
 सत्यमेव जयते	RAJASTHAN AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX KAR BHAWAN, AMBEDKAR CIRCLE, NEAR RAJASTHAN HIGH COURT JAIPUR – 302005 (RAJASTHAN)	
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ADVANCE RULING NO. RAJ/AAR/2019-20/32

J.P.Meena Additional Commissioner	:	Member (Central Tax)
Hemant Jain Additional Commissioner	:	Member (State Tax)
Name and address of the applicant	:	M/s Latest Developers Advisory Ltd., 3 rd Floor, Apex Mall, Tonk Road, Lal Kothi, Jaipur, Rajasthan 302015
GSTIN of the applicant	:	Un Registered
Clause(s) of Section 97(2) of CGST/SGST Act, 2017, under which the question(s) raised	:	(b) Applicability of a notification issued under the provisions of this act; (e) Determination of liability to pay tax on any goods or services or both;
Date of Personal Hearing	:	09.01.2020
Present for the applicant	:	Mr. Rohit Jain, Advocate
Date of Ruling	:	07.02.2020

Note: Under Section 100 of the CGST/SGST Act, 2017, an appeal against this ruling lies before the Appellate Authority for Advance Ruling constituted under section 99 of CGST/SGST Act, 2017, within a period of 30 days from the date of service of this order.

- At the outset, we would like to make it clear that the provisions of both the CGST Act and the RGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the RGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / RGST Act would be mentioned as being under the "GST Act".
- The issue raised by M/s Latest Developers Advisory Ltd., 3rd Floor, Apex Mall, Tonk Road, Lal Kothi, Jaipur, Rajasthan 302015 (hereinafter the applicant) is fit to pronounce advance ruling as it falls under the ambit of the Section 97(2) (b)& (e) given as under: -



(b) Applicability of a notification issued under the provisions of this act;

(e) Determination of liability to pay tax on any services;

- Further, the applicant is unregistered person as per the declaration given by him in Form ARA-01 and the issue raised by the applicant is neither pending for proceedings nor proceedings were passed by any authority. Based on the above observations, the applicant is admitted to pronounce advance ruling.

1. **SUBMISSION AND INTERPRETATION OF THE APPLICANT:**

- The Applicant has obtained temporary user ID 081900000727ARE for the purpose of filing the present Advance Ruling Application. The Applicant proposes to engage in the business of providing maintenance services to housing societies ('Society').
- For the purpose of providing maintenance services, the Applicant will enter into an agreement (hereinafter referred to as 'Contract I') with the Society / Owners' Association ('Association') / individual Customers. The maintenance services embody services for Common Area

Maintenance ('CAM'), and the Applicant levies goods and services tax ('GST') for provision of such services.

- With respect to one of the Projects which is located in an area which lacks proper water supply, it is likely that the Society / Customers may request the Applicant to check with the individual members / them on the need for water supply arrangement. In pursuant thereto, the Applicant will enter into a contract [hereinafter referred to as 'Contract II'] with the individual members (hereinafter known as the 'Customer') for supply of water for personal use.
- The Applicant will typically procure such water from tanker water suppliers (hereinafter known as 'vendors') and supply such water to the individual Customers. Considering the fact that there will be no sub-meters it is likely that the Applicant may collect water charges based on the sq. feet area occupied by such Customers/ other suitable basis and will accordingly issue an invoice to the Customers. Contract II will be optional and hence the Applicant will enter into such contract only with those Customers who desire to procure water from the Applicant. For instance, there may be a society having five wings, in which case, Customers of four wings may choose to procure water from the Applicant and the Customers of the fifth wing may opt for purchasing water from some other source.
- In light of the given facts, it important to examine the definition of 'Goods' under the Central Goods and Services Tax Act, 2017 ('CGST Act'), which is as under: 'Goods' - Section 2(52).

(52). "goods" means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply;

- For the purpose of determining the taxability of the supply of water under Contract II it is imperative to examine the Notification No.2/2017 - Central Tax Rate dated 28th June, 2017 [hereinafter referred to as 'the Notification'] which provides for an exemption in respect of certain supplies. The relevant extract of the same is as under:

In exercise of the powers conferred by sub-section (1) of section 11 of the CGST ACT, the Central Government, being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby exempts intra-State supplies of goods, the description of which is specified in column (3) of the Schedule appended to this notification, falling under the tariff item, sub-heading, heading or Chapter, as the case may be, as specified in the corresponding entry in column (2) of the said Schedule, from the whole of the central tax leviable thereon under section 9 of the CGST Act.



Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Goods	Rate (per cent.)	Condition
(1)	(2)	(3)	(4)	(5)
99	Heading 2201	Water [other than aerated, mineral, purified, distilled, medicinal, ionic, battery, de-mineralized and water sold in sealed container]	Nil	Nil

It can be observed that Entry no. 99 of the Notification provides exemption from levy of GST on supply of water, other than the specified categories.

- The Applicant submits that since the Project is located in an area where there is no proper water supply, the Customer intends to enter into a contract with the Applicant for supply of water. The transaction

under the Contract II shall involve purchase of water by the Applicant from the vendors and supply the water 'as such' to the Customer.

- Water is movable in nature and therefore qualifies as goods as defined under Section 2(52) of the CGST Act. Further, the Applicant will procure the water from the vendors and will supply the water 'as such' to the Customer without carrying out any further processes in the water. In other words, the activity of the Applicant is simply in the nature of trading of water where on one hand it shall purchase the water from vendors and then supply the same to the Customer.
- In order to determine the taxability of such supply, reference is drawn to the Notification 12/2017. The Notification provides list of goods which are exempt from GST. Entry no. 99 of the Notification provides that supply of water other than the specified category is exempt from levy of GST.

The water supplied by the Applicant is tanker water and is not covered in any of the above mentioned exclusions from the exemption such as aerated, mineral water, purified water etc. It is pertinent to note that the exemption from GST is a blanket exemption and does not provide for fulfillment of any condition to be eligible for the exemption.

Thus, the Notification should be applicable to the transaction proposed to be carried out under Contract II and hence should be exempt from levy of GST.

The above position is also supported by the understanding of the Applicant that generally the vendors from whom the Applicant will procure water do not levy GST when supplying such water to the Applicant. Since the Applicant simply trades in such water, the exemption should also be available to the Applicant.

- Without prejudice to the above, it is pertinent to note the following:
 - ❖ The arrangement for supply of water would be with Customers and not the Association as in Contract I.



- ❖ It will be optional for the Customer to enter into the water supply arrangement with the Applicant.

2. **QUESTIONS ON WHICH THE ADVANCE RULING IS SOUGHT**

Whether the applicant is required to pay GST on water charges collected from the customers for supply of water under Contract II?

3. **PERSONAL HEARING**

In the matter personal hearing was granted to the applicant on 09.01.2020 at Room no. 2.29 NCRB, Statue Circle, Jaipur. On behalf of the applicant Shri Rohit Jain Advocate, appeared for personal hearing. During the PH, he reiterated the submissions already made in the application and requested for two weeks' time for additional submissions. Additional submissions, comprised of sample of draft MOU for supply of water, sample invoice raised by the applicant and sample invoice of water supplier, received in this on 28-01-2020.

4. **COMMENTS OF THE JURISDICTIONAL OFFICER**

The jurisdictional officer (STO, State Tax, Circle-N, Ward-3, Divisional Kar Bhavan, Jhalana Institutional Area, Jaipur, Rajasthan 302004) has submitted his comments vide letter dated 24.12.2019 which can be summarized as under:

“अनुबंधप्रथम के अंतर्गत कि गयी सेवा के साथ अनुबंध द्वितीय के तहत की गयी पानी की आपूर्ति Composite Supply होने के कारण कर योग्य है क्योंकि इसमें goods एवं services कि सप्लाई हो रही है”

5. **FINDINGS, ANALYSIS & CONCLUSION:**

- (a) While going through the submissions made by the applicant we observe that the applicant proposes to engage in business of providing maintenance services with the housing societies (society) for which he will enter into an agreement (Contract-I). The maintenance services for Common Area Maintenance and the applicant levies goods and services tax ('GST') for provision of such services.



- (b) What we understand out of the submissions made by the applicant is that the applicant proposes for providing maintenance services to Residential Welfare Associations (RWA) in general parlance known as society.
- (c) The applicant has also submitted that he is going to enter into Contract -II with residents of a society to supply water. The applicant has submitted a draft copy of Contract-II in this regard. The applicant has submitted that in course of the aforesaid Contract he will purchase water tanker from vendors and subsequently supply the same to the individual resident of the society (RWA) in same form without any processing on the water purchased.
- (d) The applicant is claiming that since supply of Water as a goods is exempted from GST in accordance with Notification No. 02/2017 dated 28.06.2017, hence this supply is exempted from GST.
- (e) The applicant has also submitted that though he is not admitting that there is supply of services in Contract-II but if it is assumed that there is supply of goods (water) and services involved in Agreement-II, then the supply will be a composite supply of water wherein principal supply will be of water. Since principal supply is exempted from GST, the whole supply of Contract-II is exempted from GST.

- (f) First, we need to examine whether water is a goods or not.

Section 2(52) of GST Act, 2017 defines goods as under-

"goods" means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply;

We find in view of above definition that supply of water is a supply of goods. Further, the relevant portion of notification as referred above is as under:-

Notification No. 02/2017 dated 28.06.2017

Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Goods	Rate (per cent.)	Condition
(1)	(2)	(3)	(4)	(5)
99	Heading 2201	Water [other than aerated, mineral, purified, distilled, medicinal, ionic, battery, demineralized and water sold in sealed container]	Nil	Nil

(g) We observe that, the applicant is involved in two agreements where Contract-I is for maintenance services provided to the Resident Welfare Association (RWA) and Contract-II is for supply of water to the individual resident residing in the society (RWA).

(h) We further find that GST on services provided by the Resident Welfare Association (RWA) to its resident members is @ 18% when each unit household in a society pays more than Rs. 7500/- per month for said services and the supplier of services (RWA in the present case) is registered by way of crossing over of threshold limit of Rs. 20 lakhs. The relevant portion of the provisions of law is as under:-

Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017

Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent.)	Condition
(1)	(2)	(3)	(4)	(5)
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) as a trade union; (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.	Nil	Nil


(i) Further, a Circular No. 109/28/2019-GST dated 22.07.2019 issued by CBIC clarified on applicability of GST on services provided by RWA, the relevant portion is as under:-

S. 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 its own members by way of reimbursement of charges or share of contribution up to an amount of Rs. 7500 per month per member 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. 12/2018- Central Tax (Rate) dated 28.06.2019]													
2	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?	<p>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 by way of supplying of services and goods is also Rs. 20 lakhs or more.</p> <table> <tr> <th>Annual turnover of RWA</th><th>Monthly maintenance charge</th><th>Whether exempt?</th></tr> <tr> <td rowspan="2">More than Rs. 20 lakhs</td><td>More than Rs. 7500/-</td><td>No</td></tr> <tr> <td>Rs. 7500/- or less</td><td>Yes</td></tr> <tr> <td rowspan="2">Rs. 20 lakhs or less</td><td>More than Rs. 7500/-</td><td>Yes</td></tr> <tr> <td>Rs. 7500/- or less</td><td>Yes</td></tr> </table>	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
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													



(j) In the instant case, we find that the applicant is providing services to the society (RWA) in two parts viz. all services of maintenance (other than supply of water) and supply of water. We further observe that as a general practice across trade and market, the maintenance services is inclusive of supply of water and hence supply of water provided by the applicant through a separate agreement raises a suspicion in its activity. The reason behind the suspicion is that the water received by the society (RWA) is used for multiple purpose i.e. for gardens, washing cleaning, swimming pool and for the use in the apartments etc. and is stored in the common underground water tank which is maintained by the society (RWA).

(k) In view of the above facts, it is observed that the applicant seems to have bi-furcated the services provided to society (RWA) in order to escape the condition of Rs. 7500 per month per member or it might be crossing the GST registration threshold limit of Rs.20 lakh.



(l) We further observe that, in general each society consists of many residential towers, varying floors from three to fifteen plus and further each tower consists of many residential apartments which have a common underground and overhead water storage tank. Even though the applicant might have a separate agreement for supply of water and for receiving charges on the basis of per square feet with the residents of the apartment in a particular tower but it is not possible to supply water to each apartment separately as mentioned in the Contract-II, because the apartments do not have their own separate water storage tanks.

(m) Therefore, in other words supply of water is actually to the Society (RWA) and the applicant is trying to split the Contract into Contract I and II to avoid the GST to facilitate Society (RWA) in order to keep the maintenance charges paid by the residents below Rs 7500/-. Further we also observe that water charges collected from the individual residents are on the basis of per Square feet (size of the flat), instead of per tanker of water, which is


similar to the collection of maintenance charges collected by the Resident Welfare Association (RWA).

(n) In view of above it is quite evident that supply of water in Contract-II and supply of maintenance services in Contract-I are to the same society (RWA) and relevant to each other, hence there appears no case of direct supply of water by the applicant to the individual residents of the society(RWA).


6. In view of the forgoing, we rule as follows:-

RULING

Contract-I and Contract-II appears to be directly linked with each other as there is no case of direct supply of water by the applicant to the individual residents of the society therefore the applicant is required to pay GST as applicable on Contract-I.


(J.P.MEENA) 07/02/2020
MEMBER
CENTRAL TAX




(HEMANT JAIN) 7/2/2020
MEMBER
STATE TAX

e/c

SPEED POST

M/s Latest Developers Advisory Ltd.,
3rd Floor, Apex Mall,
Tonk Road, Lal Kothi,
Jaipur, Rajasthan 302015.

O/C

F.No. AAR/latest/2019-20/248-252.

Date: 10/02/2020

Copy to: -

1. Chief Commissioner, CGST & Central Excise (Jaipur Zone), NCRB, Statue Circle, Jaipur, Rajasthan 302005.
2. Commissioner, State Tax, Kar Bhawan, Bhawani Singh Road, Ambedkar Circle, C-Scheme-, Jaipur 302005.
3. Commissioner, CGST and Central Excise Commissionerate Jaipur, NCRB, Statue Circle, Jaipur, Rajasthan 302005.
4. STO, State Tax, Circle-N, Jaipur Zone-3, Divisional Kar Bhavan, Jhalana Institutional Area, Jaipur, Rajasthan 302004.



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