MAHARASHTRA AUTHORITY FOR ADVANCE RULING
GST Bhavan, 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) Ms. P. Vinitha Sekhar, Additional Commissioner of Central Tax, (Member)

(2) Mr. A. A. Chahure, Joint Commissioner of State Tax, (Member)

GSTIN Number, if any/ User-id	**27AGQPC1508D1ZS**
Legal Name of Applicant	**M/s. RISHABH CHOPDA**
Registered Address/Address provided while obtaining user id Correspondence Address	Silver Utopia, Cardinal Gracious Road, Off. Andheri-Chakala Road, Andheri (East), Mumbai- 400099. 1302, Tower –I, Svasa Homes, Bull Temple Road, K.G. Nagar, Bangalore – 560019 Karnataka State.
Details of application	GST-ARA, Application No. 86 Dated 30.12.2019
Concerned officer	**MUM-VAT-E-702, Nodal DIV-007, Mumbai**
Nature of activity(s) (proposed/present) in respect of which advance ruling sought	
A Category	**Leasing Business**
B Description (in brief)	Applicant is residing in Bangalore along with his father and mother at 1302, Tower-I, Svasa Homes, Bull Temple Road, K. G. Nagar, Bangalore-560 019, Karnataka State. All the three persons are also directors in the **RISHABH INFRASTRUCTURE PVT. LTD.** which is incorporated under the Companies Act, 1956 having its registered office at Raipur, Chhattisgarh State at Opposite Manas Bhavan, Pujari Park, Panchpedi Naka Road, Raipur-492 007, Chhattisgarh State.
Issue/s on which advance ruling required	(iv) Admissibility of input tax credit of tax paid or deemed to have been paid

	(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. RISHABH CHOPDA.,** the applicant, seeking an advance ruling in respect of the following questions.

1. ***When there are four joints owners of a property and in turn the joint owners are liable for GST on the rent income that they are receiving on 'Leave and License', on the common Area Maintenance Charges charged, the co-operative society has to issue four separate invoice showing the respective ownership share ratio of the each owner and mentioning the GSTIN of each owner in the respective invoices in order to get input tax credit by each of the co-owner?***

2. ***Is there any provision under the CGST Act, 2017 by which lumpsum CGST charged to the only one co-owner the credit of which can be transferred to the other co-owners?***

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 Mr. Rishab Chopda, the applicant are as under:-

2.1 Applicant is residing in Bangalore, Karnataka State along with his father and mother. All of them are directors in M/s Rishabh Infrastructure Pvt. Ltd. (RIPL), Chhattisgarh State.

2.2 Applicant along with his parents and RIPL purchased two commercial properties at CNERGY IT PARK Co-operative Premises Society Ltd., in Mumbai. Their respective shares in the said properties are as under:

Sr. No.	Name of the Person	Respective share in the properties
1	Rishabh Infrastructure Pvt. Ltd.	40 %
2	Mr. Pramod Chopda	20 %
3	Mrs. Kanchan Pramod Chopda	20 %
4	Mr. Rishabh Chopda	20 %

2.3 Applicant alongwith the other three co-owners have leased out these properties and each co-owner is raising a separate 'Tax Invoice' of his/her/it's respective share and charging CGST & SGST @ 9% under SAC No. 997212. Each co-owner is claiming its input tax paid to the Society as credit, subject to the various relevant provisions of the GST Laws. Till May, 2019, the Society was raising separate Tax Invoices on each co-owner, towards society maintenance charges for their respective share. However from June, 2019 onwards, the society has started issuing only one consolidate 'Tax Invoice' mentioning the name of the first co-owner viz. Rishabh Infrastructure Pvt. Ltd. and charging GST accordingly.

2.3 The question for determination is, whether the other three co owners are eligible for input tax credit when no CGST and SGST are charged to them, OR whether the society must raise a separate 'Tax Invoice' to the respective co-owners in proportions to their respective ownership share ratio in order for the co-owners to be eligible for input tax credit, since there are no provisions under the CGST Act, 2017 under which credit can be availed by all the four co-owners when lump sum CGST charged to the only one co-owner.

2.4 Applicant feels that the society must raise a separate "Tax Invoice' on the respective co-owners in proportions to their respective ownership share ratio in order for all the co-owners to be eligible for input tax credit in view of the provisions of Section 16 of the CGST Act, 2017 r/w Rules 36 to 45 of the CGST Rules, 2017.

03. <u>CONTENTION – AS PER THE JURISDICTIONAL OFFICER:</u>

The jurisdictional officer has submitted that the subject application is not maintainable as per Section 97 of CGST and SGST Act, 2017 as there is no provision to artificially bifurcate availability of ITC to third person other than the person to whom tax invoice is raised.

04. HEARING

Preliminary hearing in the matter was held on 03.03.2020. Shri Ashvin A Acharya, Advocate appeared, and requested for admission of the application. Jurisdictional Officer Shri M. V. Thakur, Dy. Commr. of S.T.((E-702), Nodal 7, Mumbai also appeared and made submissions. We heard both the 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 authority.

5.2 This authority is governed by the provisions of Chapter XVII of CGST ACT and the relevant Sections are 95 to 98, 102, 103, 104 and 105. As per Section 95, the term '***advance ruling' means a decision provided by this authority to an applicant on matters or questions specified in subsection 2 of Section 97, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant.***

5.3 Therefore, before we decide the question raised by the applicant in this application, it is essential that we first determine whether or not the questions raised, is in relation to supply of goods or services or both, being undertaken or proposed to be undertaken by the applicant.

5.4 The first question raised by the applicant is whether the co-operative society, in the present case has to issue four separate invoices to each of the four co-owners so that all of them can get proportionate input tax credit.

5.4.1 We find that the said question is raised on behalf of the co-operative society and that too in respect of some procedure to be followed pertaining to issue of invoices.

5.4.2 Section 95 allows this authority to decide the matter in respect of supply of goods or services or both, undertaken or proposed to be undertaken by the applicant on the matters or questions specified in sub-section (2) of section 97. We find that, in the subject case the maintainance charges are collected by the society for having rendered Club or association services to all the four co-owners including the applicant. Thus we find that the supply of services, in respect of which the question has been raised, is being undertaken by the society and not by the applicant. Applicant is a recipient of services in the subject transaction. The impugned question raised by applicant is in relation to procedure to be followed by the society in respect of issue of invoices to applicant for the common area

maintenance charges and hence the issue is not within the purview of Section 97(2) under the Act. Therefore, the subject application cannot be admitted. Hence we do not discuss the merits of the case.

5.5 The second question that is being asked in the subject case is whether there are any provisions under the CGST Act, 2017 by which credit of lumpsum CGST charged to the only one co-owner can be transferred to the other co-owners proportionately.

5.5.1 We have already held above that the subject application cannot be admitted. Further, it is also seen that the question raised does not fall under any of the provisions of Section 97 (2) of the CGST Act, 2017.

5.6 In view of the above we find that the present application seeking ruling on question stated hereinabove is not maintainable and liable for rejection.

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

ORDER

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

NO.GST-ARA- 86/2019-20/B- 29 **Mumbai, dt.** 11/03/2020

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

For reasons as discussed in the body of the order, the subject application for advance ruling made by the applicant is rejected under the provisions of sub-section 2 of Section 98 of the CGST Act, 2017.

PLACE - Mumbai

DATE: 11/03/2020

Sd

A. A. CHAHURE

(MEMBER)

Sd

P.VINITHA SEKHAR

(MEMBER)

CERTIFIED TRUE COPY

MEMBER
ADVANCE RULING AUTHORITY
MAHARASHTRA STATE, MUMBAI

Copy to:-

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The 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.