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M/s Bowring Institute



KAR ADRG 27/ 2021 – M/s Bowring Institute

Facts: Bowring Institute**, a members club and NPO** was in receipt of two types of income from its members:
1.Subscription fees on admission
2.Contribution towards Infrastructure development fund
The receipts were utilized to provide facilities to the members.

Questions raised:
Whether the facilities rendered by the applicant against the subscription fees and contribution to infrastructure development fund are to be **treated as supply of service for the purpose of GST**?

Held:
Reference was made to the judgment of SC in state of west Bengal Vs Calcutta club whereby concept of **Doctrine of mutuality** was upheld.
As per Doctrine of mutuality, the club and its members are treated as same and no distinction is made between the two. It implies that the two are treated as same person. Hence, levy of GST is ultravires since for GST imposition, there should be a **supply which requires existence of two persons/ legal entities**.
Further, amendment to section 7 which defines "**Supply**", via. Finance Act 21 was taken into consideration whereby clause (aa) has been inserted in sub section (1) with **retrospective effect i.e. w.e.f. 1.07.2017. It reads as *"(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."***
Thus, as per this **amendment** the given case will get covered within the ambit of supply since the Club and its members are treated as distinct. However, this amendment shall come into force on such date as the CG may notify by notification in the official gazette. Hence, for the time being, Doctrine of mutuality will prevail and the provision of facility will not be treated as supply of service for GST purpose.