

Tax alert: No levy of service tax or sales tax on supplies by clubs to its members – Supreme Court

Issued on: 04 October 2019



Summary

There were provisions under service tax/vat laws which provided that the transaction between the incorporated clubs and its members would tantamount to sale/provisions of services and hence would be eligible to VAT/service tax. However, the same has been challenged on the ground that club and its members cannot be separated and hence transaction between the club and its members would not tantamount to sale/provisions of services in the absence of existence of two parties. The Gujarat and Jharkhand High Court (HC) upheld the above view. On challenge, the Supreme Court (SC), while upholding the decision of HC, held that there cannot be levy of service tax or VAT on member's clubs in incorporated forms.

Facts of the case

- The department had issued a Show Cause Notice (SCN) to the petitioner¹ alleging that it had failed to make payment of sales tax on sale of food and drinks to the permanent members.
- The petitioner argued that it is not a dealer as there is no sale of any goods in the form of food, refreshments, drinks, etc. by the club to its permanent members and hence, it is not liable to pay sales tax.
- A prayer was also made before the Tribunal for nullifying the action of the department threatening to levy tax on the supply of food to the permanent members.

Petitioner's contentions

- **Doctrine of mutuality:** The petitioner contended that there could be no sale by it to its permanent members, since the doctrine of mutuality would come into play.
- **Agent of the members:** The petitioner treated itself as the agent of the permanent members in entirety and advanced the stand that since what was being passed was the reimbursement of the amount by the members and in absence of any consideration for supplies of food, drinks or beverages, etc., sales tax could not be levied.

¹ Calcutta Club Limited (CIVIL APPEAL NO.4184 OF 2009)

SC's observations and ruling

- **No consideration:** The SC observed that, the doctrine of agency, trust and mutuality is to be applied qua members' clubs, there should be an activity carried out by one person for another for consideration. The fact is that in members' clubs there is no sale by one person to another for consideration, as one cannot sell something to oneself. This would also apply on definition of services as well.
- **Definition of body of persons:** The expression 'body of persons' may subsume within it persons who come together for a common purpose, but cannot include a registered cooperative society.
- **No levy of service tax/sales tax:** Accordingly, the SC held that there cannot be a levy of service tax/sales tax on member's clubs in the incorporated form.
- **Upheld the view of HC:** The SC upheld the view taken by Gujarat and Jharkhand HC and stated that they were correct in their view of the law in following decision of Young Men's India Association for not to levy service tax on member's club in the incorporated form.
- **Demand declared void:** The SC dismissed the appeals filed by the department and allowed the writ. Consequently, the SCNs, demand notices and other action taken to levy and collect service tax/sales tax from incorporated members' clubs are declared to be void and of no effect in law.

Our comments

This is a landmark judgment by the SC which will put an end to the long-drawn litigations on the matters pertaining to supply of goods/services by the clubs to its members.

An analogy can also be drawn even under the GST regime as most of the definitions have been borrowed from the erstwhile laws. A due clarification from the authorities with regards to the implications under GST on such supply will be a welcome move.

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