

MAHARASHTRA AUTHORITY FOR ADVANCE RULING

GST Bhavan, Room No.107, 1st floor, B-Wing, Old Building, Mazgaon, Mumbai – 400010.
(Constituted under Section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

(1) Shri. Rajiv Magoo, Additional Commissioner of Central Tax, (Member)

(2) Shri. T. R. Ramnani, Joint Commissioner of State Tax, (Member)

ARN NO	AD2704200107589
GSTIN Number, if any/ User-id	27AABAS0695K1Z5
Legal Name of Applicant	M/s. Monalisa Co-Operative Housing Society Limited.
Registered Address/Address provided while obtaining user id	33 Monalisa, 3 Bomanji Petit Road, Near Parsee General Hospital, Maharashtra, Mumbai 400026.
Details of application	GST-ARA, Application No. 30 Dated 23.09.2020
Concerned officer	MUM-VAT-D-821, Nodal Division-02
Nature of activity(s) (proposed/present) in respect of which advance ruling sought	
A Category	Service Provision
B Description (in brief)	The applicant is a Co-operative Housing Society which provides services to its members and charges GST on maintenance charges recovered from its Members.
Issue/s on which advance ruling is required	<ul style="list-style-type: none">• Determination of the liability to pay tax on any goods or services or both.• Whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.
Question(s) on which advance ruling is required	As reproduced in para 01 of the Proceedings below

NO.GST-ARA- 30/2020-21/B-71

Mumbai, dt. 31.05.2022

PROCEEDINGS

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

The present application has been filed under Section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as “the CGST Act and MGST Act” respectively] by **M/s. Monalisa Co-Operative Housing Society Limited.**, the applicant, seeking an advance ruling in respect of the following questions.

- 1. Whether the charges received by the applicant towards upkeep and maintenance from its members are covered under Sec 7 of the CGST Act?**

2. Whether the receipt of a gratuitous payment from an outgoing member for the time he has resided in the society be taxable under the CGST Act, 2017 as there is no corresponding service being provided separately by the tax payer society?
3. Whether major repairs to be made in the future for the co-operative housing society, for which amounts are collected, be taxable at all as it is for the members only? And if taxable, whether the same is taxable at the time of its collection or whether the same would be taxable on utilization of such funds?

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, the expression 'GST Act' would mean CGST Act and MGST Act.

2. FACTS AND CONTENTION – AS PER THE APPLICANT

2.1 The Applicant is a co-operative housing society registered under the Maharashtra Co-operative Housing Society Act (MCHS Act) having 48 Flats which charges to its members, maintenance charges as per flat towards maintenance and upkeep of its premises.

2.2 When there is a transfer of a flat, the outgoing member makes a gratuitous & voluntary payment to the society. The same does not have any implications on outgoing formalities to be completed as per MCHS Act. The Applicant states that the above contribution made is entirely voluntary and is not at all a consideration received in lieu of services provided by the Applicant.

2.3 The Applicant is also collecting funds from its members for future major repairs and renovation of the premises. Such funds have no immediate utilization purpose. The amount will only be utilized once the Applicant finalizes on the bids received for the repairs to be carried out.

2.4 The applicant refers to the provisions of Sec 7 and Sec 2 (84) of the CGST Act, 2017, decision of the Hon'ble Supreme Court of India, in the Case of Calcutta Club Limited v State of West Bengal vide C.A. No. 4184 of 2009, decision of the Hon'ble Jharkhand High Court in case of Ranchi Club Ltd v Chief Commissioner, decision of the Hon'ble Gujarat High Court in the case of Sports Club of Gujarat Ltd v UOI and the decision of the Maharashtra AAAR Ruling for Rotary Club of Mumbai Nariman Point to support its contention that maintenance charges collected by the society are in the form of reimbursement collected for upkeep of the premises, where no benefit goes to the society & each & every expense is incurred from the maintenance charges collected by the society is to maintain the society premises. Similarly, the expenses incurred by the society are already subject to GST and charging tax on maintenance fees would amount to double taxation.

2.5 As per Sec 7 of the CGST Act, 2017, supply should be made in the course of furtherance of business. A gratuitous payment by an outgoing member cannot be regarded as a consideration but rather in substance is a gift to the society as the member is paying on his own volition. The applicant believes that such payment cannot be treated as consideration as there is no business transacted and the person acts on his own volition in its entirety.

2.6 As per proviso to Sec 2(31) of the CGST Act, 2017, a deposit is only regarded as payment for a supply when such deposit is applied towards consideration for the supply. A sinking fund is an amount collected and kept aside without being used, until the event which requires its use occurs. There is no supply of goods or services, by the applicant, and collection of corpus fund is only a transaction in money, which is kept outside the definition of "goods" or "services". The sinking fund amount becomes a taxable supply only where the amount is utilized towards the major repairs for which the sinking fund was collected.

APPLICANT'S SUBMISSIONS DATED 29.04.2022-

2.7 Under the CGST Act, for a transaction to be considered as taxable, there must be a supply of Goods by one person to another for a consideration, and in the course or furtherance of business. Applicant submits that in case of a voluntary contribution by an outgoing Member the payment is not made in any inducement of any supply & hence this cannot be considered as a consideration.

2.8 Applicant submits a Letter of NOC dtd 11.02.2020 by the Society to a particular outgoing member which states that the Member has duly paid Share Transfer Fees or Rs 25,000/- as per the Maharashtra Cooperative Societies Act by Laws and there are no outstanding dues of the said member, post which, a voluntary contribution was made by the outgoing member. Further, the applicant submits an Affidavit by the outgoing member which states that the payment is solely made out of his own discretion and not in lieu of NOC or any other Service and also an Affidavit by the Treasurer which state that the Voluntary Contribution is not taken in lieu of NOC provided to the Member and it is solely on the discretion of the member to make such Voluntary Contribution.

2.9 The Voluntary Contribution is shown as a Capital Reserve under the Major Repairs Fund in the applicant's Books of Account. As for the Para wise Comments provided by the Jurisdictional Officer, assuming that member was already an outgoing member and share certificate had endorsement done of the transfer, then the amounts was clearly against any service and purely voluntary as the member had nothing to obtain in return from the Society.

03. CONTENTION – AS PER THE CONCERNED OFFICER:

OFFICER’S SUBMISSIONS DATED 06.09.2021:-

3.1 On perusal of the definition of the term “service”, it is adequately clear that the term “service” under the CGST Act, 2017 has a very wide connotation, which is evident from the presence of the expression “anything other than goods, money and securities”. In view of this, it is clear that the activities undertaken by the Applicant have been covered under the scope of the term “service”.

3.2 Further, as per clause (e) under Section 2(17) of the CGST Act, 2017, provision of any facilities or benefits by a club, association, or society to its members against a subscription or any other consideration would be construed as business. In the present case also, the Applicant is undertaking various sorts of activities for the members of the society against the contribution called “maintenance charges”, which can reasonably be construed as “consideration” in terms of Section 2(31) of the CGST Act, 2017. Thus, applicant is undertaking up keeping and maintenance activities for the benefits of its members, it is clear beyond doubt that under the provisions of the CGST Act, 2017, the Applicant is doing “business” in terms of its definition provided under Clause (e) of Section 2(17) the CGST Act, 2017. Since, the Applicant is providing services to its members against the consideration, named as ‘maintenance charges’ in the course or furtherance of business, therefore, the activities would be construed as “supply” in terms of Section 7(1) (a) of the CGST Act, 2017 and accordingly liable for GST.

3.3 The provisions under the CGST law, namely, definition of ‘person’, ‘business’ and ‘supply’ are now self-contained, unqualified and wide enough to include the supply by both-incorporated and unincorporated clubs to its members and by their extensiveness completely does away with the principal of mutuality and the Hon’ble Gujarat High Court Judgment in the case of Sports Club of Gujarat Limited Vs. Union of India (2010) 35 VST 375 (Gujarat HC), pronounced under the erstwhile the Finance Act. 1994, is not applicable to facts and circumstances of the instant case. Further, clause (c) of Sl. 77 of Notification No. 12/2017-C.T.R., dt 28.06.2017 as amended by Notification No. 2/2018-C.T.R., dt 25.01.2018 stipulates that, 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 up to an amount of seven thousand five hundred rupees per month per member for sourcing of goods or services from a third party for the common use of its members in a housing society or a residential complex is exempt from levy of GST. Thus, it can clearly be inferred from the provisions of aforesaid notification that any amount, exceeding seven thousand five hundred rupees per month per member, charged by the

housing society from its members, for the supply of goods or services for the common use of its members, would be subject to GST provided that the aggregate turnover of such society in a financial year exceed twenty lakh rupees.

3.4 With respect to the second question, it is submitted that, Payment from an outgoing member to a society is a payment made for the services rendered by society to the outgoing member during his stay as a member in society. As outgoing member is satisfied with the quality of services received by him and provided by society during his stay as a member in society, he has a gratitude towards society and accordingly he makes voluntary payment to the society. Hence, it is a consideration received to the society against supply of services. The claim of applicant is that the receipt of a gratuitous payment from an outgoing member for the time he has resided in the society cannot be taxable under the CGST Act, 2017 as there is no corresponding service being provided separately by the tax payer society, is not tenable. As outgoing member has received the services provided by society during his stay as a member in society. As he has satisfied with the services received by him, he has a gratitude towards society and accordingly he makes voluntary payment to the society. Hence, it is a consideration received to the society against supply of services. Hence, taxable under CGST Act-2017.

3.5 An advance does not earn any return on it, whereas a deposit earns interest. An advance has to be utilized for the specific purpose for which the advance is made, whereas utilization of a deposit depends entirely on the person with whom it is deposited. GST is not applicable on deposit in view of section 2(31) of GST Act. But GST is certainly applicable on the advance received. In the subject case, members do not earn any interest on money given to society and the money received by applicant for the repair services agreed to be supplied by applicant in the near future. Hence it is an advance not the deposit. The applicants contention as "There is no supply of goods or services, by the applicant, and collection of corpus fund is only a transaction in money" is not tenable as the money received is an advance for the repair services agreed to be supplied by applicant in the near future, hence liable to be taxed at the time of receipt. Repairs of building is treated as service in GST Act-The rules for the time of supply under GST plays a very important role in determining when to pay tax for a transaction. The general rule for time of supply for services is earliest of the following –

- Date of issue of invoice
- Date of receipt of payment/advance
- Date on which invoice should be issued

This means that if the advance is received before the issue of the invoice the time of supply would be the date of receipt of advance. Thus, taxpayers receiving advance must pay GST on the money received as advance. Thus, money collected by society as sinking fund for the repair services agreed to be supplied by applicant in the near future is an advance and is taxable under CGST and MGST Acts and to be taxed at the time of receipt.

04. HEARING

4.1 Preliminary e-hearing was held on 27.07.2021. Authorized representatives of the Applicant, Shri. Akshay Shah, Partner of company and Shri. Adit Shah, Consultant were present. The Concerned Nodal Officer Shri. Ganesh Londhe, Asst. Commissioner of State Tax, MUM-VAT-D-821, Nodal 02, Mumbai was also present. The Authorized representatives made oral submission with respect to admission of their application. The applicant informed that Q-1 is withdrawn. The applicant was directed to produce details of income collected as mentioned in Q-2 together with vouchers and details as to what treatment to said income is given in the final accounts and in the income tax returns. The applicant was also directed to produce declaration or proof taken from such members to prove the fact that said contribution is voluntary and not binding on outgoing member. The applicant was further asked to produce details as to NOC or No dues certificate issued (or not issued) to such members who have made contributions.

4.2 The application was admitted and final e-hearing was held on 26.04.2022. The Authorized representative of the applicant, Shri. Akshay Shah, Learned Partner was present. The Jurisdictional officer, Shri. S. T. Mohite, ACST, MUM-VAT-D-821, Nodal-2 was present. Question No. 3 is withdrawn by applicant voluntarily. The matter was heard only with respect to Question No. 2.

05. OBSERVATIONS AND FINDINGS:

5.1 We have gone through the facts of the matter, documents on record and submissions made by both, the jurisdictional officer as well as the applicant.

5.2 Question No. 1 raised in the application was withdrawn by the applicant during the course of the Preliminary Hearing and Question No. 3 raised in the application was withdrawn by the applicant during the course of the Final Hearing and therefore, both the questions are not taken up for discussion.

5.3 The second question i.e Question no.2 asked by the applicant is as under:

Whether the receipt of a gratuitous payment from an outgoing member for the time he has resided in the society be taxable under the CGST Act, 2017 as there is no corresponding service being provided separately by the tax payer society?

5.4 The applicant has submitted that whenever there is a transfer of a flat, the outgoing member makes a gratuitous payment to the applicant society which does not have any implications or bearing on outgoing formalities to be completed as per the Maharashtra Co-operative Societies Act including issue of NOC for sale of the said flat. The Applicant has further submitted that the gratuitous contribution is voluntary made by the outgoing member and is not at all a consideration received in lieu of services provided by the Applicant and therefore such amounts received are not liable to GST.

5.5 The jurisdictional officer has submitted that, the gratuitous and voluntary payment received by the applicant from an outgoing member is a payment made for the services rendered by society to the outgoing member during the member's stay in the applicant society. The jurisdictional officer has further submitted that since an outgoing member is satisfied with the quality of services received by him and provided by society during his stay as a member in society, he has a gratitude towards society and accordingly he makes voluntary payment to the society and therefore, it is a consideration received to the society against supply of services.

5.6.1 First and foremost we would discuss whether the applicant society can legally collect the so called gratuitous and voluntary donation from a transferor of a flat in the society. We therefore refer to the 'Model Bye Laws of the Co-operative Housing Societies' in Maharashtra. Bye Law No 38 is very relevant in the present case and is therefore reproduced as under:

Bye Laws No. 38

Notice of transfer of Shares and interest in the capital /property of the Society.

(a) A member, desiring to transfer his shares and interest in the capital/property of the Society shall give 15 days' notice of his intention to do so the Secretary of the Society in the prescribed form, along with the consent of the proposed transferee in the prescribed form.

(b) On receipt of such notice, the Secretary of the Society shall place the same before the meeting of the Committee, held next after the receipt of the notice, pointing out whether the member is primefacie eligible to transfer his shares and interest in the capital/property of the Society, in view of the provisions of Section 29(2)(a) of the Act.

(c) In the event of ineligibility (in view of the provisions of section 29(2)(a) & (b) of the Act) of the member to transfer his shares and interest in the capital/property of the Society, the Committee

shall direct the Secretary of the Society to inform the member accordingly within 8 days of the decision of the Committee.

(d) "No Objection Certificate" of the Society is not required to transfer the shares and interest of the transferor to transferee. However in case such a certificate is required by the transferor or transferee, he shall apply to the Society and Committee of the Society may consider such application on merit, within one month.

(e) The Transferor/Transferee shall submit following documents and make the compliance as under:

(i) Application, for transfer of his shares and interest in the capital/ property of the society, in the prescribed form, along with the share certificate;

(ii) Application for membership of the proposed transferee in the prescribed form;

(iii) Resignation in the prescribed form;

(iv) Stamp duty paid agreement;

(v) Valid reasons for the proposed transfer;

(vi) Undertaking to discharge the liabilities to the society by the transferor;

(vii) Payment of the transfer fee of Rs. 500/-;

(viii) Remittance of the entrance fee of Rs. 100/- payable by the proposed transferee;

(ix) Payment of amount of premium at the rate to be fixed by the general body meeting but within the limits as prescribed under the circular, issued by the department of co-operation government of Maharashtra from time to time.

No additional amount towards donation or contribution to any other funds or under any other pretext shall be recovered from transferor or transferee;

(x) Submission of 'no objection' certificate, required under any law for the time being in force or order or sanction issued by the government, any financing agency or any other authority;

(xi) The undertaking/declaration in compliance with the provisions of any law for the time being in force, in such form as is prescribed under these bye-laws.

Note : The condition of Sr. No. (ix) above shall not apply to transfer of shares and interest of the transferor in the capital/property of the society to the member of his family or to his nominee or his heir/legal representative after his death and in case of mutual exchange of flats amongst the members.

5.6.2 In view of the above clause (ix), it is expressly clear that, **No additional amount towards donation or contribution to any other funds or under any other pretext shall be recovered from transferor or transferee by the housing society.**

5.6.3 Further Model Bye law No. 7 of the Cooperative Housing Societies, pertaining to 'raising of Funds' by a housing society, states the various ways how funds can be raised by a Housing Society and **clause (e) specifically states that funds can be raised by voluntary donations but not from Transferor or Transferee.**

5.6.4 Thus, in view of the Model Bye laws No. 7 (e) & 38 (e) (ix) of the Cooperative Housing Societies, it is clear that the applicant cannot collect amounts as voluntary donations from Transferor or Transferee in excess of premium i.e Rs. 25,000/- (as also mentioned by the applicant during the course of the final hearing) fixed by the society for transfer of flats. **Therefore, we find that the society cannot at all accept voluntary donations from a Transferor or Transferee in transgression of the Model Bye Laws of Cooperative Housing Societies in Maharashtra and therefore the amounts received by the society from the Transferor cannot be considered as voluntary donations.**

5.7 Vide its reply dated 29.04.2022, the applicant has stated that it was submitting an Affidavit by an outgoing member (Mr. Sanjay Prakash Sahjwani), which states that the payment is solely made out of his own discretion and not in lieu of NOC or any other Service. We have perused the said document submitted by the applicant and find that the said document is not clear and complete. **However, from whatever can be seen in the said Affidavit, we observe that the amount of Rs. 17,70,000/- has been given to the society by the outgoing member towards Building Betterment Fund of the Society and it is clearly stated that the amount is inclusive of GST.** The signature of the Deponent in the copy produced in advance ruling hearing Affidavit, date, etc are also missing. The applicant has produced unclear incomplete copy of affidavit and avoided to produce the original of said affidavit.

5.8 This issue of transfer charges was before the Bombay High Court in the case of Alankar Sahkari Griha Rachana Sanstha Maryadit vs Atul Mahadev and another (Writ Petition No 4457 of 2014, decided on August 6, 2018), where the Bombay High Court, relying on the provisions of the byelaws adopted by the society and the circular dated August 9, 2001, observed that there was a ceiling of Rs 25,000 for transfer fees and that different ways were being invented by societies, to earn more money through legally impermissible means. Further, the Bombay High Court, in the Alankar Sahkari case, recognised that in a situation where a flat purchaser wants a smooth

transaction and transfer of the share certificate in his name, the society enjoys a dominant position. Under such circumstances, the society demands payment of exorbitant amounts from the flat purchaser, under the garb of 'voluntary donations'.

5.9 Further, we observe that in the instant case, the contributions are received from the outgoing members who have been members of the society in the past and, have received services from the society as envisaged under the GST Act. Thus, it can be said that, Payment from an outgoing member to a society is a payment made for the services rendered by society to the outgoing member during his stay as a member in society. As outgoing member is satisfied with the quality of services received by him and provided by society during his stay as a member in society. Hence, it is a consideration received to the society against satisfaction of the said member on supply of services received from the society. This is akin to the service charges levied by restaurants on which GST is collected. The restaurant collects GST on sale of food and many a times collect a percentage of the Bill amount as service charges (on which GST is levied) which are paid by customers. These service charges can be refused to be paid by the customer in the event that the customer is not happy with the services rendered by the restaurant. Similarly, in the subject case the outgoing member being happy with the services received has paid contributions to the applicant society which is liable to be taxed under GST Laws as consideration for good services received in the past. Further, the contributions are made by the outgoing members only because they have been a part of the said society. It is not that an outsider has given any contribution to the applicant society. The receipt of contribution by the applicant from its members whether outgoing or not, is only because of the fact that the members are or have been a part of the society. If the applicant society had received contributions from outsiders to the effect that the same was a donation then probably on case to case basis it could have been treated differently.

5.10 Even the half baked and incomplete copy of affidavit submitted by the applicant in respect of an out going member by the name Mr. Sanjay Prakash Sahjwani mentions that the amount is being given towards 'Building Betterment Fund'. Further, the applicant has also submitted a copy of the Affidavit of Shri Chandresh Thakker, Treasurer of the Applicant Society, wherein it is mentioned that the amount given by the outgoing member Mr. Sanjay Prakash Sahjwani (towards 'Building Betterment Fund') has been transferred by the Applicant Society towards 'Major Repairs Fund'. Thus, it is clear that the amount is paid for receipt of services from the society when the Major Repairs are being carried out or will be carried out. Therefore, the said contribution is nothing



but Advance amounts paid to the society for services to be received in future by the members of the Society and is therefore taxable as per the GST Laws. In fact, services are very definitely going to be provided by the Applicant Society to its members in future when Major Repairs are undertaken and amounts from the Major Repairs Fund are utilized towards rendering of the said services and the outgoing member has clearly specified that the amount given is to be used for Major repairs of the Society.

We also observe that the Affidavit of Shri Chandresh Thakker, Treasurer of the Applicant Society is dated 09.11.2021 (date when the Affidavit was notarised), whereas from the submissions of the applicant, the outgoing member has supposedly received the NOC on 11.02.2020 and the contribution made by the said member appears to be on 07.03.2020 (the applicant has mentioned 07.03.2019 which appears to be an inadvertent error). Thus the Hon. Treasurer found it fit to make an Affidavit on 09.11.2021 i.e. more than one year after the subject application was filed and that too, after the date of the Preliminary hearing i.e 27.07.2021 during which: the applicant was directed to produce details of income collected as mentioned in Q-2 together with vouchers and details as to what treatment to said income is given in the final accounts and in the income tax returns ; the applicant was asked also to produce declaration or proof taken from such members to prove the fact that said contribution is voluntary and not binding on outgoing member; the applicant was further asked to produce details as to NOC or No dues certificate issued (or not issued) to such members who have made contribution. The Affidavit of the Treasurer of the Applicant Society was prepared and made only after these above observations were made by this Authority during the Preliminary Hearing, and therefore preparation of the concerned Affidavit appears to be an afterthought on part of the applicant society.

- 5.11 To sum up, we find that the Applicant Society cannot take Voluntary Contributions at all from an outgoing member (transferor of a flat) in view of Bye laws No. 7 (e) and 38 (e) (ix) of the Model Bye laws for Cooperative Housing Societies in Maharashtra. It appears that the applicant is trying to give a colour of 'voluntary and gratuitous' payment for amount received from a Transferor/Outgoing member which is collected and will be used for carrying out Major Repairs in future as is seen from the Affidavit submitted by Shri Chandresh Thakker, Treasurer of the Applicant Society.
- 5.12 Activities rendered by the applicant Society to its members are supply of services in view of the amended Section 7 of the CGST Act, 2017 and contributions/charges collected by the Applicant Society from its members are chargeable to tax under the GST Laws. This has been accepted by



the applicant and accordingly it has withdrawn Question Nos. 1 and 3 of the application. We have held above that the contributions received from outgoing members are payments for taxable services received from the applicant in the past and for taxable activities of the applicant in future pertaining to Major Repairs to be undertaken.

5.13 We also reproduce the contents of para 2 of the application as under:

When there is a transfer of a flat, the outgoing member makes a gratuitous payment in gratitude of payment. The same does not have any implications on outgoing formalities to be completed as per the Maharashtra Co-operative Societies Act. The Applicant states that the above contribution made is entirely voluntary and is not at all a consideration received in lieu of services provided by the Applicant. The outgoing member makes such contribution on his own volition.

From the said submissions made by the applicant, it appears that each and every outgoing member makes a gratuitous payment to the applicant in gratitude thus leading to a conclusion that all sellers/Transferor of flat in the society, without a single exception are in gratitude towards the Applicant Society. Thus, it appears that the applicant society has laid down norms albeit only it seems, that there is a compulsion for an outgoing member to show gratitude to the Applicant Society by way of making gratuitous/voluntary payments to the Society. We have already mentioned above that such voluntary payments cannot be accepted by the Applicant Society from the Transferors/Transferee as per the Model Bye Laws. We are of the opinion that the amounts are collected for smooth transfer of the flat from the Transferor to the Transferee.

5.14 We are reminded by the observation made by Hon'ble Bombay High Court in the case of Alankar Sahkari Griha Rachana Sanstha Maryadit vs Atul Mahadev and another, mentioned above and agree that, in a situation where a flat purchaser wants a smooth transaction and transfer of the share certificate in his name, the society enjoys a dominant position and under such circumstances, the society may demand payment of amounts from the flat purchaser, under the garb of 'voluntary donations'.

5.15 Finally, we find that the contribution made by the outgoing member is nothing but consideration and we reproduce the definition of the term 'consideration' under the CGST Act as under:-

Section 2 (31) of the CGST Act, 2017 :-

(31) —consideration in relation to the supply of goods or services or both includes—

(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or

by any other person but shall not include any subsidy given by the Central Government or a State Government;

(b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government: **Provided** that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply.

5.16 From the definition reproduced in the above para above, we find that 'consideration' includes – any payment made (in the subject case payment is made by the Transferor which is termed as voluntary contribution by the applicant) in money and since the payment is made towards Major Repair Funds of the Society, it is clear that the said payment is for the inducement of, the supply of goods or services or both, either by the recipient if he continues to be a member, or by any other person (meaning, other members). There is a famous case of M/s MP Finance Group CC (In Liquidation) v C SARS reported in 69 SATC 141 in which one important legal proposition explained and the High Court of Appeal ruled that income 'received by' a taxpayer from illegal gains will be taxable in the hands of the taxpayer. Thus though the collection of charges of society might be illegal under some other law, but since it is covered by the scope of supply and other ingredients of GST levy, it is taxable.

5.17 From the foregoing we have no hesitation in holding that the receipt of gratuitous payment from an outgoing member is taxable under the CGST Act, 2017.

06. In view of the extensive deliberations as held hereinabove, we pass an order as follows:

ORDER

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

For reasons as discussed in the body of the order, the questions are answered thus –

Question 1:- Whether the charges received by the applicant towards upkeep and maintenance from its members are covered under Sec 7 of the CGST Act?

Answer:- Not answered since the question has been voluntarily withdrawn by the applicant.

Question 2:- Whether the receipt of a gratuitous payment from an outgoing member for the time he has resided in the society be taxable under the CGST Act, 2017 as there is no corresponding service being provided separately by the tax payer society

Answer:- Answered in the affirmative.

Question 3:- Whether major repairs to be made in the future for the co-operative housing society, for which amounts are collected be taxable at all as it is for the members only? And if taxable, whether the same is taxable at the time of its collection or whether the same would be taxable on utilization of such funds?

Answer:- Not answered since the question has been voluntarily withdrawn by the applicant.



RAJIV MAGOO
(MEMBER)

L. P. RAMNANI
(MEMBER)

Copy to:-

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Pr. Chief Commissioner of Central Tax, Churchgate, Mumbai
5. The Joint Commissioner of State Tax, Mahavikas for Website.

Note:-An Appeal against this advance ruling order shall be made before, The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India Building, Nariman Point, Mumbai – 400021. Online facility is available on gst.gov.in for online appeal application against order passed by Advance Ruling Authority.

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