



GST- ON BEAT, OFF-BEAT AND BACK BEAT

GST ON RESIDENTIAL WELFARE ASSOCIATION, FOLLOWING ADVANCED RULING: TO BE OR NOT TO BE?

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During Lock-down we have realized that rules must be followed to avoid infection. Anyhow its rule of life that Rule should be followed written or otherwise. However time comes when you get confused what is to be followed? Without guessing further let's understand the Advance Ruling Pronounced in the year 2019; the case law is for **Prestige South Ridge Apartment Owner's Association**. Firstly we will see what is decided in the case.

The applicant [Apartment Owners Association] is engaged in providing maintenance or repair of the common area of the apartments and surrounding area viz. corridors, pathways, gardens, clubhouse, swimming pool, lifts, etc. It also provides lighting in common area, undertakes periodic upkeep of equipment, etc. in the play area, etc. It collects monthly subscription as maintenance charges.

It sought advance ruling in respect of the following questions:

1. Whether the activity of procuring goods and services from third parties for upkeep and maintenance of apartments and collecting the monies from its members to pay third party vendors is an activity liable to GST.
2. If liable to GST, whether the exemption Entry No. 77 of Notification No. 12/2017 - Central Tax (Rate), dated 28-6-2017 apply for maintenance charges collected from members.
3. If exemption is available, whether it is available on per member basis or per flat basis, as some members could have more than one flat.
4. Whether the exemption as per Entry No. 77 of Notification No. 12/2017 - Central Tax (Rate), dated 28-6-2017 is a standard exemption that can be claimed irrespective of amount collected towards maintenance, i.e., if maintenance charges from a member for a month is Rs. 10,000, whether Rs. 10,000 liable to GST or Rs. 2,500 (Rs. 10,000 - 7,500) liable to GST.
5. Whether the electricity charges paid to BESCOM (electricity supply authority) for the power consumed towards common facilities and separately recovered from members liable to GST.-
6. Whether the corpus/sinking fund collected from members liable to GST. - **Critical Point**

We will see this judgement and commentary point by point.

- (1) Whether the activity of procuring goods and services from third parties for upkeep and maintenance of apartments and collecting the money from its members to pay third party vendors is an activity liable to GST.- *As observed in various cases that repairs and upkeep of common area which belong to all Apartment Owners is performed by Apartment hence its business services and must fall under ambit of GST. Section 7 (1) of the CGST Act deals with scope of supply and stipulates various other forms of Supply. It is observed that Association of Persons has a legal existence and is different from its members. Also term Business includes the provision, by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members. From the above its amply clear that Activities of Apartment Owner/ Co-operative Societies are included in the ambit of GST.*
- (2) If liable to GST, whether the exemption Entry No. 77 of Notification No. 12/2017 - Central Tax (Rate), dated 28-6-2017 apply for maintenance charges collected from members.- *The applicant is a non-profit organisation and is registered under the Karnataka Apartment Owners Association Act,*

1972, The applicant provides services only to its members and collects the share of contribution or reimbursement of charges, The recipients of services provided by the applicant are its own members i.e. members of a residential complex. In view of the above, the exemption under entry number 77 of Notification No. 12/2017 - Central Tax (Rate), dated 28.06.2017 as amended by Notification No. 2/2018 - Central Tax (Rate), dated 25.01.2018 is available for an amount, up to Rs. 7,500/- per month per member, collected for sourcing of goods or services from a third person for common use of the members

- (3) If exemption is available, whether it is available on per member basis or per flat basis, as some members could have more than one flat: - Circular No. 109/28/2019- GST dated 22.07.2019 wherein the similar case is disclosed. From the paragraph in this Circular the above question is answer directly. As per general business sense, a person who owns two or more residential apartments in a housing society or a residential complex shall normally be a member of the RWA for each residential apartment owned by him separately. The ceiling of Rs. 7500/- per month per member shall be applied separately for each residential apartment owned by him. For example, if a person owns two residential apartments in a residential complex and pays Rs. 15000/- per month as maintenance charges towards maintenance of each apartment to the RWA (Rs. 7500/- per month in respect of each residential apartment), the exemption from GST shall be available to each apartment.
- (4) Whether the exemption as per Entry No. 77 of Notification No. 12/2017 - Central Tax (Rate), dated 28-6-2017 is a standard exemption that can be claimed irrespective of amount collected towards maintenance, i.e., if maintenance charges from a member for a month is Rs. 10,000, whether Rs. 10,000 liable to GST or Rs. 2,500 (Rs. 10,000 - 7,500) liable to GST. : - In the same above mentioned circular this point is covered in paragraph 5 very clearly. The exemption from GST on maintenance charges charged by a RWA from residents is available only if such charges do not exceed Rs. 7500/- per month per member. In case the charges exceed Rs. 7500/- per month per member, the entire amount is taxable. For example, if the maintenance charges are Rs. 9000/- per month per member, GST @18% shall be payable on the entire amount of Rs. 9000/- and not on [Rs. 9000 - Rs. 7500] = Rs. 1500/- . From the discussion it is clear that entire amount is getting chargeable to GST. However Department should seriously consider this clause in future for giving exemption of Rs. 7500 from amount if charged higher.
- (5) Whether the electricity charges paid to BESCO (electricity supply authority) for the power consumed towards common facilities and separately recovered from members liable to GST: - There is difference between paid on behalf of someone and paid as common charges. Like mainly Property Taxes are charged to Apartment Owners for their own residence/ flat and also for common areas. The point here is when RWA/ CHS acts as agent to collect taxes charges on behalf of any agency then it should not be charged to GST or not even to be added in the limit of Rs. 7500. But when any common charges are recovered from owners then they should be considered as upkeep and maintenance of common area. Hence Electricity charges which might have been shown separately may have to be added in Maintenance charges. After adding the same exemption limits or taxability may be calculated. In this specific case RWA/CHA has also given their sample invoice for the consideration for advance ruling.
- (6) Whether the corpus/sinking fund collected from members liable to GST:- This is the case wherein some difference of opinion can be identified. If we refer FAQ bearing F No. 332/04/2017- TRU having subject FAQ on levy of GST on supply of services to the cooperative society Answer to Question No. 1 has the following statement '**3.Sinking fund, repairs & maintenance fund, car parking charges, Non- occupancy charges or simple interest for late payment, attract GST, as these charges are collected by the RWA/Co-operative Society for supply of services meant for its members.**' Whereas the advance ruling has the following comments '

11.9. The sixth question is related to applicability of tax on the Corpus/Sinking Fund. The applicant collecting the amounts towards corpus/sinking fund for future supply of services meant for its members. It is a fact that the corpus fund or sinking fund is mandatory under the Bye-laws of the Co-operative Societies/Resident Welfare Associations and is in the nature of a deposit towards unforeseen events or planned events. Clause (31) of section 2 of the CGST Act, 2017 defines the term "consideration" which is as under:

'(31) "Consideration" in relation to the supply of goods or services or both includes —

(a) Any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

(b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government:

Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply;'

The proviso to the above clause states that the deposit given in respect of a future supply shall not be considered as payment made for such supply until the supplier applies such deposit as consideration. In the instant case the corpus/sinking fund so collected is the amount collected towards the future supply of service and accordingly gets applied as consideration towards supply of services only at the time of actual supply of services. Therefore the amounts collected towards Corpus/Sinking Fund do not form part of consideration towards supply of services at the time of collection and hence is are not liable to GST, at the time of collection. However the amounts so utilized for provision of service are liable to tax at the time of actual supply of service.

From the above paragraphs in FAQ and decision of Advance Ruling are totally different and while choosing one has to understand that Advance Ruling is for specific case whereas FAQs are for all in general. Hence according to me FAQ should prevail. There is another reason that GST to be charged as and when it is collected as it will be included in overall limit of 7500 (5000 earlier) also while charging GST at the time of usage means huge amount may be charged as Sinking fund is utilized for major repairs, demolition etc.

Advance Ruling authority is not an adjudicating authority. The definition of “Adjudicating Authority” as defined in Section 2 (4) of CGST ACT, 2017 excludes Advance Ruling Authority (Both the Authority for Advance Ruling and the Appellate Authority for Advance Ruling). Advance Ruling will be binding only on the applicant who has sought for advance ruling. Advance ruling will be binding only on the concerned officer or the jurisdictional officer in respect of the applicant.

References:

[2019] 110 taxmann.com 235 (AAR - KARNATAKA)/[2019] 30 GSTL 107 (AAR - KARNATAKA).