

**M/s. Vaishnavi Splendour Homeowners Welfare Association**

**Karnataka Appellate Authority for Advance Ruling**

**Order no. KAR/AAAR-10/2019-20 and dated 21/01/2020**

**Ratio :** In a recent ruling, the AAAR held that service supplied by Association to its member is a taxable service under GST Law and therefore, contribution received from members is liable for GST.

**Facts of the case :**

The Appellant is an association of apartment owners in the condominium known as “Vaishnavi Splendour”. The association has 88 members and each of them contribute towards the maintenance of common area / facilities, lightings in the common areas, water, etc. The contributions of each member work out to more than Rs.7500/- per month.

**Question before AAR :**

- (i) Whether the Applicant Association is liable to pay GST on amount of contribution received from its members ?
- (ii) Whether benefit of Notification no. 12/2017 CT(R) dt. 28/06/2017 (Sl. No. 77) r.w. Notification no. 02/2018 dt. 25/01/2018 which provide for exemption from tax where the value of supply upto an amount of Rs.7500/- per month per member can be availed by the Appellant Association ?
- (iii) GST on amount collected from members towards corpus fund?

**AAR verdict :**

The AAR ruled that :

- (i) Applicant is liable to pay GST on amount of contribution received from its members as their activities amounts to taxable supply of its service.
- (ii) Benefit of exemption as per above mentioned Notifications is available only if the contribution does not exceed Rs.7500/month/member. In case, contribution exceeds Rs.7500/- per month per member, the entire amount is taxable.
- (iii) Applicant is eligible to claim ITC subject to restrictions u/s. 17(2) of CGST Act r.w. Rule 42

of CGST Rules and other restrictions applicable if any.

- (iv) GST is not leviable on collections from members for setting up corpus fund.

Aggrieved, the Appellant Association raised question no. (i) and (ii) before AAAR.

**Appellants' submission before AAAR as to why GST shall not be levied :**

- (i) Supply made to members by the members association is governed by principal of mutuality.
- (ii) There has to be privity of contract as the supplier and recipient are one and the same.
- (iii) The Appellant is acting merely as an agent of the members and contribution of the members is mere a reimbursement of amount spent for outsourcing goods and services and not in nature of consideration. Reliance placed on *State of West Bengal v. Calcutta Club Limited Civil Appeal no. 4184 of 2009, order dt. 03/10/2019 (SC)*.
- (iv) Rule 33 of CGST Rules provides for excluding amounts received as reimbursement of expenses from the value of supply of goods or service or both.
- (v) Where there is “no consideration”, the activity will not amount to “supply” and the levy will not get attracted.
- (vi) Notification no. 25/2012 – Service Tax dt. 20/06/2012 reveals that contribution less than Rs.5000/month/member is fully exempted and contribution more than Rs.5000/- is exempted upto Rs.5000/- and tax was required to be paid on amount over and above Rs.5000/-. Similar

interpretation applies for Notification no. 12/2017 CT(A) dt. 28/06/2017 under GST.

(vii) Interpretations which are most beneficial / favourable to the assessee should be adopted.

## **AAAR's verdict :**

### **Issue 1 : Supply of service by Association Appellant to its members is taxable under GST:**

Activity to qualify as "Supply" in terms of sec. 7 of CGST Act, the following must be satisfied:

- A) There must be supply of "goods" or "service" or "both" : Meaning of "Service" u/s. 2(102) is to be taken from the recipient's point of view. Activity performed by Association for ensuring maintenance and upkeep of complex by procuring services and goods from 3<sup>rd</sup> party, benefits each member. Hence, it can be said there is "service" rendered by Association to its members.
- B) Activity should be undertaken for a "consideration" u/s. 2(31) – Members of the Association are beneficiaries and contribution by them is "consideration" for service received.
- C) Activity should be in course of furtherance of business defined in section 2(17) – Clause "e" clearly states that activity of providing facilities or benefits by an association to its members for a subscription is a business. Hence, the transaction between Association and members is a "service".

*State of West Bengal v. Calcutta Club Limited (Supra)* cannot be referred since in Finance Act, 1994, taxable event u/s. 66B was on service "provided or agreed to be provided by on person to another". Under GST, supply should necessarily be in course of or furtherance of business and business club, association, society or anybody which provides facilities to its members for a subscription. Thus, GST law and service tax law are different.

### **Issue 2 : Entire contribution will be liable for tax under GST :**

In *CCI v. M/s. Dilip Kumar and Co., CA no. 3327 / 2007, order dt. 30/07/2020*, the Apex Court held that the benefit of ambiguity in exemption notification is to be interpreted in favour of the revenue. Thus, exemption as per Entry 77 of Notification no. 12/2017

CT(R) is available only when a member's contribution per month is upto an amount of Rs.7500. A member who contributes an amount which is more than Rs.7500/-, will not be eligible for the exemption and the entire contribution amount will be liable to be taxed.

**AAAR held :** The AAAR distinguished the principle of mutuality as applicable to service tax with that of GST. Thus, holding that for GST purposes such principle is inapplicable as there is no duality of persons required. It also held that entire amount of Rs.7500 is taxable.

## **Acelegal Analysis :**

- (i) The AAAR has missed out the fact that the functioning of the society is governed under the respective state Society Act. For instance in Maharashtra, it's the Maharashtra Co-operative Societies Act, 1960 which regulate the appointment of managing committee and the collection and deployment of funds. The society works on principle of mutuality and its bye laws and no consideration is charged by the managing committee for services rendered.
- (ii) The act of collecting the common expenses in a pool and rendering that expense on behalf its members is statutorily governed and it cannot constitute "business" under CGST Act.
- (iii) The monthly contribution is used for payment of various charges including statutory charges like common electricity, water, property tax, sinking fund (a statutory levy), salaries of security, cleaners etc. and these are not "consideration" payable to the society for alleged services rendered by them. No payment in nature of remuneration is made to the managing committee by the members for managing and maintaining the residential complex as it is governed by the concept of mutuality and common co-operation. Therefore we believe that this decision of AAAR would further see some litigation in higher forums.

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