

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		27AAAF6419K1ZL
Legal Name of Applicant		M/s. FOREST COUNTY CO OPERATIVE HOUSING SOCIETY LIMITED
Registered Address/Address provided while obtaining user id		SR No 40,41 59 Forest County Ground Near EON IT PARK Kharadi, Pune 411014
Details of application		GST-ARA, Application No. 65 Dated 26.11.2019
Concerned officer		PUN-VAT-C-401,Pune Division
Nature of activity(s) (proposed/present) in respect of which advance ruling sought		
A	Category	Service Provision
B	Description (in brief)	Applicant is an unincorporated body and a Non Profit Entity Register under The Maharashtra co-op soc.Act,1960
Issue/s on which advance ruling required		(ii) Applicability of a notification issued under the provisions of this Act (v) Determination of the liability 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. FOREST COUNTY CO-OPERATIVE HOUSING SOCIETY LIMITED**, the applicant, seeking an advance ruling in respect of the following questions.

- Applicability of GST on Repair and maintenance fund and sinking fund***

2. *Whether or not exemption Limit of Rs.7500/- per member is applicable on above two components of maintenance bill by the housing co-operative Society to members of society.*

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, as reproduced verbatim, could be seen thus-

"Total bill raised by a housing Co-operative society if for example. Rs. 6500/- per month per member, break up of Rs. 6500/- is as below:

1) Repair and maintenance fund: - Rs. 1500/-

2) Sinking Fund: - Rs. 1500 /-

3) Other Maintenance charges: - Rs. 3500/-

Total Maintenance Bill (1+2+3) - Rs. 6500/-

Is society liable to collect any GST in above scenario. Or since total maintenance bill is less than Rs. 7500/-, no GST is required to be charged and collected by housing co-operative society?

A. Statement of relevant facts having a bearing on the questions (s) raised.

Forest County Housing Co-operative society is an unincorporated body and a non-profit entity registered under THE MAHARASHTRA CO-OPERATIVE SOCIETIES ACT, 1960. It is registered under GST since the aggregate turnover is more than 20 lakhs. It collects Maintenance charges from its members on a quarterly basis for providing services and goods for the common use of its members.

Monthly bill (including Repair and Maintenance fund and Sinking Fund) is less than Rs. 7500/- per month per member.

B. Statement containing the Applicant's interpretation of law and /or facts.

Our interpretation of law with reference to "Circular No. 109/28/2019- GST New Delhi, the 22nd July, 2019"

Compliance requirements for housing societies under GST: *If the turnover of housing society is above 20 lakhs, it needs to take registration under GST in terms of Section 22 of the CGST Act, 2017. However, taking registration does not mean that the housing society has to compulsorily charge GST in the monthly maintenance bills raised on its members. Notification No.12/2017 -Central Tax (Rate) dated 28.06.2017 at sr.no.77 provides for the following exemption to housing societies:*

“In view of the provision contained, a society may be registered under GST, however if the monthly contribution received from members is less than Rs.7500/- (and the amount is for the purpose of sourcing of goods and services from a third person for the common use of its members), no GST is to be charged by the housing society on the monthly bill raised by the society. However, GST would be applicable if the monthly contribution exceeds Rs.7, 500/-“.

Forest county housing co-operative society (FC) status:

Our turnover is more than 20 lakhs and hence we are required to be registered under GST law and which we are compliant with.

Maintenance Charges per month per member is within Rs. 7,500/- and hence FC is not required to collect any GST.

All the charges including Sinking Fund and Repair and Maintenance Fund are collected from members for providing services and goods for common use of its members in a housing society or a residential complex.

So in our view, there is no liability on Forest County to collect any GST from its members.

03. CONTENTION – AS PER THE CONCERNED OFFICER:

The submissions, as reproduced verbatim, could be seen thus-

Officer Submission dated 07.01.2020

Question; - Total bill raised by a housing Co-operative society if for example. Rs. 6500/- per month per member, break up of Rs. 6500/- is as below:

- 1) Repair and maintenance fund: - Rs. 1500/-
 - 2) Sinking Fund: - Rs. 1500 /-
 - 3) Other Maintenance charges: - Rs. 3500/-
- Total Maintenance Bill (1+2+3) - Rs. 6500/-

Is society liable to collect any GST in above scenario. Or since total maintenance bill in less than Rs. 7500/-, no GST is required to be charged and collected by housing co-operative society?

Answer: - As per circular no. 109/28/2019-GST dated 22/07/2019 (F No 332/04/2017-TRU Govt of India Ministry of Finance, Department of Revenue (Tax research Unit) in the Sr. No 1 and 2 which is mentioned as follows.

SI No.	Issue	Clarification		
1.	Are the maintenance charges paid by residents to the Resident Welfare Association (RWA) in a housing. Society exempt from GST and if yes, is there an upper limit on the amount of such charges for the exemption to be available?	Supply of service by RWA (unincorporated body or a non-profit entity registered under any law) to <u>its own members by way of reimbursement of charges or share of contribution up to an amount of Rs. 7500 per month per member</u> for providing services and goods for the common use of its members in a housing society or a residential complex are exempt from GST, Prior to 25th January 2018, the exemption was available if the charges or share of contribution did not exceed Rs 5000/- per month per member. The limit was increased to Rs. 7500/- per month per member with effect from 25th January 2018: (Refer clause (c) of Sl. No. 77 to the notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 as amended vide notification No. 2/2018- Central Tax (Rate), dated 25.01.2018)		
2.	ARWA has aggregate turnover of Rs.20 lakh or less in a financial year. Is it required to take registration and pay GST on maintenance charges if the amount of such charges is more than Rs. 7500/- per month per member?	No, if aggregate turnover of an RWA does not exceed Rs.20 Lakh in a financial year, it shall not be required to take registration and pay GST even if the amount of maintenance charges exceeds Rs. 7500/- per month per member. RWA shall be required to pay GST on monthly subscription/ contribution charged from its members, only if such subscription is more than Rs. 7500/- per month per member and the annual aggregate turnover of RWA per by way of supplying of services and goods is also Rs. 20 lakhs or more.		
		Annual Turnover of RWA	Monthly maintenance Charge	Whether Exempt?
		More than Rs. 20 Lakhs	More than Rs. 7500 /-	NO
			Rs. 7500/- or less	Yes

		Rs. 20 Lakhs or less	More than Rs. 7500 /-	Yes
			Rs. 7500/- or less	Yes

04. HEARING

- 4.1 Preliminary hearing in the matter was held on 07.01.2020. Sh.Avinash Dalal, Smt. Meeta Mangal appeared from applicant side and requested for admission of their application. The Jurisdictional Officer, Sh. Prashant Falak, State Tax Officer, Nodal-4, Pune also appeared.
- 4.2 Final Online e-hearing was held on 20.07.2021. The Authorized representatives of the applicant, Shri. Sandeep Bedekar, CA who is also a Member of Management Committee of society was present. Jurisdictional officer Shri. Prashant Falak, STO, PUN-VAT-C-401 Nodal-4, Pune was present. The Authorized representative made oral submissions. Jurisdictional officer also referred to his written submissions as above.
- 4.3 Heard both sides.

05. OBSERVATIONS AND FINDINGS:

- 5.1 We have gone through the facts of the case, documents on record and submissions made by both, the applicant as well as the jurisdictional officer.

- 5.2 M/s Forest County Housing Co-operative society, the applicant, is an unincorporated body and a non-profit entity registered under THE MAHARASHTRA CO-OPERATIVE SOCIETIES ACT, 1960 has submitted that it is registered under GST since its aggregate turnover is more than 20 lakhs. It collects Maintenance charges from its members on a quarterly basis for providing services and goods for the common use of its members and issues Monthly bill (including Repair and Maintenance fund and Sinking Fund) which is less than Rs. 7500/- per month per member.

- 5.3 The Applicant is of the view that having obtained registration does not mean that the housing society has to compulsorily charge GST in the monthly maintenance bills raised on its members and have cited the provisions of Notification No.12/2017 -Central Tax (Rate) dated 28.06.2017, which, at Sr. No.77 provides for the following exemption to housing societies, *"a society may be registered under GST, however if the monthly contribution received from members is less than Rs.7500/- (and the amount is for the purpose of sourcing of goods and services from a third person for the common use of its members), no GST is to be charged by*

the housing society on the monthly bill raised by the society. However, GST would be applicable if the monthly contribution exceeds Rs. 7, 500/-."

5.4 As per the submission of the Applicant, their Gross Turnover is more than 20 lakhs and the Maintenance Charges per month per member is within Rs. 7,500/- and hence it is not required to collect any GST from its members.

5.5 We find from the written submissions made that, the applicant has not challenged any provision of the notification nor raised any question of laws, in the application filed. The applicant has asked certain queries. The issues are very specific i.e. applicability of GST on Repair and maintenance fund and sinking fund and the query regarding exemption limit of Rs. 7500/- per member.

5.6 As per the provisions of section 7 of CGST ACT, 2017, the Applicant 'co-operative housing Society' and its members are to be considered as separate persons. It means, both are distinct entities. It is to be decided whether GST is applicable on the value of charges for the aforesaid events of supply charged by applicant in monthly bills raised on its members. We find that, the applicant is engaged in "supply of services" to its members and collects the consideration against these supplies. The supply of services are as per the bye laws of the 'THE MAHARASHTRA CO-OPERATIVE SOCIETIES ACT, 1960'.

5.7 As per the provisions of GST laws, 'Repair and maintenance fund and sinking fund' are covered under the "services" as per the provisions of the GST Act. Hence, such services provided by the applicant to its members is liable to tax subject to crossing the threshold turnover limit and as per the provisions of Notification No.12/2017 -Central Tax (Rate) dated 28.06.2017.

5.7 Circular No. 109/28/2019-GST dated 22/07/2019 (F No 332/04/2017-TRU Govt Of India, Ministry of Finance, Department of Revenue (Tax research Unit) is reproduced as under:-

SI No.	Issue	Clarification
1.	<i>Are the maintenance charges paid by residents to the Resident Welfare Association (RWA) in a housing Society exempt from GST and if yes, is there</i>	<i>Supply of service by RWA (unincorporated body or a non-profit entity registered under any law) to <u>its own members by way of reimbursement of charges or share of contribution up to an amount of Rs. 7500 per month per member</u> for providing services and goods for the common use of its members in a housing society or a residential complex are exempt from GST,</i>

	<i>an upper limit on the amount of such charges for the exemption to be available?</i>	<i>Prior to 25th January 2018, the exemption was available if the charges or share of contribution did not exceed Rs 5000/- per month per member. The limit was increased to Rs. 7500/- per month per member with effect from 25th January 2018: (Refer clause (c) of Sl. No. 77 to the notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 as amended vide notification No. 2/2018- Central Tax (Rate), dated 25.01.2018)</i>		
2.	<i>A RWA has aggregate turnover of Rs.20 lakh or less in a financial year. Is it required to take registration and pay GST on maintenance charges if the amount of such charges is more than Rs. 7500/- per month per member?</i>	<i>No, if aggregate turnover of an RWA does not exceed Rs.20 Lakh in a financial year, it shall not be required to take registration and pay GST even if the amount of maintenance charges exceeds Rs. 7500/- per month per member. RWA shall be required to pay GST on monthly subscription/ contribution charged from its members, only if such subscription is more than Rs. 7500/- per month per member and the annual aggregate turnover of RWA per by way of supplying of services and goods is also Rs. 20 lakhs or more.</i>		
		<i>Annual Turnover of RWA</i>	<i>Monthly maintenance Charge</i>	<i>Whether Exempt?</i>
		<i>More than Rs. 20 Lakhs</i>	<i>More than Rs. 7500 /-</i>	<i>NO</i>
			<i>Rs. 7500/- or less</i>	<i>Yes</i>
		<i>Rs. 20 Lakhs or less</i>	<i>More than Rs. 7500 /-</i>	<i>Yes</i>
			<i>Rs. 7500/- or less</i>	<i>Yes</i>




- 5.8 A plain reading of the above said circular makes it clear that, it is the intention of the Government, to tax Housing Societies under GST Laws subject to the condition that the reimbursement of charges or share of contribution of the members exceed an amount of Rs. 7500/- per month per member for Supply of service rendered by Resident Welfare Association (unincorporated body or a non- profit entity registered under any law) to its own members. In addition, it is also clarified that if the Gross turnover exceeds the 20 lakhs, but maintenance charges collected are up to or less than Rs.7500/-per member per month, then

no is GST applicable. Further, it is clarified that even in cases in which Turnover of receipt is below 20 lakhs, but maintenance collected exceeds Rs. 7500/-per member per month, no GST is payable. It is seen that, the Government has clarified the eventualities of transactions and has removed the doubts of the taxpayers regarding the applicability of GST.

5.9 The applicant has submitted sample copies of bills/invoices issued against the services provided to its members which are available on record. The said bills/invoices are examined and it shows that applicant has collected charges separately for sinking fund, Repair and maintenance fund, maintenance charges, non-occupancy charges etc in the bills. One bill copy each, submitted for 2BHK, 3 BHK, 3 ½ BHK and 4 1/2 BHK flats on sample basis are kept on record. On perusal of submitted bills, it is seen that the charges are fixed as per the flat are in square feet basis for sinking fund and repair and maintenance fund and further, an amount of Rs.2800/- is charged per flat per month basis for maintenance charges to its members and 10 % of maintenance charges as non-occupancy charges.

5.10 It is a fact that, the applicant has collected charges separately on above said heads in maintenance bills and invoices which were issued to its members. Considering the aforesaid notification and clarification circular issued by TRU, we hold that, if the applicant has collected the charges from its members on the above said supplies up to Rs. 7500/-per member per month basis, then the said supplies would not attract the GST and if the charges collected exceed the Rs. 7,500/- per month, in that case, the GST would be applicable on the total amount recovered (by whatever name called) from its members on their supply of services. This aspect is clarified in the said circular at Sr. No. 5 which is reproduced below:



SI No.	Issue	Clarification
5	<i>How should the RWA calculate GST payable where the maintenance charges exceed Rs. 7500/- per month per member? Is the GST payable only on the amount exceeding Rs. 7500/- or on the entire amount of maintenance charges.</i>	<i>The exemption from GST on maintenance charges charged by a RWA from residents is available only if such charges do not exceed Rs. 7500/- per month per member. In case the charges exceed Rs. 7500/- per month per member, the entire amount is taxable. For example, if the maintenance charges are Rs. 9000/- per month per member, GST @18% shall be payable on the entire amount of Rs. 9000/- and not on [Rs. 9000 - Rs. 7500] = Rs. 1500/-.</i>

5.11 The bills produced by the applicant on sample basis, are reproduced as below:

Sr. No	Invoice No. and date	Period of Bill (Quarterly)	Current Invoice amount (Quarterly) as mentioned in top row of the bill / Monthly value arrived by dividing the total current invoice by the total no of months involved.	Type of Flat
1	20019.2020/1696, dt.24 July 2019	July to sept. 2019	18237=00 / 6079=00	2BHK
2	20019.2020/1224 dt.24 July 2019	July to sept. 2019	21502=00 / 7167=00	3BHK
3	20019.2020/1182, dt.24 July 2019	July to sept. 2019	23558=00 / 7852=00 Here collection exceeds 7500	3 ½ BHK
4	20019.2020/1786, dt.24 July 2019	July to sept. 2019	26288=00 / 8762=00 Here collection exceeds 7500	4 1/2 BHK

5.12 On the perusal of the above said sample quarterly bills and its details, if the total value of charges exceed the limit of Rs. 7500/- per member per month , then the total value of the amount in said bill would be held as taxable to levy GST thereon and GST would be applicable @18%. So in case of the bills at serial number three and four (above) the GST is applicable. For the bills at serial number one and two, GST is not applicable.

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)

NO.GST-ARA- 65/2019-20/B- 42

Mumbai, dt. 04.08.2021

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

Question 1. Applicability of GST on Repair and Maintenance Fund and Sinking Fund.

Answer: - In view of the discussions made above, it is held that GST is applicable on Repair and Maintenance Fund and Sinking Fund.

Question 2. Whether or not exemption limit of Rs.7500/- per month per member is applicable on above two components of maintenance bill by a Housing Co-operative society to members of society.

Answer:- In view of the discussions made above it is held that if the gross amounts collected by the applicant in their bills/invoices, exceed Rs.7500/- then exemption limit of 7500/- is not applicable on two components of maintenance bills as asked in question above. It is explained in para 5.12 and the table mentioned in above order.




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.