समक्ष अग्रिम विनिर्णय प्राधिकारी उत्तराखण्ड(माल और सेवा कर)

BEFORE THE AUTHORITY FOR ADVANCE RULINGS FOR THE STATE OF UTTARAKHAND (Goods and Services Tax)

Present:

श्री अनुराग मिश्रा(सदस्य)

Shri Anurag Mishra (Member)

श्री रामेश्वर मीणा (सदस्य)

Shri Rameshvar Meena (Member)

The 12th day of November, 2021

अग्रिम विनिर्णय संख्या.**06 /2021-22**

Ruling No: 06/2021-22

in

आवेदन संख्या.. **०४/2021-22**

Application No: - 04 /2021-22

1	आवेदक Applicant	M/s Antara Purukul Senior Living Limited, Guniyal Gaon, P.O. - Sinola, Dehradun – 248009, Uttarakhand.
2	अधिकारिता अधिकारी Jurisdictional Officer	----------
3	आवेदक की ओर से उपस्थित Present for the Applicant	Mr. Verendra Kalra, Chartered Accountant
4	अधिकारिता अधिकारी की ओर से उपस्थित Present for the Jurisdictional Officer	None
5	Concerned Officer	Ms. Preeti Manral, Concerned Officer
6	आवेदन प्राप्ति की तिथि Date of receipt of application	17.08.2021
7	सुनवाई की तिथि Date of Personal Hearing	28.09.2021 (Through video Conferencing)

नोट: इस अग्रिम विनिर्णय की प्राप्ति के 30 दिन के अन्दर उत्तराखण्ड माल और सेवाकर अधिनियम 2017 की धारा-99 के अन्तर्गत गठित अग्रिम विनिर्णय अपीलप्राधिकारी के समक्ष धारा- 100(1) के अन्तर्गत अपील दायर की जा सकती है।

Note: An appeal against this ruling lies before the appellate authority for advance ruling under Section 100(1) of the Uttarakhand Goods and Services Tax Act, 2017, constituted under Section 99 of the Uttarakhand Goods and Services Tax Act, 2017, within a period of 30 days from the date of service of this order.

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AUTHORITY FOR ADVANCE RULING
GOODS & SERVICE TAX
UTTARAKHAND

PROCEEDINGS

1. This is an application under Sub-Section (1) of Section 97 of the Central Goods & Service Tax Act, 2017 and Uttarakhand State Goods & Service Tax Act, 2017 (hereinafter referred to as CGST/SGST Act) and the rules made there under filed by M/s Antara Purukul Senior Living Limited having its registered office at Guniyal Gaon, P.O.: Sinola, Dehradun – 248009, Uttarakhand (herein after referred to as the "applicant"), a registered Public Limited Company under Companies Act, and registered with GSTIN- 05AAGCS4077C1ZJ under the CGST Act, 2017 read with the provisions of the UGGST Act, 2017 (hereinafter referred to as 'the applicant').

2. (i) The applicant has developed a residential community providing services of residential apartments, maintenance and other common facilities to the residents of senior living community by entering into a lease agreement and the maintenance and facilities agreement and collects maintenance and facilities (herein after referred to as the "*Antara Comprehensive Benefits*" or "ACB") charges on recurring basis from the residents under the following heads.

1. ACB Charges- ACB contributions from its residents is calculated on the basis of certain apportion of yearly proposed budget of expenses of super built area by the number of residents.
2. Asset Replacement Deposits

Following goods and services are collected under Antara Comprehensive Benefits:
1. Safety & Security Services
2. Operation & Maintenance Services of the Club and Common Areas
3. Maintenance of Apartments
4. Health Services
5. Concierge Services
6. Transportation
7. Other services and facilities

Electricity charges- The invoice is raised by the UPCL (Electricity Supply Authority) for electricity charges in the name of the applicant and is liable to pay the total amount of electricity charges on behalf of the residents and common area electricity consumption shared by the residents and the applicant.

Hence, the applicant has divided electricity charges under the following heads: -
1. Utility residential charges (recovered from residents)
2. Common Area Electricity Charges

i. ACB Common Area Electricity Charges (recovered from residents)
ii. Non-ACB Common Electricity Charges (treated as expenses of Antara)

For the same the applicant has installed sub-meters on the apartments of the residents to record their consumption of electricity and recovers electricity charges from the residents on actual cost incurred. These charges are recorded separately under head Utility residential charges.

The remaining amount of electricity charges is treated as common area electricity charges for which the applicant and the residents have mutually agreed to pay common area electricity charges on proportionate basis. The Electricity charges are calculated on estimated consumption of electricity for common area from the yearly proposed budget of expenses. Wherein, the amount is recovered from the residents in accordance to the built area by the number of residents of the agreed proportion of electricity charges. The applicant calculates the total expenses actual incurred for electricity consumption at year end and raise debit notes to the residents if there is short or excess in amount collected from residents as per estimated consumption electricity charges than actual consumption of electricity charges.

2 (ii) **Asset Replacement Deposit** - In order to meet any planned or unplanned capital outlay in future, the applicant recovers such amount at INR 4.41 of super area in accordance to mutual agreement between them and residents. The Asset Replacement Deposits are non-refundable deposits and any short in deposits for capital outlay would be filled by them (as service provider and owner of the properties). The accounts of such deposit are separately maintained and separate debit notes are raised to the residents. These deposits would be used for the said purpose and not towards regular Antara Comprehensive Benefits.

In view of the above facts the applicant has sought advance ruling on the following questions:

1. Whether the electricity charges paid to UPCL for the power consumed by residents in their residential apartments and recovered from them on actual cost basis liable to GST?
2. Whether the electricity charges paid to UPCL (Electricity supply authority) for the power consumed towards common area and recovered from residents on actual cost basis are liable to GST?
3. Whether Asset Replacement Deposits collected from residents are liable to GST?

3. At the outset, we would like to state that the provisions of both the CGST Act and the SGST 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 provisions under the SGST Act.

4. The Advance Ruling under GST means a decision provided by the authority or the appellate authority to an applicant on matters or on questions specified in sub section (2) of section 97 or sub section (1) of section 100 in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant.

5. As per the said subsection (2) of Section 97 of the Act advance ruling can be sought by an applicant 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 the 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.

6. In the present case applicant has sought advance ruling on applicability of GST, therefore, in terms of said section 97(2) of the Act, the present application is hereby admitted.

7. Accordingly opportunity of personal hearing was granted to the applicant on 28.09.2021. Shri Verendra Kalra (Chartered Accountant), on behalf of the applicant appeared for personal hearing and re-iterated the submission as filed with the application. He also cited the advance rulings of Gujarat & Karnataka in this regard. Ms Preeti Manral, Deputy Commissioner, SGST-Dehradun, cconcerned officer, from the State Authority, was also present during the hearing proceedings. She objected to the contention of the applicant, w.r.t. their claim of being considered as a "pure agent" as per the terms of "MAINTENANCE & FACILITY AGREEMENT", as Article 15.1 of the said agreement clearly provided that, **"No provision of this Maintenance & Facilities Agreement shall be deemed to constitute a partnership or joint venture between the parties or constitute any Party as the legal representative or agent of any other Party."** Further she submitted that the applicant doesn't fulfill, all the conditions as laid down in rule 33 of CGST/SGST Rules. Hence, the electricity charges recovered from residents on actual cost basis are naturally bundled with the services of the residential apartments and qualify as composite supply, therefore, liable to GST.

8. We find that the applicant is a registered Public Limited Company under Companies Act, and registered with GSTIN- 05AAGCS4077C1ZJ in Uttarakhand at Guniyal Gaon, P.O. -Sinola, Dehradun - 248009, Uttarakhand and in their

application dated 17.08.2021 and written submission dated 04.10.2021, the applicant submitted that:

i) They are liable to pay electricity charges to UPCL for the power consumed by the residents and common area shared by the residents and the applicant for which they receives the invoices of electricity charges with no GST levied on it, as the electricity charges are exempt vide Notification No. 12/2017 Central Tax (Rate), dated June 28, 2017. And that they are involved in purely passing through of the electricity charges charged by the UPCL to the residents proportionately under the following heads: -

1. Utility residential charges (recovered from residents)
2. Common Area Electricity Charges
   (i) ACB Common Area Electricity Charges (recovered from residents)
   (ii) Non-ACB Common Electricity Charges (treated as expenses of Antara)

And that to record actual consumption of electricity and collect the amount of electricity charges on actual cost or volume consumed by the resident, sub-meters have been installed on the apartments.

ii) **Asset Replacement Deposits** - There is no supply of goods or services provided to the residents at the time of collection, the amount collected is only a transaction of money, and that this transaction does not qualify as "supply" as per GST law, as there is no application of such deposit at the time of receipt of the deposit and so the Applicant is not liable to make GST on this transaction. And for any transaction to get considered as supply there has to be consideration involved in the same, as defined in Section 2(31) of CGST Act, 2017.

9. We find that the applicant the "*Lessor*" has entered into a "*MAINTENANCE & FACILITIES AGREEMENT*" with the Lessee i.e. the service receiver, the owner/occupant resident of the Community. In the said agreement it is very clearly spelt out that the applicant has developed a residential community for senior living (the "Community)' and the word "*Community*" has been conceptualized as providing residential apartments, infrastructure, The club, support services and other amenities for use and occupation by its residents (the owner/occupant resident of the Community) and has claimed himself as a "*pure agent*", in terms of Rule 33 of the GST Valuation Rules, 2017 and in claiming so, they have contended that electricity charges on the basis of actual consumption by Lessee i.e. the service receiver, the owner/occupant resident of the Community in their residential unit and on proportionate basis of the common area are collected by them and further paid to the state Electricity Board.

10. We find that the concept of pure agent has been borrowed from the erstwhile Service Tax Determination of Value Rules, 2006 and carried forward under GST. For clear perspective Rule 33 of the CGST Rules, 2017 is reproduced hereunder:

"33. Value of supply of services in case of pure agent.- Notwithstanding anything contained in the provisions of this Chapter, the expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply, if all the following conditions are satisfied, namely,-

(i) the supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorisation by such recipient;

(ii) the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and

(iii) the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.

Explanation.- For the purposes of this rule, the expression –pure agent means a person who-

(a) enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;

(b) neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply;

(c) does not use for his own interest such goods or services so procured; and

(d) receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account."

10.2. From the above it is seen that a pure agent is one who while making a supply to the recipient, also receives and incurs expenditure on some other supply on behalf of the recipient and claims reimbursement for such supplies from the recipient of the main supply and while the relationship between them in respect of the main service is on a principal to principal basis, the relationship between them in respect of other ancillary services is that of a pure agent, **but the important thing to note is that a pure agent does not use the goods or services so procured for his own interest and this fact has to be determined from the terms of the contract**. Hence, to ascertain the above facts proper scrutiny of the documents submitted by the applicant with the instant application is imperative.

11. It is seen that the "Lessor" the applicant and "*Lessee*" has entered into a "*LEASE DEED*' (registered) on the basis of an "*Application Form*" and an "*Allotment Letter*" for an "*Apartment*". In the Lease deed it has also been spelt out that the Lessor has developed a residential community for senior living on the Community

Land. The Community provides residential apartments, infrastructure, support services and other amenities within a community for use and occupation by its residents. Further at Para 5.1 of the "*LEASE DEED*', it has been clearly spelt and agreed upon that "*The Lessee(s) agree that the common area and the Club within the community shall be maintained and operated by the lessor and or a maintenance agency/operating agency appointed by the Lessor for the same, from time to time.* ***Simultaneously with the execution of this Lease Deed, the Lessee(s) have signed a separate agreement with the Lessor (the "Maintenance & Facilities Agreement") for the provision of certain services including the maintenance and operation of the Club and the Common Area, as set out in the "Maintenance & Facilities Agreement (the "Services")".***

Further, at Schedule 1 of the MAINTENANCE & FACILITIES AGREEMENT, "***Maintenance & Facilities Agreement***" *shall mean this Maintenance & Facilities Agreement executed between the Parties, as amended from time to time.* Also Para 1.3 of the said agreement defines provision of services as under:

"***1.3 Provision of Services:*** *In consideration of payment of Service Charges by the Lessee(s), the Lessor hereby agrees to render to the Lessee(s), the following services ("Services"):*
a) services forming part of fixed monthly plan as specified in ***"Schedule 2" ("Antara Comprehensive Benefit or ACB");*** *and*
*b) Additional services as described in Clause 1.4 below ("****Additional Services"****). These Additional Services can be chosen by the Lessee at any time in accordance with the terms hereof."*

From the above it is apparent and abundantly clear that the said agreement has been entered into, for rendering of services of a) Antara Comprehensive Benefit or ACB: and Additional services, to the Lessee(s) in consideration of payment of service charges.

b) The term "Additional Services" has been defined as
"1.4 Additional Services: *The Additional Services can be opted by the Lessee(s) as per their preference or convenience keeping in view the schedule notified by the Lessor from time to time.*
The Additional Services shall comprise the optional services which shall be: charged on a pay per use basis at rates specified by the Lessor. The Lessee(s) shall give reasonable notice to the Lessor for availing the optional services to enable the Lessor to organize the same.
The charges payable for Additional Services ***("Additional Services Charge")*** *shall form part of Service Charges and shall be payable in accordance with the terms of this Maintenance & Facilities Agreement".*

11.2. Further as per Schedule 2 (LIST OF SERVICES FORMING PART OF ANTARA COMPREHENSIVE BENEFIT OF LESSOR AND AVAILED BY LESSEE(S) IN THE COMMUNITY" the term" Services" has been defined and for clear perspective, the same is reproduced as under:

*"**A. Services***

Keeping in line with the Lessor's vision for giving residents an unparalleled service experience, below are the Services Included in the fixed monthly plan and forming part of the ACB Charge:

***1. Safety & Security Services:** Safety of all occupants and their assets is of paramount importance to the Lessor, hence the following services will be provided: .*

- *Security interventions at all entry and exit points to and within the Community, e.g. access control, visitor control systems etc.*
- *24-hour security guards throughout the Community.*
- *Security monitoring through CCTV's in strategic locations throughout the Community, e.g. entry points Into the Community and residential buildings.*
- *24-hour security control desk.*
- *LPG and smoke detectors within Apartment.*
- *Emergency alarms within Apartment.*
- *Automatic rescue devices in the lifts.*
- *24-hour emergency support teams.*
- *Regular fire drills and Inspection of fire-fighting equipments.*

2. Operation & Maintenance Services of The Club and Common Areas:

The Lessor shall be responsible for the operations, maintenance, housekeeping and upkeep of The Club and Common Areas:

***3. Maintenance of Apartments:** The Lessor shall be responsible for the maintenance of the Apartment excluding housekeeping (unless opted as part of Additional Services) keeping in mind the overall maintenance of the Community. This shall include routine maintenance, répairs, réplacernent and refurbishment of the Apartment and items/equipments/furnitures/fures provided by the Lessor, due to regular and reasonable wear and tear. Am request for repairs, replacements and refurbishments which are beyond ordinary wear and tear shall be undertaken at the cost of the Lessee (s).*

The maintenance services shall exclude repairs due to damage caused to u Apartment by the Lessee(s) beyond ordinary wear and tear."

Further, "*Service Charges*" has been defined as "*service charges shall mean all charges payable, either on a periodical or on a usage basis, by the Lessee(s) to the Lessor for the operation and maintenance of the community and shall include the ACB Charge, Additional Service Charges or any other charges for being provided with the service in terms of this Maintenance and Facilities Agreement and /or the*

Community Rule".

12. From the above lease deed and maintenance and facilities agreement, we have no doubt in coming to the conclusion that the services offered by the applicant is a wholesome and combined package of services, which cannot be performed without the supply of electricity(water also), to the infrastructure, which in an integral part of the "Community'.

And once an Lessee, there is no option available for himself or herself, to disassociate him or her, from the ambit of the services so provided by the Lessor and opt only for paying electricity charges (and for that matter water charges if applicable) on actual consumption basis, without availing any other services, as the Lessee has no other option. This fact is evidently established, as in the 'LEASE DEED' it has been clearly mandated that with the execution of the Lease Deed, the Lessee(s) have signed a separate agreement with the Lessor (the "Maintenance & Facilities Agreement") for the provision of certain services including the maintenance and operation of the Club and the Common Area, as set out in the "Maintenance & Facilities Agreement (the "Services"). The term "have signed a separate agreement" suggest that it is compulsory and not optional.

13. Further, at Para 8.16 of the "LEASE DEED" it has been has been clearly spelt that "ELECTRICITY & WATER: THE LESSOR SHALL PROVIDE ELECTRICITY AND WATER SUPPLY TO THE APARTMENT FOR THE USAGE OF THE LESSEE(S). THE LESSEE(S) SHALL PAY THE APPLICABLE CHARGE ONLY FOR THE CONSUMPTION OF THE ELETRICITY AS PER THE TERMS OF THE Maintenance and Facilities Agreement. The use of word "shall" indicate that there is no option for the service receiver i.e. the owner/occupant resident of the Community, to opt for any other scheme of things viz. take a direct electricity connection from the UPCL (Electricity supply authority) and or establish independent water pipeline/ make provision for, from any outside entity/agency.

14. Further we find that it is clearly spelt out that *THE LESSOR **SHALL** PROVIDE ELECTRICITY AND WATER SUPPLY TO THE APARTMENT FOR THE USAGE OF THE LESSEE,* this means that the applicant is providing electricity and that there is no mention of the source of electricity i.e. it can be provided after sourcing from UPCL (Electricity supply authority) or by generating through Generator set by themselves or by any other agency/establishment. Likewise the applicant is providing water supply and that there is no mention of the source of water i.e. it can be provided after sourcing from State Jal Board or by pumping out by themselves or by any other agency/establishment engaged by the applicant.

[emphasis applied on "**SHALL**"]

14.2. From the above terms and conditions, as mandated in the LEASE DEED and Maintenance & Facilities Agreement, it is apparent that the applicant is bound to provide the services of maintenance to the owner/occupant resident of the Community, which cannot be performed without the supply of electricity[water also, although not under purview of this application] and even more so the owner/occupant resident of the Community, cannot opt out of the agreement to opt for direct supply of electricity/water by any other agency, without using the infrastructure developed by the applicant.

14.3. In case of disruption of supply of electricity by the state electricity Board, many of the infrastructure, would come to a halt and to overcome this, a generator set is used as a contingency plan. This fact is established from the "Bill of Supply" raised by the applicant to its resident, wherein "Diesel Consumption Charges" (under SAC Code – 996929) has been charged and the electricity generated has been consumed by the Lessor i.e. the service recipient. Such supply of electricity generated by the applicant using generator set and likewise electricity received from the Electricity Board, is supplied to the residents/end users, using the infrastructure for which the applicant charges the same under various heads viz. Antara Comprehensive Benefits (ACB) Charges, Utility residential charges (recovered from residents), Common Area Electricity Charges, ACB Common Area Electricity Charges (recovered from residents), Non-ACB Common Electricity Charges (treated as expenses of Antara).

15. We find that the agreement of "MIANTENANCE & FACILITIES AGREEMENT" entered by the applicant with the Lessee/ service recipients (the owner/occupant resident of the Community) is a wholesome service (combination of many services) for which the supply of electricity is an integral part, and the services of MIANTENANCE & FACILITIES cannot be executed in the absence of electricity. Further, the electricity board is responsible for supplying the electricity up to the receiving point (may be a transformer etc.) of the applicant and not to the each apartment and or to the nook and corner of the Community (including **"The Antara Wellness Centre" consisting** of The Salon, The Pool, The Gym, Treatment Rooms, Consult Rooms, Hydrotherapy Pool, The Fitness Studio, The Physio Room, The Lifecare Suits, The Pavllion, and Observation rooms, **"The Club" consisting** of The Lobby, The Theatre, The Creative Workshop, The Reading Room, The Bridge Room, The Card Room, The Den, The Bar, Restaurant and Dining Area, The Verandah, The Private Drinking Room, The Community Kitchen, The Studio, The Grocery Store, The Courts, Heart of House and Guest Rooms, **and any other area which may be decided to create /develop at a later stage**). The responsibility to supply electricity to each and every apartment and or to the nook and corner of the Community lies with the applicant and not to the electricity board, that is why as a contingency plan a generator set has been set up and is being used for, for which the applicant is charging such charges from the Lessor i.e. the service recipient.

16. In view of the definition of pure agent, it is clear that a pure agent is one who, whilst making a supply to the recipient, also receives and incurs expenditure on some other supply on behalf of the recipient and claims reimbursement (as actual, without adding it to the value of his own supply) for such supplies from the recipient of the main supply. While the relationship between them (provider of service and recipient of service) in respect of the main service is on a principal to principal basis, the relationship between them in respect of other ancillary services is that of a pure agent and the service provider as pure agent can be excluded from the value of taxable service subject to the condition that all the conditions specified in the Rule are satisfied, but we find that since the applicant is using the electricity, procured from State Electricity Board and also water to perform the maintenance services and other facilities to the Lessee/ service recipients (the owner/occupant resident of the Community).

16.2. We find that although the applicant has claimed himself as "pure agent" but on scrutiny of the "LEASE DEED' and "MIANTENANCE & FACILITIES AGREEMENT" it becomes abundantly clear that the infrastructure developed by them is fully dependent on the electricity (and for that matter water also) and in turn the services of MIANTENANCE & FACILITIES so offered to the Community is absolutely dependent on the electricity (and water also). Take out the components of electricity (water also), many of the infrastructure (Lifts, Pool, Hydrotherapy Pool, Theatre to name few) and consequent services of MIANTENANCE & FACILITIES [made functional and operated with the electricity only (water also)], so offered, the owner/occupant resident of the Community [the service receiver], becomes infructuous and redundant. This means to say that to provide services of maintenance, under the MIANTENANCE & FACILITIES AGREEMENT, the applicant is using electricity supplied by the UPCL (Electricity supply authority), and hence, this act of the applicant, is in contradiction of the of the provisions of Rule 33 of CGST Rules, 2017, which stipulates *"(c) does not use for his own interest such goods or services so procured: and"*.

16.3. In the instant case we find that the applicant is using "Electricity" procured from the UPCL (Electricity supply authority) for furtherance of his interest in as much as all the infrastructure developed by them is fully dependent on the electricity (and for that matter water also) and in turn the services of MIANTENANCE & FACILITIES so offered to the Community is absolutely dependent on the electricity.

16.4. We further find that in the 'LEASE DEED' and 'MIANTENANCE & FACILITIES AGREEMENT' provided by the applicant, there is no clause/ reference/ agreement which specifies them as a "pure agent" for any service, whereas as per the Explanation (a) of the said rule, it has been mandated that "*pure agent means a person who - (a) enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or*

services or both;", hence we hold that the applicant in addition to the condition as set out in explanation (c) also does not fulfill the condition as set out in explanation (a) if the Rule 33 of the CGST Rules, 2017.

16.5. Even more so the applicant in their application admittedly accepted that they *have developed a residential community providing services of residential apartments, maintenance and other common facilities to the residents of senior living community by entering into a lease agreement and the maintenance and facilities agreement and collects maintenance and facilities charges on recurring basis from the residents under different* heads and that for the said services they are charging and collecting maintenance and facilities charges on recurring basis from the residents, which clearly establishes the fact that they are providing a wholesome and complete package of maintenance and other common facilities to the residents of senior living community. And this wholesome and complete service package of maintenance and other common facilities to the residents of senior living community cannot be undertaken and performed in any manner, without putting into the use of electricity procured by them from the UPCL (Electricity supply authority). This goes on to prove that they are dependent on electricity procured by them from the UPCL (Electricity supply authority) and hence have their vested interest in the supply of electricity by the said entity. Further, the lease agreement and the maintenance and facilities agreement executed and entered beforehand between the service provider and receiver, does neither gives any option to the buyer of opting out of such maintenance and other common facilities nor there is any mention of any pure agent service in this regard. This fact is affirmed from the Par 7.2 of the 'MIANTENANCE & FACILITIES AGREEMENT', which inter-alia says *"7.**2 Obligation to pay Service Charges:** The Lessee(s) acknowledge that the utilization of the Services is essential to the Lessee(s) and integral to the proper functioning of the Community and that the Lessor has invested considerable resources in providing the Services to the residents of the Community. Therefore, the Lessee(s) agree that the ACB Charge and the Additional Services Charge will not be altered or affected in the event the Lessee(s) do pot utilize any services under Antara Comprehensive Benefit or opted Additional Services and that they shall pay such charges iirrespective of the same".*

17. In view of the above discussion and findings, we find that the applicant does not fulfil, two criteria out of the four, as specified in explanation to Rule 33 of the CGST Rules, 2017, to be considered as a pure agent, hence we hold that the electricity charges paid to the UPCL (Electricity supply authority) for the power consumed by residents in their residential apartments and recovered from them on actual cost basis and the electricity charges paid to the UPCL (Electricity supply authority) for the power consumed towards common area and recovered from residents on actual cost basis are liable to GST.

18. We find that in a similar case the Karnataka AAR, Advance Ruling No. KAR ADRG 42/2019, dated 17-9-2019 [2019 (30) G.S.T.L. 107 (A.A.R. - GST)] in the case of Prestige South Ridge Apartment Owners' Association, has been held that value of electricity charges separately shown in the invoices is to be added to the considerations shown towards the same service of upkeep and maintenance charged to individual members and then the consideration for the supply of such service is to be arrived and the taxable value shall be determined as under. The operative portion of the ruling is reproduced as under:

"The applicant, in this regard, admitted that they pay electricity charges and recover the amount from members for the electric' power consumed towards lighting of common areas. Further they propose to recover the actual charges paid to Electricity Suppliers, in respect of the power consumption for common area, from the members proportionate to the carpet area owned by them, by raising a debit note indicating the proportionate electricity charges.
The electricity bill received in relation to the consumption of electricity for the common utilities is in the name of the applicant. The applicant is not involved in the supply of electrical energy to the members but is involved in providing the service of upkeep and maintenance of the common utilities of the apartments and for this the electricity consumed by them becomes an input. Though the electricity bill is distributed to all its members, it is not the consideration for the supply of electrical energy to the members but the value is a part of the consideration for the supply of services to its members and hence is liable to tax at appropriate rates.
Hence this value of electricity charges separately shown in the invoices is to be added to the considerations shown towards the same service of upkeep and maintenance charged to individual members and then the consideration for the supply of such service is to be arrived and the taxable value shall be determined."

19. Having decided firsts two issues, we now proceed to examine, whether the amounts collected by the applicant towards Asset Replacement Deposits, would form part of consideration towards the services being provided by them or not.

In this regard we invite reference to Section 2(31) of the CGST Act, 2017, which defines the term "***consideration***".

For clear perspective, the same is reproduced as under:
"(31) of goods or services or both 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 or both, 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, in respect of, in response to, or for the inducement of, the supply of goods or services or both, 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 such deposit as consideration for the said supply;

19.2. We observe that the proviso to Section 2(31) above, clarifies that any deposits collected in respect of a future supply shall not be considered as payment made for such supply until the supplier applies such deposit as consideration.

20. In view of the above, we observe that the crux issue before us is to decide whether the amounts collected towards Asset Replacement Deposits, amounts to advances for supply of future services or deposits.

20.2. In this regard we are of the opinion that there are certain distinguishable features of both advance and deposit and the advances differ from the deposits. We find that the applicant, while seeking advance ruling, has accepted the fact that in accordance to mutual agreement between the applicant and the residents and in order to meet any planned or unplanned capital outlay in future, they recover an amount (on the basis of super area), known as Asset Replacement Deposits, which would be non-refundable deposits.

20.3. Further, in view of the above clarification in the form of proviso, it becomes very clear that until the supplier of services consider, the said amount, as pure deposits, which means to say that till such amount is refundable, back to the person depositing the same, it cannot be considered as a consideration, but the moment such amount/deposit are non-refundable, then the said amount is purely a consideration and consideration in any form, either for the supply of services or goods, if not immediately than at a later date.

20.4. Further, the claim by the applicant that the amount so collected is only *a transaction of money* as there is no supply of goods or services to the residents at the time of collection, seems to be a far-fetched statement to escape the applicable GST at the said point of time, as there appears no reasonableness in the logic, as any transaction of money between two independent legal entities has some reason, if not in the front/open but in the hindsight necessarily. Like in the instant case, as admitted, these deposits are in accordance with the agreement and are directly proportional to the super area and are to meet any planned or unplanned capital outlay in future, which is clearly a consideration to meet any contingency, which may arose in future and hence there is no iota of doubt regarding the true picture of such deposits. Coining and using any other term to camouflage such deposits, would not take away its basic characteristics of "consideration".

20.5. From the above it is very clear that these deposits are to be charged from the residents/ owners for undertaking /execution of any services in future (planned or unplanned). And since these deposits are for services to be executed in future, they would be non-refundable in nature and would depend upon the super area taken on lease by the service recipient/ resident/owner and by all means this is an advance sought for by the applicant for future supply of services. The basis for calculating these amounts is directly proportional to the super area taken on lease, as per the lease deed executed between them, is indicative of fact that the element of service is inbuilt, although for a future date. In other words, the service provider is asking for an advance in lieu of a promise to seamlessly provide services in future.

20.6. We also find that section 13(2)(a) stipulates that the time of supply of services shall be the earliest of the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under Section 31 of the CGST Act, 2017 or the receipt of payment, whichever is earlier. In the instant case the applicant receives the payment earlier and hence the time of supply is the date of receipt of amount towards the Asset Replacement Deposits, therefore, the said amounts are liable to GST as they are advances towards future supply of services and not the deposits and hence liable to GST at the time of issuing/raising of debit notes.

21. In view of the above facts we hold that Asset Replacement Deposit is a consideration being collected by the applicant for provision of supply.

22. We find that in a similar case the Karnataka AAR, vide Ruling No. KAR ADRG 12/2021, dated 10-3-2021 [2021 (49) G.S.T.L. 29 (A.A.R. - GST - Kar.)] in the case of Olety Landmark Apartment Owner's Association, Bengaluru, has been held that amounts collected by the applicant towards Sinking Fund amounts to advancement for future supply of services to members.

22.2. We also find that in the case of M/s Uttar Pradesh Awas Evam Vikas Parishad, Lucknow, the Uttar Pradesh AAR, vide Ruling No. 45 dated 13.12.2019 has held that *"the time of supply in case of 'deposit works' being executed by the applicant will be the time of receipt of funds, from the client government department'.*

22.3. Likewise, Maharashtra Authority for Advance Ruling (AAR) in the case of M/s Forest County Cooperative Housing Society Limited, Pune, vide Ruling No. GST-ARA-65/2019-20-B-42 dated 04.08.2021 has held that GST at 18% is applicable on repair and maintenance funds and sinking funds collected by residents' welfare association (RWA) or Housing Society if the total value of charges exceeds the threshold limit of Rs. 7500 per month per member.

23. Further, the facts and circumstances, in the case laws cited by the applicant, differ from the facts and circumstance of the present case, hence are not relevant in the present proceedings. Further, the communication quoted by the applicant, appears to have been sought for either by not disclosing correct facts and circumstances in the matter or by not submitting relevant documents/ agreements before the said authority.

24. **In view of the discussions held above, we rule as under:**

RULING

1. **The electricity charges paid to UPCL for the power consumed by residents in their residential apartments and recovered from them on actual cost basis is liable to GST.**

2. **The electricity charges paid to UPCL (Electricity supply authority) for the power consumed towards common area and recovered from residents on actual cost basis is liable to GST.**

3. **The amounts collected towards Asset Replacement Deposits, amounts to advancement for future supply of services to residents, are taxable, in terms of Section 13(2)(a) of the CGST Act, 2017.**

ANURAG MISHRA
(MEMBER)

RAMESHVAR MEENA
(MEMBER)

AUTHORITY FOR ADVANCE RULING
GOODS & SERVICE TAX: UTTARAKHAND
OFFICE OF THE COMMISSIONER, SGST, UTTARAKHAND
LADPUR RING ROAD, UPPER NATHANWALA, DEHRADUN

F. No. : 04/S.Tax-UKD/GST/Sec-97/2021-22/DDN 4192 **Date:** 12/11/2021

Copy to:

1. The Chief Commissioner, CGST, Meerut Zone, Meerut for review.
2. The Commissioner, CGST, Commissionerate, Dehradun for review.
3. The Commissioner, SGST, Commissionerate, Uttarakhand for review.
4. The Assistant Commissioner, CGST Division, Dehradun for review.
5. The Assistant Commissioner, Sec-01, SGST, Dehradun for review.
6. The Concerned officer, CGST, Dehradun.
7. The Concerned officer, SGST, Dehradun
8. The Appellate Authority of Advance Ruling, Uttarakhand
9. Guard File.