Queen's Necklace on a platter.

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Apropos to the decision of the Maharashtra Appellate Authority for Advance Rulings in the case of Rotary Club of Mumbai Queens Necklace (citation) an attempt is made to understand the decision of the AAAR.

It is curious to note that while the submissions made by the Appellant club and the respondent are recorded in nearly 20 pages, the discussions and conclusion of the AAAR is comprised of in less than 3 pages.

Though the principle of "mutuality of interest" laid down by the Hon'ble Apex Court in the case of Calcutta Club (citation) was relied upon heavily by the Appellant - Rotary Club and it was pleaded that the ratio of the said judgement shall apply on all four walls under the GST law also, the decision of the AAAR is not based on the doctrine of mutuality of interest. So we have to wait further to see how this doctrine of mutuality is going to apply under GST law.

The conclusion of the AAAR that the Rotary Club is not liable to pay any GST on Admission fee and Membership Fee collected by it, from its members, is based on the following reasoning.

The scope of "supply" dealt with under Section 7 of the CGST Act, 2017 requires that to constitute supply, such supply shall be made "in the course or furtherance of business".

> ***SECTION 7. Scope of supply.*** *— (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) import of services for a consideration whether or not in the course or furtherance of business; and*
>
> *(c) the activities specified in Schedule I, made or agreed to be made without a consideration;*
>
> *(1A) where certain activities or transactions, constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.*
>
> *(2) Notwithstanding anything contained in sub-section (1), —*
>
> *(a) activities or transactions specified in Schedule III; or*
>
> *(b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council,*

shall be treated neither as a supply of goods nor a supply of services.

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

(a) a supply of goods and not as a supply of services; or

(b) a supply of services and not as a supply of goods.

So, it has to be first determined, whether the Appellant - Rotary Club is engaged in any "business", which term is defined in Section 2 (17) of the CGST Act, as bellow.

2 (17) "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;

It may be observed from the above none of the above clauses, except clause (e) would apply to such clubs. As per clause (e) of sub section (17) of Section 2, a club, association, society, or any such body can be said to be engaged in any business, if they offer any facilities or benefits to its members, for a subscription or any other consideration.

So, the issue to be decided was whether Rotary Club is providing any facilities or benefits to its members against receipt of Admission Fee and Membership Fee.

It was argued by the Appellant Rotary Club, that Rotary is a movement to undertake various social welfare projects, which is supported mainly by voluntary donations. The ways and means to achieve the above objectives are discussed in the periodical meetings of the Club and the above Fees collected from the members are used "only to meet the above expenses and other administrative expenses of the club" and no facilities or benefits are provided by the Rotary Club to its members. In other words, no service is provided by Rotary Club to its members, it was argued.

Per contra, the department has argued that apart from undertaking various social welfare projects, the Rotary club also provides various services to its members, such as arranging lectures by various eminent personalities, which benefits the members; offering Rotary Global Reward scheme to its members, where the members can avail various discounts from the vendors / service providers; creates a networking for business development of the members; organising various recreational events for its members; etc.

The AAAR has come to the following conclusion, which can gainfully be quoted, as it is very brief.

> In the instant case, it has been submitted by the Appellant that entire subscription / membership amount collected by the Appellant from its members is utilised solely towards expenditure in the meetings, communication and other administrative expenses like, printers, stationeries, etc. They have categorically submitted that they do not provide any facility or benefit to any of its members against the said subscription or membership fee. They further submitted that the object of the Appellant-Club is to promote peace, fight diseases, provide clean water, sanitation and hygiene, support education, etc. Further, they have also furnished financial statements pertaining to the year 2016-17 & 2017-18, which reveals that the entire amount of membership subscription and admission fee collected by the Appellant is almost spent towards meetings and administrative expenses of the Appellant.

Accordingly, the AAAR has come to the conclusion that the Appellant Rotary club is not providing any facilities or benefits to its members and hence not engaged in any business. Thus one of the essential requirements to constitute supply, i.e. having been made in the course or in furtherance of business is absent and hence the admission fee and subscription fee collected by the Rotary Club from its members is not consideration for any facilities or benefits provided by the former to the later and hence not liable to GST.

The Author is of the view, with due respects to the wisdom of the AAAR that merely because the amount collected from the members is matched by the expenditure incurred on conducting meetings and administrative expenses, can it be concluded that no facilities or benefits are provided by the Club to its members? As Rotary Club's main source of funding is generous donations, there can be no one to one correlation of expenses and collection of fee from the members. Further, the instances of various facilities and benefits provided by the Rotary Club to its members, pointed out by the Department cannot be ignored.

The AAAR went on to add since only the cost of holding the meetings and administrative expenses are reimbursed by the Members to the club, if any tax is levied on the same, it would lead to double taxation, which is alien to the concept of GST, as the service providers like Hotels, caterers, etc. already pay GST, which is defrayed from the Members' contributions.

In author's humble view, GST is a Value Added Tax and avoidance of double taxation is rather achieved by extending Input Tax Credit and if the above view is accepted it will lead to serious consequences.

While AARs and AAARs are often accused of being highly biased towards revenue in their rulings, this ruling is one of its kind, where the benevolence of the AAAR has surpassed that of the noble objectives of the Appellant before it.

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