KABRA GALAXY STAR 3 CO-OP HOUSING SOCIETY

Authority for Advance Ruling — Maharashtra

NO.GST-ARA-137/2018-19/B-66, Mumbai, dated 04/06/2019 (the number i… Dated **04.06.2019**

Q Questions Before the Authority

- Whether individuals who own flat(s) in a society but have opted not to become members of the society will be at par with other individual flat owners who have taken membership, for the GST exemption of Rs. 7,500 per month, or whether they will be treated as outsiders and be liable to GST without that exemption.

F Facts

The applicant is a registered co-operative housing society that collects maintenance and other charges from flat owners. Some flat owners in the society have not taken membership. The applicant's view is that the Rs. 7,500 per month exemption under the reimbursement-of-charges entry in Notification 12/2017 (State Tax (Rate), SR No. 77, heading 9995) is available only to members, so non-member flat owners would bear GST.

H Ruling

The Authority rejected the application as non-maintainable and did not rule on the merits. It held that the question raised does not fall within any of the clauses of Section 97(2) of the CGST Act, so it has no jurisdiction to pass a ruling on it. No advance ruling under the GST Act was therefore given.

R Reasoning

The Authority examined the question against the matters on which an advance ruling may be sought under Section 97(2) of the CGST Act, namely classification, applicability of a notification, time and value of supply, input tax credit, liability to pay tax, registration, and whether a particular act amounts to a supply. It found that the question of whether non-member flat owners are at par with member flat owners for the Rs. 7,500 exemption falls outside all of these heads. Since the question is not one for which a ruling can be sought, the application was held not maintainable and was rejected under Section 98.

P Provisions Relied On

Section 97(2) of the CGST Act, 2017 (and the corresponding MGST Act provision)

Section 98 of the CGST Act, 2017 and MGST Act, 2017 (form of order)

Notification 12/2017 (State Tax (Rate)), SR No. 77, heading 9995, as referred to by the parties

Prepared as a reading aid. Where this summary and the original order differ, the order governs.

! For the Practitioner

This order is useful only to show that the Authority will decline to rule on whether non-member flat owners are entitled to the Rs. 7,500 reimbursement exemption, because that question is not within Section 97(2). It does not decide the substantive point, so it cannot be cited for the proposition that non-members are liable to GST or that they are excluded from the exemption. Practitioners advising housing societies on this issue will need to rely on the notification text, the statutory definitions, and the full order rather than on this ruling.

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 -> maharashtra_aar_137_2018-19_kgs3chs_04.06.19.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