

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)

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| ARN No. | AD271119020073H |
| GSTIN Number, if any/ User-id | 27AACAV1748D1ZK |
| Legal Name of Applicant | M/s. VISHAL COOPERATIVE HOUSING SOCIETY LIMITED |
| Registered Address/Address provided while obtaining user id | Society Office, Vishal Cooperative Housing Society Limited, Ground Floor, Sir M V Road, Andheri East, Maharashtra Mumbai 400069 |
| Details of application | GST-ARA, Application No. 75 Dated 03.12.2019 |
| Concerned officer | MUM-VAT-C-713, Nodal-007, Mumbai Division |
| Nature of activity(s) (proposed/present) in respect of which advance ruling sought | |
| A | Category |
| B | Description (in brief) |
| | Service Provision |
| | Vishal Cooperative Housing Society Limited (hereinafter referred to as the society) is cooperative housing society registered on 30 th November 1984. The society has 68 commercial shops, 233 residential flats and 18 garages. The society has various buildings - A, B, C, D, E, F, G, H and I. |
| Issue/s on which advance ruling required | Applicability of a notification issued under the provisions of this Act Determination of time and value of supply of goods or services or both Admissibility of input tax credit of tax paid or deemed to have been paid Determination of the liability to pay tax on any goods or services or both. Whether applicant is required to be registered. |
| Question(s) on which advance ruling is required | As reproduced in para 01 of the Proceedings below. |

NO.GST-ARA- 75/2019-20/B- 83

Mumbai, dt. 02.11.2021

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. VISHAL COOPERATIVE HOUSING SOCIETY LIMITED**, the applicant, seeking an advance ruling in respect of the following questions. The application is as under:

1. *According to circular number 109/28/2019 GST dated 22nd July 2019, Resident Welfare Association (RWA) shall be required to pay GST on monthly subscription contribution charged from its members, only if such subscription is more than INR 7,500 per month per member and aggregate annual turnover of RWA by way of supplying services and goods is also INR 20 Lakhs or more. In case of the society, though annual turnover is more than INR 20 Lakhs, monthly maintenance per month per member is less than INR 7,500. But the society also has 68 commercial shops, 233 residential flats and 18 garages. Hence, the society does not contain only residential flats. In view of this please confirm whether the society can stop paying GST and surrender the registration.*
2. *According to circular number 109/28/2019 GST dated 22nd July 2019 RWAs are entitled to take ITC on GST paid by them on capital goods (generators, water pumps, lawn furniture etc.), goods (taps, pipes, other sanitary and hardware fittings etc.) and input services such as repair and maintenance services. But as per section 17 (5)(c), ITC shall not be available, when works contract services supplied for construction of immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service. Collective reading of notification and section 17(5)(c), gives contradiction picture to the extent of major repair work carried out with respect to immovable property. Hence, the society wants to understand if the registration is to be continued then whether the society can claim ITC on repairs both major as well as minor.*
3. *According to circular number 109/28/2019. GST dated 22 July 2019 RWAs are entitled to take ITC on GST paid by them on capital goods (generators, water pumps, lawn furniture etc.), goods (taps, pipes, other sanitary and hardware fittings etc.) and input services such as repair and maintenance services. The society claims exemption of INR 7,500 available to residential unit and hence, it does not claim ITC on various services availed such as professional fees, bank charges, insurance premium, stationery items purchased, repair and maintenance, security charges, Cable Services etc. Please provide your opinion whether the society can claim ITC on these services either fully or proportionately despite of availing exemption available to residential units.*

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

Submissions made by Vishal Cooperative Housing Society Limited, the applicant, are as under:-

- 2.1 *The applicant society does not charge contribution towards maintenance more than INR 7,500 per member per month (previous limit of INR 5,000 till 25th January 2018) to any commercial shop or residential unit or Garage. In case of **residential flat**, the society does not charge GST on amount collected towards government dues (such as property tax, education fund, etc.), claims exemption towards reimbursement (such as maintenance charges, central service charges, etc.) and charges GST on flat specific contribution (such as repair and maintenance fund, contribution towards sinking fund, interest on arrears, parking charges, etc.). In case of **commercial shop and garages**, society does not charge GST on amount collected towards government dues (such as property tax, education fund, etc.). Society charges GST on reimbursements as well as flat specific contributions without claiming exemption of INR 7,500 per member per month as this exemption is applicable to residential unit only. Further, society also collects GST contribution towards major repair fund. The Society does not claim input tax credit on regular expenses such as professional fees, bank charges, insurance premium, stationery items purchased, repair and maintenance, security charges, etc. The society has claimed proportionate ITC once only pertaining to GST charges on major repair bill received from the contractor.*

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

1. *As per Circular number 109/28/2019 GST dt 22.07.2019, Resident Welfare Associations (RWA) shall be required to pay GST on monthly subscription contribution charged from its members, only if such subscription is more than INR 7,500 per month per member and aggregate annual turnover of RWA by way of supplying services and goods is also INR 20 Lakhs or more. In case of the society, though annual turnover is more than INR 20 Lakhs, monthly maintenance per month per member is less than INR 7,500. **In applicant's view GST should be charged only on Commercial Premises and Residential premises should be able to claim Exemption.***
- 2.2 *According to circular number 109/28/2019 GST dt 22.07.2019 RWAs are entitled to take ITC on GST paid by them on capital goods (generators, water pumps, lawn furniture etc.), goods (taps, pipes, other sanitary and hardware fittings etc.) and input services such as repair and maintenance services. But as per section 17 (5)c, ITC shall not be available, when works*

contract services supplied for construction of immovable property (other than plant and machinery) except whether it is an input service for further supply of works contract service. Collective reading of notification and section 17(5)(c), gives contradiction picture to the extent of major repair work carried out with respect to immovable property. **In applicant's view the society should be able to claim ITC as the society pays GST on output services.**

- 2.3 As per Circular number 109/28/2019 GST dated 22.07.2019 RWAs are entitled to take ITC on GST paid by them on capital goods, goods and input services. The society claims exemption of INR 7,500 available to residential unit and hence, it does not claim ITC on various services availed. **In applicant's opinion, it should be able to claim ALL ITC as the society pays GST on output services.**

APPLICANT SUBMISSION DATED 24.08.2021:-

2.4 **Point number 1 – Surrendering of GST registration**

- According to 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.
- Notification number 12/2017-Central Tax (Rate) dated 28th June 2017 at serial number 77 provides for 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 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 GST or
- c) Up to an amount of Rupees 7,500/- 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.
- In view of the provisions contained at (c) above, if the monthly contribution is less than INR 7,500 per month per member then no GST is to be charged by the housing society on the monthly bill raised by the society.

Applying above provisions of law –

- Applicant society is a cooperative housing society registered on 30.11.1984 having 68 commercial shops, 233 residential flats and 18 garages.
- Total maintenance charged by the society exceeded INR 20 Lakhs and hence it obtained GST registration on 16.10.2017. The break-up of maintenance charges are as follows –

| <i>Particulars</i> | <i>Amount (INR)</i> |
|---------------------------------|---------------------|
| <i>Contribution towards</i> | |
| <i>Maintenance</i> | <i>23,76,345</i> |
| <i>Property tax</i> | <i>17,34,304</i> |
| <i>Interest on arrears</i> | <i>10,69,304</i> |
| <i>Parking charges</i> | <i>6,63,556</i> |
| <i>Central service charges</i> | <i>12,99,600</i> |
| <i>N A Tax</i> | <i>84,000</i> |
| <i>Non occupancy charges</i> | <i>44,846</i> |
| <i>Change of use of charges</i> | <i>1,18,127</i> |
| <i>Total</i> | <i>73,90,082</i> |

Our argument –

- *Though total collection received by way of contribution from members is more than INR 20 Lakhs, contribution towards maintenance per member per month is less than INR 7,500. Hence, the society is not liable to register under GST law. Society should be allowed to surrender GST registration.*
- *Vishal CHS is 'housing society' under section 2(16) of the Maharashtra Co-operative Society Act, 1960. This is irrespective of commercial units or garages situated in housing society. As predominant nature of organisation is housing society, every member including commercial shop and garage should be given benefit of exemption.*
- *In case of commercial shop and garages, society charges GST on full amount including government dues (such as property tax, education fund, etc.). But the basic intension of giving exemption for charging GST on government dues was not to charge tax on tax. Hence, considering intention of lawmakers, in our opinion, GST should not be charged on property tax and other government taxes in case of commercial shops and garages also.*

2.5 Point number 2 – Claiming Input Tax Credit

Relevant legal provisions -

- *As per Circular number 109/28/2019 GST dtd 22.07.2019, RWAs are entitled to take ITC on GST paid by them on capital goods (generators, water pumps, lawn furniture, etc.), goods (taps, pipes, other sanitary and hardware fittings etc.) and input services such as repair and maintenance services.*

- According to section 17(5) of CGST Act, 2017, ITC cannot be availed if works contract services when supplied for construction of immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service.

Applying above provisions of law –

- Society also collects GST contribution towards major repair fund.
- The Society does not claim ITC on regular expenses such as professional fees, bank charges, insurance premium, stationery items, repair and maintenance, security charges, etc.
- The society also incurs major repair work. On this amount, society pays GST to contractor. But due to blocked credit provisions, society fails to claim input tax credit of this amount.
- The society collects GST on Major repair work from members and pays this GST amount to government. For major repair works, the society pays GST on contractor's bill also but does not get ITC on these contractor's bills due to blocked credit provisions. Hence society is hit twice due to blocked credit provisions. This amounts to double taxation.

Applicant's argument –

- The applicant 'housing society' carries out major repair work for maintenance of society which is service provided by the society to its members. Hence the society should be allowed to claim ITC for major repair work carried out for buildings as it is for the furtherance of business of the society.
- Though society claims benefit of exemption of INR 7,500 as explained above, the society should be allowed to claim input tax credit on regular repair and maintenance work and for procuring capital and other goods. Irrespective of nature of expenditure incurred whether capital or revenue, benefit of input tax credit should not be denied to the society.

2.6 Point number 3 – Claiming Input Tax Credit

Relevant legal provisions -

- As per Circular number 109/28/2019 GST dt 22.07.2019 RWAs are entitled to take ITC on GST paid by them on capital goods (generators, water pumps, lawn furniture etc.), goods (taps, pipes, other sanitary and hardware fittings etc.) and input services such as repair and maintenance services.
- According to section 17(2) read with rule 42 and 43 of CGST Rules 2017, where goods or services are used partly for effecting taxable supplies and partly for exempt supplies then the amount of credit as attributable to exempt supplies should be reversed.

Applying above provisions of law –



- In case of residential flat, applicant does not charge GST on amount collected towards government dues (such as property tax, etc.), claims exemption towards reimbursement (such as maintenance charges, etc.) and charges GST on flat specific contribution (such as repair and maintenance fund, sinking fund, interest on arrears, parking charges, etc.).
- In case of commercial shop and garages, society charges GST on full amount including government dues (such as property tax, education fund, etc.). Society charges GST on reimbursements as well as flat specific contributions without claiming exemption of INR 7,500 per member per month as this exemption is applicable to residential unit only.
- Further society also collects GST contribution towards major repair fund and does not claim input tax credit on regular expenses such as professional fees, bank charges, insurance premium, stationery items purchased, repair and maintenance, security charges, etc.
- The society also incurs major repair work. On this amount, society pays GST to contractor. But due to blocked credit provisions, society fails to claim input tax credit of this amount.

Our argument –

- The society should be allowed to claim proportionate input tax credit according to rule 42 and 43 of CGST Rules, 2017.

03. CONTENTION – AS PER THE CONCERNED OFFICER:

OFFICER SUBMISSION DATED 24.09.2021:-

M/s Vishal Co-Op Housing Society Ltd., (“Taxable person”/“TP”) holding GSTIN, engaged in the activity of services providing to its Society/Club/Trust/AOP, as well as providing services to its members in the forms of maintenance charges, central service charges etc., and specific contribution such as repair and maintenance fund, contribution towards sinking fund, interest on arrears, parking charges.

- 3.2 This is the factual question, which cannot be answered in advance ruling proceeding. Where the turnover cross INR 20 Lakhs, or not, is a factual finding.
- 3.3 The question on which advance ruling can be sought under this act u/s 97(2)(f) of MGST/CGST Act shall be in respect of whether the taxpayer is required to be registered. Here the advance ruling is sought whether the taxpayer could surrender the registration which he already had.
- 3.4 In this case the taxpayer being registered can file application for cancellation of registration under section 29 of GST Act being no longer liable to be registered under section 22 to and 24 of the GST Act. The proper officer can cancel the registration as per the application filed by the

taxpayer, after due verification. Hence the subject application is not maintainable u/s 97 of CGST/SGST Act 2017, hence application may be rejected.

3.5 Question raised by taxpayer (1) – Surrendering of GST registration

- In view of applicant's submissions, it is to submit that, Total maintenance charges includes the receipt of Interest or arrears, parking charges and central service charges, non-occupancy charges and change of use of charges, the said charges are taxable under GST statute. It means the taxable receipt due to other receipts has exceeded the turnover limit INR 20 Lakhs and hence TP's Registration is not required to be cancelled under the GST.

In view of the above fact, it is to submit that, other than maintenance receipt is taxable under the GST statute. And TP is required to pay taxes under GST statute.

The intention of the 'housing society' is only for residential purpose, whenever it includes garages and commercial shops then it is beyond the ambit of the RWA, hence the exemption towards the commercial shops and garages is not applicable to the TP.

In this regard, the context require to draw pertaining to taxability to builder cum developer regarding commercial shops, and residential complex, as per the said notification commercial and residential complex has been distinguished for the purpose of taxability. It means then intention of statute is crystal clear that, residential apartment and commercial shops are considered different. In case of commercial shop and garages, TP is required to pay GST on all receipt. In view of the above fact and, considering intention of statute, GST is applicable on commercial shops, garages and other receipts, it means the TP should be registered under GST Statute, and he is liable to pay tax under GST on all receipts.

The amounts collected by the TP towards aforesaid receipt in respect of supply of services to members, covered under SAC 9995 as "Services of Membership Organisations" and are taxable to GST @ 18% in terms of Sl.No.33 of Notification No.11/2017-Central Tax (Rate), dated 28-6-2017 as amended.

3.6 Question raised by taxpayer –(2) Claiming Input Tax Credit

Issue No. 2: The input tax credit is a form of concession granted by the Government to taxpayer's which is subject to terms and conditions provided in MGST / CGST Act. Therefore, input tax credit to the extent of legally allowable can be available. The input tax credit pertaining to negative list cannot be granted. This requires detail verification of facts, where ever goods are used in works contract leading to creation of immovable property, the input tax credit cannot be allowed.

3.7 Question raised by taxpayer (3) – Claiming Input Tax Credit

Issue No. 3: The proportionately allowable input tax credit as per provision of MGST / CGST Act can be availed subject to provision of section 15, 16 and 17 of MGST / CGST Act. The minor repairs, if leading to creation of immovable property, then no input tax credit can be allowed in such case.

- 3.8 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. The housing society and its members are "distinct entities or distinct persons" under MGST / CGST Act as per provisions of GST Act. ITC is a concession & always subject to condition & negative list. (Refer Hon. Supreme Court decision in case of M/s TVS Motors Company Ltd v/s State of Tamil Nadu, dt. 12/10/2018 in CA 10560 -10564 of 2018)

04. HEARING

- 4.1 Preliminary hearing in the matter was held on 22.01.2020. Shri Ulhas Gumaste, CA and Shri. Uday Gumaste, CA appeared, and requested for admission of the application. Jurisdictional Officer, Shri. K. R. Bodkhe, learned Deputy Commnr, E-701, Nodal-7 and Shri.Sachin L. Jadhav, learned STO, C-713, Nodal-7 also appeared.

- 4.2 The application was admitted and posted for final e-hearing on 24.08.2021. The Authorized representatives of the applicant, Shri. Ulhas Gumaste, CA was present. The Concerned officer Shri. Pradeep Sharma, STO, MUM-VAT-C-713, Nodal 7 was also present. The Authorized representatives made oral and written submissions in this matter. The Concerned officer wanted time to make written submission. It was directed that the applicant may also submit further written submissions in response to written submission that may be filed by the Jurisdictional Officer.

- 4.3 We heard both the sides.

05. OBSERVATIONS AND FINDINGS:

- 5.1 We have perused the documents on record and gone through the facts of the case and the submissions both oral and written, made by the applicant.
- 5.2 The applicant has submitted that it is a 'housing society' registered under the Maharashtra Co-operative Society Act, 1960. The applicant collects maintenance charges from its members and does not charge GST on amount collected towards government dues (such as property tax,

education fund, etc.). It claims exemption towards reimbursement (such as maintenance charges, central service charges, etc.) and collects GST on flat specific contribution (such as repair and maintenance fund, contribution towards sinking fund, interest on arrears, parking charges, etc.). In case of commercial shop and garages, the applicant society does not charge GST on amount collected towards government dues (such as property tax, education fund, etc.). Further, the applicant society also collects GST contribution towards major repair fund and does not claim input tax credit on regular expenses such as professional fees, bank charges, insurance premium, stationery items purchased, repair and maintenance, security charges, etc.

5.3.1 The applicant, vide this application has asked three questions and the first question is whether the applicant society can stop paying GST and surrender the registration.

5.3.2 We feel it necessary to decide whether the first question raised by the applicant is covered under Section 97(2) of the CGST Act, 2017, and thus maintainable, or liable for rejection. Having said so, we invite attention to the questions that can be posed in an application for an Advance Ruling under the provisions of the GST Act. Sub-section (2) of Section 97 is the relevant section which is reproduced as below:

(2) The question on which the advance ruling is sought under this Act, shall be in respect of,—

- a. classification of any goods or services or both;*
- b. applicability of a notification issued under the provisions of this Act;*
- c. determination of time and value of supply of goods or services or both;*
- d. admissibility of input tax credit of tax paid or deemed to have been paid;*
- e. determination of the liability to pay tax on any goods or services or both;*
- f. whether applicant is required to be registered;*
- g. whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.*

5.3.3 We observe in the instant case, the question which has been raised by the applicant is not pertaining to any of the matters mentioned in Section 97 (2) of the CGST Act. In other words, Section 97(2), which encompasses the questions, for the ruling by this Authority does not deal with the issue of whether a GST registration should be surrendered. Hence, it is held that this authority does not have jurisdiction to pass any ruling on such matters.

5.3.4 In view of the above discussion, we reiterate that, the question posed before us does not pertain to matter in respect of which an Advance Ruling can be sought under the GST Act. In view thereof, we find that the first question is not maintainable.

5.4.1 The second question asked by the applicant is whether the society can claim ITC on repairs both major as well as minor.

5.4.2 The applicant has submitted that the society carries out major repair work and pays GST on contractor's bill also but does not get input tax credit on these contractor's bills due to blocked credit provisions. The applicant has further submitted that, the major repair work carried out for maintenance of society is service provided by the society to its members. Hence the applicant society should be allowed to claim input tax credit for major repair work carried out for buildings as it is for the furtherance of business of the society.

5.4.3 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.

5.4.4 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;”*

5.4.5 In view of 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 to 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.

5.4.6 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*.

5.4.7 Thus, the aforementioned supply of goods and services supplied for construction work of an immovable nature can be done in composite manner also i.e. works contract. The works contract service for supply of above mentioned goods and service is covered under Section 17(5)(c) read with explanation mentioned therein. Therefore, ITC on GST paid on above said works contract service will not be available to the extent of capitalisation as mentioned in Explanation of Section 17(5) of the CGST Act, 2017.

5.5.1 The third question asked by the applicant is whether the society can claim ITC on these services either fully or proportionately despite of availing exemption available to residential units.

5.5.2 The applicant has submitted that it is providing both exempt and taxable services. In view of this fact we need to refer to the relevant provisions of Section 17 of the CGST Act, 2017 which are as under:-

Section 17 (Apportionment of credit and blocked credits)

- (1) *Where the goods or services or both are used by the registered person partly for the purpose of any business and partly for other purposes, the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business.*
- (2) *Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.*
- (3) *The value of exempt supply under sub-section (2) shall be such as may be prescribed, and shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.*

5.5.3 From the above it is seen that the provisions of Section 17 (2) will be applicable in the present case in as much as when goods or services or both are used by the applicant partly for effecting taxable supplies under the GST Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies.

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)

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

Question.1. According to circular number 109/28/2019 GST dated 2200 July 2019, Resident Welfare Association (RWA) shall be required to pay GST on monthly subscription contribution charged from its members, only if such subscription is more than INR 7,500 per month per member and aggregate annual turnover of RWA by way of supplying services and goods is also INR 20 Lakhs or more. In case of the society, though annual turnover is more than INR 20 Lakhs, monthly maintenance per month per member is less than INR 7,500. But the society also has 68 commercial shops, 233 residential flats and 18 garages. Hence, the society does not contain only residential flats. In view of this please confirm whether the society can stop paying GST and surrender the registration.

Answer: - Not answered in view of discussions made above.


Question.2. According to circular number 109/28/2019 GST dated 22nd July 2019 RWAs are entitled to take ITC on GST paid by them on capital goods (generators, water pumps, lawn furniture etc.), goods (taps, pipes, other sanitary and hardware fittings etc.) and input services such as repair and maintenance services. But as per section 17 (5X(c), ITC shall not be available, when works contract services supplied for construction of immovable property (other than plant and machinery) except whether it is an input service for further supply of works contract service. Collective reading of notification and section 17(5)c), gives contradiction picture to the extent of major repair work carried out with respect to immovable property. Hence, the society wants to understand if the registration is to be continued then whether the society can claim ITC on repairs both major as well as minor.

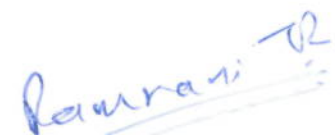
Answer:- In view of the discussions made above, ITC on GST paid on above said works contract service received by the applicant will not be available to the extent of capitalisation as mentioned in Explanation of Section 17(5) of the CGST Act, 2017

Question.3. According to circular number 109/28/2019. GST dated 22 July 2019 RWAs are entitled to take ITC on GST paid by them on capital goods (generators, water pumps, lawn furniture etc.), goods (taps, pipes, other sanitary and hardware fittings etc.) and input services such as repair and maintenance services. The society claims exemption of INR 7,500 available to residential unit and hence, it does not claim ITC on various services availed such as professional fees, bank charges, insurance premium, stationery items purchased, repair and maintenance, security charges, Cable Services etc. Please provide your opinion whether the society can claim ITC on these services either fully or proportionately despite of availing exemption available to residential units.

Answer:- In view of the discussions made above, the society can claim ITC on the input services, proportionately, as mentioned in Explanation of Section 17(2) 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, 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.