Apsara Co-operative Housing Society Limited

Authority for Advance Ruling — Maharashtra

NO.GST-ARA-21/2019-20/B-34, Mumbai, dated 17.03.2020 (the scan read… Dated **17.03.2020**

Q Questions Before the Authority

- Whether the activities carried out by the applicant for its members qualify as "supply" under the definition of Section 7 of the CGST Act, 2017.
- If the activities of the applicant are treated as "supply" under the CGST Act, 2017, whether the applicant has correctly discharged the GST as per the illustrative copy of the invoice generated by the applicant.

F Facts

The applicant is a co-operative housing society registered under the Maharashtra Co-operative Societies Act, 1960, formed by its members who are its shareholders. It collects monthly or quarterly charges from members, including property tax, electricity, water, repair and maintenance, lift, sinking fund, service and parking charges, and loan repayments, and applies them to the purposes set out in its bye-laws. The applicant contends that these charges are mere contributions and not consideration, and that the society and its members are not distinct persons, so no supply arises.

H Ruling

Whether the applicant's activities for its members qualify as supply under Section 7 of the CGST Act, 2017	**Answered in the affirmative: the activities are a supply.**	The society and its members are held to be distinct persons, the member charges are consideration under Section 2(31), and the activities are business under Section 2(17)(e). The principle of mutuality is rejected for GST purposes, and the Lions Club and Rotary Club rulings are distinguished.
Whether the applicant has correctly discharged GST as per the illustrative invoice, if the activities are supply	**Not answered.**	The question does not fall within the matters listed in Section 97(2), so the authority held it not maintainable and had no jurisdiction to rule on it.

The authority answered the first question in the affirmative, holding that the society and its members are distinct persons, that the member charges are consideration, and that the activities are carried on in the course or furtherance of business, so they amount to supply. It did not answer the second question, holding that the question of whether GST was correctly discharged on the illustrative invoice is not a matter on which an advance ruling can be sought under Section 97(2).

R Reasoning

The authority relied on the wide inclusive definition of supply in Section 7(1)(a) and checked its three elements: a supply by a person, for consideration, in the course or furtherance of business. It held that a registered

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co-operative society is a person under Section 2(84), and that the member charges are consideration under Section 2(31). It found the activities to be business under Section 2(17)(e), which covers provision of facilities or benefits to members by a society for subscription or other consideration. The authority distinguished the High Court and Supreme Court mutuality decisions as concerning income tax, or as pre-dating the 2012 deeming provision, which treats club and members as separate persons. Finally, it held that Question 2 falls outside Section 97(2).

P Provisions Relied On

- Section 7(1)(a) of the CGST Act, 2017 (and the corresponding MGST Act provision)
- Section 7(2) and 7(3) of the CGST Act, 2017, referred to in general terms
- Section 9 of the CGST Act, 2017 (levy on supply)
- Section 2(17)(e) of the CGST Act, 2017 (business, including provision of facilities to members by a society)
- Section 2(31) of the CGST Act, 2017 (consideration)
- Section 2(84)(i) of the CGST Act, 2017 (person, including a co-operative society)
- Section 97(2) of the CGST Act, 2017 (matters on which an advance ruling may be sought)
- Section 98 of the CGST Act, 2017
- Section 2(16) of the Maharashtra Co-operative Societies Act, 1960 (housing society)
- Circular No. 109/28/2019-GST dated 22.07.2019 (RWA maintenance charges and the Rs. 7,500 per month threshold)
- Notification No. 12/2018-Central Tax (Rate), entry at clause (c) of Sl. No. 77 (the date is partly illegible in the scan)
- Section 65B(44) of the Finance Act, 1994 (cited in the Emerald Leisures ruling quoted in the order)

! For the Practitioner

A practitioner advising a co-operative housing society can cite this order for the proposition that member charges may be consideration for a taxable supply under the GST regime, and that the mutuality principle drawn from income tax cases does not automatically exclude GST. The order does not decide the invoice question, so the applicant's actual GST treatment of its invoices remains unresolved by this ruling. The order also refers to the Rs. 7,500 per month exemption for RWA and housing society charges in Circular 109/28/2019-GST, but it does not apply that exemption to the applicant's facts, so a society relying on the threshold must analyse it separately.

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 -> mah_aar_21_2019-20_b-34_17.03.2020_achsl.pdf

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Pune (HQ)
RTC Silver, B4-708, Sai Satyam Park, Wagholi, Pune, Maharashtra 412207

Mumbai
104, Rajshila Building, 597 J.S.S. Road, Marine Lines, Mumbai 400002

Delhi
3rd Floor, B-6/154-155, Sector 5, Rohini, Delhi 110085

Gurugram
Pioneer Urban Square, B109, Golf Course Ext Road, Sector 62, Gurugram…

Ahmedabad
Phoenix Tower, 1107, near Commerce Six Road, Drive In Road, Navrangp…

Talk to us: **+91 94594 56700** | sales@patronaccounting.com | patronaccounting.com