THE AUTHORITY ON ADVANCE RULINGS
IN KARNATAKA
GOODS AND SERVICES TAX
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD
GANDHINAGAR, BENGALURU – 560009

Advance Ruling No. KAR ADRG 47/ 2019
Date : 17th September 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 Vaishnavi Splendour Home Owners Welfare Association, #12, 3rd Cross, Poojari Layout, Geddalahalli, RMV 2nd Stage, Bengaluru - 560094
2.	GSTIN or User ID	29AABAV2780J1Z2
3.	Date of filing of Form GST ARA-01	22-06-2018
4.	Represented by	Sri Vishnu Murthy, Chartered Accountant
5.	Jurisdictional Authority – Centre	The Commissioner of Central Tax, Bangalore North Commissionerate
6.	Jurisdictional Authority – State	LGSTO 150, Bengaluru
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs.5,000/- each under KGST Act and CGST Act vide CIN IBKL18062900089640 dated 13-06-2018.

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

1. M/s Vaishnavi Splendour Home Owners Welfare Association, (hereinafter called "applicant"), No.12, 3rd Cross, Poojari Layout, Geddalahalli, RMV 2nd Stage, Bengaluru - 560094, having GSTIN number 29AABAV2780J1Z2, have filed an application for Advance Ruling under Section 97 of CGST Act, 2017 & KGST Act 2017 read with Rule 104 of CGST Rules 2017 & 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 a Homeowners' Association with 88 members. They maintain the common area, viz. corridors, pathways, gardens, clubhouse, swimming pool, lifts, etc., provides lighting in common area, undertakes periodic up-keep of equipments etc., in the play area, etc. They collect annual contributions from its members calculated on the basis of super built-up area owned by the members. In addition they collect contribution towards corpus fund for future contingencies. They are registered under the Goods and Services Act, 2017.

In view of the above, the applicant has sought advance ruling in respect of the following questions:

i. *Whether the applicant is liable to pay CGST and SGST on the amount of contribution received from its members?*

ii. *If the answer to (i) above is "yes", whether it can avail the benefit of Notification No.12/2017 dated 28-6-2017 (Sl. No. 77) read with Notification No.2/2018 dated 25-1-2018 which provide for exempting from tax, the value of supply up to an amount of Rs. 7,500 per month per member ?*

iii. *If the answer to (ii) above is "yes", whether it is required to restrict its claim of input tax credit ?*

iv. *Whether the applicant is liable to pay CGST/SGST on amounts which it collects from its members for setting up a corpus fund*

3. The applicant has furnished their understanding of law in respect of the aforesaid questions as under:

i. The applicant with regard to liability of GST on the amount of contribution received from its members submits that

   a. The applicant is an "association" within the meaning of Section 3(d) of Karnataka Apartment Ownership Act, 1972. Accordingly, it is an "association" constituted by the statute and is not a "voluntary association". It undertakes administration, maintenance, repair or replacement of the common area pursuant to Section 3 (g) of the Act. The association is performing activities as mandated by the statute and not pursuant to any contract between itself and its members.

   b. The applicant contends that only such of the activities performed pursuant to a contract are covered within the scope of "supply of goods or services" as described in Section 7 of the Act. It would not cover activities performed pursuant to the Karnataka Apartment Ownership Act, 1972. Since the levy of tax is on the activity of "supply" and because the activities do not amount to "supply" as defined under Section 7 of the

CGST Act, 2017, there would not be any incidence of tax on the activities performed by the applicant.

c. The applicant further states that Section 10 of the Karnataka Apartment Ownership Act, 1972, provides for refund of surpluses to its members. Therefore, what is collected by the association is pure and simple reimbursement of expenses and it is not in the nature of any consideration from its members for supplying services. Therefore, there is no consideration for the activities performed by the applicant.

ii. The applicant with regard to applicability of exemption under entry number 77 of Notification No.12/2017-CT (R) dated 28.06.2017, as amended, to its members contends that if for any reason, if the contributions are held to be taxable, then the association would be entitled to claim exemption calculated @ Rs.7,500-00 per month per member and on such amount, it is not required to pay any tax.

iii. The applicant with regard to entitlement of input tax credit, on availment of exemption, contends that the amount calculated @ Rs.7,500/- per month per member is a mere reduction in the value of supply and hence it does not convert the supply into an exempted supply. Therefore, they are entitled to full amount of input tax credit.

iv. The applicant with regard to collection of amounts towards corpus fund from its members contends that the amounts so collected are mere deposits and they are under obligation to refund them to its members if it is not spent. Therefore, it is not liable tax.

PERSONAL HEARING: / PROCEEDINGS HELD ON 28.06.2018

4. Sri. Vishnu Murthy, Chartered Accountant and duly authorised representative of the applicant appeared for personal hearing proceedings held on 28.06.2018, reiterated the facts narrated in their application and furnished written submissions, inter alia stating as under:

a) The applicant is an association formed by filing a declaration under the provisions of Karnataka Apartment Ownership Act, 1972 and under the said Act, it is mandatory for individual flat owners to come together and form themselves into an association for the purpose of maintaining and managing the common areas and facilities in the condominium and it is incumbent on the association to carry out such functions. Thus, the applicant performs its activity as a duty mandated under a statute; it does not perform them as discharging any contractual obligations.

b) Charge under the Act gets attracted only in respect of transactions performed in discharge of contractual obligations. It would not get triggered in circumstances where one performs his activities under a statutory

mandate. In this regard, the applicant relies on section 7(1) of the Act which delineates the scope of the expression "supply" and section 2(31) of the Act, which explains the scope of the expression "consideration". Therefore, the applicant is of the view that its activities would not amount to supply of any goods or services or both and the contributions received by it from its members towards maintenance of common areas and facilitates will not answer the description of "consideration" given under the Act and hence it would not be liable to pay any tax under the Act.

c) The applicant has also extracted the provisions of the Karnataka Apartment Ownership Act, 1972 and section 10 of the said Act provides as follows:

> *"10. Common profits and expenses.- The common profits of the property shall be distributed among and common expenses shall be charged to, the apartment owners according to the percentage of the undivided interest in the common areas and facilities."*

d) Thus, the applicant states that statutorily, the association cannot collect and retain any amount from its members which is more than what is required to be spent for the purpose of upkeep and maintenance of the common areas, common facilities etc. The statute further requires the association to return surpluses, if any, arising in circumstances where the expenses incurred are less than the amounts collected from its members. Therefore, the amounts collected by the applicant would be in the nature of mere reimbursements of expenses.

e) The applicant states that Rule 33 of the Rules read with section 15 of the Act provides for excluding amounts received as reimbursement of expenses from the value of supply of goods or services or both. Therefore, in the case of the applicant, the contributions received from its members, which are in the nature of reimbursement of expenses, will not be includible in the value of supply of any goods or services or both. Therefore, the applicant would not be liable to pay tax under the Act on the amounts collected by it from its members towards maintenance of common areas and facilities.

f) On the second question i.e. whether, the amount of Rs.7,500/- per month per person as specified in Notification No.12/2017 dated 28-06-2017 (Sl.No.77), as modified by Notification No.2/2018 dated 25-01-2018, is deductible in determining the value of its taxable supplies even when the amounts so collecting from its members exceed Rs.7,500/- per month per member, the applicant submits their views as under:

g) The applicant states that Home Owners Association enjoyed exemptions from tax even in the service tax regime. First of such exemption was given in terms of the following notification:

Notification No. 8/2007 – Service Tax dated 01-03-2007 – the taxable services provided by a resident welfare association where the sole criteria for its membership is the residential status of a person in a residential complex to its members, from the whole of the service tax leviable thereon, subject to the condition that the total consideration received from individual member by the said association for providing the said services does not exceed three thousand rupees per month.

The applicant states that on analysis of the above notification it could be seen that the Associations were divided into two groups. The first group comprised of associations in which none of the individual members contributed more than Rs.3,000/- per month and the second group comprised of the associations in which at least one member contributed to more than Rs.3,000/- per month. The first group was given exemption but the second group was not given any such exemption. Thus, under the above notification, some of the associations enjoyed exemption, while others did not.

h) The applicant continued that the above legal position was changed by issuing the Notification No. 25/2012-ST dated 20.06.2012 wherein the Central Government exempted the following taxable services from the whole of service tax -

> *"28(c) Service by an unincorporated body or non-profit entity registered under any law for the time being in force, to its own members by way of reimbursement of charges or share of contribution upto an amount of five thousand 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."*

The applicant states that on analysis of the above notification it would reveal that the earlier requirement of classifying the associations into two groups was done away with and instead the benefit of exemption was extended to all the home owner's associations, but with a ceiling. Accordingly, all the home owner's associations enjoyed the exemption of tax in respect of the contributions upto Rs.5,000/- per month per member. The rest of the contributions were taxable. In circumstances where contribution was less than Rs.5,000/- per month per member, the association enjoyed the full exemption from tax. In circumstances where the contribution was more than Rs.5,000/- per month per person, the associations enjoyed exemption upto Rs.5,000/-, but had to pay tax on the amounts which was over and above such Rs,5,000/-.

i) The Notification No.12/2017- Central Tax (Rate) dated 29.06.2017 as amended by Notification No.02/2018 – Central Tax (Rate) dated 25-01-2018 in the entry no.77, deals with the services provided and the said entry reads as under:

Sl. No	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of services	Rate (per cent)	Condi-tion
77	Heading 9995	Service by an unincorporated body or a non-profit entity registered under any law for the time being in force, to its own members by way of reimbursement of charges or share of contribution – 1. As a trade union; 2. For the provision of carrying out any activity which is exempt from the levy of Goods and Services Tax; or 3. Upto an amount of seven thousand five hundred 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	Nil	Nil

j) The applicant states that an analysis of the above notification would reveal that every home owner's association would enjoy the benefit of exemption from tax under the Act up to an amount of Rs.7,500/- per month per member and such exemption will be available even in circumstances where the contribution by individual members is in excess of Rs.7,500/- per month.

k) The applicant states that in case of any doubt, the rules of interpretation of statutes should be interpreted in the way the construction which is beneficial to the assessee. The applicant relied upon the following judgements in support of their contention:

   a. CIT v. A.J.Abraham Anthraper 268 ITR 417

   b. CIT v. J.Palemar Krishna 342 ITR 366.

   c. CIT v. South Arcot Society 176 ITR 117 (SC)

   d. CIT v. Mahindra & Mahindra Ltd 144 ITR 225 (SC)

l) The applicant states that there is another dimension to the whole issue. The applicant provides electricity and water, in addition to other facilities to its members, supply of which is exempt from tax under the Act. If the applicant is made liable to pay tax on the entire amount of contributions received by it, it would amount to making it pay tax on the supply of such exempted items

as well. This would amount to department trying to tax something which it cannot tax directly and might raise issues regarding constitutional validity. May be for this purpose the authorities have thought it fit to extend the benefit of exemption up to an amount of Rs.7,500/- per month per member, to all home owner's associations, since all such associations will invariably involve themselves in supplying such exempted items of water and electricity.

m) The applicant states that Section 8 of the Act, provides for taxing different kinds of supplies for a single consideration by treating them as composite supplies. It is worthwhile to note that provisions contained in the said section applies only when all such supplies are taxable supplies. It would not apply if some supplies are taxable and other are not taxable. Therefore, supply of electricity and water by home owner's associations cannot be taxed by making them part of a composite supply. Therefore, there is a need to segregate such supplies from rest of the supplies made by such associations. This would also call for dividing the total consideration between taxable supplies and non-taxable supplies. The applicant is of the view that the amount of Rs.7,500/- stipulated in the notification is an ad-hoc amount which should be treated as consideration for supply of exempted goods or services. Since all the home owners associations will be involved in such exempted supplies, it is but natural that all such associations are allowed such ad-hoc exemptions. Therefore, the applicant is of view that it is entitled for exemption from tax in respect of individual contribution of Rs.7,500/- per month.

n) The applicant's views on the third question, i.e. whether, it can avail input tax credits of the whole of the amount of taxes paid on its inputs and input services, if it is held that it need not pay tax under the Act on individual contributions of Rs.7,500/- per month, are as follows:

o) The restrictions with regard to input tax credit is contained in sub-section (2) of section 17 of the Act and it provides as follows:

> *"Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies."*

p) The phrase "exempt supplies" is defined under Section 2(47) of the Act and the same is as follows:

"Exempt supply" means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under

section 11, or under section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply."

q) The applicant states, in so far as the receipt of contributions by the applicant is concerned, they are exempt to the extent of Rs.7,500/- per month per member. In other words, the contributions are exempt partially. They are not wholly exempt from tax. Therefore, having regard to the definition of "exempt supply" given in Section 2(47) of the Act, the supplies by the applicant to its members would not be an "exempt supply". They also state that unless the supply amounts to an "exempt supply", the restrictions contained in section 17(2) of the Act do not come into play. Unless the provisions contained in sub-section (2) of section 17 are triggered, there will not be any requirement to restrict the input tax credit. Therefore, the applicant is of the view that notwithstanding the fact that it is not liable to pay tax on contributions to the extent of Rs.7,500/- per month per member, it would still be eligible to claim credit of the entire input tax.

r) The applicant further submits that the concession of Rs.7,500/- per month per member operates only as a reduction in value of the supply and it will not operate to transform an otherwise taxable supply into an exempted supply. Therefore, the applicant is of the view that it need not restrict any claim of input tax credit merely because it claims exemption from tax on the contributions to the extent of Rs.7,500/- per month per member.

s) On the fourth question, i.e., whether it would be liable to pay tax under the Act, if it collects amounts towards setting up a corpus fund, the views of the applicant are as follows:

"under the scheme of the Act, in terms of Section 9, amounts received become taxable only when such amounts are received as "consideration for supply of goods or services or both". Amounts received by the applicant which are required to be kept as it is, without being spent, are not considerations for supply of any goods or services or both. In terms of Section 10 of the Karnataka Apartment Ownership Act, 1972 these contributions will become refundable to the members on some future date. Therefore, contributions received by the applicant towards setting up of a corpus fund would not be taxable.

t) Further, "Consideration" is defined under section 2(31) of the Act and it reads as under:

"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.

(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."

It is evident from the above, the applicant states, that for an amount to get transformed into "consideration", either there should be actual supply of goods or services or there should be a promise to supply goods or services. If the "supply" aspect is missing, then the amount received will not be in the nature of 'consideration'. In the instant case, the amount received by the association is not for the purpose of supplying any goods or services. It is an amount which will be invested by the association and the returns generated therefrom might be used for effecting supply of goods or services or both to the members. Therefore, the applicant is of the view that amount received by the association for setting up a corpus fund would not be liable to tax under the Act.

5. FINDINGS & DISCUSSION:

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

5.2 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.

5.3 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 a Homeowners' Association with 88 members. They maintain the common area, provide lighting in common area, undertakes periodic up-keep of equipments etc.,. They collect annual contributions from its members calculated on the basis of super built-up area owned by the members.

5.4 The first question is with regard to liability of GST on maintenance charges collected by the applicant from its members. The applicant is a registered entity and is an Association of Persons and is distinct from its members. The Association is receiving consideration for the supply of services. There is no dispute that the applicant is performing certain operations / services for which consideration is received. There is no such thing in the law that services provided as statutory obligations are not "supplies" under the definition of the Act. Section 7(1) of the CGST Act 2017, reads as under:

7. Scope of supply.- (1) For the purposes of this Act, the expression "supply" includes –

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business

(b) ....

(c) ...."

The above definition clearly states/indicates that the term "supply" includes all forms of supply of goods or services or both made for a consideration by a person in the course or furtherance of business, and by definition what is supplied by the applicant is a service as it is not goods. It is the supply of maintenance services and the activities of the applicant are covered under the definition of "business" as is defined in sub-section (17) of section 2 of the CGST Act, 2017.

5.5 The term of "consideration" as defined in sub-section (31) of section 2 of the CGST Act, clearly includes any payment made in respect of or in response to the supply of services. As explained earlier, the amount of consideration is towards the supply of maintenance services provided by the applicant to it members. The profit motive is not the criteria to qualify an activity as a business activity or otherwise. Further, no activity is mandated to be done as per any law for the time being in force or otherwise.

5.6 Summing up the above, GST is levied on intra-State and inter-State supply of goods and services. According to section 7 of CGST Act, 2017, the expression "supply" includes all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business, and includes activities specified in Schedule II to the CGST Act, 2017. The definition of "business" in section 2(17) of CGST Act states that "business" includes 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. The term person is defined in section 2(84) of the CGST Act, 2017 to include an association of persons or a body of individuals, whether incorporated or not, in India or outside India. Further, Schedule II of CGST Act, 2017 enumerates activities which are to be treated as supply of goods or as supply of services. It states in para 7 that supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration shall be treated as supply of goods. A conjoint reading of the above provisions of the law implies that supply of services by an unincorporated association or body of persons (AOP) to a member thereof for cash, deferred payment or other valuable consideration shall be treated as supply of services. The above entry in Schedule II is analogous to and draws strength from the provision in Article 366(29A)(e) of the Constitution according to which a tax on the sale or purchase of goods includes 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.

5.7 In view of the above, the activity of the applicant is a provision of services to its members, and it is in the form of reimbursement of charges or share of contribution and the applicant is a non-profit entity.

5.8 Regarding the taxability of the transaction, the service is covered under the Heading 9995. As per the Annexure to Notification No.11/2017 – Central Tax (Rate) dated 28.06.2017, the services provided by the Home Owners Associations are covered under the Heading 9995 and specifically under Service Code of 9995 98. Hence it is clear that what is supplied by the applicant is a service by the Home Owner's Association to its members and not a composite supply or mixed supply, which is actually a combination of more than one supply for a common consideration. Even if the same is considered as a composite supply, then the principal supply would be the "Supply of services by the Home Owner's Association" and hence the entire supply would be treated as a composite supply of such service. Regarding the services, the supply of services is made in common to all the members and it is only reimbursement of charges or share of contribution.

5.9 The second question is related to applicability of exemption under entry No. 77 of Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 as amended by the Notification No. 2/2018 – dated 25-01-2018. The said entry reads as under:

Sl. No.	**Chapter, Section, Heading, Group or Service Code (Tariff)**	**Description of services**	**Rate (per cent)**	**Condi-tion**
77	Heading 9995	Service by an unincorporated body or a non-profit entity registered under any law for the time being in force, to its own members by way of reimbursement of charges or share of contribution – (a) . . . . ; (b) For the provision of carrying out any activity which is exempt from the levy of Goods and Services Tax; or (c) Upto an amount of seven thousand five hundred 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	Nil	Nil

The activity is covered under clause (c) of the entry 77 and reading together "Services by a non-profit entity registered under any law for the time being in force, to its own members by way of reimbursement of charges or share of contribution upto an amount of seven thousand five hundred 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" is exempted from the levy of GST.

5.10. Further, in relation to the said exemption, the applicant contends that when the monthly subscription exceeds Rs.7,500/-, then also they are entitled to claim the said exemption of Rs.7,500/- and the tax need to be paid only on the remaining amount of monthly contribution.

This issue 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/-.

5.11 The third question is "whether the applicant is required to restrict the claim of input tax credit". Section 16 of the CGST Act 2017 allows the claim of input tax credit subject to the conditions and limitations as may be prescribed in the Rules. Section 17(2) of the CGST Act reads as under:

> *"(2) Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies."*

In the instant case, as already discussed, the applicant is involved in supply of taxable service, if the contribution exceeds Rs.7,500/- per month per member and also involved in exempted supply of service when the contribution is upto Rs.7,500/-. Therefore the applicant is providing partly taxable as well as partly exempted supply of service. Therefore, the applicant is liable to restrict the claim of input tax credit to the extent of exempt turnover as per Rule 42 of the CGST Rules 2017, which is related to common input tax credits. For the unrestricted amount of input tax credit, the applicant can avail the benefit of input tax credit. However, this is again subject to the restriction and ineligibilities as enumerated in the Act and rules made thereunder.

5.12 The fourth question is related to the liability of GST on the amounts collected for corpus fund from members. It is seen that this amount is collected as

a deposit and is utilised by the applicant as when required. The contributions are made by the members to the applicant as contributions to the corpus fund and not in relation to any service in particular.

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 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 and the time of supply has to be determined in terms of Section 13 of the CGST Act 2017.

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

RULING

1. *The applicant is liable to pay CGST and SGST on the amount of contribution received from its members as their activities of amounts to taxable supply of service.*

2. *The benefit of exemption, under entry no.77 of Notification No. 12/2017 – Central Tax (Rate) dated 28.06.2017 (as amended by Notification No.02/2018 – Central Tax (Rate) dated 25.01.2018), is available to the applicant only if maintenance charges (contributions) 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.*

3. *The applicant is eligible to claim input tax credit on the inward supplies of goods and services and this is subject to the restrictions as enumerated in Section 17(2) of the CGST Act read with Rule 42 of the CGST Rules and other restrictions applicable if any.*

4. *The applicant is not liable to pay CGST/SGST on amounts collected from members for setting up a corpus fund.*

17/09/2019

(Harish Dharnia)
Member

(Dr.Ravi Prasad.M.P.)
Member

Place : Bengaluru,

Date : 17-09-2019

To,

The Applicant

Copy to :

1. The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.
2. The Commissioner of Commercial Taxes, Karnataka, Bengaluru.
3. The Commissioner of Central Tax, Bangalore North Commissionerate, Bengaluru.
4. The Asst. Commissioner, LGSTO-150, Bengaluru.
5. Office Folder