THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
(SET UP BY AN ACT OF PARLIAMENT)

MAY 2026

E-NEWSLETTER

THRISSUR BRANCH (SIRC)

EDITORIAL

Dear Esteemed Members

Greetings from the ICAI Thrissur Branch (SIRC).

The month of May marks another vibrant chapter in the journey of our Branch, reflecting the spirit of learning, leadership, and professional excellence that defines the Chartered Accountancy fraternity. As the profession continues to evolve amidst regulatory reforms, technological transformation, and changing economic dynamics, it becomes increasingly important for us to remain informed, adaptable, and future-ready.

During the month, the Branch had the privilege of organizing a series of professional and academic programmes aimed at enhancing the knowledge and competencies of members and students. The enthusiastic participation and encouraging feedback received for our seminars, and interactive sessions reaffirm the commitment of our fraternity towards continuous professional development.

We also take pride in the active involvement of our students, whose enthusiasm and dedication continue to inspire the Branch. Their participation in academic programmes, cultural initiatives, and professional activities reflects the bright future of the profession. I encourage all students to continue their efforts with confidence, discipline, and perseverance. As professionals, we are entrusted with responsibilities that go beyond compliance and reporting. The Chartered Accountant today is expected to be a strategic advisor, ethical leader, and catalyst for sustainable growth. In this context, continuous learning, integrity, and professional commitment remain the cornerstones of our success.

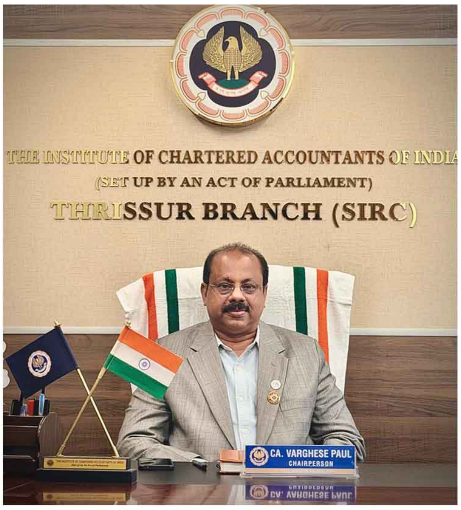
I sincerely thank all the office bearers, managing committee members, faculty, and participants for their wholehearted support and contribution towards the successful conduct of the Branch activities. Your cooperation and collective efforts continue to strengthen the vision and mission of the Branch.

Let us move forward together with renewed energy and commitment towards professional excellence, knowledge sharing, and service to society.

With warm regards,

CA. Vineesh Chandran
Editor
ICAI Thrissur Branch (SIRC)

CHAIRPERSON'S MESSAGE



Dear Professional Colleagues,

Warm greetings from the ICAI Thrissur Branch (SIRC).

As we progress through another eventful month, I take this opportunity to extend my sincere appreciation to all members and students for their continued participation, support, and commitment towards the activities of our Branch. The enthusiasm and professional spirit displayed by our fraternity continue to strengthen the vision and mission of the Institute.

The profession today stands at a transformative phase marked by evolving legislation, digital advancement, global business integration, and increasing expectations from stakeholders. In such an environment, Chartered Accountants are expected not only to ensure compliance and governance but also to emerge as strategic advisors and value creators. Continuous professional development and adaptability therefore remain essential for sustained excellence.

During the month, the Branch successfully organized various professional and academic initiatives aimed at enhancing technical knowledge, practical exposure, and professional interaction among members and students. The positive response received for these programmes reflects the growing commitment of the fraternity towards lifelong learning and professional competency.

A notable milestone was the Outreach Programme and Seminar on the "Income Tax Act, 2025," jointly organized with the Office of the Joint Commissioner of Income Tax, Range-1, Thrissur. The programme facilitated insightful discussions on the implications of the new legislation and provided a valuable platform for interaction between professionals and tax authorities.

I also place on record my appreciation for the dedicated efforts of our Managing Committee members, faculty, volunteers, sponsors, and staff whose collective contribution ensures the successful execution of every Branch initiative.

Let us continue to move forward together with integrity, professionalism, and a shared commitment towards excellence, knowledge, and service to society.

Warm regards,

CA Varghese Paul
Chairman
ICAI Thrissur Branch (SIRC)

Delving Deep into The Decision of the DB of the HC in IMA's Case

CA. K. SANTHAKUMAR

The Kerala High Court, in a landmark judgment the 11th Day of April 2025 in the case of Indian Medical Association Vs Union of India declared Sections 7(1)(aa) and 2(17)(e) of the CGST and KGST Acts unconstitutional, and also holding that the retrospective levy of GST on services provided by clubs and associations to their members violates core constitutional provisions. The case arose from a challenge by the Indian Medical Association, Kerala Branch, which contended that the principle of mutuality governs transactions between a club and its members. This doctrine treats an association and its members as the same legal entity, thereby negating any concept of "supply" between them.

In this article, an attempt is made to critically examine the core issues dealt with by the division bench in the said judgement.

Point No.1

Concerning the principle of mutuality, the Hon'ble division bench of the HC observed:

The decision of the Supreme Court in State of West Bengal and Others v. Calcutta Club Ltd. – [(2019) 19 SCC 107] is authority for the proposition that the principle of mutuality has survived under the Constitution even after the 46th Amendment. If that be so, then the amendment exercise carried out by the Parliament would itself have to be seen as unconstitutional since it incorporates a definition of supply that militates against the constitutional understanding of the term. **[Para 17]**

The said decision of the SC in Calcutta Club's case deals with:

- *Levy of sales tax on the goods supplied by clubs or associations to members*
- *Levy of service tax on clubs or associations*

I am confining my discussion to the judgement of the SC in the Calcutta Club's case respecting the service tax levy.

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The findings in the Calcutta Club on the issue of levying service tax on services rendered by incorporated clubs to their members are based not on any constitutional provision but on the interpretation of the various provisions of the Finance Act, 1994, before and after the major amendments carried out in 2012.

The only factor that weighed with the Bench to hold against the revenue on this point is that the Explanation-3, clause (a) to the definition of Service provided in Section 65B (44) of the Finance Act, 1994 expressly recognises only members of an 'unincorporated association or a body of persons' as distinct persons. As regards Explanation 3 to section 65B(44) of the Finance Act, 1994, the Court held that the said explanation deeming associations and their members as distinct persons would not apply to incorporated associations or clubs. Relying on the decision in the case of I.C.T., Bombay North, Kutch and Saurashtra, Ahmedabad vs. Indira Balkrishna (1960) 3 SCR 513, the Court further observed that the expression 'unincorporated associations' would include persons who join together in some common purpose or common action. The Court ruled that the expression 'body of persons' cannot be applied to incorporated bodies. Hence, the principle of mutuality is not ousted so far as incorporated bodies and their members are concerned.

Thus, in my considered opinion, it cannot be gainsaid that '*…the proposition that the principle of mutuality has survived under the Constitution even after the 46th Amendment…*'.

Point No. 2

Concerning the Constitutional sanction for the amendment in the definition of 'service' under the GST law, the HC observed:

"...However, we are in these proceedings concerned with a slightly different issue, viz., whether it would be competent for a legislature to levy tax on a transaction

when the taxable event in relation to the subject of taxation has not been recognised as such by the Constitution? In other words, when the Constitution has understood a taxable transaction as necessarily involving two persons, can a legislature deem a transaction that does not involve two persons as a taxable transaction…? **[Para-11]**

Here again, I draw your attention to the findings in the Calcutta Club. The Supreme Court has not dealt with the exclusion of deemed sale under Article 366(29A) from the definition of 'service' in section 65B (44) of the Finance Act, 1994.

The HC has proceeded on the premise that services do not have a definition in the Constitution. Hence, a wide definition in the Act cannot give unnatural meaning to the term services. The natural meaning of services is a verb, an action word, and it requires two persons. Goods are unique; their meaning does not depend on the number of persons involved, but supplies and services need two persons to form their definition itself. 'Service' in the CGST Act is defined in such a way that it is no longer a verb, but also a noun. The definition of services in the Act does not go beyond the Constitution. The services as defined in section 2(102) of the CGST Act are traceable to authority in the Constitutional definition of services in article 366(26A). The HC has not dealt at length with this definition, and that is why I said the order is sub-silento on this point.

This definition was inserted into Article 366 by the Constitution (One Hundred and First Amendment) Act, 2016, which paved the way for the implementation of the Goods and Services Tax (GST) in India. Before this amendment, the Constitution did not have a specific definition for "services." This new definition was crucial for clearly distinguishing between goods and services to levy and administer GST. In case one were to consider the definition of 'Services' as contained in Article 366(26A), which is a wide and inclusive definition, this case would squarely fall within the scope of the decision of the Supreme Court in Skill Lotto Solutions Private Limited [(2021) 15 SCC 667], in which the Court considered the validity of Section 2(52) of the CGST Act that defined "goods" to include actionable claims. The contention that an artificial definition of goods to include actionable claims could not withstand the test of constitutionality when the word "goods" was defined differently under the Constitution, was rejected byholding that "The Constitution-framers were well aware of the definition of goods as occurring in the Sale of Goods Act, 1930 when the Constitution was enforced. By providing an inclusive definition of goods in Article 366(12), the Constitution-framers never intended to give any restrictive meaning of goods." Thus, the Court did not find any contradiction between the meaning of the word as used in the Constitution and the meaning given to it under the Statute concerned.

Similarly, in Navnit Lal C. Javeri [(1965) 56 ITR 198 (SC)], the Court held that entries in the List had to be construed widely, and when so construed, the word 'income' could be interpreted to include within its ambit even a loan advanced to a shareholder.

Suffice it to say that the definition of "Services" in the Constitution is wide enough to take in its fold 'deemed service'.

Point No. 3

The Kerala High Court declared Sections 7(1)(aa) and 2(17)(e) of the CGST and KGST Acts unconstitutional, and also held that the retrospective levy of GST on services provided by clubs and associations to their members violates core constitutional provisions.

The question is whether Sections 7(1)(aa) and 2(17)(e) are constitutionally sustainable?

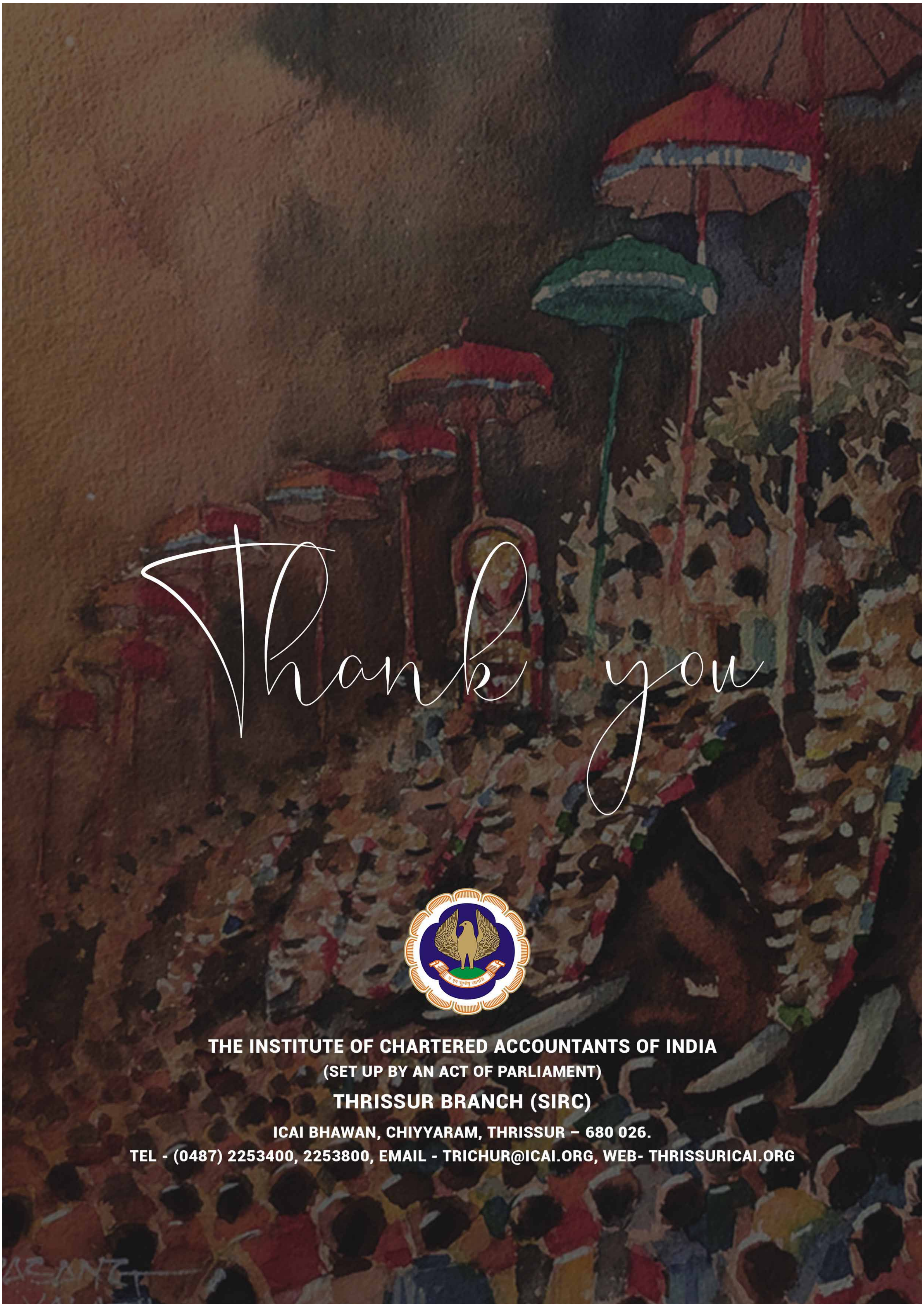
The answer can be **NO**. Before going into that question, let us first examine Section 7(1)(aa):

"Section 7(1)(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****."* [Emphasis applied]

One could note from the last portion of the definition, which is in bold, that there should be a valuable consideration. Thus, while drafting the GST law, they have committed the same mistake as in Section 65B (44) of the Finance Act, 1994, while defining 'service', by which it has not bypassed the lacuna pointed out by the larger bench of the Supreme Court in the **Calcutta Clubs** case. The Supreme Court in that case held that even in the case of sale/supply of goods by unincorporated associations or body of persons to members, the requirement of consideration is not fulfilled since in case of sale of goods to self, there exists no consideration as per the provisions of the Contract Act, 1872.

Therefore, although the definition of service under S. 2(102) of the CGST Act could take within its fold the self-service, the mention of a consideration in Section 7(1)(aa) presupposes the existence of two persons, and thus caught within the mischief of the decision in the Calcutta Club's case.

CA. K. SANTHAKUMAR



Thank you

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