

MAHARASHTRA AUTHORITY FOR ADVANCE RULING
GST Bhavan, Room No.107, 1st floor, B-Wing, Old Building, Mazgaon, Mumbai – 400010.

(Constituted under Section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

(1) **Shri Rajiv Magoo, Joint Commissioner of Central Tax, (Member)**

(2) **Shri T.R. Ramnani, Joint Commissioner of State Tax, (Member)**

GSTIN Number, if any/ User-id	27AABAE1552D1Z8
Legal Name of Applicant	M/s. Emerald Court Co-operative Housing Society Limited
Registered Address/Address provided while obtaining user id	Plot No. 118, Emerald Court Co-op Housing Society Ltd, Kondivita Lane, Andheri (East), Mumbai -400059.
Details of application	GST-ARA, Application No. 113 Dated 24.02.2020
Concerned officer	MUM-VAT-C-720, Nodal Division-007, Mumbai
Nature of activity(s) (proposed/present) in respect of which advance ruling sought	
A Category	Service Provision
B Description (in brief)	Assessee is a registered Housing Society formed for the welfare of its members.
Issue/s on which advance ruling required	(v) Whether the applicant is liable to pay tax on any goods or services, or both.
Question(s) on which advance ruling is required	As reproduced in para 01 of the Proceedings below.

PROCEEDINGS

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

The present application has been filed under Section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act" respectively] by **M/s. Emerald Court Co-operative Housing Society Limited**, the applicant, seeking an advance ruling in respect of the following questions.

Determination of the liability to pay GST on Maintenance charges.

Emerald Court Co-op Housing Society Ltd is a Co-operative Housing Society (CHS). It looks after the upkeep of the society and its members. The CHS provides services to its members in the form of facilities or benefits like security, cleaning, repairs, water, common electricity etc. It also arranges to pay for the ancillary services like accounting, auditing, caretaker, etc.

Presently, the CHS is raising monthly bills on its members which consist of 2 parts, one is property tax on which GST is not being charged and another is 'Maintenance charges' on which GST is being charged.

Hence we seek opinion on the chargeability of GST on such transaction since there could be no sale by the Co-operative Housing Societies to their own permanent members, for doctrine of mutuality would come into play. To elaborate, CHS treated itself as the agent of the permanent members in entirety and advanced the stand that no consideration passed for the services rendered by the society to its members and there was only reimbursement of the amount by the members and therefore no GST could be levied.

At the outset, we would like to make it clear that the provisions of both, the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, the expression 'GST Act' would mean CGST Act and MGST Act.



FACTS AND CONTENTION – AS PER THE APPLICANT

- 2.1** Emerald Court Co-op Housing Society Ltd, the applicant, a registered Entity under GST with registration number 27AABAE1552D128 provides services to its members in the form of facilities or benefits, like security, cleaning, repairs, water, common electricity etc. It also arranges to pay for the ancillary services like accounting, auditing, caretaker, etc. Presently, the applicant is raising monthly bills on its members which consist of 2 parts, one is property tax on which GST is not being charged and another is 'Maintenance charges' on which GST is being charged.
- 2.2** In GST, taxable event is determined when there is supply of goods, services or both. From the definition of the terms, 'Supply' and 'business' as per the GST Act, applicant's activities, consisting of upkeep and maintenance of the society and collecting money from the members do not constitute business as there is no exchange of consideration and merely reimbursement of the amount by the members for the facilities provided by the society. Also, the doctrine of mutuality would come into play as there is no supply of goods or services by the applicant to its members.
- 2.3** As per Section 7(1) (a) of the CGST Act, 'supply' is an inclusive definition, so it is possible to argue that anything, even if not mentioned specifically in Sec. 7 can be

treated as "supply". But as per ejusdem generis, when a limited list of specific things also includes a more general class, that the scope of that more general class shall be limited to other items more like the specific items in the list.

2.4.1 Serial No. 77 of Notification No.12/2017-C.T.-(Rate) dated 28.06.2017 provides for the following exemption to housing societies:

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) as a trade union

(b) For the provision of carrying out any activity which is exempt from the levy of Goods and Service Tax

(c) Up to 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 their members in a housing society or a residential complex.

2.4.2 The notification stated above, was interpreted to mean that all the services by housing societies, other than those specified in Notification No. 12/2017 are liable for GST.

2.4.3 Further the Tax Research Unit (TRU), Government of India issued Circular No. F.No. 332/04/2017 dated 05-09-2017 containing Frequently Asked Questions (FAQs) wherein it is stated that, "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."

2.5.1 In the case of The Cosmopolitan Club, Madras, The Youngmen's Indian Association, Madras and the Lawley Institute, Ootacamund, the Hon'ble Supreme Court held that a member's club cannot be made subject to the provision of the Sales Tax Act concerning sales, because the members are joint owners of all the club property. Supply of article to a member at a fixed price by the club cannot be regarded as a "sale".

2.5.2 The various High Courts of the country in the cases of Sports Club of Gujarat Limited and Ranchi Club Limited have held Service Tax levy to be illegal on the principle of Mutuality.

2.5.3 Further, the Hon'ble Supreme Court, in the Calcutta Club Limited case held that, clubs are not entitled to charge, collect and pay taxes on any services/sales made to their



members. The rationale for the decision was that if there are no members, there is no club and vice-versa.

- 2.6 Without prejudice to the above discussion, even if it is argued that, services rendered by Co-operative societies come under the ambit of definition of 'Supply' under GST, the GST Act has not specifically included tax rate for charging tax on supply under Co-operative Housing Societies. In fact it has only issued exemption notification, to exempt the value of supply made by co-operative society upto Rs 5000/-.

The Applicant vide letter dated 21.06.2021 made additional submissions as under:-

- 2.7.1 The Government has recently amended the GST provisions retrospectively vide Finance Act 2021 by amending provisions of section 7 of CGST Act 2017. The said amendment read as under:

In the Central Goods and Services Tax Act, 2017 (hereinafter referred as the Central Goods and Services Tax Act), in section 7, in sub-section (1), after clause (a), the following clause shall be inserted and shall be deemed to have been inserted with effect from the 1st day of July, 2017, namely:—

(aa) the activities or transactions, by a person, other than an individual, to their members or constituents or vice versa, for cash, deferred payment or other valuable consideration.

Explanation.—For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and their members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another;”.

- 2.7.2 As on date, the retrospective amendment made under GST vide Finance Act 2021 is not yet effective.
- 2.8 In Case Of Rotary Club of Mumbai, Nariman Point and Rotary Club Of Mumbai, Queens Necklace, the Hon'ble Appellate Authority For Advance Ruling, Maharashtra referred to the definition of the term Business and observed that entire membership amount collected by the applicant from their members is solely utilized towards expenditure incurred in the meetings. There is no specific facility or benefits given to the members against the subscription amount charged. Thus, it was concluded that the appellant was not doing any business.



- 2.9 As can be seen by the definition under the GST Act, 'consideration' necessarily requires consideration flowing from one person to another. There must be consideration for an activity to be termed as business. Even as per section 7 of CGST Act, supply must be for a consideration. In Calcutta Club Ltd. case, it has been observed by the Hon'ble Supreme Court that there is absence of consideration between club and its members, as consideration is a must and should pass from one person to another. Applying the same in the present case, the definition of business cannot fasten GST liability on a club rendering service to its members as there is no consideration.
- 2.10 Section 7 (1A) of CGST Act, Schedule II only classifies the transaction as supply of goods or services and does not deem it to be supply. Schedule II does not cover any incorporated clubs or associations and therefore cannot fasten GST Liability on a club or association.
- 2.11 In view of the above, charging of GST by Cooperative Housing societies to its members is totally unfair and beyond the actual concept of charging GST in business activities.

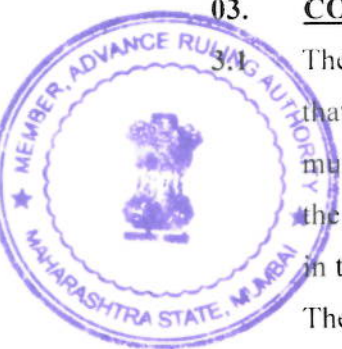
03. CONTENTION – AS PER THE CONCERNED OFFICER (Nodal Officer):

3.1

The doctrine of mutuality, based on common law principles, is premised on the theory that a person cannot make a profit from himself. The essence of the principle of mutuality lies in the commonality of the contributors and the participants who are also the beneficiaries. The contributors to the common fund must be entitled to participate in the surplus and the participants in the surplus are contributors to the common fund. The law envisages a complete identity between the contributors and the participants in this sense. The principle postulates that what is returned is contributed by a member. Any surplus in the common fund shall therefore not constitute income but will only be an increase in the common fund meant to meet sudden eventualities. A common feature of mutual organizations in general can be stated to be that, the participants usually do not have property rights to their share in the common fund, nor can they sell their share. Cessation from membership would result in the loss of right to participate without receiving a financial benefit from the cessation of the membership

3.2

CHS are covered by the definition of business as given section 2(17) of MGST I CGST Act. Therefore, they are duty bound to obtain registration, if other conditions are fulfilled. Moreover, section 7, read with Schedule I and II show that in case of "related persons" and distinct persons, the activity is supply even if no consideration passes from supplier to recipient.



3.3 Under the MGST Act, the deeming fiction or legal fiction has been created whereby the supply made by a taxable person to related person (section 15) or distinct person (section 25) for himself (schedule 1) is liable to be treated as *supply* made by one person to another. Even if such supply of goods or services is not reciprocated by consideration by the recipient, still such activity is liable to be treated as supply under MGST Act.

3.4.1 Section 15 of the MGST Act, read with schedule 1 (and section 7) provides that the supply of goods or services made by the taxable person or Supplier to the recipient who is related person, though made without consideration, would be liable to be treated as Supply as defined under section 7(c). This provision has been in an extraordinary situation. In ordinary situation, the supply of goods or services made against the consideration by supplier to the recipient, who is related person, would be liable to be treated as supply [u/s 7(c)]. Therefore, natural corollary of provisions of section 15 / schedule I, is that in ordinary situation where consideration is received by supplier from recipient (who coincidentally is also a related person as defined in section 15), for the supply of goods or services made by him, then such supply is obviously be a liable to be treated as "supply". Section 15 of MGST Act has provided the comprehensive definition of term related person to be applied under MGST Act so as to treat the supplier and recipient as two different and distinct persons if they are covered by the said provision.

3.5 The definition of business as given in section 2(17)(b) makes it clear that "Provision by a Co Operative Housing Society, Club, association, society, or any such body (for a subscription, or any other consideration) of the facilities or benefit to its member" is business activity. Therefore, every CHS, whether incorporated or un-incorporated, is required to obtain the registration under MGST Act if the limit of turnover crosses the prescribed limit. An individual (natural person), company, corporation, association of persons or a body of individuals, whether incorporated or not, or society / cooperative society, as well as every artificial juridical person are covered by the definition of "person" (section 2(84)) of MGST Act.

3.6 The MGST Act treats the CHS and its members as two separate persons or entities (section 15 uses the term related persons), one as company or society or unincorporated body, and other as natural person(s).

3.7 Moreover, the definition of person as given in section 2(84) covers, natural person, company, corporation, society, and registered society. Co-operative Housing societies



are covered by the definition of business. Once they provide the goods and/or services to other persons (natural persons who are co-incidentally members) then naturally such activity is liable to be treated as supply under section 7 of MGST Act. Therefore, whenever supply of goods or services effected by CHS to its members then such supply is taxable (whether consideration is given or not given by member) as section 15 read with schedule 1 is applicable.

3.8 Therefore, taking a cue from the principle mentioned in the Bhuwalka Steel Industries Ltd. (2017, 5 SCC 598) (para 36), considering the deeming fiction provided in section 15(1) and explanation thereof, as well as Schedule I, in respect of related persons, the Co-Operative Housing society (whether incorporated or unincorporated) and its members are liable to be treated as distinct or independent entities for the purpose of taxation under MGST Act. Therefore, the principle of mutuality may not have any impact as far as levy of GST under MGST Act with regard to supply of goods and services made by Co-operative Housing society to its members is concerned.

3.9 Therefore, MGST and CGST Act have express provisions whereby the cooperative society is liable to obtain registration and liable to pay GST in case of supply of services goods to members or non-members.

3.10 In view of the aforementioned discussion, facts and provisions of MGST /CGST Acts, the following conclusion can be drawn:

- (i) The transaction of supply of services by Co-Op Housing Society to its members is covered by the transaction taking place between "related persons" as provided in Section 15 of MGST/CGST Act-2017. By express provisions in terms of definitions of "business" and "person" as provided in section 2 of MGST Act /CGST Act, the housing society is required to obtain registration and pay GST in case of supply of Goods/ services to members or non-members as the case may be.
- (ii) Alternatively & simultaneously such transactions of supply of service by Co-Op Housing Society to its members / non-members are covered by the "statutory supply" of service as provided by the provisions / bye-laws according to the provision of Maharashtra Co-Op Housing Society Act-1960.
- (iii) Housing society is body corporate and hence is conducting business of rendering of services as per bye laws is duty bound to get registered under MGST I CGST Act.
- (iv) The member of the society can be an individual or company or trust. The qualification of the member is also prescribed in the bye laws and in accordance with the provisions of the Cooperative Act, Membership of any members can be cancelled



by following the provisions of the bye law. Therefore, the member of cooperative society is separate and distinct entity than the housing society as the qualification has been prescribed for becoming member of the cooperative society under Cooperative Act.

(v) The member and the Co-operative Society are not only distinct and separate entities under the Cooperative Act,

(vi) But also they are separate and distinct entities under the MGST and CGST Act by virtue of the provisions of the Section 15, i.e. related person.

(vii) Therefore whenever the Housing Society has been providing various services as per the bye laws under the Cooperative Act to the members then such services provided by housing society to members are liable to levy of GST by applying the provisions of related person under section 15.

(viii) Alternatively such services when provided by the cooperative society to the members are also liable to levy of GST as such supply is taking place by virtue of the statutory provisions of the Cooperative act and such supplies of services are liable to be treated as taxable supply due to operation of law.

3.11 The question / issues referred by the applicant, is required to be answered in favor of revenue & against the applicant Housing Society due to the submission made as hereinabove. Due to the express provisions as mentioned hereinabove as provided in MGST/ CGST Act, the housing society is required to obtain registration and pay GST in case of supply of Goods / services to members or non-members as the case may be if required threshold is crossed in terms of turnover of supply.

04. HEARING

4.1 Preliminary hearing in the matter was held on 28.05.2021. Smt. Satvinder Kaur (C.A), Authorized Representative, appeared, and requested for admission of their application. Jurisdictional Officers Shri. Rajesh Advani, Deputy Commissioner, MUM-VAT-C-720, Nodal Division-007, Mumbai and Shri. Shailesh Mulam were also present.

4.2 The application was admitted and called for final hearing on 22.06.2021. Smt. Satvinder Kaur (C.A), Authorized Representative, appeared, made oral and written submissions. Jurisdictional Officers Shri. Rajesh Advani, Deputy Commissioner, MUM-VAT-C-720, Nodal Division-007, Mumbai and Shri. Shailesh Mulam were also present and made submissions. We heard both the sides.

05. DISCUSSIONS AND FINDINGS:

5.1 We have perused the documents on record and submissions made by both, the applicant as well as the jurisdictional officer.

5.2 The only issue before us is whether, Emerald Court Co-op Housing Society Ltd i.e. the applicant, is liable to pay GST on the maintenance charges collected from members of its society.

5.3 The applicant, has broadly submitted that : they collect amounts from its members against property tax on which GST is not being charged and against 'Maintenance charges' on which GST is being charged ; its activities, consisting of upkeep and maintenance of the society do not constitute business as envisaged under the GST Act ; because of the doctrine of mutuality there is no supply of goods or services by the society to its members and the Supreme Court, in the Calcutta Club Limited case has held that clubs are not entitled to charge, collect and pay taxes on any services/sales made to its members on the grounds of principle of Mutuality.

5.4 The jurisdictional officer, on the other hand, has contended that cooperative housing societies are covered by the definition of business as given under the provisions of the GST Act ; transaction of supply of services by a Co-Op Housing Society to its members is covered by transaction taking place between "related persons" as provided in Section 15 of GST Act ; if supply of service or goods takes place in case of related persons or distinct persons, then such activity is 'supply' even if it is not accompanied by "consideration" ; a member of cooperative society and the cooperative housing society itself are separate and distinct entities under the MGST and CGST Act by virtue of the provisions of the Section 15, i.e. related person.

5.5 We find from the submissions made by the applicant that they are of the view that GST is not liable to be paid on the amounts received by the society them from its members because of the principle of mutuality due to which, the society cannot be considered as an entity, separate from the individual members of the society.

5.6.1 We observe that there were a lot of litigations and disputes by clubs/associations/ societies on this issue, earlier. However the said issue, with respect to Goods and Services Tax has been sought to be addressed by way of the proposed amendment made to Section 7 of the GST Act in the Finance Budget, 2021.

5.6.2 Vide clause 99, an amendment was proposed in the CGST Act, 2017, whereby, in section 7, in sub-section (1), after clause (a), the following clause was to be inserted and deemed to have been inserted with effect from the 1st day of July, 2017, namely:



"(aa) the activities or transactions, by a person, other than an individual, to their members or constituents or vice versa, for cash, deferred payment or other valuable consideration. Explanation.—For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and their members or constituents shall be deemed to be two separate persons and the supply of 77 activities or transactions inter se shall be deemed to take place from one such person to another;"

- 5.7 The amendment mentioned above has received the assent of the President of India on the 28th March, 2021 and in view of the same the issue of principles of mutuality in the case of cooperative societies like the applicant has been settled.
- 5.8 Therefore, in view of the amended Section 7 of the CGST Act, 2017, we find that the applicant society and its members are distinct persons and the amounts received by the applicant, against maintenance charges, from its members are nothing but consideration received for supply of goods/services as a separate entity. The principles of mutuality, which has been cited by the applicant to support its contention that GST is not leviable on the maintenance charges collected by them from its members, is not applicable in view of the amended Section 7 of the CGST Act, 2017 and therefore, the applicant has to pay GST on the said amounts received against maintenance charges, from its members.

06. In view of the above discussions, we pass an order as follows:

ORDER

(Under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

NO.GST-ARA- 113/2019-20/B- 29

Mumbai, dt. 13-07-2021

For reasons as discussed in the body of the order, the questions are answered thus –

Question: - Determination of the liability to pay GST on Maintenance charges.

Emerald Court Co-op Housing Society Ltd is a Co-operative Housing Society (CHS). It looks after the upkeep of the society and its members. The CHS provides services to its members in the form of facilities or benefits like security,

cleaning, repairs, water, common electricity etc. It also arranges to pay for the ancillary services like accounting, auditing, caretaker, etc.

Presently, the CHS is raising monthly bills on its members which consist of 2 parts, one is property tax on which GST is not being charged and another is 'Maintenance charges' on which GST is being charged.

Hence we seek opinion on the chargeability of GST on such transaction since there could be no sale by the Co-operative Housing Societies to its own permanent members, for doctrine of mutuality would come into play. To elaborate, CHS treated itself as the agent of the permanent members in entirety and advanced the stand that no consideration passed for the services rendered by the society to its members and there was only reimbursement of the amount by the members and therefore no GST could be levied.

Answer:- The applicant is liable to pay GST on maintenance charges (by whatever name called) collected from its members, if the monthly subscription or contribution charged from the members is more than Rs. 7,500/- per month.




RAJIV MAGOO
(MEMBER)


T.R. RAMNANI
(MEMBER)

Copy to:-

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Pr. Chief Commissioner of Central Tax, Churchgate, Mumbai
5. Joint commissioner of State Tax, Mahavikas for Website.

Note:- An Appeal against this advance ruling order shall be made before The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India Building, Nariman Point, Mumbai – 400021. Online facility is available on gst.gov.in for online appeal application against order passed by Advance Ruling Authority.