

WEST BENGAL AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX
14 Beliaghata Road, Kolkata – 700015
(Constituted under section 96 of the West Bengal Goods and Services Tax Act, 2017)

Members present:

Dr. Tanisha Dutta, Joint Commissioner, CGST & CX Joyjit Banik, Senior Joint Commissioner, SGST

Preamble

A person within the ambit of Section 100 (1) of the Central Goods and Services Tax Act, 2017 or West Bengal Goods and Services Tax Act, 2017 (hereinafter collectively called 'the GST Act'), if aggrieved by this Ruling, may appeal against it before the West Bengal Appellate Authority for Advance Ruling, constituted under Section 99 of the West Bengal Goods and Services Tax Act, 2017, within a period of thirty days from the date of communication of this Ruling, or within such further time as mentioned in the proviso to Section 100 (2) of the GST Act.

Every such appeal shall be filed in accordance with Section 100 (3) of the GST Act and the Rules prescribed there under, and the Regulations prescribed by the West Bengal Authority for Advance Ruling Regulations, 2018.

Name of the applicant	PRINSEP ASSOCIATION OF APARTMENT OWNERS
Address	1, New Bata Road, Calcutta Riverside, P.S. Maheshtala, Kolkata - 700140
GSTIN	19AAKAP4502F1ZL
Case Number	WBAAR 21 of 2023
ARN	AD190823015436Z
Date of application	August 31, 2023
Jurisdictional Authority (State)	Behala Circle, Budge-Budge Charge
Jurisdictional Authority (Central)	Maheshtala Division, Kolkata South Commissionerate
Order number and date	22/WBAAR/2023-24 dated 29.11.2023
Applicant's representative heard	Mr. Vishal Kumar Daga, Authorized Representative

1.1 At the outset, we would like to make it clear that the Central Goods and Services Tax Act, 2017 (the CGST Act, for short) and the West Bengal Goods and Services Tax Act, 2017 (the WBGST Act, for short) have the same provisions in like matter except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a

reference to the CGST Act would also mean reference to the corresponding similar provisions in the WBGST Act. Further to the earlier, henceforth for the purposes of these proceedings, the expression 'GST Act' would mean the CGST Act and the WBGST Act both.

1.2 The applicant is stated to be an Association of Persons (AOP, for short) registered with Association of Apartment Owners under the West Bengal Act XVI of 1972, whose primary functions are:

- (i) to raise funds;
- (ii) to provide for maintenance, repair and replacement of the common areas and facilities of the property and payments thereof;
- (iii) to provide for proper maintenance of accounts;
- (iv) to provide for and do any other thing for the administration of the property in accordance with the Act and bye-laws.

1.3 The applicant has made this application under sub section (1) of section 97 of the GST Act and the rules made there under raising following questions vide serial number 14 of the application in FORM GST ARA-01:

- (1) Where monthly contribution charged to a member exceeds INR 7500 per month, whether the applicant can avail the benefit of Notification No. 12/2017 dated 28.06.2017 (Sl. No. 77) read with Notification No. 02/2018 dated 25.01.2018 which provide for exempting from tax, the value of supply up to an amount of Rs. 7,500/- per month per member? In other words, whether tax would be charged over and above INR 7500 or the total amount collected from members.
- (2) Whether applicant is liable to pay CGST/SGST on amounts which it collects from its members for setting up a corpus fund for future contingencies/ major CAPEX. Whether such fund from members will come under the definition of supply and liable to be taxed?
- (3) Whether the applicant is liable to pay CGST/SGST on collection of common area electricity charges paid by the members and the same is recovered on the actual electricity charges?

1.4 The aforesaid questions on which the advance ruling is sought for are found to be covered under clause (b) and (e) of sub-section (2) of section 97 of the GST Act. The applicant has enclosed copies of challans as proof of payment of Rs.5,000/- for SGST and Rs. 5,000/- for CGST towards fee for Advance Ruling.

1.5 The applicant states that the questions raised in the application have neither been decided by nor is pending before any authority under any provision of the GST Act.

1.6 The officer concerned from the revenue has also raised no objection to the admission of the application.

1.7 The application is, therefore, admitted.

Submission of the Applicant

The submission of the applicant along with his interpretation of law is reproduced herein under:

2.1 M/s PRINSEP ASSOCIATION OF APARTMENT OWNERS or the applicant is an AOP with 246 members having its principal place of business at 1, New Bata Road, Calcutta Riverside, P.S. Maheshtala, Kolkata 700140. The applicant has received Certificate of Registration from Association of Apartment Owners under the West Bengal Act XVI of 1972. It would be responsible for managing the day-to day activities, organizing events, managing facilities in the apartment as well as safeguarding the rights of the unit holders of the society. The applicant provides maintenance or repair of the common area of the apartments and surrounding which inter alia includes lighting in common area. To provide these services, the applicant collects monthly subscription as maintenance charges from its members. In addition to this, the applicant is stated to be engaged in setting up a Corpus Fund to meet future contingencies for which the applicant also collects subscription from its members. The instant application is related to taxability of such monthly subscription charges in terms of serial number 77 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, as amended. The other issues are in respect of liability to pay tax on amount collected for common area electricity charges and corpus fund.

2.2 Statement containing applicant's interpretation of law:

- Question No. 1: Where monthly contribution charged to a member exceeds INR 7500 per month, whether the applicant can avail the benefit of Notification No.12/2017 dated 28-6-2017 (Sl. No. 77) read with Notification No. 2/2018 dated 25-1-2018 which provide for exempting from tax, the value of supply up to an amount of Rs. 7,500 per month per member. In other word Tax would be charged over and above INR 7500 or the total amount collected from Members.

A.1 Reference in this regard has been invited to the provisions of Section 7(1) of the Central Goods and Service Tax Act, 2017 (hereinafter referred to as 'CGST Act') set out herein below:

"Supply" includes-

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business.

*[(aa) the activities or transactions, by a person, other than an Individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration.

Explanation – For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, Tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another;]

**inserted w.e.f. 01st July 2017 by s.108 of The Finance Act, 2023 (No. 13 of 2021) – Brought into force on 01st January, 2022 vide Notification No. 39/2021-CT., dated 21st December, 2021.*

The applicant submits that after the insertion of this clause, it is apparently clear that activities or transaction done between the member and the association should be treated as supply as they are two separate persons.

A.2 Further reference is invited to Entry No. 77 in the CGST Notification No. 12/2017- CT (Rate) dated 28.06.2017 read with Notification No. 02/2018 dated 25.01.2018, Heading No. 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),.....

;or

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."

The applicant submits that the aforesaid entry is applicable to the supply of service by RWA (unincorporated body or a registered non-profit entity) to its own members by way of reimbursement of charges or share of contribution up to an amount of Rs. 7,500/- per month per member for providing services and goods for the common use of its members in a housing society or a residential complex and therefore such supply is exempted from payment of tax.

A.3 According to the applicant, the moot question arises whether the above exemption granted to members would be null and void if the contribution exceeds Rs. 7,500/-. In this context, the applicant has relied on the judgement by the Hon'ble High Court of Madras in the case of *Greenwood Owners Association vs Union of India* [2021] 128 taxmann.com 182 (Madras) wherein the Hon'ble Court has held as under:

“24. The term 'up to' hardly needs to be defined and connotes an upper limit. It is interchangeable with the term 'till' and means that any amount till the ceiling of Rs. 7,500/- would exempt for the purposes of GST.

25. As regards the argument concerning slab rate, a slab is a measure of determining tax liability. The prescription of a slab connotes that income upto that slab would stand outside the purview of tax on exigible to a lower rate of tax and income above that slab would be treated differently. The intendment of the exemption Entry in question is simply to exempt contributions till a certain specified limit. The clarification by the GST Department even as early as in 2017 has taken the correct view.

26. The discussion as above leaves me no doubt that the conclusion of the AAR as well as the Circular to the effect that any contribution above Rs. 7,500/- would disentitle the RWA to exemption, is contrary to the express language of the Entry in question and both stand quashed. To clarify, it is only contributions to RWA in excess of Rs. 7,500/- that would be taxable under GST Act.”

A.4 The applicant thus contends that only that part of monthly contribution exceeding Rs. 7,500/- should be taxable under GST.

- Question No. 2: Whether the applicant is liable to pay CGST/SGST on amounts which it collects from its members for setting up a corpus fund for future contingencies/Legal Matter/major CAPEX. Whether such fund from members will come under the definition of Supply and liable to be taxed?

B.1 Reference in this regard has been invited to the provisions of Section 2(52) and 2(102) of the 'CGST Act' set out here-in-below:

2(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;

2 (102) "services" means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination to another form, currency or denomination for which a separate consideration is charged

From the above definition it is clear that money is neither a goods nor a service.

B.2 The applicant has compared the corpus fund with the following contribution done by various entities to meet the present or future contingencies as and when required and which are not subject to GST:

SI No	Entity	Contribution by
1.	Proprietorship firm	Proprietor
2,	Partnership firm	Partner
3.	Company	Shareholder or Loan from Director

According to the applicant, the same view can be taken where Members of Association contribute such money as CORPUS FUND other than monthly/Quarterly maintenance for future contingencies or development of Society and therefore the same should be treated as transaction in money.

- Question No. 3: Whether the applicant is liable to pay CGST/SGST on collection of common area electricity charges paid by the members and the same is recovered on the actual electricity Charges?

C.1 The value of supply for charging GST has been provided under Section 15 of the CGST Act, 2017. Section 15(5) read with Rule 33 of the CGST Rules 2017 provides the exclusion of the value of reimbursements on actual basis from the purview of taxable value under GST.

C.2 Since the common electricity charges are recovered on actual basis, the same should be kept out of purview of GST. The applicant has placed his reliance on the advance ruling given by the Telengana Authority for Advance Ruling in the case of *Jayabheri Orange County Owners Association*.

Submission of the Revenue

3.1 The submission of concerned officer from the revenue is reproduced in verbatim as under:

- Question No. 1: As per SI no. 01 & 05 of CBIC Circular No. 109/28/20 19-GST Dated 22.07.2019 - it is very clearly stated that GST will be payable on entire amount, if maintenance charges exceeds Rs.7500- per month.

- Question No. 2: The contributions are made by the members to the applicant as contributions to the corpus fund and not in relation to any service in particular. Clause (31) of Section 2 of the CGST Act, 2017 defines the term "consideration" states that the deposit given in respect of a future supply may not be considered as payment made for such supply until the supplier utilise such deposit as consideration. In the instant case the corpus / sinking fund so deemed to collect will be the amount collected towards the future supply of Service and accordingly gets applied as consideration towards supply of services only at the time of actual supply of services.

Therefore the amounts collected towards Corpus/Sinking Fund prima facie appears to be not form part of consideration towards supply of services at the time of collection and hence appears not liable to GST, at the time of collection. However the amounts so utilized for provision of service are liable to tax at the time of actual supply of service and the time of supply has to be determined in terms of Section 13 of the CGST Act 2017.

- Question 3: 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 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 the 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 /or the supply of such service is to be arrived and the taxable value shall be determined for the purpose of charging the GST at the appropriate rate.

Observations & Findings of the Authority

4.1 We have gone through the records of the issue as well as submissions made by the authorized representative of the applicant during the course of personal hearing.

4.2 The issue involved in the first question is to decide whether in the event of the monthly contribution charged to a member exceeding Rs. 7,500/- per month, the applicant can avail the benefit of Notification No.12/2017 dated 28-6-2017 (Sl. No. 77) read with Notification No. 2/2018 dated 25-1-2018 which provide for exemption from tax, the value of supply up to

an amount of Rs. 7,500/- per month per member. In other words, whether tax would be charged over and above Rs. 7,500/- or the entire amount collected from members is exigible to tax.

4.3 We find that several issues related to GST on monthly subscription/contribution charged by a Residential Welfare Association from its members have been clarified by the Tax Research Unit, Department of Revenue, Ministry of Finance vide Circular No. 109/28/2019-GST dated 22.07.2019 [West Bengal Trade Circular No. 30/2019 dated 31.07.2019]. In regard to the issue whether tax is payable only on the amount exceeding Rs. 7500/- or on the entire amount of maintenance charges, it has been clarified as under:

“The exemption from GST on maintenance charges charged by a RWA from residents is available only if such charges do not exceed Rs. 7500/- per month per member. In case the charges exceed Rs. 7500/- per month per member, the entire amount is taxable. For example, if the maintenance charges are Rs. 9000/- per month per member, GST @18% shall be payable on the entire amount of Rs. 9000/- and not on [Rs. 9000 - Rs. 7500] = Rs. 1500/- .”

4.4 The applicant has relied on the judgement by the Hon’ble High Court of Madras in the case of *Greenwood Owners Association vs Union of India* wherein the Hon’ble Court held that the conclusion of the AAR as well as the Circular No. 109/28/2019 dated 22.07.2019 to the effect that any contribution above Rs. 7,500/- would disentitle the RWA to exemption, is contrary to the express language of the entry No. 77 and both stand quashed. Only contributions to RWA in excess of Rs. 7,500/- would be taxable under GST Act.

4.5 However, the Hon’ble Division Bench of Madras High Court in the case of *Union of India vs M/s TVH Lumbini Square Owners Association*, while admitting the appeal petition filed by the Revenue, has observed that ‘the legal issue has to be decided as because the learned Single Bench not only quashed the proceedings of the Tamil Nadu Authority for Advanced Ruling, but also the Circular issued by the Department, which needs verification.’ The Hon’ble Division Bench thereafter held as follows:

“Since the circular has wider ramification, that portion of the order passed in the writ petitions, shall remain stayed until further orders.”

4.6 Serial No. 77 of Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017, prior to the amendment made vide Notification No. 02/2018- Central Tax (Rate) dated 25.01.2018, exempts services by an unincorporated body or a non-profit entity to its own members up to an amount of Rs. 5000/- per member for sourcing goods or services from a third person for the common use of its members in a housing society or a residential complex. This limit has

been enhanced to Rs.7500/- w.e.f. 25.01.2018. We find it relevant to reproduce the comments of the Fitment Committee in this regard from the Agenda for the 25th GST Council Meeting:

‘Services by RWA (unincorporated or nonprofit entity) to its members against contribution of up to an amount of five thousand rupees per month per member are exempt. The limit is sufficient to cover most of the housing societies. Those paying more than Rs. 5000 for the services of the RWA alone may afford to pay GST on such contribution.

The limit of Rs 3000 was set in year 2007 and in the Budget, 2014 the limit was revised to Rs 5000.

Further considering the Consumer Price Index of April 2014 and November 2017, and accounting for the same, the adjusted limit for November 2017 based on growth in the, - General Index would be Rs 5977

Residential building and land [cost of repairs only] would be Rs 5969

Other consumer services excluding conveyance would be Rs 6076

The limit may be enhanced to Rs 6000 per month per member. Threshold may be increased to Rs 7500/. Fitment Decision Decided in favor of Rs 7500/- per month per member.’

[Agenda for 25th GST Council Meeting: Volume-2: Page: 20-21]

4.7 It thus appears that the Government intends to provide the exemption only in cases where contribution received from a member per month is below the specified limit of Rs.7500/-. In other words, where the contribution exceeds the limit, taxability of such services by RWA shall not get covered by entry number 77 of the aforesaid notification. We are, therefore, unable to accept the contention of the applicant that in the event of the monthly contribution charged to a member exceeding Rs. 7,500/- per month, tax is payable only on the differential amount.

4.8 The second question is related to the liability of GST on the amounts collected for corpus fund from members. It has been submitted by the applicant that the members contribute to CORPUS FUND for future contingencies or development of the society. The applicant argues that this amount is collected as a deposit and not in relation to any services in particular though such amount shall be utilized by the applicant as and when required.

4.9 A sinking fund is created in order to meet future contingencies e.g., to meet the expenses for structural repairing, reconstruction work etc. RWA creates a sinking fund which serves as a backup fund for supply of specific services. A member contributes to the

sinking fund with an agreed condition that the RWA will provide some specific services in future, as and when required out of the said fund. We find from the “Minutes of the Meeting” copy of which has been submitted by the authorized representative of the applicant in course of personal hearing that “considering all major repairing requirements, EBM will need to collect on account of ‘Capital and Major Repair’ @ Rs. XXX per sq ft per month per apartment for a minimum period of three months from the date of taking over the charges of Prinsep and if necessary (due to shortage of funds or cash flow), EBM will have to continue to collect this fund (Capital and Major Repair), for few more months up to a maximum of six months.” It thus appears that the amount collected by the applicant from its members towards sinking fund is only meant for meeting expenses for future supply of services and therefore such contribution cannot qualify as a deposit. We thus hold that the amount collected by the applicant from its members for setting up a sinking fund is an advance payment towards future supply of services and such payment comes under the definition of ‘consideration’ under clause (31) of section 2 of the GST Act. The applicant is, therefore, liable to pay tax on such supply in terms of sub-section (2) of section 13 of the GST Act. It would be pertinent to mention here that we are not in agreement with the view expressed by the officer concerned from the revenue on this issue.

4.10 The third question is whether the applicant is liable to pay CGST/ SGST on collection of common area electricity charges from the members when the same is recovered on actual basis. The officer concerned from the revenue has submitted that 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 services of upkeep and maintenance of the common utilities of the apartments. According to the officer concerned from the revenue, such value is a part of the consideration for the supply of services to its members and hence is liable to tax at appropriate rates.

4.11 In Circular No. 206/18/2023-GST dated 31.10.2023, it has been clarified that ‘where the electricity is supplied by the Real Estate Owners, Resident Welfare Associations (RWAs), Real Estate Developers etc., as a pure agent, it will not form part of value of their supply. Further, where they charge for electricity on actual basis that is, they charge the same amount for electricity from their lessees or occupants as charged by the State Electricity Boards or DISCOMs from them, they will be deemed to be acting as pure agent for this supply.’

4.12 In the instant case, admittedly the applicant collects the electricity charges consumed for common area from its members on pro-rata basis. In course of hearing, the authorized representative of the applicant has furnished copy of one tax invoice in support of ‘Common

Area Maintenance' issued to a member. We find that the applicant has declared a consolidated amount in the said invoice under SAC 999598 where a fixed rate is levied per square feet of the area of the flat. Tax @ 18% [Central Tax @ 9% + State Tax @ 9%] has also been charged on the entire amount. Any amount collected on account of consumption of electricity has not been shown separately in the said invoice. We are therefore of the view that electricity is being supplied bundled with supply of goods and services sourcing from a third person for the common use of its members. Thus supply of electricity forms a part of composite supply where the principal supply is the supply of common area maintenance services. The applicant is therefore liable to pay tax on collection of common area electricity charges if the services for common area maintenance fails to qualify for exemption under serial number 77 of the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, as amended and as discussed earlier.

In view of the foregoing, we rule as under:

RULING

Question 1: Where monthly contribution charged to a member exceeds INR 7500 per month, whether the applicant can avail the benefit of Notification No. 12/2017 dated 28.06.2017 (Sl. No. 77) read with Notification No. 02/2018 dated 25.01.2018 which provide for exempting from tax, the value of supply up to an amount of Rs. 7,500/- per month per member? In other words, whether tax would be charged over and above INR 7500 or the total amount collected from members.

Answer: The exemption is not available when the maintenance charges exceed Rs. 7,500/- per month per member. Where the charges exceed Rs. 7500/- per month per member, the entire amount is taxable.

Question 2: Whether the applicant is liable to pay CGST/SGST on amounts which it collects from its members for setting up a corpus fund for future contingencies/ major CAPEX. Whether such fund from members will come under the definition of supply and liable to be taxed?

Answer: The amount collected by the applicant from its members for setting up a sinking fund is an advance payment towards future supply of services and the applicant is, therefore, liable to pay tax on such supply.

Question 3: Whether the applicant is liable to pay CGST/SGST on collection of common area electricity charges paid by the members and the same is recovered on the actual electricity charges?

Answer: Amount collected on account of common area electricity charges, being a part of composite supply, is taxable in cases where the supply of common area maintenance services as provided by the applicant fails to qualify for exemption under serial number 77 of the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, as amended.

(Dr.TANISHA DUTTA)
Member

West Bengal Authority for Advance Ruling

(JOYJIT BANIK)
Member

West Bengal Authority for Advance Ruling

Place: Kolkata

Date: 29th November, 2023

To,

Prinsep Association of Apartment Owners

1, New Bata Road, Calcutta Riverside, P.S. Maheshtala, Kolkata - 700140

Copy to:

- (1) The Principal Chief Commissioner, CGST & CX, 180, Shantipally, R.B.Connector, Kolkata-700107
- (2) The Commissioner of State Tax, West Bengal, 14, Beliaghata Road, Kolkata-700015
- (3) The Joint Commissioner, Large Taxpayer Unit, 14, Beliaghata Road, Kolkata-700015
- (4) The Commissioner, Kolkata South Commissionerate, CGST & CX, 1st Floor, 180, Shantipally, R.B.Connector, Kolkata-700107
- (5) Office Folder