fund collected from the members as per the Hon'ble Supreme Court judgment in the case of M/s. Calcutta Club Ltd.

11. In view of the foregoing, we pass the following

R U L I N G


The applicant is not liable to pay GST on subscription fees and Infrastructure development fund collected from the members and this ruling is subject to the amendment to the CGST Act by section 1 of the Finance Act 2021, as and when it is notified.



(Dr.M.P.Ravi Prasad)
Member

MEMBER

Karnataka Advance Ruling Authority
Place : Bengaluru-560 009



22.04.2021

(Mashhood Ur Rehman Farooqui)
Member

MEMBER

Karnataka Advance Ruling Authority
Bengaluru-560 009

Date : 22-04-2021



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To,

The applicant

Copy to:

1. The Principal Chief Commissioner of Indirect Taxes, Bangalore Zone, Karnataka.
2. The Commissioner of Commercial Taxes, Karnataka, Bengaluru.
3. The Commissioner of Indirect Taxes, Bangalore East Commissionerate, Bengaluru.
4. The Asst. Commissioner, LGSTO-20, Bengaluru.
5. Office Folder.

The applicant is not liable to pay GST on subscription fees and
information document fees collected from the members and this ruling
is subject to the amendment to the GST Act by section 1 of the Finance Act
2021, as and when it is notified.

[Signature]
MEMBER
Karnataka Advance Ruling Authority
Bangalore-560 009

[Signature]
MEMBER
Karnataka Advance Ruling Authority
Bangalore-560 009