

4. Tax Relief for Food at Incorporated Clubs

Prelims: Economics- Taxation

Mains: GS-III- Indian Economy and Issues Relating to Planning, Mobilization of Resources, Growth, Development and Employment.

Why in News?

- ▶ In a significant judgment, the Supreme Court has held that supply of food, drinks and beverages by an incorporated members' club to its permanent members is not liable for sales or service tax.

Issue:

- ▶ The Bench was answering a reference on the question of whether the doctrine of mutuality highlighted in the Young Men's Indian Association judgment of the Constitution Bench would survive the 46th Constitutional Amendment, which introduced Article 366 (29-A) into the Constitution. The particular Article dealt with the taxation of sale of goods. Its clauses said that the supply or service of 'goods' like food or drink by an "unincorporated association or body of persons' would be taxable.

Highlights:

- ▶ The Supreme Court has ruled that the doctrine of mutuality continues to be applicable to incorporated and unincorporated members' clubs.
- ▶ The doctrine of mutuality, based on common law principles, is premised on the theory that a person cannot make a profit from himself. An amount received from oneself, therefore, cannot be regarded as income and is not taxable. Thus, Sales Tax cannot be levied on Clubs, whether incorporated or unincorporated for the supply of food and drinks to permanent members. The Court said such supply of goods lacks the essential aspect of a sale — a seller and a buyer. It was said that the legal entity called the club and its members are one and the same. The club, though a distinct legal entity, is only an agent of its members. The Supreme Court has held that, in the case of sales tax, both incorporated and un-incorporated members' clubs are exempt from liability of paying sales tax.
- ▶ The Bench referred to the Constitution Bench judgment in the Young Men's Indian Association case and held that the doctrine of mutuality between the club and its members would dominate the relationship between an incorporated members' club and its permanent members. The rendering of service by the petitioner-club to its members is not taxable service under the Finance Act, 1994, the court held.