

**BEFORE THE ODISHA SALES TAX TRIBUNAL: CUTTACK  
(Full Bench)**

**S.A. Nos. 16 to 20 of 2014-15**

(Arising out of orders of the learned DCST (Appeal), Bhubaneswar Range,  
Bhubaneswar in First Appeal Case Nos. AA- 216/BH-II/06-07,  
AA- 217/BH-II/06-07, AA- 218/BH-II/06-07, AA- 220/BH-II/06-07 &  
AA- 219/BH-II/06-07 disposed of on dated 28.02.2014)

Present: Shri R.K. Pattanaik, Chairman,  
Smt. S. Mishra, 2<sup>nd</sup> Judicial Member, and  
Shri P.C. Pathy, Accounts Member-I

M/s. Bhubaneswar Club,  
Rajpath, Unit-VI, Bhubaneswar ... Appellant

-Versus-

State of Odisha, represented by the  
Commissioner of Sales Tax, Odisha,  
Cuttack ... Respondent

For the Appellant : Sri R.K. Kar, Advocate  
For the Respondent : Sri S.K. Pradhan, Additional Standing Counsel (CT)

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Date of hearing: 15.07.2020 \*\*\*\*\* Date of order: 13.08.2020  
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**ORDER**

Pursuant to the reference to a Constitution Bench, the Hon'ble Apex Court in a recent judgment in the case of State of West Bengal and others Vs. Calcutta Club Ltd. and other batch of appeals reported in (2019) 70 GSTR 209(SC) elaborately discussed and enunciated the law vis-a-vis the doctrine of mutuality while answering pertinent question as to if on the advent of 46<sup>th</sup> Amendment of

1982 with respect to Article 366(29-A)(e) of the Constitution of India, 1950, whether, such law of mutual concerns which refers to supply of goods by unincorporated association or body of persons does include incorporated company, society, association etc. and if at all transactions relating to such supply of goods can be classified as goods supplied by unincorporated association or body of persons, etc. and ultimately rendered that doctrine of mutuality continues to be applicable and it holds the field even after the said amendment and sub-clause (f) thereof has no application to the Members' Clubs.

2. In so far as the present subject matter is concerned, the appellant is a Club and as per the assessment orders since it failed without sufficient cause to get it registered, proceedings under Section 12(5) of the Odisha Sales Tax Act, 1947 (in short, 'the Act') were initiated requiring it to furnish returns with all particulars on turnovers for the periods 2000-01, 2001-02, 2002-03, 2003-04 and 2004-05. In response to the notices in Form-IV, the appellant appeared and claimed that it would not be liable to pay tax under the Act as the activities are covered by doctrine of mutuality. The learned Sales Tax Officer, Bhubaneswar-II Circle, Bhubaneswar (in short, 'AA') finally arrived at a conclusion that the appellant while supplying the goods to its members for price, the activities partake the nature of trade and thus, exigible to tax for carrying business and ultimately, raised the demand along with surcharge and penalty for the periods under assessment. The appellant, thereafter, assailed the assessments in question before the learned

Deputy Commissioner of Sales Tax (Appeal), Bhubaneswar Range, Bhubaneswar (in short, 'FAA'), who dismissing the claim as contended before, confirmed the orders of the AA.

3. The following question is to be adjudicated upon by the Tribunal: whether the appellant Club is dealing in any kind of trade or business while supplying goods to its members and others and therefore, it is liable to pay the tax under the Act for the alleged periods?

4. The learned Counsel for the appellant contended that in view of the ratio laid down by the Hon'ble Apex Court in Calcutta Club Ltd. case (ibid), there is no liability under the Act to pay tax in supplying goods. While contending so, apart from the aforesaid decision of the Hon'ble Apex Court, one more authority in the case of Joint Commercial Tax Officer, Harbour Division II, Madras Vs. Young Mens' Indian Association (Reg.), Madras and others reported in 1970 SCR (3) 680 is cited. It is further contended that the Tribunal(DB) in S.A. Nos. 564 to 571 of 2008-09 concluded that a Club of similar nature like the appellant is not exigible to tax under the Act and even held that letting out premises of club occasionally to outsiders does not extinguish the mutuality entirely. That apart, a copy of an order of the Tribunal (FB) dated 25.06.2020 in S.A. No. 60 (VAT) of 2007-08 is produced by the learned Counsel for the appellant in support of the plea that the Clubs do enjoy immunity against being exigible to tax. In S.A. No. 60 (VAT) of 2007-08, the appellant Club was before the Tribunal and there the finding was that in view of

the authority of the Hon'ble Apex Court in Calcutta Club Ltd. case (supra), it is beyond the purview of tax net. In that case, the Tribunal proceeded on the premise that the activities of the appellant Club had only been in supplying goods to its constituent members and not to outsiders.

5. Admittedly, the appellant Club is a company incorporated under the Companies Act, 1956 and a separate legal entity. As per the contention of the State, since the authorities below noticed that on different heads the appellant Club appeared to have supplied food stuff, beverages, liquor etc. not to its members but to outsiders, it can be said that dealing is in the nature of trade or business as defined in Section 2(c) of the Act. On the last occasion, while dealing with S.A. No. 60 (VAT) of 2007-08, the Tribunal did not have the occasion to go through the Memorandum and Articles of Association of the Club and as earlier stated, it had proceeded on the premise that the goods were supplied only to the members and none. But now, the learned Counsel for the appellant Club cited the provisions of the Memorandum and Articles of Association, a copy of which was produced for reference of the Tribunal. On a bare perusal of it, the Tribunal finds that the objects of the Club stand described in Clause 3 of the Memorandum of Association; classes of Members in Article 5 of Articles of Association (in short, 'AoA'); guests defined in Article 9 thereof; and also Article 10 providing the details with regard to club facilities/amenities and payment of club dues, of which Clause (a) proviso I and II are relevant for the present purpose.

6. As to the law on the subject, on a critical examination of the citations submitted by the learned Counsel for the appellant Club, it appears that according to the ratio decidendi, doctrine of mutuality evenly applies to incorporated and unincorporated Member Clubs despite amendment to Article 366(29-A) of the Constitution of India, 1950; the ruling in Young Mens' Indian Association (ibid) and other judgments of the Hon'ble Apex Court applied the said doctrine which continues to hold good post 46<sup>th</sup> Amendment; sub-clause (f) thereof has no application to the Clubs; and in the case of M/s. Ranchi Club Ltd., the expression 'the body of persons' with reference to the provisions of Finance Act, 2006 has been interpreted in order to exclude the persons who are incorporated entities, while defining the expression 'unincorporated association'. Thus, the law in this regard confirms the view that goods supplied by the Member Clubs do not relate to transfer of property and cannot, therefore, be taxed and not only that the services so provided are also beyond the purview of taxability and even by referring to clauses (e) or (f) to Article 366(29-A) of Constitution of India, 1950, such Clubs cannot be said to deal with sale or purchase of goods for the purpose of tax. While reading Section 2(45) of the Act, which defines the term 'sale', the Tribunal, in the context of the law as aforesaid, reaches at a logical conclusion that there is no transfer of goods to its Members for any cash or valuable consideration as defined in Clause (d) thereof or at any rate, it relates to supply of goods or articles for human consumption etc. by way of or as a part of service, which is again on

payment of cash or valuable consideration as per Clause (e). In other words, no tax liability arises in respect of such Clubs which only act as agents of its constituent members.

7. If the Articles of Association are carefully read and understood the goods are supplied to the members of the appellant Club, besides, the guests and members of affiliated Clubs as per Article 10. A guest can only be entertained by the Club, if only introduced and accompanied by a member and subject to certain terms and conditions as stated in Article 9 of AoA. It does mean, other than members, the guests and members of affiliated Clubs can avail the services of the Club subject to the conditions prescribed in the AoA. According to the State, goods like ice cream, pantry, etc. have been supplied to the members of the Club and also to the guests and others including the members of the affiliated Clubs which resulted in carrying business within the definition of Section 2(c) of the Act. But, having regard to the decision of the Hon'ble Apex Court in the Calcutta Club Ltd. (ibid) and referring to the provisions of the AoA, such activities of appellant Club cannot be branded as sale or trade for the purpose of tax liability. When the doctrine of mutuality is still applicable to the incorporated bodies notwithstanding 46<sup>th</sup> Amendment to Article 366(29-A) of the Constitution of India, 1950 and when the members of affiliated Clubs may be supplied with goods and services, however, for the guests, it has to be on being introduced by the constituent members of the Clubs as shown/revealed from AoA, such dealings of the appellant Club cannot be

alleged as supplying goods to the outsiders. The Tribunal in S.A. Nos. 564-571 of 2008-09 has ventured even to the extent to hold that occasional activities of the Club in question dealing with outsiders cannot dismantle its structure of mutuality. Having regard to the totality of the circumstances and to have a consistent view on the matter, as the Tribunal had a similar view expressed on couple of earlier occasion, the following conclusion is inevitable, such as, the appellant Club does have no tax liability under the Act.

8. Hence, it is ordered.

9. In the result, the appeals stand allowed. The impugned orders dated 28.02.2014 of the FAA stand set aside. As a consequence, the assessments for the periods 2000-01, 2001-02, 2002-03, 2003-04 and 2004-05 as directed by the AA are hereby quashed for the reasons indicated herein above.

Dictated & Corrected by me

Sd/-  
(R.K. Pattanaik)  
Chairman

Sd/-  
(R.K. Pattanaik)  
Chairman

I agree,

Sd/-  
(Smt. S. Mishra)  
2<sup>nd</sup> Judicial Member

I agree,

Sd/-  
(P.C. Pathy)  
Accounts Member-I