

AUTHORITY FOR ADVANCE RULINGS
(Central Excise, Customs and Service Tax)
Hotel Samrat, 4th Floor, Kautilya Marg, Chanakyapuri
New Delhi

Present:

Justice V.S. Sirpurkar (Chairman)
Shri S.S.Rana (Member)
Shri R.S.Shukla (Member)

The 12th day of August, 2016

Ruling No. AAR/44/ST-I/ 29 /2016
in
Application No. AAR/44/ST-1/10/2016

Name & address of the applicant : M/s Avadh Infratech Ltd.,
Surat, Gujarat

Commissioner concerned : Commissioner of Central Excise
Surat-II, 2nd Floor, New Central Excise
Building, Opp. Gandhi Baug, Chowk Bazar,
Surat-395001

Present for the applicant : Shri Avinash Poddar, CA

Present for the Department : Shri Govind Krishna Dixit (AR)

Ruling

M/S Avadh Infratech (hereinafter also referred as an applicant) is a partnership firm. The main object of the applicant is to establish a club with luxurious amenities such as restaurant, swimming pool and gymnasium as also to do all incidental activities necessary for the attainment of the foregoing objects of the club. The applicant has already started the process of conversion into a Limited Company because it has the planning to collect the money from its shareholders which shall be utilized for the

purposes and object i.e. establishment of a luxurious club. Hence membership shall be granted to only those persons who are shareholders of the company. The part of share subscription is towards equity share capital and remaining towards development contribution fund and will be treated as a deposit in the company.

2. Applicant has raised following question before this Authority;

Whether the money/contribution received by company against shares and deposit from the prospective members for raising funds which can be used for achieving the sole object of the company i.e. establishing a luxurious club, is taxable as service as per the provisions of the Finance Act, 1994?

3. Applicant submits that as per the definition of Service under Section 65B (44) of the Finance Act 1994, following can be concluded:

- a) First and foremost, there has to be an activity;
- b) Second, if there is an activity then it shall be carried out by a person for another person;
- c) Third, if there is any activity and it is being carried out by a person for another person then there shall be a consideration;

that anything or transaction to be covered under the definition of service shall satisfy all the above three things, otherwise it cannot be termed as service; that in the light of the facts of the present case, there is no activity, since receiving an amount against the issuance of shares by a company cannot be said to be against an activity; that if there is no activity then the very first condition remains unsatisfied and hence it cannot connoted at service.

4. Applicant further submits that the word Securities fall under the definition of goods, as per Section 65B of the Finance Act, 1994 read with Section 2 (h) of the Securities Contract (Regulation) Act, 1956; that issuance of shares and getting money from the same cannot be service in any circumstance.

5. Revenue inter-alia submits that the amount collected from Shareholders in form of the Share Capital is nothing but membership fee towards "membership of the club"; that though the proposed company is not providing any services at present against such Share Subscriptions other than issuance of Share Certificates, but in future, it is explicitly intended to provide club service and would clearly be rendering such service;

that this is further explicit from the definition of consideration which also covers promised future actions as valid consideration as mentioned in Section 2(d) of Indian Contract Act, 1872, which reads as “When at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise”; that as subscriptions to Share of the proposed Public Limited Company is the only way of acquiring the membership of the Club in future, promises to provide the services of the club such as Restaurant, Swimming pool, Gymnasium and incidental activities, cannot be seen separately and they are nothing but club services; that where a company provides membership only to those persons from whom the company receives the amount in whatever mode of payment, the relationship between the company and members of club, should be considered as ‘service’ by one person (service provider) to another person (service receiver) for the purpose of Section 65B (44) read with Section 66B, 66D and Section 66E of Finance Act, 1994, therefore, such charges are to be considered as membership fee and such charges received from the members are liable to be Service Tax; that similar issue in case of M/s Emerald Leisures Ltd., Mumbai, as reported in 2016(41) S.T.R. 321(A.A.R.), was decided by the Authority.

6. It is observed that in a similar issue relating to the relationship between the applicant and members of the club, it was held by this Authority that it should be considered as provision of “service” by one person (service provider) to another person (service receiver) for the purpose of Section 65B (44) of the Finance Act, 1994 read with Sections 66B, 66D and Section 66E of the Finance Act, 1994 and accordingly, the Membership fee, Annual fee and other charges received from members from time to time liable for Service Tax. While arriving at above conclusion, it was observed that the term “activity” has very wide connotation and it could be active or passive. Further, it includes provision of a facility provided by the club. In the present case, applicant proposes to provide the services of the club such as restaurant, swimming pool and gymnasium as also to do all incidental activities necessary for the attainment of the objects of the club. Therefore, the contention of the applicant that the proposed service of club to members will not have the element of “activity” and thus, will not fall under the

definition of “service”, is not tenable. Further, with effect from 01.07.2012, new system of taxation of services has been introduced by the Government. Besides other changes, the word “service” has also been defined under Section 65B (44) of the Finance Act, 1994. Explanation 3 (a) to said Section states that for the purposes of this chapter, an unincorporated association or a body of persons, as the case may be, and a member thereof shall be treated as distinct persons. Therefore, deeming provision has been introduced with effect from 01.07.2012 to the effect that the club and members are deemed to be separate persons. Therefore, activity carried out by club for members would be service.

7. Applicant further submits that the word shares fall under the definition of goods, as per Section 65B of the Finance Act, 1994 read with Section 2 (h) of the Securities Contract (Regulation) Act, 1956 and therefore, issuance of shares and getting money from the same cannot be service in any circumstance. It is to be observed that members of the club in lieu of shares would get services which include provision of a facility provided by the club such as restaurant, swimming pool and gymnasium as also all incidental activities necessary for the attainment of said objects of the club.

8. Similarly, this Authority in above referred case of M/s Emerald Leisures Ltd., Mumbai held that refundable security deposit should not be subjected to Service Tax as per provisions of the Finance Act, 1994 and ratio of that ruling is applicable to this case.

9. In view of above, we rule as under;

The money/contribution received by company against shares from the prospective members for raising funds which can be used for achieving the sole object of the company i.e. establishing a luxurious club, is taxable as service as per the provisions of the Finance Act, 1994. However, refundable deposit from the prospective members is not taxable as service as per the provisions of the Finance Act, 1994.

Sd/-
(S.S. Rana)
Member(R)

Sd/-
(V.S.Sirpurkar)
Chairman

Sd/-
(R.S.Shukla)
Member (L)