Dimensions – 51st Edition

Rulings / Judgment under GST era:

1. M/s ION Trading Private Limited - Uttar Pradesh[1]	
Issues for Consideration	• Whether the amount recovered from employees towards parental insurance premium payable to insurance company would be deemed as a 'Supply of Service' by the Applicant to its employees? • If yes, whether the value of supply shall be 'Nil' in terms of pure agent services or something else? • Whether the Applicant can avail proportionate ITC for tax paid on parental insurance premium against output insurance services for parents of employees?
Discussion & Ruling	**Discussion:** • The Applicant is in the business of development and export of software services. • The Applicant provides group mediclaim insurance services to its employees which covers the employee, their spouse and three children. The cost of the same is borne by the Applicant. The employee can also opt to include their parents by paying an additional amount of ₹ 5,000. Any amount incurred in excess of ₹ 5,000 is borne by the Applicant. • The Applicant approached the Authority in order to determine whether GST is leviable on the amount recovered for parental insurance and contended as follows: - The activity of facilitating the insurance services for parents of the employees is not in the course or furtherance or incidental to the business of software development. It is not connected to the business in such a way that without it the business will not function; - Not providing the mediclaim facility may cause some inconvenience to the employees but it would not facilitate the business activity of developing software;

[1] Order no. 41 dated September 25, 2019 [2020-VIL-27-AAR]

	- Reliance was placed upon the ruling in the case of *M/s. Posco India Pune Processing Center Private Limited*[2]. • The Authority observed as follows: - The Applicant is in the business of software development and not in the business of providing insurance services; - Recovery of amount of premium and deposit of the same with the insurance company cannot be treated as a supply of service in the course or furtherance of business. Reliance was placed upon the ruling of *Posco India Pune Processing (supra);* - Providing insurance facility to employee's parents is nowhere connected to the business of the Applicant. **Ruling:** • The amount recovered from employees towards parental insurance premium payable to insurance company is not a supply of service in the course or furtherance of business and hence, no GST is leviable on the same. • Issue no. 2 is, accordingly, not required to be answered. • No ITC would be eligible to the Applicant.
Dhruva Comments / Observations	• Provision of such facilities to the employees is a common practice in the industry. A similar ruling was also given in the case of *Jotun India Pvt. Ltd*.[3] • It would be interesting to see whether the input tax credits could be questioned by the authorities where output tax on such recoveries has been discharged by the Companies.

2. Rotary Club of Mumbai Queens Necklace - Maharashtra Appellate Authority[4]	
Issues for Consideration	• Whether the amounts collected by the Appellant ('Club') from its members as membership subscription and admission fees ('fees') are liable to GST? • If yes, whether the Club can claim Input Tax Credit ('ITC') of the tax paid on banquet and catering services for holding members meetings and various events?
Discussion & Order	**Discussion:** • The Club is an un-incorporated association of individuals and is registered under GST. It works to promote various social causes. • The Club collects fees from its members, and it is currently charging GST on the same. The fees so collected are utilised for administration purposes of the club viz. meeting expenses such as banquet and catering services, stationery, printing, audit fees, etc.

[2] Order no. GST-ARA-36/2018-19/B-110 dated September 07, 2018
[3] Order no. GST-ARA- 19/2019-20/B-108 dated October 04, 2019
[4] Order No. MAH/GST-AAAR-15/2019-20 dated August 08, 2019

	• The Club had approached the Authority for Advance Ruling ('Authority') to contend that no GST was payable on the fees collected. However, the Authority held against the Club. Accordingly, the impugned appeal was filed before the Appellate Authority. • The Club contended as follows: - There is no deeming fiction in the definition of 'person' under section 2(84) of the CGST Act, 2017 to treat the Club and its members as different persons. Thus, there is no supplier and recipient for a transaction to be taxed; - Mere inclusion of association of persons under the definition of 'person' does not imply that the members of such association and the association are different persons; - For a transaction to be regarded as 'supply' there should be a business activity and for a consideration. Both of these requirements are not there in the present case; - Various rulings in the Pre-GST era, based on the principle of mutuality, have held that a Club and its members are not distinct persons and therefore, no service tax can be levied. Accordingly, the service tax law was amended to treat both, club and its members as distinct persons. There is no such provision under the GST law; - Further, the Club and its members being the same they cannot be regarded as related person under section 15 of the CGST Act, 2017; - If the fees are subject to GST, then ITC on food and beverages should be eligible since the fees are collected for providing various services including banquet and catering. These services provided along with the club membership services constitute 'composite supply' and the principal supply being of supply of club / association service. Accordingly, the ITC should be eligible to the Club. • The Appellate Authority observed as follows: - As per the financial statements, entire membership subscription amount is spent towards meetings and administrative expenditures only. Therefore, the Club is not doing any 'business' as per section 2(17) of the CGST Act, 2017 and accordingly, it would not come under the scope of *supply* under section 7(1) of the CGST Act, 2017; - If the activities of the Appellant are held to be supply, then the fees collected by the Appellant, being purely in the nature of reimbursement for the meetings and administrative expenses would lead to double taxation since the suppliers have already charged tax on the input service / goods that are used in meeting and other administrative functions of the Appellant. **Order:** • No GST is payable on the fees collected since there is no supply, and • Since there is no supply, the question regarding the availment of ITC on the input services does not arise.
Dhruva Comments / Observations	• Although the present ruling favours a club / association of persons, there has also been a contrary ruling by the Maharashtra Appellate Authority in the case of *Lions Club of*

	Poona Kothrud[5], where it was observed that the membership fees collected are not only meant for administrative expenses but also for organising leadership programs for direct and indirect benefits of the members. Thereby, GST was leviable on the amount collected. • Considering divergent rulings, suitable clarifications should be issued by the Government. Also, considering the recent Supreme Court judgment in case of the *Calcutta Club*[6], it would be relevant to examine GST implications on Club / Society / Trust structures.

3. Shree Nanak Ferro Alloys Pvt Ltd v. The Union of India through the Commissioner & Others[7]	
Issue for Consideration	Whether the Petitioner is required to pay interest along with IGST due to inadvertent classification of inter-state supply as intra-state supply?
Discussion & Judgment	**Discussion:** • The Petitioner, while filing the Form GSTR 3B for the month of September 2017, paid CGST instead of IGST. However, while submitting GSTR1 for the said month, the Petitioner reflected correct tax liability under the head IGST. • The said mistake was observed on scrutiny of Form GSTR 1 and GSTR 3B during the CERA audit and the authorities issued a letter demanding payment of IGST along with interest. The Petitioner filed a reply stating that they had paid the impugned IGST amount inadvertently under a different head and filed a Writ Petition against the demand for interest. • The Petitioner submitted as under: - An inter-state supply transaction was inadvertently considered as an intra-state supply transaction and was a bona fide mistake of tax payment under the wrong head; - Placing reliance on the provisions contained in section 77 of the CGST Act, 2017 and rule 92 of the CGST Rules, 2017 it was submitted that the Petitioner was ready to either pay impugned IGST and take the refund of CGST wrongly paid or adjust the CGST paid against any future tax liabilities. • The Respondent submitted as under: - The Petitioner was fully aware that the supply is an inter-state supply and has intentionally shown the tax under the wrong head; - The State Government did not get its proportion of IGST due to payment of tax under CGST instead of IGST and accordingly Petitioner is liable to pay interest; - No adjustment/ transfer/ utilization of the tax paid is permitted as the impugned tax was paid through electronic cash ledger and not via the electronic credit ledger;

[5] Order no. MAH/AAAR/SS-RJ/32/2018-19, dated April 23, 2019
[6] 2019-VIL-34-SC-ST
[7] 2020-VIL-30-JHR

	- The Petitioner is not entitled to refund as the act of the Petitioner are deliberate and not bona fide. • On a detailed examination of the facts, the Hon'ble High Court observed as under: - The Petitioner discharged the IGST liability under the CGST head and neither concealed the transaction nor committed any fraud in paying the tax liability. Further, no benefit could have been derived by depositing cash in electronic cash ledger under the CGST head and paying CGST instead of IGST; - There is no provision for cross-utilization of amounts lying in the electronic cash ledger of one tax head against another unlike electronic credit ledger which can be used for payment of tax under other heads; - Reliance was placed on section 77(1) of the CGST Act, 2017 read with section 19(2) of the IGST Act, 2017 which provides for refund of CGST in cases where a transaction has been treated as an intra-state supply instead of inter-state supply and that interest shall not be applicable; - The question whether the amount deposited under CGST head can be adjusted against IGST was not discussed as Petitioner was ready to pay IGST liability and take refund or seek adjustment of future liabilities under the CGST head. **Judgment:** • The Hon'ble High Court directed the Petitioner to deposit the impugned IGST without any interest. • Further, the Petitioner is entitled to either take refund of CGST or adjust such amount of tax against any future tax liabilities.
Dhruva Comments / Observations	The Hon'ble High Court has liberally interpreted the provisions of section 77 of the CGST Act, 2017 and has allowed adjustment. This judgment shall serve as a guideline to the GST authorities while dealing with matter involving payment of tax under wrong head.

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