

**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		<b>27AADAM4146R2Z0</b>
Legal Name of Applicant		<b>M/s Mahindra Splendour CHS Ltd</b>
Registered Address/Address provided while obtaining user id		M/s Mahindra Splendour CHS Ltd, CTS No.617 Part, 617/30, 617/39, Plot -B, L.B.S Marg, Bhandup (West), Mumbai - 400 078.
Details of application		GST-ARA, Application No. 38 Dated 07.10.2020
Concerned officer		<b>MUM-VAT-E-401, MUMBAI-13</b>
<b>Nature of activity(s) (proposed/present) in respect of which advance ruling sought</b>		
A	Category	<b>Service Provision</b>
B	Description (in brief)	Taxability on various contributions from society members.
Issue/s on which advance ruling required		<ul style="list-style-type: none"> <li>➤ Applicability of notification issued under the provisions of the Act</li> <li>➤ Determination of time and value of supply of goods or services or both</li> <li>➤ Admissibility of input tax credit of tax paid or deemed to have been paid</li> <li>➤ Determination of the liability to pay tax on any goods or services or both</li> </ul>
Question(s) on which advance ruling is required		As reproduced in para 01 of the Proceedings below.

NO.GST-ARA- 38/2020-21/B- 103

Mumbai, dt. 01/12/2021

**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 Mahindra Splendour CHS Ltd** , the applicant, seeking an advance ruling in respect of the following questions.

- Whether the applicant is liable to pay GST on the contribution received from its members?**

2. If yes, whether the applicant can avail the benefit of exemption under entry no. 77 of Notification no.12/2017-CTR dated 28th June, 2017 for the value upto Rs.7,500/- per month per member and in case the said monthly contribution exceeds Rs. 7,500/- per month, then the GST is leviable only on differential value in excess of Rs. 7,500/-?
3. Whether the applicant is liable to pay GST on amount collected from its members towards the following accounts as per the Bye laws:
  - a. Sinking Fund
  - b. Building Repair Fund
  - c. Election and Education Fund
4. Whether the supplies otherwise exempted from tax or charged at Nil rate shall be included in value in computing threshold amount of Rs.7,500/- per month per member under entry no. 77 of Notification no.12/2017-CTR dated 28th June, 2017, for determining the tax liability?
5. Whether contribution collected to defray expenses for supply of following types of water are covered under entry 99 of Notification 2/2017-CTR dated 28th June, 2017 i.e. under HSN Code 2201 and attracts NIL rate of tax?
  - a. For Potable water received from MCGM u/s 169 of Mumbai Municipal Corporation Act 1888, which is supplied/distributed to the flats of the Members through an elaborate storage and pumping system.
  - b. Flush Water (Non Potable water) generated from Sewage treatment plant installed in the Society premises and supplied to all the flats for use in toilet flushing.
6. Whether input tax credit can be claimed on the expenses incurred for heavy repairs and maintenance of the society building premises and which are not capitalized in books of accounts?

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:**

*The submissions made by the applicant are as under:-*

- 2.1 *M/s Mahindra Splendour Co-operative Housing Society Ltd, the Applicant is a housing society whose main objects include: managing, maintaining and administering its property; raising funds for achieving the said objects etc., by way of collecting contributions/charges from members of the society, like Property taxes, Maintenance charges, Water and electricity charges, Sinking and Building repair Fund, Club House charges, Interest on delayed payment, etc.*
- 2.2 *Applicant procures goods and services from third party vendors for maintenance its property. No other activity other than those mentioned in the bye laws is carried out.*
- 2.3 *Contribution of charges from members is outside purview of GST on the principles of mutuality. A harmonious reading of the provisions of the CGST Act, 2017 viz. Section 9, Section 7 Section 2(17) Section 2(31) Section 2(105) and Section 2(93), etc., determines that where consideration is involved in a transaction, the recipient is the "person" who pays consideration to the supplier. Hence, 2 different persons have been envisaged in the law to tax a transaction of supply of goods or services or both in course of business or furtherance of business made for a consideration.*
- 2.4 *However, nowhere under the GST Act, the members and the society are treated as distinct persons. Therefore, the society and its members are not distinct person. Hence, the impugned transaction between the association and its member do not get covered under section 7(1)(a) of the Act and the contribution / fund raised from the members is collected for benefit of all the members and to foster society's objectives.*
- 2.5 *Applicant, in support of the applicability of the principle of mutuality in its case, are relying on the following decisions:-*
- i. Hon'ble Jharkhand High court in case of **Ranchi Club Ltd. v. Chief Commissioner**;*
  - ii. Hon'ble Mumbai CESTAT in case of **Cricket Club of India Ltd. v. Commr of Service Tax**;*
  - iii. Hon'ble Gujarat High Court in the case of **Sports Club of Gujarat Ltd v. UOI**;*
  - iv. Hon'ble Supreme court in case of **STATE OF WEST BENGAL & ORS Vs. M/S CALCUTTA CLUB LTD / RANCHI CLUB LTD**;*
  - v. Hon'ble Mumbai CESTAT in case of **M/s Tahnee Heights CHS Ltd Vs. Commissioner of CGST, Mumbai South***
- 2.6 *Since the concept of mutuality was upheld by Larger Bench of Hon'ble Supreme Court during the service tax regime, the same principle will also be applicable in the GST regime, as there is no change in the legal position. Further, there is nothing contrary to the above decision of Hon'ble*

Apex Court in the case of *M/s Calcutta Club Ltd* and as per Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all Courts within the territory of India.

2.7 Applicant states that under service tax there was a deeming clause i.e. "An unincorporated association or a body of person, as the case may be, and a member thereof shall be treated as distinct person". The said clause is absent under GST. The intent in GST was never to treat society and members are separate persons.

2.8 The applicant also places reliance on the decisions of the Hon'ble Maharashtra Advance Appellate Authority in following cases:-

- *Rotary Club of Mumbai Queens Necklace* (2020) 6 TMI 627
- *Lions Club of Poona Kothrud* (2019) 11 TMI 420
- *M/s Rotary Club of Mumbai Western Elite* (2019) 10 TMI 452.

2.9 Also, from the above observations of the Apex Court and analysis of the provisions under the Act, it can be concluded that in absence of 2 separate persons and based on the principle of mutuality the receipts collected from members is outside the purview of GST.

2.10 Further, if at all your honour is of the contrary view that the impugned transaction is leviable to GST, we request your honour to distinguish the applicability of above ratio of Hon'ble Supreme court relied upon, else it will tantamount to contempt of court.

**II. Without prejudice to above, contribution upto an amount of Rs.7,500/- from members is exempt from payment of GST in view of entry 77 of notification 12/2017-CTR.**

2.11 Entry 77 of Notification 12/2017-CTR provides for exemption from payment of GST for a contribution received from a member upto Rs.7,500/- per month per member. Thus in such a case GST shall not be leviable up to an amount of Rs.7,500/- per month per member.

2.12 Applicant is collecting contribution for the services / goods like that of water, electricity, repairs and maintenance, administrative expenses etc. which are incurred for the maintenance and upkeep of the common area and amenities used by the members.

2.13 MOF vide circular no. 109/28/2019-GST dated 22nd July, 2019 in Para 5 has clarified that exemption under entry 77(c) shall be applicable only if contribution is upto Rs.7,500/ and if it is more than Rs.7,500/- then entire contribution shall be leviable to GST.



2.14 Clarification given by above circular is contrary to the exemption notification. In applicant's view, contribution only in excess of Rs. 7,500/- per member per month is leviable to GST. When the words used in exemption entry draws literal interpretation, restricted meaning given by a circular to the same is non-est in law. The exemption entry clearly provides that "upto an amount of Rs.7,500/- per month per member" there would be no leviability of GST on the same. Drawing legislative intent from the erstwhile service tax law it is beyond doubt that in case of monthly contribution from member exceeds Rs. 7,500/ then it is only differential amount in excess of Rs. 7,500/- is leviable to GST.

**III. Supplies of goods / services not leviable to GST or exempted or nil/ 0% rated shall not be counted while determining the exemption of Rs. 7,500/- per month per member**

2.15 The applicant submits that procurement of goods / services which are otherwise not leviable to GST (including NIL / 0% rate of tax), shall not form part of value for this exemption limit of Rs.7,500/-. In other words, the applicant collects share from the members towards supplies like water charges paid to MCGM, electricity charges paid to MSEB and property tax which should not be included in computing value for the exemption limit of Rs.7,500/- per month per member. Reliance is also placed on FAQ's on levy of GST on supply of services to the Co-operative society- reg dated 5th September, 2017 issued by CBIC.

**IV. Amount collected towards sinking building repair fund etc., shall not liable to tax as they are in nature of deposit.**

2.16 The basic idea to collect amounts against sinking fund, building repair fund, education and election fund to meet the future or unplanned major expenditure requirements, is to avoid a larger contribution in one installment on a later date. These funds are only used for a purpose as prescribed under bye-laws. The said contributions are in the nature of deposit, used for a specific purpose and not in relation to procurement of any goods/service in particular.

2.17 In common parlance, the term "deposit" means to place or transfer money to another party for safekeeping or as pledge and not for any specific activity/ job. Similarly, the term "fund" means a sum of money saved or made available for a particular purpose.

2.18 The proviso to clause (31) of Section 2 of CGST Act 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. Therefore amounts collected towards Repair/ Sinking Fund etc., do not form part of consideration towards supply of services at the time of collection and is

towards future uncertain supply of service and accordingly gets applied as consideration towards supply of services only at the time of actual supply of services and hence is not liable to GST, at the time of collection.

**V. Without prejudice to above, if water charges recovered are liable to GST then rate of GST shall be nil in view of entry 99 of notification 2/2017-ctr under HSN Code 2201.**

2.19 Applicant maintains a pumping and a storage system, to supply water to each flat. The water charges paid by applicant to MCGM, are recovered from the members. Also, applicant has inbuilt sewerage treatment plant by which the waste water generated in house is treated and then re-used for non-potable purposes such as toilet flushing etc.

2.20 Water qualifies as goods as defined under Section 2(52) of the CGST Act. Further, the Applicant procures the water from MCGM and supplies the water 'as such' to the members of the society. The water supplied by the Applicant is normal potable water supplied by MCGM and treated water from STP Plant. In view of entry 99 of above notification 2/2017-CTR supply of water (including supply of water treated in STP) by the applicant to society shall be charged at NIL rate of GST i.e. is exempted from levy of GST.

**VI. ITC is eligible on heavy repairs and maintenance expenditure incurred, which are not capitalized in the books of accounts**

2.21 The applicant society proposes to incur expenditure on repairs and maintenance of the civil structure of building and its premises to improve the dilapidated condition of the civil structure. The said expenditure shall be made from the earmarked Repairs/ Sinking Fund collected from the members on regular basis and shall not lead to creation of any new asset for the society or its members and therefore they do not intend to capitalize said expenditure incurred on repairs and maintenance in their books of accounts.

2.22 Section 17(5) of the CGST Act, states that input tax credit in respect of works contract services for construction of immovable property shall be restricted only to the extent the same is capitalized in the books of accounts and not otherwise. Therefore, applicant is eligible to avail the ITC of GST paid on the said repairing expenditure u/s 16 of CGST Act.

**Additional Submissions dated 20.10.2021:-**

The applicant reiterated its submissions made earlier and have submitted that:

2.23 Recently, Hon'ble Madras High Court in case of M/s Greenwood Owners Association has held that clarification in Circular 109/28/2019-GST is contrary to the express language of the Entry 77



and shall stand quashed. It stated that the plain words employed in Entry 77 being, 'upto' an amount of 7,500/- can thus only be interpreted to state that any contribution in excess of the same would be liable to tax - the term 'upto' hardly needs to be defined and connotes an upper limit. It is interchangeable with the term 'till' and means that any amount till the ceiling of 7,500/ would exempt for the purposes of GST.

**03. CONTENTION – AS PER THE CONCERNED OFFICER:**

The jurisdictional/concerned officer has not made any submissions

**04. HEARING**

4.1 Preliminary e-hearing in the matter was held on 10.08.2021. Authorized representatives of the Applicant, Shri. Rajiv Luthia, learned C.A and Shri. Atul Mandavgane, Secretary were present. The Concerned Nodal Officer was absent. The Authorized representative made oral submission with respect to admission of their application.

4.2 The application was admitted and called for final hearing on 29.10.2021. Shri. Rajiv Luthia, learned C.A; and Authorized Representative Shri Jaibrat Deb, Society member and Shri. Atul Mandavgane, Secretary appeared and made oral/written submissions. Jurisdictional Officer was absent.

4.3 We heard the matter.

**05. OBSERVATIONS AND FINDINGS:**

5.1 We have perused the documents on record, facts of the matter and submissions made by the applicant. The jurisdictional/concerned officer has neither appeared for the hearings nor has made any submissions in the matter.

5.2 M/s Mahindra Splendour Co-operative Housing Society Ltd, the Applicant is a housing society located at Bhandup, Mumbai which manages, maintains and administers the society's property and raises funds for achieving the objects of the society, as provided in its Bye-Laws. The funds are raised by collecting contributions/charges from members of the society which include: (a) Property taxes, (b) Maintenance charges, (c) Water and electricity charges, (d) Sinking Fund, Building repair Fund, etc. To manage and maintain its property, the applicant procures goods and services from third party vendors.

We now deal with the questions raised by the applicant as under:-

5.3.1 **Question No. 1:-** Whether the applicant is liable to pay GST on the contribution received from its members?

- 5.3.2 The applicant has submitted that the society and its members are not distinct persons and on the principle of mutuality since they are one and same person, the impugned transactions between the applicant society and its members are not liable to tax under the provisions of the GST Laws.
- 5.3.3 The applicant has relied upon a number of decisions passed by the various authorities and the Hon'ble High Courts and the Hon'ble Supreme Court in service tax matters, to support their contention that the applicant's transactions with its members are not taxable under the provisions of the GST Act. Further, in their submissions the applicant has also made a comment that this authority may distinguish the applicability of the ratios of Hon'ble Supreme court ruling relied upon, failing which it will tantamount to contempt of court.
- 5.3.4 Under the GST regime, the taxable event which attracts the levy of GST is the 'supply' of goods or services, in terms of Section 9 of the CGST Act. Under the GST law, the scope of what constitutes 'supply' is stated in Section 7 of the CGST Act. 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 activities or transactions inter se shall be deemed to take place from one such person to another;"*
- 5.3.5 The amendment mentioned above has received the assent of the President of India on the 28<sup>th</sup> 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.
- 5.3.6 Section 2(102) of the CGST Act defines "services" to mean anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged. The activities performed by the Applicant for ensuring the maintenance and upkeep of the society complex by procuring the services and goods from third parties, benefits every member of the Society and hence it can be said that there is a service rendered by the Applicant to its members.



5.3.7 To be taxable under GST laws, the services must be supplied in the course or furtherance of their business. The term 'business' is defined under Section 2(17) of the CGST Act and includes,-

.....

e) 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;

.....

5.3.8 Clause (e) of the Business definition is relevant and it is clear from the said clause that the activity of providing facilities or benefits by an association to its members for a subscription is a business under GST Act. Hence the transactions between the association and its members is a service.

5.3.9 Further, Section 2(31) of the CGST Act states that 'Consideration' in relation to the supply of goods or services 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, 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, whether or not voluntary, in respect of, in response to, or for the inducement of, the supply of goods or services, 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 the deposit as consideration for the said supply;

5.3.10 In the instant case, the monthly contribution made by the members to the housing society/Association is in return for receiving the services of the Association in ensuring the maintenance and upkeep of the residential complex. The money collected by the Appellant from its members is used to procure services and goods from a third party and provide the benefits of such procured goods and services to the members of the association. Under GST, the term 'person' has been defined in Section 2(84) of the CGST Act, 2017, to include an 'individual' as well as an 'association of persons or a body of individuals, whether incorporated or not. Therefore, the individual apartment owners who are members of the Association are beneficiaries and the contributions made by them is to be considered as consideration for the services received by them.

5.3.11 Therefore, in view of the above, we find that the applicant society and its members are distinct persons and the various charges received by the applicant 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.

5.3.12 The Applicant has relied upon the Supreme Court's decision in the case of State of West Bengal & Ors vs Calcutta Club Ltd (Civil Appeal No 4184/2009) wherein it is stated that supplies made to its members by the member associations, both incorporated as well as unincorporated, are governed by the principle of mutuality and therefore they cannot be charged to tax, be it as tax on sale of goods or as a tax on supply of service. We find that the Hon'ble Supreme Court has decided on two issues relating to taxability of sale of goods and provision of services by member's club to their members.

5.3.13 With respect to services, we find that the decision of the Supreme Court was rendered in the context of the provisions of the Finance Act, 1994 under which, the taxable event in terms of Section 66B was on services 'provided or agreed to be provided by one person to another'. Under GST, the taxable event is the "supply" of goods or services or both. As already mentioned above, the activities undertaken by the applicant are covered under the amended definition of 'supply'. Further, under the GST laws, the term 'business' has been specifically defined in Section 2(17) of the CGST Act to include provision by a club, association, society or any such body (for a subscription or any other consideration) of facilities or benefits to its members. Thus, there is a marked difference in the concept of the levy between the Finance Act and the CGST Act. In terms of the Finance Act, it was sufficient that a service was rendered by one person to another for a consideration in the taxable territory for the levy of service tax to be attracted. However, under GST, the supply of the service should necessarily be in the course of or furtherance of business and 'business' has been defined to include provision by a club, association, society or any such body which provides facilities or benefits to its members for a subscription.


5.3.14 The doctrine of mutuality was examined by the Supreme Court in the context of the Sales Tax law. However, the amended definition of Section 7 has put an end to the issue of the doctrine of mutuality in the cases of registered societies like the applicant. According to the amended definition the applicant and its members are to be treated as distinct persons. Hence, we hold that there is a supply of service by Applicant to its members and the same is taxable under GST.



5.3.15 We observe that all the case laws relied upon by the applicant pertain to service tax matters which have been raised prior to the introduction of the Goods and Services Tax Act. We also 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.

5.4.1 **Question No. 2:-** If yes, whether the applicant can avail the benefit of exemption under Entry No. 77 of Notification No. 12/2017-CTR dated 28.06.2017 for the value upto Rs.7,500/- per month per member and in case the said monthly contribution exceeds Rs. 7,500/- per month, then GST is leviable only on differential value in excess of Rs. 7,500/.

5.4.2 The relevant entry of the GST Notification is extracted below:



SI No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of services	Rate (per Cent)	Condition
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 exempt from the levy of Goods and services Tax or (c) Up to 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

5.4.3 The exemption as per the entry 77 of the Notification No 12/2017 CT (R) is available only when a member's contribution per month is upto an amount of Rs 7,500/-. A member who contributes an amount which is more than Rs 7,500/-, will not be eligible for the exemption under entry No 77 and the entire contribution amount will be liable to be taxed. Hon'ble Supreme Court of India,

Constitution Bench of Five Judges in the case of Commissioner of Customs (Import) Mumbai Vs. M/s Dilip Kumar and Company and Ors (Civil Appeal No. 3327 of 2007) has held that **the benefit of ambiguity in exemption notification cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue/state**. Exemption notifications are subject to strict interpretation. The Circular No. 109/28/2019-GST dated 22.07.2019 issued by the CBIC only clarifies this position.

5.4.4 The applicant has also cited the recent ruling of the **Hon'ble Madras High Court in case of M/s Greenwood Owners Association (2021 (7) TMI 591)** wherein it is held that above clarification in Circular 109/28/2019-GST is contrary to the express language of the Entry 77 and shall stand quashed. It stated that the plain words employed in Entry 77 being, 'upto' an amount of 7,500/- can thus only be interpreted to state that any contribution in excess of the same would be liable to tax - the term 'upto' hardly needs to be defined and connotes an upper limit. It is interchangeable with the term 'till' and means that any amount till the ceiling of 7,500/ would exempt for the purposes of GST.

5.4.5 We find that the department has challenged the said decision of the Hon'ble Madras High Court before the Hon'ble Division Bench of Madras High court and Hon'ble Division Bench has issued stay order to the said decision. And, therefore, in our view the matter has yet not been settled.

5.4.6 In view of the above, we hold that a member who contributes an amount which is more than Rs 7,500/-, will not be eligible for the exemption under entry No 77 and the entire contribution amount is liable to be taxed, contribution may be by whatever name called.

5.5.1 Question No. 3:- Whether the applicant is liable to pay GST on amount collected from its members towards: a) Sinking Fund; b) Building Repair Fund and c) Election & Education Fund.

5.5.2 The applicant has submitted that, the amounts collected against sinking fund, building repair fund, education and election fund are to meet the future or unplanned major expenditure requirements, and to avoid a larger contribution in one installment on a later date if required and which can be gathered in relatively small portion on regular basis from the members. The applicant has further submitted that, the said fund is collected for a specific purpose as prescribed under bye-laws and not in relation to procurement of any goods/service in particular and it is in the nature of deposit. The applicant has also submitted that, the said '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 for example, in the instant case the repair/ sinking fund so collected



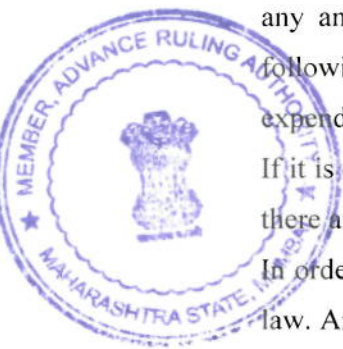
is the amount collected towards the future uncertain supply of service and accordingly gets applied as consideration towards supply of services only at the time of actual supply of services.

5.5.3 Whereas the applicant has stated that the said funds collected, are not in relation to procurement of any goods/service in particular they have also submitted that the amounts in the said fund gets applied as consideration towards supply of services only at the time of actual supply of services. According to the applicant there is a supply of services in the instant case and the collected fund gets used accordingly for provisions of such services.

5.5.4 Applicant has submitted that, the proviso to Section 2(31) of the CGST Act states 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 the deposit as consideration for the said supply.

5.5.5 We find that, the amount towards sinking/repair fund is collected as per percentage fixed in its bye-laws and as per the various circulars issued from time to time by the Registrar of Co-operatives and as per the provisions of the Co-operative Societies Act. The society cannot collect any amount as sinking fund as it deems fit, but the fixed amount is collected as per or by following the provisions contained in its byelaws. So it (such collection) has force of law. The expenditure of this amount is subsequent event. So collection per se, cannot be termed as deposit. If it is deposit, then it can be refunded. The applicant has not produced any evidence to show that there are instances when such collected amounts are returned back to members after its collection. In order to collect deposit by co-operative society, the society has to follow certain procedure of law. Anyone cannot simply collect amounts as deposit. The applicant has not produced any proof as to what procedure was followed while collecting such deposit, whether in balance sheet said amounts are shown as deposit collected individual name wise, what is the amount of interest paid towards the deposit etc. Hence, amount collected towards sinking/repair fund is nothing but collection of certain amount as maintenance advance for overall maintenance of society. Hence, the said amount is liable to tax.

5.5.6 We also refer to the decision dated 04/08/2021 of this very Authority passed in the case of M/s. FOREST COUNTY CO-OPERATIVE HOUSING SOCIETY LIMITED wherein, it is already held that contribution towards sinking fund is liable to GST. The fund once collected becomes the property of the society. The individual member does not have right over the said money. So to call it as a deposit will be misnomer. It is a charge by the society for specific purpose and said charge is authorized by the general body and is as per the other provisions of the co-operative law. Some-times it may be a percentage of maintenance amounts. Similarly with regard to



question regarding election and education fund collected by the applicant, we find that the same are liable to tax.

5.6.1 **Question No. 4 :-** Whether the supplies otherwise exempted from tax or charged at Nil rate shall be included in value in computing threshold amount of Rs.7, 500/- per month per member under entry no. 77 of Notification no.12/2017-CTR dated 28th June, 2017, for determining the tax liability?

5.6.2 Notification No.12/2017 -Central Tax (Rate) dated 28.06.2017 at Sr. No.77 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) .....

(b) for the provision of carrying out any activity which is exempt from the levy of Goods and service 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.

5.6.3 The applicant has submitted that certain statutory dues such as property tax, electricity charges etc., form part of the monthly maintenance bill raised by the society on its members.

5.6.4 As per clause (b) in Sr No 77 of said Notification, exemption is available to housing societies for provision of carrying out any activity which is exempt from the levy of Goods and service Tax assuming that a housing society is a non-profit registered entity; and property tax and electricity, etc. are exempt from the levy of GST. Thus, charges, collected by the society on account of property tax, electricity charges and other statutory levies would be excluded while calculating the limit of Rs. 7,500/-.

5.7.1 **Question No. 5 :-** Whether contribution collected to defray expenses for supply of following types of water are covered under entry 99 of Notification 2/2017-CTR dated 28th June, 2017 i.e. under HSN Code 2201 and attracts NIL rate of tax?

- a. For Potable water received from MCGM u/s 169 of Mumbai Municipal Corporation Act 1888, which is supplied/distributed to the flats of the Members through an elaborate storage and pumping system.
- b. Flush Water (Non Potable water) generated from Sewage treatment plant installed in the Society premises and supplied to all the flats for use in toilet flushing.



5.7.2 Notification 2/2017-CTR dated 28th June, 2017 pertains to goods supplied and is not applicable to services supplied. The applicant in the subject case is not selling goods per se. Rather it is supplying potable water through storage and pumping system. Whereas the applicant is supplying Flush Water only after treatment carried out in its treatment plant. In both the cases water per se is not sold. The applicant is providing the services of supplying water to its members. The applicant would be charging the members not on the quantity of water supplied but on the process undertaken to supply the water which is nothing but rendering of services. Thus, the provisions of entry 99 of Notification 2/2017-CTR dated 28th June, 2017 is not applicable in the instant case.

5.8.1 **Question No. 6 :-** Whether input tax credit can be claimed on the expenses incurred for heavy repairs and maintenance of the society building premises and which are not capitalized in books of accounts?

5.8.2 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.

5.8.3 Further, the Section 17 of CGST 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 Act, 2017 in this regard is reproduced below:-

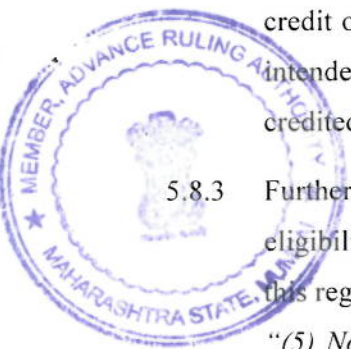
*“(5) Notwithstanding anything contained in sub-section (1) of section 16 and subsection (1) of section 18, input tax credit shall not be available in respect of the following, namely:-*

*(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 re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property;”*

5.8.4 The applicant has submitted that it proposes to incur expenditure on repairs and maintenance of the civil structure of building and its premises and the said expenditure shall be made from the



earmarked Repairs/ Sinking Fund collected from the members on regular basis and shall not lead to creation of any new asset for the society or its members and therefore the applicant do not intend to capitalize the said expenditure incurred on repairs and maintenance in their books of accounts.

- 5.8.5 In view of the provisions of Section 17 (5) mentioned above, input tax credit generally is not available for construction, reconstruction, renovation, addition, alteration or repair of an immovable property even when such goods or services or both are used in course or furtherance of business. However, the limitation in such a situation is, extent of capitalization. The activity of repair and maintenance which encompasses supply of goods for a construction activity is of immovable nature. The provisions of ITC for the said supply of goods is covered under Section 17(5)(d) read with explanation mentioned therein. Therefore, ITC on GST paid on such goods as mentioned above will not be available to the extent of capitalisation on account of construction service in respect of the concerned immovable property as mentioned in Explanation of Section 17(5) of the CGST Act, 2017.

5.8.6 The applicant is engaged in club or association supply of service as a business and the construction service is used for furtherance of the said business. Thus the supply rendered by the applicant is also covered under Section 17(5)(d) read with explanation mentioned therein. ITC on GST paid on such supply of service as mentioned above will not be available *to the extent of capitalisation of the said service*. Any expenditure benefit which is likely flow over a few years needs to be capitalized, so no ITC is available for such expenditure. Major repairs involve large expenditures that extend the useful life of an asset. For example, the replacement of a building roof is considered a major repair if it allows the building to be used beyond its normal operating life or, if the engine/main motor in a lift is replaced, thereby results in extending the lifespan of the said lift equipment. In accounting, major repairs are capitalized as assets and depreciated over time. Minor repairs do not extend the useful life of an asset, and so are charged to expense as incurred. Proper facts regarding nature of work and whether benefits of such major repair shall flow over the years or not; are not produced, so no further comments in this respect can be made.

- 06 In view of the above discussions, we pass the following order

#### **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 1:-** Whether the applicant is liable to pay GST on the contribution received from its members?

**Answer: -** Answered in the affirmative.

**Question 2:-** If yes, whether the applicant can avail the benefit of exemption under entry no. 77 of Notification no.12/2017-CTR dated 28th June, 2017 for the value upto Rs.7, 500/- per month per member and in case the said monthly contribution exceeds Rs. 7,500/- per month, then the GST is leviable only on differential value in excess of Rs. 7,500/-?

**Answer: -** In view of the discussions made above, in case the said monthly contribution exceeds Rs. 7,500/- per month, then the GST is leviable on the entire value of the monthly contribution collected.

**Question 3:-** Whether the applicant is liable to pay GST on amount collected from its members towards the following accounts as per the Bye laws:

- a. Sinking Fund
- b. Building Repair Fund
- c. Election and Education Fund

**Answer: -** GST is applicable as discussed above.

**Question 4:-** Whether the supplies otherwise exempted from tax or charged at Nil rate shall be included in value in computing threshold amount of Rs.7, 500/- per month per member under entry no.77 of Notification no.12/2017-CTR dated 28th June, 2017, for determining the tax liability?

**Answer:-** Thus, charges, collected by the society on account of property tax, electricity charges and other statutory levies would only be excluded while calculating the threshold limit of Rs. 7,500/-.

**Question 5:-** Whether contribution collected to defray expenses for supply of following types of water are covered under entry 99 of Notification 2/2017-CTR dated 28th June, 2017 i.e. under HSN Code 2201 and attracts NIL rate of tax?

- a. For Potable water received from MCGM u/s 169 of Mumbai Municipal Corporation Act 1888, which is supplied/distributed to the flats of the Members through an elaborate storage and pumping system.

- b. Flush Water (Non Potable water) generated from Sewage treatment plant installed in the Society premises and supplied to all the flats for use in toilet flushing.

**Answer: -** The provisions of entry 99 of Notification 2/2017-CTR dated 28th June, 2017 is not applicable in the instant case.

**Question 6:-** Whether input tax credit can be claimed on the expenses incurred for heavy repairs and maintenance of the society building premises and which are not capitalized in books of accounts?

**Answer: -** In view of the discussions made above, ITC on the expenses incurred for heavy repairs and maintenance of the society building will not be available to the extent of capitalisation as mentioned in Explanation of Section 17(5) of the CGST Act, 2017.



**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. The 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, 15<sup>th</sup> floor, Air India Building, Nariman Point, Mumbai – 400021. Online facility is available on [gst.gov.in](http://gst.gov.in) for online appeal application against order passed by Advance Ruling Authority.