

WIRC's State Cooperative Conference सहकार पर्व



Recent GST Developments

Impacting Various Co-operative Entities

Presented by CA. Yogesh Ingale

CONCEPT OF COOPERATIVE

A Cooperative is an **association of persons united voluntarily** to meet their **common economic, social and cultural** needs and aspirations through a **jointly owned** and democratically controlled enterprise.

Core Principles



**Voluntary &
Open
Membership**



**Democratic
Member Control**



**Member
Economic
Participation**



**Mutual Aid &
Self-Help**



**Jointly Owned
Enterprise**

TYPES OF COOPERATIVE SOCIETIES



Agriculture / Farming

Ex. Amul, Kattraj Dairy, IFFCO, KRIBHCO, NAFED



Co-operative Banks

Ex. Cosmos Bank



Housing Societies

CHS Ltd. (apartment societies),
Tenant co-partnership societies



Consumer Societies

Apna Bazar, Sahakari Bhandar



Industrial / Producers

Lijjat Papad (Woman Worker's
Cooperative),
Handloom weavers' societies



Marketing & Processing

Maharashtra State Coop
Cotton Growers' Federation,
Sugar factory federations

LEVY OF GST



Section 7 — Scope of Supply

“Supply” includes

- **sale, transfer, barter, exchange, licence, rental, lease or disposal** of goods or services
- made or agreed to be made **for a consideration**
- by **a person**
- in the course or furtherance of **business.**

LEVY OF GST



“Person” — Section 2(84)(f), (i) & (l)

- (f) An association of persons or a body of individuals, whether incorporated or not
- (i) a co-operative society registered under any law relating to co-operative societies
- (l) a society registered under the Societies Registration Act, 1860



“Business” — Section 2(17)(e)

Provision by a club, association, society or any such body, for a subscription or other consideration, of the **facilities or benefits to its members** is treated as ‘business’.

KEY ASPECTS TO EXAMINE UNDER GST

For co-operative entities, three broad areas need careful examination:

01



Taxability of Outward Supply

Whether supplies made by the society (to members & non-members) are taxable, exempt, or outside the scope of GST

02



Reverse Charge Mechanism (RCM)

Identifying inward supplies where the society itself is liable to pay GST as recipient, instead of the supplier

03



Input Tax Credit (ITC)

Eligibility, restrictions and reversal of ITC on goods/services used for taxable, exempt or member-related activities

CONCEPT OF MUTUALITY



All contributors to the common fund must be entitled to participate in the surplus, and all participators in the surplus must be contributors to the common fund, being joint owners.



Rests on the theory that a person cannot make a profit from himself / herself.



Intrinsically rooted in the Doctrine of Agency — the entity acts merely as an agent on behalf of its members.



Such arrangements are **devoid of a quid pro quo** and hence have traditionally remained outside the tax net.

INDIAN JURISPRUDENCE ON MUTUALITY



Joint CTO v. Young Men's India Association

(1970) 1 SCC 462 — Supreme Court of India



The case examined a members' club whose members jointly owned the club's assets.



When a club merely acts as agent for its members in providing food or refreshments, no "sale" takes place — members are effectively transacting with themselves.



Members were held to be "joint owners of all the club properties," with each member in substance a shareholder of the club.



Consequently, supply of goods within the club **could not be treated as a sale for sales tax purposes.**

46TH CONSTITUTIONAL AMENDMENT — BACKGROUND



Why was the amendment needed?

In an attempt to broaden the scope of indirect taxation and to overcome **YMIA and related judgments**, Parliament inserted Clause (29A) into Article 366 via the 46th Amendment.

46TH CONSTITUTIONAL AMENDMENT



Constitution (Forty-sixth Amendment) Act, 1982 — Article 366(29A)(e)

Introduced a deeming provision: “**tax on the sale or purchase of goods**” includes —

(e) a tax on the supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.



A legislative response to judicial pronouncements that had exempted such supplies under the doctrine of mutuality.



Raised a pivotal question: did this amendment abrogate the doctrine of mutuality altogether — especially for services?

THE ANSWER — CALCUTTA CLUB JUDGMENT



State of West Bengal v. Calcutta Club Ltd.

2019 (29) G.S.T.L. 545 (S.C.) — Supreme Court of India



Conclusively resolved the lingering dispute: the doctrine of mutuality continues to prevail, particularly for services.



Held that the doctrine of mutuality remains applicable to incorporated or unincorporated members' clubs even after the 46th Amendment.



Transactions between members and their clubs do not constitute a **'supply' under service tax laws, as they lack duality** — a core requirement for any taxable transaction.



Article 366(29A)(e) is only a limited fiction — it does not abrogate the doctrine of mutuality at large and **applicable when concept of mutuality is absent and profit making is present.**

THE ANSWER — CALCUTTA CLUB JUDGMENT



State of West Bengal v. Calcutta Club Ltd.

2019 (29) G.S.T.L. 545 (S.C.) — Supreme Court of India

Amendment is having effect in following situations –

If a body -

- Runs for a profit
- Where suppliers and members are different persons
- Where there is no real mutuality

LEGISLATIVE OVERRIDE — SECTION 7(1)(aa)



Finance Act, 2021 — Section 7(1)(aa) of CGST Act

Inserted with **retrospective effect from 1st July 2017** —

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.

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 its 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

LEGISLATIVE OVERRIDE — SECTION 7(1)(aa)



Finance Act, 2021 — Section 7(1)(aa) of CGST Act enforced on 01.01.22

Inserted with **retrospective effect from 1st July 2017** — statutorily deems any supply of goods or services by a club, association or body of persons (registered or not) to its members, for consideration, to be a **“supply”** under GST.



An Explanation was added to Section 7 clarifying that ‘notwithstanding any law in force’, such dealings are taxable.



Section 2(17)(e) expands ‘business’ to cover provision of facilities or benefits by a club/association/society to its members for subscription or other consideration — enabling the body to be treated as a separate taxable person.



Together, these provisions sought to override mutuality by treating an association and its members as distinct persons exchanging a taxable supply.

CHALLENGE TO THE 2021 AMENDMENT



Indian Medical Association, Kerala State Branch

Kerala High Court — Challenge to Section 7(1)(aa) & Section 2(17)(e) of the CGST Act



IMA Kerala collected membership fees and provided mutual facilities and amenities to its members.



GST authorities issued demands on these club-member transactions, relying on Sections 7(1)(aa) and 2(17)(e) as creating a taxable supply between separate persons.



A division bench unanimously struck down the challenged provisions as unconstitutional, holding that the amendments lacked legislative competence.

IMA KERALA — KEY HOLDINGS



GST under Article 366(12A) is strictly a tax on supply between two different persons. A club acting for its members cannot satisfy this requirement, since members and the club are one and the same in beneficial interest under mutuality.



The Calcutta Club decision already affirmed mutuality post 46th Amendment — the basic law is that no ‘service’ or ‘supply’ is possible within a mutual society.



The 2021 amendments merely tinkered with the statute book without amending the Constitution — impermissible, as altering the constitutional premise of mutuality requires a constitutional amendment, not ordinary legislation.



Status: This matter is pending before the Supreme Court and will attain finality only after the Supreme Court’s decision.

IF THE SUPREME COURT UPHOLDS KERALA HC JUDGEMENT -

Further questions that would then arise:

01



Whether Section 7(1)(c) read with Section 25(4)/(5) and Schedule I shall hold water?

02



Whether the artificial dissemination of a single entity into multiple distinct persons by the statute, for the purpose of levying tax, is unconstitutional?

RWA EXEMPTION — THE FRAMEWORK



Entry 77(c) of Notification No. 12/2017-CT (Rate) — Circular No. 109/28/2019-GST

Exempts the reimbursement of charges or share of contribution collected by an unincorporated body or non-profit entity (RWA/society/cooperative) from its own members, up to Rs. 7,500 per month per member, for sourcing goods/services from a third party for common use of members.



Registration: No GST registration required so long as the RWA's aggregate turnover (including exempt supplies) does not exceed Rs. 20 lakh in a financial year, even if per-member charges exceed Rs. 7,500.



Multiple flats: A member owning more than one flat/unit in the same complex is entitled to a separate Rs. 7,500 exemption limit for each unit.



Input Tax Credit: Once registered, the RWA can avail ITC on tax paid on inputs/input services (capital goods, generators, water pumps, repairs etc.) used for making the taxable supply of service to members.

THE RS. 7,500 LIMIT — SLAB OR THRESHOLD?



Circular No. 109/28/2019-GST — the disputed clarification

If a member's monthly contribution exceeds Rs. 7,500, GST becomes payable on the entire amount — not merely the excess over Rs. 7,500.



Greenwood Owners Association v. UOI

Madras High Court, 2021

Quashed the Circular's clarification and the related AAR order — the word **'up to'** in Entry 77(c) is unambiguous. Only the **contribution in excess of Rs. 7,500** is taxable; the first Rs. 7,500 remains exempt regardless of the total amount.



Practical issue: divergent AAR/AAAR rulings across States continue, since the CBIC Circular has not been formally withdrawn despite Greenwood — leading to litigation risk for RWAs taking the 'excess only' position.

Note: This decision has been stayed by the Division Bench and is pending.

CHARGES COLLECTED BY SOCIETY — GST NOT APPLICABLE

As per TRU FAQ F.No. 332/04/2017-TRU



Property Tax — collected on behalf of the local authority



Water Tax — statutory levy passed through to the local authority



Non-Agricultural Tax (State Government)



Electricity charges — where collected as a pure pass-through under other statutes



Reimbursement / share of contribution up to Rs. 5,000* per month per member for sourcing goods or services from a third party for common use of members

**Rs. 5,000 limit per Entry 77(c) of Notification No. 12/2017-CT (Rate); subsequently revised to Rs. 7,500.*

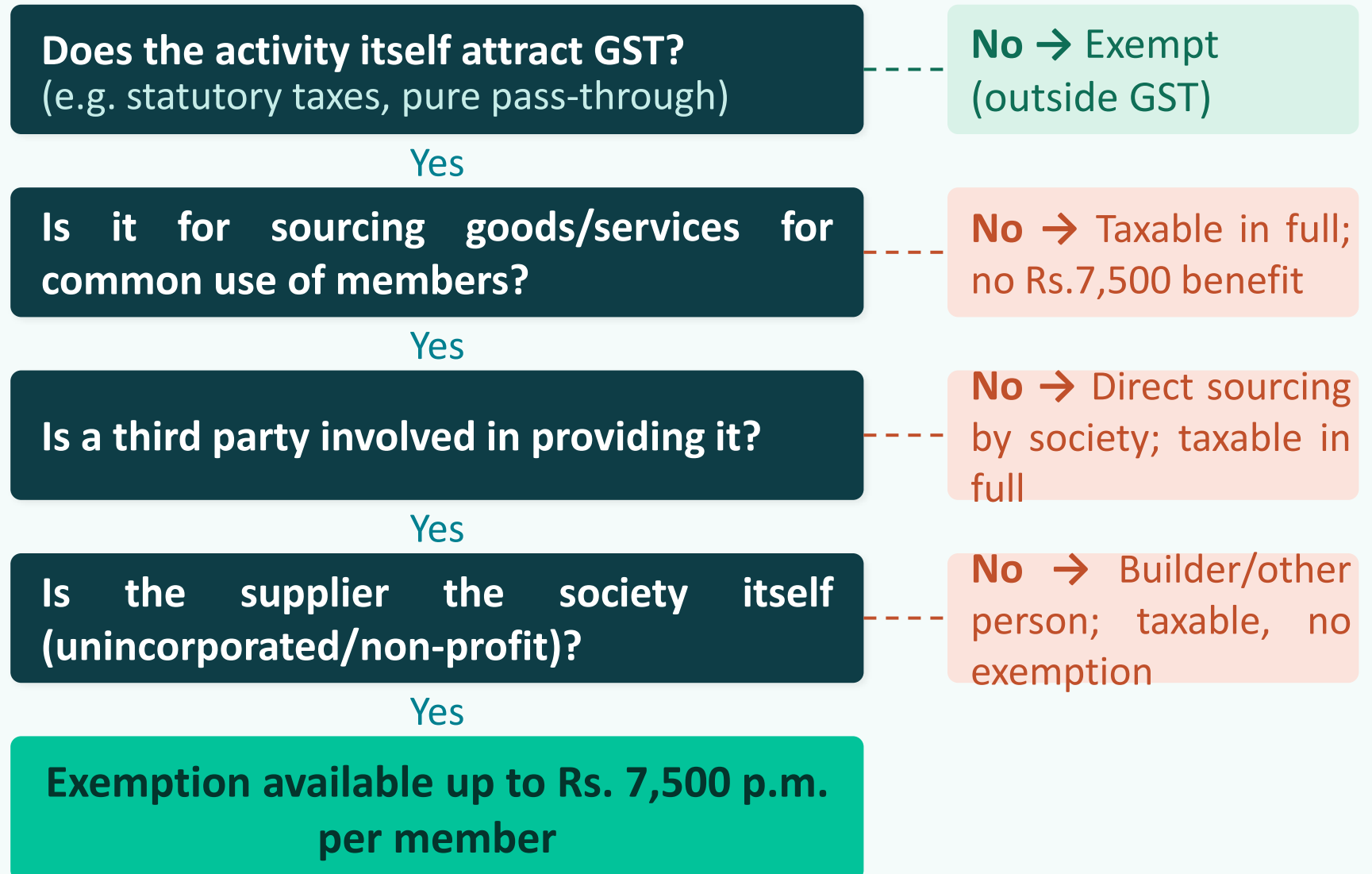
CHARGES COLLECTED BY SOCIETY — GST APPLICABLE

As per TRU FAQ F.No. 332/04/2017-TRU

- ! Sinking Fund — mandatory under the Bye-laws of the Co-operative Society
- ! Repairs & Maintenance Fund
- ! Car Parking Charges
- ! Non-Occupancy Charges
- ! Simple interest charged for late payment
- ! Electricity/water charges — where collected for the society's own generator or to provide drinking water facility (own supply, not a pass-through)
- ! Charges for specific services by the society to members or non-members (e.g. community hall hire), once aggregate value exceeds the GST threshold

WHEN DOES THE RS. 7,500 EXEMPTION APPLY?

A decision path for each contribution collected by the society



GST ON PENAL CHARGES — BANKS & NBFCs

Circular No. 245/02/2025-GST, dated 28th January 2025 — Para 2



Background: RBI (18.08.2023) directed REs (banks/NBFCs) to replace **penal interest** with **penal charges** for loan non-compliance, to instil credit discipline.



Penal charges are not a payment/consideration for ‘tolerating an act or situation’ — the same reasoning as liquidated damages, per Circular No. 178/10/2022-GST.



Such amounts are recovered to deter breach, not to permit it — they are mere ‘events’ in a contract, not a separate taxable supply. The essence of a contract is its performance, not its breach.



Penal charges levied per RBI directions are, in essence, charges for breach of contractual terms — squarely covered by this reasoning (principle akin to **ejusdem generis**: same genus as liquidated damages/forfeiture of deposits).



Conclusion: No GST is payable on penal charges levied by REs for non-compliance with loan terms, in line with RBI directions dated 18.08.2023.

ITC — INPUT SERVICE DISTRIBUTOR (ISD) MANDATORY

w.e.f. 1st April 2025



Input Service Distributor — Section 2(61) & Section 20, CGST Act

An office of the supplier that receives tax invoices for input services (and the GST paid thereon) for or on behalf of its distinct persons (other GSTINs of the same PAN), and distributes the ITC to such distinct persons by issuing an ISD invoice.



Pursuant to amendments by the Finance (No. 2) Act, 2024, registration as an ISD and distribution of common ITC via ISD mechanism is now mandatory — not optional — **from 1st April 2025.**



Cross charge (treating the head office supply to branches as a separate taxable supply under Schedule I) can no longer be used as a substitute for distributing ITC on common input services received centrally.



Distribution is proportionate to the turnover of each recipient unit in the relevant period (Rule 39), and is done separately for CGST/SGST/IGST/UTGST credits as per the location of the recipient.

CROSS CHARGE vs INPUT SERVICE DISTRIBUTOR (ISD)

CROSS CHARGE

Used for **own services rendered by HO to branches** (e.g. common management, IT, HR functions performed by HO staff for branches)

Treated as a **deemed taxable supply under Schedule I** (between distinct persons), with value determined as per Rule 28 (open market value, or cost-based valuation for full-ITC recipients)

Tax invoice issued by HO to each branch; recipient branch avails ITC as a normal inward supply

INPUT SERVICE DISTRIBUTOR (ISD)

Used for **third-party input services procured centrally by HO for the benefit of branches** (e.g. audit fees, software licences, legal services billed to HO)

Not a supply — merely a pass-through distribution of ITC already paid to the vendor; value = ITC amount, no additional tax element created

ISD invoice issued by HO (registered as ISD) to each recipient branch, distributing eligible/ineligible credit proportionate to turnover

CROSS CHARGE & ISD — BANKING SECTOR EXAMPLES



Example 1 — Cross Charge Invoice

Bank's Mumbai HO centrally manages treasury and IT operations for all branch GSTINs. HO's attributable staff cost + overheads = **Rs. 10 crore** (per Rule 28, valued at cost as full ITC is available to recipients). HO issues a **tax invoice (cross charge)** to each branch for its share, charging IGST/CGST+SGST as applicable. Branches avail ITC as a normal inward supply.



Example 2 — ISD Invoice

Statutory auditors raise a single invoice on the Mumbai HO (registered as ISD) for the bank's annual audit, covering all branches: **fees Rs. 1 crore + GST Rs. 18 lakh**. The ISD distributes the **Rs. 18 lakh ITC** to each branch GSTIN via an ISD invoice, in proportion to each branch's turnover in the previous financial year, split as eligible CGST/SGST or IGST credit based on the recipient's location.

RCM — SERVICES OF RECOVERY AGENTS TO BANKS/NBFCs



Entry 8, Notification No. 13/2017-CT (Rate)

Supplier: Recovery agent

Recipient (liable under RCM): Banking company / financial institution / NBFC, located in the taxable territory



The bank/NBFC, as recipient, must pay GST on the recovery agent's service under RCM, irrespective of the agent's own registration status or turnover.



GST so paid under RCM is available as ITC to the bank/NBFC, subject to the Section 17(4) restriction — banks/FIs/NBFCs may avail either proportionate eligible credit, or a flat 50% of eligible credit per month, at their option.

RECOVERY CHARGES DEBITED TO BORROWER'S ACCOUNT

Taxability of the onward recovery from the borrower



The bank pays GST on the recovery agent's service under RCM, then debits the borrower's loan account with the recovery agent's cost (including the GST element) as part of the recovery process.



The amount debited to the borrower is a recovery of the bank's cost (including the GST paid by it under RCM), and not a separate consideration for any new supply made by the bank to the borrower — hence GST is not separately charged afresh on this debit.



If GST is not separately charged on this recovery, the amount recovered must be treated as inclusive of the GST cost already borne by the bank — i.e. the bank effectively recovers on a **cost-inclusive (GST-paid) basis**, and cannot claim a further deduction or separate levy.



Correspondingly, since the recovery is not treated as the bank's own outward taxable supply, the ITC of the RCM-paid GST (subject to Section 17(4)) is availed by the bank itself and forms part of its cost recovered from the borrower.

THANK YOU

CA. Yogesh Ingale

 [*yogesh.ingale@vaditvamlegal.in*](mailto:yogesh.ingale@vaditvamlegal.in)

 **+91-8275519783**