

MAHARASHTRA AUTHORITY FOR ADVANCE RULING
GST Bhavan, Room No.107, 1st floor, B-Wing, Old Building, Mazgaon, Mumbai – 400010.
(Constituted under Section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

- (1) Shri. Rajiv Magoo, Additional Commissioner of Central Tax, (Member)**
(2) Shri. T. R. Ramnani, Joint Commissioner of State Tax, (Member)

GSTIN Number, if any/ User-id	27AAATN0457A1Z1
Legal Name of Applicant	M/s Navi Mumbai Sports Association
Registered Address/Address provided while obtaining user id	Navi Mumbai Sports Association, Near MGM Hospital, Sports Sector 1A, Vashi, Navi Mumbai - 400 703
Details of application	GST-ARA, Application No. 16 Dated 02.09.2020
Concerned officer	Division-II, Commissionerate Belapur
Nature of activity(s) (proposed/present) in respect of which advance ruling sought	
A	Category
B	Description (in brief)
Issue/s on which advance ruling required	Service Provision Taxability of Club Membership Fees & Subscription <ul style="list-style-type: none">• Applicability of notification issued under the provisions of the Act• Determination of the liability to pay tax on any goods or services or both• 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 that term
Question(s) on which advance ruling is required	As reproduced in para 01 of the Proceedings below.

NO. GST-ARA- 16/2020-21/B-

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Mumbai, dt.

25/05/2022

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" respectively] by **M/s Navi Mumbai Sports Association**, the applicant, seeking an advance ruling in respect of the following questions.

1. **Whether the following amount collected by the applicant from its members is liable to GST?**
 - a. **Entrance / Admission fees which forms part of corpus fund**
 - b. **Annual Subscription fees**
 - c. **Annual Maintenance fees**
2. **Whether the amount / fees collected towards rendering training / coaching in recreational & sports activities are exempt from payment of GST under entry no. 80 of notification 12/2017 CTR dated 28th June, 2017?**

- a. Football / Basketball/ Athletic / Cricket / Swimming coaching fees
- b. Summer coaching fees
- c. Dance coaching
- d. Karate / Physical fitness

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 FACTS:

- 2.1 *M/s Navi Mumbai Sports Association ("the Applicants/Association") is a Non-Government Sports Organization & Public Charitable Trust registered under The Societies Registration Act, 1860 VIDE Registration 03.02.1981 & The Bombay Public Trust Act, 1950 vide registration dated 07.04.1981. The Association holds a valid registration under section 12AA of the Income Tax Act, 1961.*
- 2.2 *The association has constructed international sports complex on land allotted by M/s CIDCO to it. The main aim & object of the Association is to encourage & foster sports, cultural & social activities. It also provides health and sports education, and inter alia includes the following:*
 - a. Providing facilities for indoor and outdoor games, swimming pool, recreation activities.*
 - b. Provide facilities for physical activities.*
 - c. Organize cultural programmes.*
 - d. Organize training camps for youngsters with a view to serve the national interest and also provide necessary facilities for the same.*
 - e. Utilize the funds to the maximum for developing the sports and other similar activities on no loss no profit basis.*
 - f. Promote all other activities as are necessary from time to time to further the aim and objects of the association.*
 - g. Utilize the income and properties of the Association, whatsoever derived from solely towards the object and business of the Association and no portion thereof shall be paid, transferred or distributed directly or indirectly by way of dividend, bonus or interest or otherwise whatsoever, by way of profit to the members of the Association.*
- 2.3 *The applicant association is regulated and managed by an elected body i.e. Managing committee, which looks into the affairs of the association & makes policy decisions which aims at promotion of sports, fellowship and fitness for individual, families, schools, institutions and corporate bodies. For promotion of sports, Annual Camps are held to select talents and rigorous work out are given to make them champions. Schools and colleges are provided the association's infrastructure for sports and competitions. For fellowship, it has affiliations with prestigious clubs across India and abroad for the benefit of its members.*



- 2.4 The sports complex is equipped with various facilities for achieving its objectives, which includes indoor badminton, squash, table tennis courts, gym and health club, retiring rooms, football and cricket ground, swimming pools, restaurants, conference halls etc.
- 2.5 Any person desirous of joining the association can do so by becoming member & shall subscribe to the objects of the Association, shall adhere to the rules & regulations & bye laws of the Association. There are various categories of Membership such as Founder member, Life member, Patron member, Organization member, General member, Student member, Associate member etc. The members on joining are required to pay one time admission / entrance fees based on the type of membership & the same shall form part of corpus of the applicant trust / association.
- 2.6 Apart from entrance/ admission fees, the association also collects various fees such as : Annual subscription & Annual maintenance fees ; Sports Activity Fees ; Training / coaching fees ; Hire charges for Banquet Hall/ Open ground/ Conference Room & Royalty from caterers/decorators.
- 2.7 The amounts collected by way of various fees stated here in above are pooled together for Convenience and it is not expected to generate any surplus from it. Association, being a charitable entity, aims only at furtherance of its object. It also receives donation from patrons for its charitable activities and to foster its objects.
- 2.8 The applicant is currently charging and collecting GST on the all receipts/ fees except on fees received for training and coaching services provided in various sports in view of exemption under entry 80 of notification 12/2017-CTR dated 28th June, 2017.

2.9 Based on various court pronouncements & rulings, few members are of the view that GST is not leviable on the annual subscription & maintenance fees collected from members and therefore the subject application has been filed.

B. STATEMENT CONTAINING APPLICANT'S INTERPRETATION OF LAW

2.10 COLLECTION OF FEES FROM MEMBERS IS OUTSIDE PURVIEW OF GST ON THE PRINCIPLE OF MUTUALITY.

- 2.10.1 Harmonious reading of Sections 2(17), 2(31), 2(105), 2(93) and Section 7 of the CGST Act, 2017 determines that where a consideration is involved in a transaction, the recipient is the "person" who pays the consideration to the supplier. Hence, 2 different persons have been envisaged in the law to tax a transaction of supply of goods or services or both in course of business or furtherance of business made for a consideration.
- 2.10.2 The term "person" is defined u/s 2(84) of the Act and Section 25 of the Act provides that establishments of a person in different states/union territories required to obtain registrations, shall be treated as distinct person. However, the said section 25 does not provide that association and it's members are to be treated as distinct persons for the purpose of GST. Therefore, the association and it's members, on the principle of mutuality they are one and same person.
- 2.10.3 Further, clause (e) in the definition of term "business" of 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; has to be interpreted & made applicable in case of proprietary clubs, wherein proprietor owns the property and funds and conducts the activities of club to attempt to make a

profit. A member's club functions on mutuality, which is not the case in case of "proprietary / owner's club.

2.10.4 Hence from above provisions of the Act, the impugned transaction between the association and its member do not get cover under section 7(1)(a) of the Act, as there are no two distinct person's involved.

Analysis for clause 7(1) (c) of the Act

2.10.5 Schedule I enlists for deeming provision of the activities without consideration therein to be treated as "supply". Entry 2 of said schedule I provides for Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business. Section 25 does not specifically provide that club/association and it's members are to be treated as 2 separate distinct persons. Based on principle of mutuality, an association and its members are the same person and hence the transaction between club/association and it's member does not get cover under entry 2 of schedule I to be treated as "supply", as well.

2.10.6 The Principle of Mutuality applies to all taxes i.e. Income Tax, VAT/ Sales Tax and Service Tax, alike and the courts of law have expounded and illustrated this principle in details, and the case laws are mentioned and relied upon as under:-

> Decision of Hon'ble Jharkhand High court in case of Ranchi Club Ltd. v. Chief Commr (2012)6 TMI 636.

> Decision of the Hon'ble Mumbai CESTAT in case of Cricket Club of India Ltd. v. Commissioner of Service Tax (2015) 9 TMI 1389 and

> Decision of the Hon'ble Gujarat High Court in the case of Sports Club of Gujarat Ltd v. UOI (2013) 7 TMI 510.

2.10.7 The larger bench of Hon'ble Supreme court in case of STATE OF WEST BENGAL & ORS Vs. M/S CALCUTTA CLUB LTD / RANCHI CLUB LTD (2019) TIOL 449 observed at length the applicability of principle of mutuality & held that services by a members' club to its members amounts to services to self and would not qualify as a service that attracts tax. In view of the fact that the concept of mutuality is being upheld by the Larger Bench of Hon'ble Supreme Court during the service tax regime (both pre & post negative regime), the same principle will also be applicable in the GST regime, as there is no change in the legal position.

2.10.8 There is nothing contrary to the said decision of Hon'ble Apex Court in the case of M/s Calcutta Club Ltd and as per Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all Courts within the territory of India and therefore, the authoritative pronouncement should bind all. There are no differences in the relevant definitions in Service Tax era and GST era. In fact, under service tax there was a deeming clause i.e. "An unincorporated association or a body of person, as the case may be, and a member thereof shall be treated as distinct person". The said clause is absent under GST. The intent in GST was never to treat club and members are separate persons.

2.10.9 Hence, it can be concluded that based on the principle of mutuality the receipts collected from members is outside the purview of GST. Further, if it is felt that, the impugned transaction is leviable to GST, applicant requests to distinguish the applicability of above ratio of Hon'ble Supreme court relied upon.



2.11 COLLECTION OF ANNUAL SUBSCRIPTION & MAINTENANCE CHARGES IS ONLY TO DEFRAY THE ADMINISTRATIVE AND OPERATIONAL EXPENSES

2.11.1 The requirement of working capital funds is met by way of collection of annual subscription and maintenance charges from the members. The amount collected by association is for convenience of members therein and pooled together only for paying administrative expenses and communication expenses, there is no element of business in this activity and neither any services are rendered nor are any goods being traded against the amount collected as membership subscription and admission fees from members. The Hon'ble Maharashtra Advance Appellate Authority in following cases has held that collection of annual subscription and annual maintenance charges is not leviable to GST as it is merely for defraying the administrative, operational and management expenses of the club:

- Rotary Club of Mumbai Queens Necklace (2020) 6 TMI 627
- Lions Club of Poona Kothrud (2019) 11 TMI 420

2.12 FEES RECEIVED FOR PROVIDING TRAINING / COACHING IN VARIOUS SPORTS ACTIVITIES IS ELIGIBLE FOR EXEMPTION UNDER ENTRY 80 OF NOTIFICATION 12/2017-CTR

2.12.1 Applicant, with view to promote their objectives provide training / coaching on basic/ advance courses to members and non-members for various sports activities such as badminton, table tennis, squash, swimming, cricket, basketball, football, dance, etc and charges fees for the same.

2.12.2 Notification 12/2017-CTR dated 28th June, 2017 vide entry 80 provides for exemption from payment of GST on services rendered by way of training or coaching in recreational activities relating to:

- a) Arts or culture or
- b) Sports by charitable entities registered under section 12AA of the Income-tax Act

2.12.3 The applicant, a charitable entity registered u/s 12 AA of IT Act is eligible for exemption provided vide Entry no.80 of Notification 12/2017-CTR in respect of fees received by it towards rendering of training & coaching in various activities listed above. Hence, fees charged / collected from members/nonmembers for various coaching courses in sports is exempt from payment of GST under notification 12/2017-CT (Rate) dated 28th June, 2017.

2.13 Vide Additional Submission dated 08.12.2021, the applicant has merely reiterated the above submissions made by them.

03. CONTENTION – AS PER THE CONCERNED OFFICER:

The jurisdictional officer has not made any submissions in the matter.

04. HEARING

4.1 Preliminary hearing in the matter was held on 29.06.2021. Authorized Representatives of the applicant, Shri. Rajiv Lutia, CA, Smt. Jinal Maru, CA were present. Jurisdictional officer was absent. The Authorized Representatives made oral submission with respect to admission of their application.

4.2 The application was admitted and called for final hearing on 14.12.2021. The Authorized representative of the applicant, Shri. Rajiv Luthia, CA, Shri. Samir Gavli, CA and Smt. Jinal Maru,

CA were present. The Jurisdictional officer was absent. The matter was heard. Jurisdictional officer was also directed to make written submissions in a weeks' time.

05. DISCUSSIONS AND FINDINGS:

5.1 We have gone through the facts of the matter, documents on record and submissions made by the applicant. In spite of directions, the jurisdictional officer has not made any submissions as on the date of passing this order.

5.2 The first question raised by the applicant is whether Entrance/Admission fees, Annual Subscription fees and Annual Maintenance fees collected from its members are liable to GST.

5.2.1 The applicant has submitted that, the amounts collected by way of various fees, stated here in above are pooled together for Convenience and it is not expected to generate any surplus from it. The applicant is of the opinion that the said fees collected from members of club are not liable to tax under CGST/SGST Act. The primary reason given by the applicant in support of their contention is that, the principle of mutuality is applicable in their case because the club and its members have the same identity. Applicant has made exhaustive submissions in the said context and in support, has cited the decision of the Hon'ble Supreme Court in **State of West Bengal v Calcutta Club** [(2019) 19 SCC 107].

5.2.2 As per the submissions, the main aim & object of the Applicant is to encourage & foster sports, cultural & social activities and there is no profit motive in their case. Further, the amounts collected by the applicant are for convenience of its members and pooled together only for paying administrative expenses and communication expenses, there is no element of business in this activity and neither any services are rendered nor are any goods being traded against the said amount collected as annual subscription & maintenance fees and admission fees, etc from its members.

5.2.3 The term "supply" is defined under Section 7 of the CGST Act and was amended last, in the Budget 2021. Prior to the amendment "supply" was defined as :

7 (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) the activities specified in Schedule I, made or agreed to be made without a consideration; and
- (c) the activities to be treated as supply of goods or supply of services as referred to in Schedule II.

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

1. a supply of goods and not as a supply of services; or
2. a supply of services and not as a supply of goods.

5.2.4 Vide clause 99, an amendment was proposed in the CGST Act, 2017, whereby, in section 7, in sub-section (1), after clause (a), the following clause was to be inserted and 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 their 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 their 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;”.

5.2.5 The amendment mentioned above has received the assent of the President of India on the 28th March, 2021 and in view of the same the issue of principles of mutuality in the case of clubs and associations, like the applicant, has been settled. Further, we also find that, Notification No. 39/2021 – Central Tax dated 21.12.2021 has been issued whereby the Central Government has appointed the 1st day of January, 2022, as the date on which provisions of sections 108, 109, and 113 to 122 of the said Act shall come into force. Hence, we find that the relevant amendment has been notified by the Central Government.

5.2.6 As per clause (aa) of Section 7 (1) of the CGST Act, the activities or transactions, by a person, other than an individual, to their members or constituents or vice versa, for cash, deferred payment or other valuable consideration. The said clause (aa) clearly specifies that all or any activities or transactions by a person (in this case, the applicant) to their members will be treated as ‘supply’ and therefore, fees/contributions from the members, recovered for expending the same for the administration of the club, its maintenance and for provision of services, etc. to its members amounts to or results in a supply.

5.2.7 As per section 2(84) the term “person” includes

(a) an individual

.....
(f) an association of persons or a body of individuals, whether incorporated or not, in India or outside India.

5.2.8 Therefore, in view of the amended Section 7 of the CGST Act, 2017, we find that the applicant and its members are distinct persons and the fees received by the applicant, from its members are nothing but consideration received for supply of goods/services as a separate entity. The principles of mutuality, which has been cited by the applicant to support its contention that it is not rendering any supply to its members and GST is not leviable on the fees collected from its members, is not applicable in view of the amended Section 7 of the CGST Act, 2017 and therefore, the applicant has to pay GST on the said amounts received from its members.

5.2.9 The reliance placed by the applicant on the orders of the Appellate Authority for Advance Ruling in the case of Lions Club of Pune Kothrud, is not proper as said order was passed prior to the amendment mentioned above. The words ‘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’ cover all types of activities/transactions of the present applicant. There

is no list or limit or any restriction prescribed in this respect in this amendment. The fees, collected by the applicant, is nothing but the "consideration" for "supply of services/goods" and is covered by the scope of the term "business". The club and the member are two distinct persons. The principle of mutuality has no application after this amendment. All the other case laws relied upon, also do not provide any guidance on the legal situation, particularly after the amendment.

5.2.10 Further, the term 'business' as defined u/s 2(17) of CGST Act 2017 includes –

- (a) Any trade, commerce, manufacture, profession, vocation 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 (a) above;
- (c) Any activity or transaction in the nature of (a) above, whether or not there is volume, frequency, continuity or regularity of such transaction;
- (d)
- (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, as the case may be;**
- (f)
- (g)
- (h)
- (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.

Black's Law Dictionary defines the term "pecuniary benefit" as : "Monetary benefits. An award or compensation or benefit that is quantifiable in monetary terms."

Therefore, undertaking of a commercial activity, whether or not the same is for pecuniary benefit (used in clause (a) above), implies that whether or not such activity yields the benefit which can be quantifiable in monetary terms or not. Hence the intent behind the said clause (a) is to even cover the commercial transactions which are in the nature of barter or exchange wherein the benefit is in non-monetary terms.

5.2.12 Further, Sub-clause (e) is a specific clause made for associations, clubs and societies and the same does not talk about any profit motive to be attributed to any club for the activities to be considered as 'business'. The said clause only speaks of Provision by a club, association, society, or any such body of the facilities or benefits to its members for a subscription or any other consideration. Therefore, the question of profit motive does not arise in this case at all.

5.2.13 In view of the above we hold that the Entrance/Admission fees, Annual subscription & Maintenance fees etc are liable to tax under the GST Laws.

5.3 Vide the second question, the applicant is asking whether the amount / fees collected towards rendering training / coaching in recreational & sports activities i.e. Football, Basketball, Athletic, Cricket, swimming, Summer coaching, Dance coaching and Karate / Physical fitness, are exempt from payment of GST under Entry No. 80 of Notification 12/2017 CTR dated 28th June, 2017.

5.3.1 Entry No 80 mentioned above is reproduced as under:-



Sr. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate %	Condition
80	Heading 9996	Services by way of training or coaching in recreational activities relating to- (a) arts or culture, or (b) sports by charitable entities registered under section 12AA of the Income-tax Act.	NIL	NIL

5.3.2 From a reading of the said Entry no. 80, we find that Services by way of training or coaching in recreational activities relating to- (a) arts or culture, or (b) **sports by charitable entities registered under section 12AA of the Income-tax Act** attract NIL rate of GST.

5.3.3 From the submissions made by the applicant, we find that they are registered under Section 12AA of the Income Tax Act and are providing training and coaching in Football, Basketball, Athletic, Cricket, swimming, Karate, Dance, Physical fitness and 'summer coaching'.

5.3.4 We also observe that Football, Basketball, Athletic, Cricket, swimming, and Karate are sports and 'Dance' would be covered under Arts. However, Physical fitness can neither be considered as sports nor Arts or culture. Further, the term 'summer coaching' is a general term which cannot be said to cover sports, Arts or culture.

In view of the above we find that training and coaching in Football, Basketball, Athletic, Cricket, swimming, Karate, Dance by the applicant would be covered under Entry No. 80 of Notification No. 12/2017 – CTR dated 28.06.2017 as amended and 'Physical fitness' training and 'summer coaching' are not covered under the said Entry No. 80 mentioned above. Therefore, the benefit of exemption as per Entry No. 80 of Notification No. 12/2017 – CTR dated 28.06.2017 as amended will be available to the applicant only in respect of training and coaching in respect of Football, Basketball, Athletic, Cricket, swimming, Karate and Dance.

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)

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

Question 1: - Whether the following amount collected by the applicant from its members is liable to GST?

- a. Entrance / Admission fees which forms part of corpus fund
- b. Annual Subscription fees
- c. Annual Maintenance fees

Answer:- Answered in the affirmative.

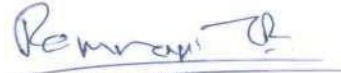
Question 2: - Whether the amount / fees collected towards rendering training / coaching in recreational & sports activities are exempt from payment of GST under entry no.80 of notification 12/2017 CTR dated 28th June, 2017:

- a. Football / Basketball/ Athletic /Cricket /Swimming coaching fees
- b. Summer coaching fees
- c. Dance coaching
- d. Karate / Physical fitness

Answer:- The benefit of exemption as per Entry No. 80 of Notification No. 12/2017 – CTR dated 28.06.2017 as amended will be available to the applicant only in respect of services by way of training and coaching in respect of sports viz Football, Basketball, Athletic, Cricket, swimming, Karate and Dance.




RAJIV MAGOO
(MEMBER)


T. R. RAMNANI
(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. The Joint Commissioner of State Tax, Mahavikas for Website.

Note:-An Appeal against this advance ruling order shall be made before The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India Building, Nariman Point, Mumbai – 400021. Online facility is available on gst.gov.in for online appeal application against order passed by Advance Ruling Authority.