

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, Additional Commissioner of Central Tax, (Member)

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

GSTIN Number, if any/ User-id		27AAAAA4393H1ZS
Legal Name of Applicant		M/s Mahavir Nagar Shiv Srushti Co-operative Housing Society Limited
Registered Address/Address provided while obtaining user id	Plot. No. Ph-1, RDP 12&13, CTS No. 1C-1/1, Link Road, Near Mahavir Nagar, Kandivali (West), Mumbai – 400067.	
Details of application		GST-ARA, Application No. 19 Dated 07.07.2021
Concerned officer		Division-VIII, Range-I, Commissionerate-Mumbai South
Nature of activity(s) (proposed/present) in respect of which advance ruling sought		
A	Category	Service Provision
B	Description (in brief)	Applicant is a residential housing society formed, by its members who are its shareholders, with the object of managing, maintaining and administering the property of the society. Applicant is receiving Works Contract Service from M/s. Unique Rehab Pvt. Ltd. ("contractor") for carrying out major repairs, renovations and rehabilitation works for the society for which the said contractor is charging service charges alongwith GST.
Issue/s on which advance ruling required		> admissibility of input tax credit of tax paid or deemed to have been paid > whether applicant is required to be registered under the Act
Question(s) on which advance ruling is required		As reproduced in para 01 of the Proceedings below.

NO.GST-ARA- 19/2021-22/B-94

Mumbai, dt. 10.11.2021

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 Mahavir Nagar Shiv Srushti Co-operative Housing Society Limited**, the applicant, seeking an advance ruling in respect of the following questions.

- 1) Whether the activities carried out by the applicant for its members qualify as “supply” under the definition of Section 7 of the CGST Act, 2017.
- 2) Whether the applicant is liable to obtain registration under the GST law?
- 3) If the activities of the applicant are treated as “supply” under CGST Act, 2017 then whether the applicant is eligible to claim the ITC on input and inputs services for repairs, renovations & rehabilitation works carried out by the Applicant?

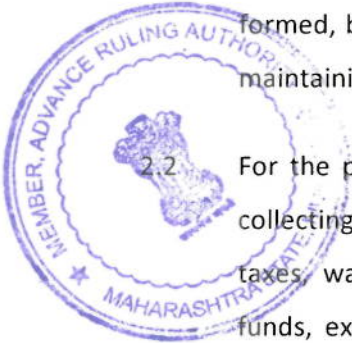
At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision 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.

2. FACTS AND CONTENTION – AS PER THE APPLICANT FACTS:

2.1 The Applicant, M/s Mahavir Nagar Shiv Srushti Co-operative Housing Society Limited, is a co-operative housing society registered under the Maharashtra State Co-operative Societies Act, 1960 and has constructed a building on the plot allotted by MHADA. The Applicant Society is formed, by its members who are the shareholders of the society, with the object of managing, maintaining and administering the property of the society.

2.2 For the purpose of achieving the above objects of the society, the Applicant raises funds by collecting contributions/charges from members of the society. The charges include: property taxes, water charges, common electricity charges, contribution to repairs and maintenance funds, expenses on repairs and maintenance of the lifts of the society, including charges to running the lifts, contribution to sinking fund, service charges, car parking charges, interest on the defaulted charges, repayment of the installment of the loan and interest, non-occupancy charges, insurance charges, lease rent, non-agricultural tax, or any other charges. The said charges are collected by issuing invoices.

2.3 The Applicant Society, uses the said funds for the specified purposes as enumerated in the bye laws. For example, the property taxes/water charges collected by the society from a particular member is paid to the Municipal Corporation. The Applicant Society does not carry out any other activity other than those mentioned in the bye laws of the society.



2.4 The Applicant Society has appointed M/s. Unique Rehab Pvt. Ltd. (hereinafter referred to as the "contractor") for carrying out major repairs, renovations and rehabilitation works for the society on 21.01.2021. The said contractor is charging service charges along with the GST for carrying out the works contract service.

2.5 Under the GST Laws, the tax is levied on supply of goods or services and the term "supply" is defined in Section 7 (1) of the CGST Act, 2017. The Applicant, under the assumption of law, that the activities of the society for its members amounts to supply, had obtained registration under GST. The Applicant has filed the present Advance Ruling Application for determining whether the said activities carried out by the Applicant for its members qualifies as supply and hence liable to GST and also further seeks to know that if the activities of the society amounts to supply liable to GST then whether the applicant is eligible to obtain the ITC of the GST charged by contractor on the works contract service of repairs, renovations and rehabilitation provided to the Applicant society.

2.6 The Applicant submits that by a plain reading of the term "supply" as defined under Section 7(1) of the CGST Act, 2017, the activities carried out by the Applicant for its members does not amount to supply and hence not liable for GST.

2.7 As per Section 7(1) (a) ***all forms of supply of goods or services or both for a consideration in the furtherance or course of business*** will qualify as "supply" liable for GST. Thus, the supply is an inclusive definition encompassing all kinds of supply, however only those transactions which are for a consideration and in the furtherance or course of business will qualify as supply.

2.8 It is therefore pertinent to note the definition of "business" under Section 2(17) of the CGST Act, 2017. Clause (e) of Section 2(17) specifically provides that business shall include **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**. Though the above definition of the business includes the provision of facilities or benefits to its members, on a case to case basis it has to be determined whether any facilities or benefits have indeed been provided by the society to its members.

2.9 In the present case the Applicant Society does not provide any facilities or benefits to its members. It is merely formed for managing the housing society. Thus, the applicant society

cannot be considered to be doing any business. Further, the said definition of 'business' also fails on the touchstone of the settled principle of law i.e. principal of mutuality. The Supreme Court in the number of cases has held that a housing society cannot be said to be providing any services to its member by applying the principals of mutuality. It is only logical to say that the society is formed by its members and members cannot be said to be supplying services to their own selves by forming the society. Thus, the applicant's activities does not amount to supply and are not liable for the GST.

- 2.10 Alternatively, without prejudice, if the Applicant is held to be supplying services to its members, then it is eligible to claim ITC on the input and input services received. Applicant shall be eligible to claim the ITC of GST charged by M/s. Unique Rehab Pvt. Ltd under the provisions of Section 16 (1) of the CGST Act, 2017 which provides that every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.



- 2.11 Applicant submits that though the services provided by contractor qualify as works contract, it will have no bearing on the eligibility of the ITC to the Applicant society. The works contract means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration, or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract. Thus even when there is a transfer of property in goods during execution of any works contract, such supply will be included in Works Contract only. Further, Entry 6(a) in Schedule II to the CGST Act provides that Works Contract under Section 2(119) shall be treated as "supply of service". Thus works contract will be treated as service and tax would be charged accordingly (not as goods or part goods/part services which was done in the erstwhile regime).
- 2.12 Applicant submits that contract given for repairs, renovations and rehabilitation of the building which is an immovable property and thus, it may come under the definition of "Works Contract" and hence treated as works contract service. However, the Applicant Society shall be entitled to ITC in view of the Section 16(1). The denial of ITC can be only if there is blockage of credit under

Section 17. In the present case there will be no blockage of credit of the reasons explained hereinbelow. From a reading of the provisions of Section 17 (5) (c) and (d) it is clear that no ITC shall be available of works contract service unless it is used for providing output works contract service. Further, the restriction does not apply to plant and machinery. In the present case, when it receives the works contract service of repairs, renovations and rehabilitation, the Applicant is further providing the said works contract services of repairs, renovations and rehabilitations to its members which is deemed to be supply. Thus, the Applicant Society shall be eligible to claim the ITC on the input works contract services as the same is used for providing the output works contract service.

2.13 The Applicant submits that it has used the works contract services provided by the contractor to provide further works contract service. The Applicant society is the main contractor as far as the members is concerned and the contractor is the sub-contractor. The Applicant submits that it has stepped into the shoes of the main contractor for providing the said works contract services to its members. Especially, after the amendment brought about in the Finance Act, 2021, Applicant Society is deemed to be a distinct entity from its members and all the works contract service received by the Applicant Society is used for providing further works contract service to its members. Thus, the said restrictions of Section 17(5) shall not be applicable in the present case.

2.14 Alternatively, without prejudice, the said repairs, renovations and rehabilitation for plant and machinery shall be entitled as ITC to the Applicant Society.

2.15 Alternatively without prejudice the applicant has submitted that in general, on a plain reading of section 17(5)(d) it is inferred by the authorities that, what is contemplated and provided for a particular situation where inputs are consumed in the construction of an immovable property, which is meant and intended to be sold as immovable property post issuance of completion certificate does not attract any levy of GST. Consequently, in such a situation, there is a break in the tax chain and therefore there is full justification of denial of input tax credit, as on the completion of the construction, no GST would at all be payable and therefore no set off of the input tax credit would be required or warranted or justified. The applicant has submitted that the position in the present case is totally different, where the repairs and maintenance is collected from the members and GST is charged therein. In that event, the Tax Chain is not broken. The denial of input tax credit in such a situation would be completely arbitrary, unjust

and oppressive and would be directly opposed to the basic rationale of GST itself, which is to prevent the cascading effect of multi stage taxation. In this aspect there is a clear violation of article 14 of Indian Constitution.

03. CONTENTION – AS PER THE CONCERNED OFFICER:

The jurisdictional/concerned officer has not made any submissions.

04. HEARING

4.1 The application was admitted and called for final hearing on Final e-hearing on 29.10.2021. The Authorized representative of the applicant, Shri. Rahul Thakkar, Advocate was present. The Jurisdictional officer was absent. Question No. 1 & 2 are withdrawn by the Applicant. The Applicant argued only the Question No 3. The Applicant to file the missing Annexure 3 of the ARA application which remained to be filed. The Applicant informed during the course of hearing that the question 3 is mainly for ITC on capital expenditure or major expenditure incurred by the society i.e. whether applicant is entitled to such ITC.

4.2 Heard the matter.

05. DISCUSSIONS AND FINDINGS:

5.1 We have gone through the facts of the case, documents on record and both, oral and written submissions of the applicant. During the course of the final online hearing held on 29.10.2021, the applicant, through the authorized representative Shri. Rahul Thakkar, Advocate, withdrew Question Numbers 1 and 2. Hence we are required to answer only question no. 3 raised by the applicant.

5.2 Question No. 3 is: “if the activities of the applicant are treated as “supply” under CGST Act, 2017 then whether the applicant is eligible to claim the ITC on input and inputs services for repairs, renovations & rehabilitation works carried out by the Applicant”.

5.3 The Applicant, M/s Mahavir Nagar Shiv Srushti Co-operative Housing Society Limited, is a co-operative housing society registered under the Maharashtra State Co-operative Societies Act, 1960, formed by its members who are the shareholders of the society, with the object of managing, maintaining and administering the property of the society for which, it raises funds by collecting contributions/charges from members of the society which include property taxes, contribution to repairs and maintenance funds, contribution to sinking fund, etc.

5.4 The Applicant Society has appointed M/s. Unique Rehab Pvt. Ltd., a contractor for carrying out major repairs, renovations and rehabilitation works for the society on 21.01.2021. The said contractor is charging service charges along with the GST for carrying out the works contract service. The applicant seeks to know whether they are eligible to obtain the ITC of such GST charged by contractor and has made submissions supporting its contention that they are eligible to obtain ITC on GST amounts paid to the contractor under the provisions of Section 16 (1) of the CGST Act, 2017.

5.5 Section 16 of the CGST Act, 2017, prescribes the eligibility and conditions for taking Input Tax Credit (ITC) and states that every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

5.6 Further, the Section 17 of CGST/SGST Act, 2017 debars certain activities/ supplies/work from the eligibility to claim ITC. The relevant portion of sub-section 5 of Section 17 of CGST/SGST Act, 2017 in this regard is reproduced below:-

“(5) Notwithstanding anything contained in sub-section (1) of section 16 and subsection (1) of section 18, input tax credit shall not be available in respect of the following, namely:-

(c) works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;

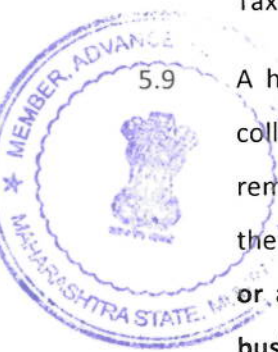
(d) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

Explanation: *For the purposes of clauses (c) and (d), the expression “construction” includes reconstruction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property;”*

5.7 Applicant has submitted that they shall be entitled to ITC in view of the Section 16(1). The denial of ITC can be only if there is blockage of credit under Section 17. In the present case when the applicant receives the works contract service of repairs, renovations and

rehabilitation, the Applicant is further providing the said works contract services of repairs, renovations and rehabilitations to its members which is deemed to be supply. Thus, the Applicant Society shall be eligible to claim the ITC on the input works contract services as the same is used for providing the output works contract service. Thus, the Applicant submits that it has used the works contract services provided by the contractor to provide further works contract service since it is the main contractor as far as the members is concerned and the contractor is the sub-contractor.

- 5.8 The applicant has submitted that they are receiving works contract service from M/s. Unique Rehab Pvt. Ltd., who is a contractor. The applicant has also submitted that the said works contract services is supplied for construction of an immovable property, (where, *the expression "construction" includes re-construction, renovation, additions or alterations or repairs*). The applicant has further submitted that they are supplying works contract service to its members and therefore the works contract service received by them from M/s. Unique Rehab Pvt. Ltd. is for further works contract supply by the applicant to its members. Hence, eligible to take Input Tax Credit of GST paid to the contractor i.e. M/s. Unique Rehab Pvt. Ltd.



5.9 A housing society is a collective body of persons, who stay in a residential society and the collective body, supplies certain services to its members, like collecting statutory dues to be remitted to statutory authorities, or maintenance of the building, etc. As per section 2(17)(e) of the CGST Act, 2017 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 is deemed to be a business**. Thus, a housing society may be seen to be providing club and association services to its members but does not provide works contract service to its members.

- 5.10 The housing society i.e. the applicant in the subject case, is making provisions of the facilities/benefits to its members and is not providing any works contract services to its members and therefore the applicant is debarred from taking Input Tax Credit under the provisions of Section 17 (5) (c) of the CGST Act, 2017.

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

ORDER

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

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

Question Nos 1 and 2 have been withdrawn by the applicant.

Question 3: If the activities of the applicant are treated as “supply” under CGST Act, 2017 then whether the applicant is eligible to claim the ITC on input and inputs services for repairs, renovations & rehabilitation works carried out by the Applicant?

Answer: - In view of the discussions made above, the applicant is not eligible for Input Tax Credit in the subject case where the contractor has provided works contract service for repairs, renovations & rehabilitation works.




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.