

**THE AUTHORITY ON ADVANCE RULINGS
IN KARNATAKA
GOODS AND SERVICES TAX
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD
GANDHINAGAR, BENGALURU – 560 009**

Advance Ruling No. KAR ADRG 42 / 2019

Date : 17-09-2019

Present:

1. Sri. Harish Dharnia,
Additional Commissioner of Central Tax, Member (Central Tax)
2. Dr. Ravi Prasad M.P.
Joint Commissioner of Commercial Taxes Member (State Tax)

1.	Name and address of the applicant	M/s Prestige South Ridge Apartment Owners' Association, Sy. No. 125, Prestige South Ridge Apartment, BSK 3 rd Stage, Hosakerehalli, Bengaluru- 560085
2.	GSTIN or User ID	29AACAP8249H1Z4
3.	Date of filing of Form GST ARA-01	22-11-2018
4.	Represented by	Sri Chandrashekar, Chartered Accountant
5.	Jurisdictional Authority – Centre	The Principal Commissioner of Central Tax, Bangalore West Commissionerate,
6.	Jurisdictional Authority – State	LGSTO-060, Bengaluru
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged Rs.5,000/- under CGST Act vide CIN ICIC 18112900255753 dated 20-11-2018 and Rs.5,000/- under KGST Act vide CIN ICIC 18102900410310 dated 02-11-2018

ORDER UNDER SECTION 98(4) OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 & UNDER SECTION 98(4) OF THE KARNATAKA GOODS AND SERVICES TAX ACT, 2017

M/s Prestige South Ridge Apartment Owners' Association, Survey No. 125, Prestige South Ridge Apartment, BSK 3rd Stage, Hosakerehalli, Bengaluru 560085, having GSTIN number 29AACAP8249H1Z4 have filed an application for Advance Ruling under Section 97 of the CGST Act, 2017 & KGST Act 2017 read with Rule 104 of CGST Rules, 2017 and KGST Rules 2017, in FORM GST ARA-01 discharging the fee of Rs.5,000/- each under the CGST Act and the KGST Act.

2. The Applicant is an Apartment Owners Association, registered imder Karnataka Apartment Ownership Act 1972 (KAOA 1972) and are governed by the By-laws which are duly approved. They also registered under the Goods and



Services Act, 2017. The applicant have 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 12/2017 Central Tax (Rate) dated 28.06.2017 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 12/2017 Central Tax (Rate) 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 BESCO (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?*

3. The applicant furnished some facts relevant to the stated activity:

3.1 The applicant, being an Apartment owners' Association, have been engaged in providing maintenance and repairs of the common area of the apartments & surrounding areas viz. corridors, pathways, gardens, clubhouse, swimming pool, lifts, etc., providing lighting in common area, undertaking periodic up-keep of equipments etc., in the play area, etc.

3.2 The applicant has 264 members who are apartment owners. They collect contributions from its members calculated on the basis of super built-up area owned by the members. In addition, it separately collects contribution towards corpus fund for future contingencies. The applicant procures goods and services from third party vendors for maintenance of the apartments and charges the maintenance charges on its members. It is a non-profit organisation.

3.3 Based on area of occupancy, some of the members pay more than Rs.7,500/- per month and members of few units pay less than Rs.7,500/- per month towards maintenance charges. Collection of maintenance charges is done on a quarterly basis.

3.4 The applicant procures the following goods and services, -

- (a) Security Services
- (b) Housekeeping materials
- (c) Landscaping Services
- (d) Water Supply for maintenance work
- (e) Repair and Maintenance of various assets
- (f) Building Insurance
- (g) Professional Services
- (h) Fuel Expenses
- (i) Outdoor Catering Services
- (j) Pest Control Services
- (k) Sewage Treatment Plant Servicing

3.5 The applicant states with regard to Electricity charges that separate electricity meters are installed to record the consumption of electricity of individual flats and each of the units directly pay to the Electricity Supply Corporations. Further, the applicant pays electricity charges and recovers the amount from each of the units for power consumed towards lighting the common area of the apartment, including parks, community hall, security room, sports area committee room, pumping water to various units, etc.

3.6 The applicant states that they propose to recover the actual electricity charges paid to Electricity Supply Corporation from each of the units in the apartments in respect of common area power consumption and proposed to adopt area of unit in square feet to the total area in square feet of all units as a basis to apportion the common area electricity cost. By following this, the applicant recovers the actual amount incurred towards electricity from each of the units by raising a debit note indicating their share of charges towards electricity.

3.7 The applicant states with regard to the corpus fund / sinking fund that in order to meet any planned or unplanned capital outlay in future, they would also recover certain amounts as "Corpus Fund" or "Sinking Fund" for a specified purpose and the account of such funds would be separately maintained and would be used for the purpose for which such fund is collected and not towards the regular maintenance activity.

APPLICANTS VIEW ON QUESTIONS SOUGHT FOR ADVANCE RULING:

4. The applicant, with regard to the activity of procurement of goods and services from third parties for upkeep and maintenance of apartments and collection of monies from its members to pay third party vendors & the GST liability thereon, submits that the association is no different person to the members and instead of each of the member taking care of the maintenance of their common area individually, for all practical purposes, the association is formed. The amounts collected by the applicant are restricted only to meet the needs of the members in upkeep and maintaining the common area. Since the association and the members



are not two separate persons, there cannot be GST on maintenance charges collected and paid by association on behalf of members. The applicant contends that based on the mutuality concept i.e., one cannot provide services to oneself and have taken reference of the following judgements in support of their contention:

- (a) Ranchi Club Ltd. v. Chief Commissioner – 2012 (26) STR 401 (Jhar)
- (b) Sports Club of Gujarat Ltd. v. Union of India – 2013 (31) STR 645 (Guj)

Based on the above, the applicant is of the view that there cannot be a GST liability on maintenance charges collected from members.

5. The applicant, with regard to the issue of applicability of the exemption under entry no.77 of Notification No.12/2017 – Central Tax (Rate) to the maintenance charges collected from members, submits that if the activity in question is liable to GST, then the exemption would be applicable to them. The entry of exemption reads as under:

“Service by an unincorporated body or a non-profit entity registered under any law for the time being in force, to its members by way of reimbursement of charges or share of contribution –

- (a) As a trade union;*
- (b) For the provision of carrying out any activity which is exempt from the levy of Goods and Services Tax; or*
- (c) Up to an amount of seven thousand five hundred rupees per month per member for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex”*

6. The applicant contends that the exemption under entry 77 of Notification No.12/2017 – Central Tax (Rate), is a standard exemption that can be claimed irrespective of the amount collected towards maintenance, i.e. if maintenance charges collected from a member per month is Rs.10,000/-, then the tax shall be payable on Rs.2,500/- which is the amount arrived after allowing deduction of Rs.7,500/-. The applicant discusses each of the elements of the exemption entry and states as under:

- (a) Service should be from an unincorporated body or a non-profit entity to its members*

This condition is satisfied by the applicant as it is formed to meet the common expenses for the upkeep and maintenance of the premises and not to make profit out of its members' contribution, though there could be a temporary surplus of funds sometimes.

- (b) Exemption upto Rs.7,500-00 per month per member*

Wordings used in the entry is "upto Rs.7,500/- per month". The applicant is of the view that the exemption of an amount upto Rs.7,500/- would be allowed i.e. if the maintenance charge is Rs.10,000/-, an amount upto Rs.7,500/- is exempted and only the balance of Rs.2,500/- is taxable. They have taken the example of Income Tax Slabs in support of their contention.

- (c) The applicant also place reliance on the extract of e-flier on Co-operative Housing Societies released by the CBIC, which clarifies that on the amount in excess of the exemption limit would be taxable.

7. The applicant contends with regard to applicability of exemption to members on per member basis or per flat basis, if available and in cases where members have more than one flat, that they are of the view that each unit contributing towards maintenance charges is to be considered as a separate member. Thus in case a person owns more than one unit, exemption would be apply for each of those units individually and if a member "A" holds two apartments, Rs.7,500/-, exemption should apply to each of his two units.

8. The applicant, with regard to the issue whether the electricity charges paid to BESCOM (Electricity Supply Authority) & separately recovered from members are liable to GST, states as under:

- (a) The applicant proposes to collect only the actual amount paid to electricity supply authorities from its members. Since nothing extra is recovered, it would only be a transaction in money and hence excluded from the taxability.
- (b) Further, it is also worth noting that only the amount collected towards supply of power through Generator is held as taxable as per the "FAQs on levy of GST on supply of services to the Co-operative Society- reg" dated 05-09-2017 issued by the CBIC.
- (c) Also considering the electricity (HSN 2716 00 00) as exempted goods as per entry no. 104 of Notification No.2/2017- Central Tax (Rate) dated 28.06.2017, a recovery of an amount towards the said charges cannot be taxed.

9. The applicant, with regard to the issue of applicability of GST on Corpus Fund collected, states that the Corpus Fund or Sinking Fund is an amount set aside for meeting an unplanned or planned future capital outlay. The applicant is of the view that it is an amount collected and kept aside without being used, until the event requiring its use occurs. There is no supply of goods or services, by the applicant, and collection of corpus fund or sinking fund is only a transaction in money, which is kept outside the definition of "goods" or "services".



PERSONAL HEARING: / PROCEEDINGS HELD ON 31.12.2018

10. Sri Chandrashekar B D, Chartered Accountant and authorised representative of the applicant appeared for personal hearing proceedings held on 31.12.2018, reiterated the facts narrated in their application and furnished written submissions in relation to the issue on exemption of Rs.7,500/- per month, inter alia stating as under:

10.1 Entry 77 of Notification No 12/2017 –Central Tax (Rate) dated 28-06-2017 exempts tax on the consideration, up to an amount of Rs 5,000/- per month per member, collected for the maintenance activities. Subsequently the same was amended by the Notification No. 2/2018–Central Tax (Rate) dated 25-01-2018 increasing the exemption limit to Rs 7,500/- per month per member. Therefore in case if the maintenance charges collected exceeds the Rs 7,500/-, the balance in excess of Rs.7,500/- only is liable to GST.

11. FINDINGS & DISCUSSION:

11.1 We have considered the submissions made by the applicant in their application for advance ruling as well as the additional submissions made by Sri Chandrashekar B D, Chartered Accountant appeared during the personal hearing. We also considered the issues involved on which advance ruling is sought by the applicant and relevant facts.

At the outset, we would like to state that the provisions of both the CGST Act and the KGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the KGST Act.

11.2 The applicant seeks advance ruling in respect of the questions mentioned at para 2 supra. We proceed to answer the questions one at a time sequentially. The applicant is an Apartment Owners' Association 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., The applicant also provides lighting in common area, undertakes periodic up-keep of equipments etc., in the play area, etc. They collect monthly subscription as 'maintenance charges'.

11.3 The first question is with regard to liability of GST on maintenance charges collected by the applicant from its members. In this regard we observe the following points in the instant case.

- (a) The applicant is a registered entity as an Association of Persons and has a legal existence separate from its members.

- (b) As per Section 2(17) of CGST Act 2017, the 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
- (c) Section 7(1) of the CGST Act 2017 deals with the Scope of Supply and stipulates that for the purposes of the said Act, the expression “supply” includes all forms of supply of goods or services or both made or agreed to be made for a consideration by a person in the course or furtherance of business.

11.4 In view of the above, the applicant association is supplying the services of maintenance of the common areas including repairs and upkeep and since the common areas belongs all apartment owners, the maintenance charges are charged on the basis of the ratio of area of each apartment to the total area of all apartments and hence the applicant is providing a service of maintenance of apartments, buildings and property to all members and this is in the course of business. Hence this would amount to a taxable supply of services.

11.5. The second question is with regard to applicability of 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. In this regard we observe that:

- (a) The applicant is a non-profit organisation and is registered under the Karnataka Apartment Owners Association Act 1972.
- (b) The applicant provides services only to its members and collects the share of contribution or reimbursement of charges.
- (c) 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.

11.6 The third question relates to the applicability of the aforesaid exemption, whether it is per member basis or per flat basis. In this regard we draw attention to the Circular No.109/28/2019-GST dated 22.07.2019 wherein the instant issue has been clarified at para 1, issue number 4, and the same is as under:

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 Residential Welfare Association (RWA) for each residential apartment owned by him separately. The ceiling of Rs.7,500/- per month

per member shall be applied separately for each residential apartment owned by him.

In view of the above, in the applicant's terms, the exemption is applicable to eligible members on per flat basis.

11.7 The fourth question is related to the applicability of 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, when the monthly subscription exceeds Rs.7,500/- per member. The applicant contends that when the monthly subscription exceeds Rs.7,500/-, the amount exceeding Rs.7,500/- only is liable to tax as the said exemption of Rs.7,500/- is allowed as deduction from the total monthly subscription.

The issue related to the said 4th question also is dealt with and clarified, in the Circular No.109/28/2019-GST dated 22.07.2019, at para 1, issue 5 and the same reads as under:

The exemption from GST on maintenance charges charged by a Resident Welfare Association (RWA) from resident is available only if such charges do not exceed Rs.7,500/- per month per member. In case the charges exceed Rs.7,500/- per month per member, the entire amount is taxable. For example, if the maintenance charges are Rs.9,000/- per month per member, GST @ 18% shall be payable on the entire amount of Rs.9,000/- and not on Rs.1,500/-. [Rs.9,000 – Rs.7,500/-]

In view of the above, the exemption of Rs.7,500/- is not available when the maintenance charges exceed Rs.7,500/- per month per member. Therefore the members are required to discharge GST on the entire maintenance charges and not on just the amount in excess of Rs 7500/-. The same ratio applies to the earlier period when the exemption was available on maintenance charges upto Rs 5000/-.

11.8 The fifth question is relation to taxability of the amounts recovered from members, which were paid by the applicant towards electricity charges to BESCOM, the electricity supply authority, for the electric power consumed towards common facilities.

The applicant, in this regard, admitted that they pay electricity charges and recover the amount from members for the electric power consumed towards lighting of common areas. Further they propose to recover the actual charges paid to Electricity Suppliers, in respect of the power consumption for common area, from the members proportionate to the carpet area owned by them, by raising a debit note indicating the proportionate electricity charges

The electricity bill received in relation to the consumption of electricity for the common utilities is in the name of the applicant. The applicant is not involved

in the supply of electrical energy to the members but is involved in providing the service of upkeep and maintenance of the common utilities of the apartments and for this the electricity consumed by them becomes an input. Though the electricity bill is distributed to all its members, it is not the consideration for the supply of electrical energy to the members but the value is a part of the consideration for the supply of services to its members and hence is liable to tax at appropriate rates.

Hence this value of electricity charges separately shown in the invoices is to be added to the considerations shown towards the same service of upkeep and maintenance charged to individual members and then the consideration for the supply of such service is to be arrived and the taxable value shall be determined.

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.

12. In view of the foregoing, we pass the following

R U L I N G

1. *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 parties is an activity liable to GST.*
2. *The exemption of Rs.7,500/- in terms of entry no. 77 of Notification No.12/2017 – Central Tax (Rate) dated 28.06.2017, as amended, is applicable for maintenance charges collected from members.*
3. *The benefit of exemption up to Rs 7500/- is applicable on per flat basis, when members have more than one flat.*
4. *The exemption of Rs.7,500/-, in terms of entry no. 77 of Notification No.12/2017 – Central Tax (Rate) dated 28.06.2017, as amended, on maintenance charges charged by a Resident Welfare Association (RWA) from resident is available only if such charges do not exceed Rs.7,500/- per month per member. In case the charges exceed Rs.7,500/- per month per member, the entire amount is taxable.*
5. *The electricity charges paid to BESCO for power consumed towards common facilities and separately recovered from members is liable to GST as consideration received for the supply of maintenance services to the members.*
6. *The Corpus Fund or Sinking Fund collected from members is not to GST, as it amounts to deposits received towards future supply of services to members.*


(Harish Dharnia)
Member


(Dr. Ravi Prasad M.P.)
Member

Place : Bengaluru,

Date : 17-09-2019

Prestige South Ridge



To,

The Applicant

Copy to :

The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.

The Commissioner of Commercial Taxes, Karnataka, Bengaluru.

The Principal Commissioner of Central Tax, Bangalore West Commissionerate,
BMTCBuilding, Bansahankari II Stage, Bengaluru

The Asst. Commissioner, LGSTO-60, Bengaluru.



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