

MAHARASHTRA AUTHORITY FOR ADVANCE RULING
GST Bhavan, 8th floor, H-Wing, Mazgaon, Mumbai - 400010.
 (Constituted under Section 96 of the Maharashtra Goods and Services Tax Act, 2017)
BEFORE THE BENCH OF

- (1) Shri B. Timothy, Addl. Commissioner of Central Tax, (Member)
 (2) Shri B. V. Borhade, Joint Commissioner of State Tax, (Member)

GSTIN Number, if any/ User-id	27AAEAK6397F1ZA
Legal Name of Applicant	KABRA GALAXY STAR 3 CO-OP HOUSING SOCIETY
Registered Address/Address provided while obtaining user id	ALYA AND GARNET BUILDING, BRAHMAND COMPLEX ,OFF GB ROAD, Thane, Maharashtra, 400607
Details of application	GST-ARA, Application No. 137 Dated 18.03.2019
Concerned officer	State Tax Officer (THA-VAT-C-018) Thane.
Nature of activity(s) (proposed / present) in respect of which advance ruling sought	
A Category	Service Provision
B Description (in brief)	Activity : Assesse is a registered Housing Society providing services to it's members.
Issue/s on which advance ruling required	(v) Determination of the liability to pay tax on any goods or services or both
Question(s) on which advance ruling is required	As reproduced in para 01 of the Proceedings below.

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"] by **KABRA GALAXY STAR 3 CO-OP HOUSING SOCIETY**, the applicant, seeking an advance ruling in respect of the following question.

Individuals who own flat/s in a society but have opted not to become the member of the society

Will they be at par with the other individual flat owner who have opted for the membership of the society, for GST exemption of Rs. 7500/- , or Will be treated as outsider and shall be liable for GST without exemption of Rs. 7500/-.

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**

The submissions, as reproduced verbatim, could be seen thus-



Definitions under GST Act which attracts the taxability to co-operative societies

Section 2(84) "Person" includes a co-operative society registered under any law relating to co operative societies or Society as defined under the Societies Registration Act, 1860

Sec 2(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

Sec 2(17) "Business" includes provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;

A co-operative society (being a person as defined above) provides services to its member in the form of facilities or benefits to it member (in course of business) for a consideration.

Based on above definition and concept of supply co-operative society also gets covered under GST.

A Housing Society / Residential Welfare Association shall be required to pay GST on monthly subscription / contribution charged from its members if such subscription is more than Rs 7500 per member and the annual turnover of Residential Welfare Association by way of supply of services and goods is also Rs 20 lakh or more.

The model bye laws vide 97th amendment to MAHARASHTRA COOPERATIVE HOUSING SOCIETY'S

Modified GR dated 2013 and adopted by the said society says on page no 13 SUB head h) Member is the person who at the time of registration or even after registration of the Society accepted by same society and who holds property rights individually or jointly. The said copy in Marathi is attached herewith.

Our interpretation

Exemption of Rs.7500 per month is available to its members only, VIDE notification no.11/2017 State Tax (Rate) dated 29th June 2017.

Non-member will not be eligible for basic exemption of Rs. 7500/

Hence GST will be payable by them on taxable services without basic exemption.

Additional submissions

PRESENTATION BEFORE ADVANCE RULLING AUTHORITY

A Co-op Society provides services to its members in the form of facilities or benefits for a consideration. Based on concept of supply, Co-Op Society also gets covered under GST.

Maintenance Charges of Hsg. Society covers Taxable & Exempted Services.

Taxable Services:

CBEC in FAQ; has clarified that Sinking fund, Repair & Maintenance Fund, Car Parking Charges, Non Occupancy Charges or Interest for late payment would be covered by GST, as these are collected by the CHS for supply of services meant for its members.

Exempted Services:

Services provided by the Central Government, State Government, Union Territory or Local Authority to a person other than business entity is exempted from GST. So Property Tax, Water Tax, N.A. Tax, Electricity Charges etc., when collected by CHS on behalf of Municipal Corporation or under statutes from Individual flat owner then GST is not leviable.

Sec. 2(17)

Business includes provision by a club, association, society or any such body (for a subscription or any other consideration) of the facilities or benefits to its members.

Definition of Member in Bye Laws of Housing Society :

“Member” means a person **joining in an application for the Registration** of a Co-operative Housing Society, which is subsequently registered, or a **person duly admitted to Membership of a Society** after Registration and **who holds the right, title and interest in the property individually or jointly.**

A) Class of Members :

- i) Members, including Associates Members &
- ii) Nominal Members

B) Eligibility for Membership :

Individual who is competent to contract under the Indian Contract Act. 1872.

C) Conditions for Membership :- :

Individual, eligible to be the member, should. .

- Apply for the membership in prescribed form.
- Fully tender the value of at least 10 shares of the society.
- Pay Entrance fees of Rs. 100/= along with the application.

I would like to draw your attention towards :

- Notification 11/2017 of Central tax (Rate) dated 28/6/2017
- Notification. 12/2017 of Central tax (Rate) dated 28/6/2017
- Notification 2/2018 of Central tax (Rate) dated 25/1/2018

SAC	Services	Rate
Heading - 9995 With exemption of "	Services of membership organisation to it's own members by way of reimbursement of charges or share of contribution up to an amount of Rs. 7500/-,"	9%

Our Interpretation

1. Society is exempted from GST Liability if .
 - a) It's turnover is less than 20 Lakhs or
 - b) It's turnover is more than 20 Lakhs but monthly contribution of individual **members** towards maintenance is less than 7500/- and the society is not providing any other taxable services to its **members or outsiders**.
2. Exemption of Rs. 7500/- is available to its members only.

Issue

Individuals who own flat/s in a society but have opted not to become the member of the society. Will they be at par with the other individual flat owner who have opted for the membership of the society, for GST exemption of Rs. 7500/- , or will be treated as outsider and shall be liable for GST without exemption of Rs. 7500/-.

03. CONTENTION - AS PER THE CONCERNED OFFICER

The submission, as reproduced verbatim, could be seen thus-

1. Assesse has two types of members

a) Flat owners are enrolled as a member of the society and classified as "members". b) Flat owners not enrolled as a member of the society & classified as "Non-member".

(1) As per Maharashtra Goods and Service Tax Act, 2017 u/s 2(17) (e) 'Provisions of facilities or benefits to his members by society are liable for GST.

As per notification No. 12/2017 - State Tax (Rate) Dated the 29th June 2017 SR. NO:77 Heading 9995 Description of Services as under: **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 upto an amount of (Seven Thousand Five hundred) rupees per month per member for sourcing of goods or services from third person for the common use of its members in a housing society or a residential complex.**

(3) As per THE MAHARASHTRA CO-OPERATIVE SOCIETIES ACT, 1960 definition of member is as under

2(19) (a) "member" means a person joining in an application for the registration of a Co-operative society which is subsequently registered, or a person duly admitted to membership of a society after registration and includes a nominal, associate or sympathizer member;

(b) "Associate member" means a member who holds jointly a share of a society with others, but whose name does not stand first in the share certificate;

(c) "Nominal member means a person admitted to membership as such after registration in accordance with the bye-laws;



(d) "Sympathizer member" means a person who sympathizes with the aims and objects of the society and who is admitted by the society as such member;

Expl: As per notification No. 12/2017 - State Tax (Rate) Dated the 29th June 2017 SR. NO 77 Heading 9995, as discussed in point No.2 above it is clear that members are only exempted from GST. In case of Assesse, Non-members are recipient of services provided by society. Hence in my opinion GST is applicable for them.

04. **HEARING**

Preliminary hearing in the matter was held on 09.04.2019. Sh. Ranjan Jhavar, C.A., appeared, and requested for admission of their application. Jurisdictional Officer Ms. Neeta Kadam, State Tax Officer (THA-VAT-C-018) Thane, appeared and made written submissions.

The application was admitted and called for final hearing on 23.05.2019. Sh. Ranjan Jhavar, C.A., appeared, made oral and written submissions. Jurisdictional Officer also appeared.

06. **OBSERVATIONS**

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

We find from the oral and written submissions made by the applicant that they are a Co-operative Housing Society. They are well aware that, as a **co-operative society providing services to their members in the form of facilities or benefits to the members (for which they receive consideration)**, they are covered by the provisions of GST laws and the supply of services in their case is taxable. They have also submitted that they provide both, taxable as well as exempted services. They have also submitted that as per the provisions contained in Notification No. 11/2017-CT (Rate) dated 28.06.2017 their supply of services is classifiable under Services Heading 9995 and taxable @ 18% GST. However as per Notification No. 12/2017-CT (Rate) dated 28.06.2017, as amended, their supply of services will attract NIL rate of tax in the event that the charges or contribution received from their members is less than Rs. 7,500/- per month.

A perusal of their submissions reveal that they are well aware of the GST laws. The only question they are asking is whether ;

"Individuals who own flat/s in a society but have opted not to become the members of the society, will they be at par with the other individual flat owner who have opted for the membership of the society, for GST exemption of Rs. 7500/- , or will they be treated as outsider and shall be liable for GST without exemption of Rs. 7500/-."

The question that they are asking this authority is, whether members of the society will be at par with the other individual flat owners who are not members. We find that the said question raised by them does not fall under any of the clauses of Section 97(2) of the CGST Act, which is reproduced as under:

(2) The question on which the advance ruling is sought under this Act, shall be in respect of,—



- a. classification of any goods or services or both;
- b. applicability of a notification issued under the provisions of this Act;
- c. determination of time and value of supply of goods or services or both;
- d. admissibility of input tax credit of tax paid or deemed to have been paid;
- e. determination of the liability to pay tax on any goods or services or both;
- f. whether applicant is required to be registered;
- g. 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.

In other words, Section 97(2), which encompasses the questions, for the ruling by the AAR does not cover the question raised by the applicant. It is therefore felt that this authority does not have jurisdiction to pass any ruling on such matters/questions.

In view of the above discussion, we reiterate that the questions posed before us are not the questions in respect of which an Advance Ruling can be sought under the GST Act. In view thereof, we find that the impugned application is not maintainable. No proceeding of Advance Ruling under the GST Act lies in the instant case.

05. 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)

NO.GST-ARA- 137/2018-19/B- 66 Mumbai, dt. 04/06/2019

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

The application for advance ruling is rejected, being non-maintainable.



—sd—
B. TIMOTHY
(MEMBER)

—sd—
B. V. BORHADE
(MEMBER)

Copy to:-

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

CERTIFIED TRUE COPY

MEMBER
ADVANCE RULING AUTHORITY
MAHARASHTRA STATE, MUMBAI

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.