M/s. Vaishnavi Splendour Homeowners Welfare Association (appellant, against advance ruling KAR/ADRG 47/2019 dated 17 Sept 2019)

Appellate Authority for Advance Ruling — Karnataka

ORDER NO.KAR/AAAR-10//2019-20 DATE:21-01-2020 Dated **21.01.2020**

Q Questions Before the Authority

- Whether the applicant is liable to pay CGST and SGST on the amount of contribution received from its members?
- If yes, whether it can avail the benefit of Notification No 12/2017 CT(R) dt 28.06.2017 (Sl.No 77) read with Notification No 02/2018 dt 25.01.2018, which provides exemption for the value of supply up to Rs 7500 per month per member?
- If the answer to (ii) is yes, whether it is required to restrict its claim of input tax credit?
- Whether the applicant is liable to pay CGST/SGST on amounts it collects from its members for setting up a corpus fund?

F Facts

The appellant is an association of apartment owners in the condominium known as Vaishnavi Splendour, with 88 members. Each member contributes monthly towards maintenance of common areas and facilities, lighting, water and similar costs, and the contribution of each member works out to more than Rs 7500 per month. The appeal concerns whether these member contributions are taxable under GST and, if so, whether the entry 77 exemption limits tax to the excess over Rs 7500 per member per month.

H Ruling

Whether member contributions to the association are liable to CGST and SGST (question i)	**Yes, liable. The association's activity is a supply of service to its members, and the contributions are consideration for it.**	Taxability rests on clause (e) of section 2(17) of the CGST Act (provision by an association of facilities or benefits to its members for a subscription or other consideration) read with section 7. The mutuality line of cases was held not to govern GST.
Whether the entry 77 exemption (Notification 12/2017 CT(R), as amended by 02/2018) covers contributions up to Rs 7500 per month per member (question ii)	**Exemption available only where the member's contribution is up to Rs 7500 per month. Where the contribution exceeds Rs 7500, the entire amount is taxable, not just the excess.**	The authority rejected the appellant's reading that only the amount above Rs 7500 is taxable. Questions (iii) and (iv) were not appealed; the advance ruling had answered them as input tax credit subject to section 17(2) and Rule 42, and corpus fund amounts as not taxable.

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The Appellate Authority held that the appellant's activities amount to a supply of service to its members, and that the contributions are consideration for that supply, so the activity is taxable. It held that the entry 77 exemption is available only where a member's contribution is up to Rs 7500 per month; where it exceeds that amount, the entire contribution is taxable, not merely the excess. The advance ruling was upheld and the appeal dismissed. The order does not separately decide questions (iii) and (iv) because the appeal was confined to questions (i) and (ii).

R Reasoning

The authority treated the association's maintenance activity as a supply under section 7 of the CGST Act, finding that clause (e) of section 2(17) brings a club or association's provision of facilities to its members for a subscription within business, and that section 2(31) makes the contributions consideration. It distinguished the Supreme Court's mutuality decision in Calcutta Club as a Finance Act, 1994 service tax case. On entry 77, it read the exemption strictly, following the Supreme Court's Dilip Kumar decision that ambiguity in an exemption notification is resolved against the assessee. It held that CBIC Circular 109/28/2019-GST dated 22.07.2019 only clarified this position and did not introduce a new levy, so it operates from the outset. It also held that the ruling delivered after the 90-day period was not void and that the delay was an irregularity curable in appeal.

P Provisions Relied On

- Section 7 of the CGST Act, 2017 (scope of supply)
- Section 2(17)(e) of the CGST Act, 2017 (business: provision by a club, association or society of facilities or benefits to memb…
- Section 2(31) of the CGST Act, 2017 (consideration)
- Section 2(84) of the CGST Act, 2017 (person)
- Section 2(102) of the CGST Act, 2017 (services)
- Section 9 of the CGST Act, 2017 (levy)
- Section 17(2) of the CGST Act, 2017 and Rule 42 of the CGST Rules (input tax credit restrictions, as stated in the order)
- Entry 77 of Notification No 12/2017-Central Tax (Rate) dated 28.06.2017, as amended by Notification No 02/2018-Central Ta…
- CBIC Circular No 109/28/2019-GST dated 22.07.2019
- Karnataka Apartment Ownership Act, 1972, section 10 (cited by the appellant)
- Rule 33 of the CGST Rules (cited by the appellant)
- Supreme Court: State of West Bengal v Calcutta Club Ltd (Civil Appeal 4184/2009); Commissioner of Customs (Import) Mum…

! For the Practitioner

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This order is a useful authority for practitioners advising residential welfare or homeowners' associations that GST applies to member contributions and that the Rs 7500 exemption under entry 77 is a threshold test, not a deduction. If a member's monthly contribution exceeds Rs 7500, the whole amount is taxable on this reading. The order does not decide the input tax credit or corpus fund questions, which were not appealed, and it does not address whether an association's own reimbursement or agency argument could succeed on different facts. Counsel should also check whether a further appeal to the High Court or Supreme Court has been filed.

Source

Summary prepared from the published order, which is a scanned document. It is a reading aid and not the authority: where the two differ, the order governs. Verify every provision against the original before relying on it.

Original order: www.gstcouncil.gov.in -> kar_aaar_10_2019-20_21.01.2020.pdf

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