

WEST BENGAL AUTHORITY FOR ADVANCE RULING

GOODS AND SERVICES TAX

14 Beliaghata Road, Kolkata – 700015

(Constituted under section 96 of the West Bengal Goods and Services Tax Act, 2017)

Members present:

Dr Tanisha Dutta, Joint Commissioner, CGST & CX Joyjit Banik, Additional Commissioner, SGST

Preamble

A person within the ambit of Section 100 (1) of the Central Goods and Services Tax Act, 2017 or West Bengal Goods and Services Tax Act, 2017 (hereinafter collectively called 'the GST Act'), if aggrieved by this Ruling, may appeal against it before the West Bengal Appellate Authority for Advance Ruling, constituted under Section 99 of the West Bengal Goods and Services Tax Act, 2017, within a period of thirty days from the date of communication of this Ruling, or within such further time as mentioned in the proviso to Section 100 (2) of the GST Act.

Every such appeal shall be filed in accordance with Section 100 (3) of the GST Act and the Rules prescribed there under, and the Regulations prescribed by the West Bengal Authority for Advance Ruling Regulations, 2018.

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| Name of the applicant | Fortune Estates Association of Apartment Owners |
| Address | Fortune Estate, Chetla Road, Kolkata, West Bengal, Pincode-700027 |
| GSTIN | 19AABAF1492R1Z4 |
| Case Number | WBAAR 04 of 2024 |
| ARN | AD1903240008837 |
| Date of application | March 13, 2024 |
| Jurisdictional authority (State) | Alipore Charge |
| Jurisdictional authority (Centre) | Rashbehari division, Kolkata-South Commissionerate |
| Order number and date | 05/WBAAR/2024-25 dated 29.07.2024 |
| Applicant's representative heard | Mr. Mohit Kabra, CA |

1.1 At the outset, we would like to make it clear that the provisions of the Central Goods and Services Tax Act, 2017 (the CGST Act, for short) and the West Bengal Goods and Services Tax Act, 2017 (the WBGST Act, for short) have the same provisions in like matter except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the WBGST Act. Further to the earlier, henceforth for

the purposes of these proceedings, the expression “GST Act” would mean the CGST Act and the WBGST Act both.

1.2 The applicant is stated to be a Residential Welfare Association (RWA) or an Association of Persons (AOP, for short) who is engaged in the business of providing services to its own members by way of reimbursement of charges or share of contribution for sourcing of goods or services procured from a third person.

1.3 The applicant has made this application under sub section (1) of section 97 of the GST Act and the rules made there under seeking an advance ruling in respect of following questions:

(i) Whether Serial No 77 of the Notification No 12/2017 shall be applicable on such members of RWA (unincorporated body) whose share of contribution is less than Rs. 7,500 per month and whereas the monthly maintenance (share of contribution) of other members of the same RWA are more than Rs. 7,500/-?

(ii) The applicant wants to know about chargeability of GST. Whether RWA (unincorporated body) shall charge GST from all the members irrespective of their share of contribution (monthly maintenance) or only from those members whose share of contribution is more than Rs. 7,500 per month although the annual turnover of RWA is more than 20 lakh per annum?

(iii) The applicant wants to know about chargeability of GST. Whether RWA (unincorporated body) shall charge GST from those members whose maintenance is less than Rs. 7,500 per month in a case where other members of same RWA are contributing more than Rs. 7,500 per month, although the annual turnover of RWA is more than Rs. 20 lakhs per annum?

(iv) The applicant wants to know about chargeability of GST. From which members the RWA shall charge GST in a situation where the annual turnover is more than Rs. 20 lakhs, but the share of contribution from maximum members of RWA is less than Rs. 7,500 per month but some paying monthly maintenance (Contribution) of more than Rs. 7,500/-?

1.4 The aforesaid questions on which the advance ruling is sought for are found to be covered under clause (b) of sub-section (2) of section 97 of the GST Act.

1.5 The applicant states that the questions raised in the application have neither been decided by nor are pending before any authority under any provision of the GST Act.

1.6 The application is, therefore, admitted.

2. Submission of the Applicant

2.1 The applicant is stated to be a Resident Welfare Association (RWA) duly registered under the West Bengal Apartment Ownership Act, 1972 vide Regn No. 003032022 of 2022 and provides services to its own members by way of reimbursement of charges or share of contribution (maintenance) for sourcing of goods and services procured from a third person for the common use of the members in the residential complex.

2.2 The applicant states that there are 33 apartments in the residential complex and each flat owner is a member of the RWA. The applicant collects monthly maintenance charges from each member based on the super built area of the apartment that the member owns.

2.3 The applicant refers serial no 77 of the Notification 12/2017 CT(R) dated 28.06.2017, amended time to time, by virtue of which services by an unincorporated body (RWA) by way of reimbursement of charges or share of contribution up to an amount of Rs. 7,500 per month per member to its members in a housing society or a residential complex is exempted under GST Act. The relevant portion of the said notification is reproduced hereunder:

| Serial No | Chapter, Section, Heading, Group or service Code (Tariff) | Description of service | Rate (per cent) | Condition |
|-----------|---|---|-----------------|-----------|
| 77 | Heading 9995 | 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- (c) up to an amount of ²³ [seven thousand five hundred] rupees per month per member for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex. | Nil | Nil |

2.4 The applicant interprets that their activities as a RWA of providing maintenance services to its own members attracts SAC 999598 which falls under heading “Services furnished by Home Owners Association”.

2.5 The applicant argues that notification does not specify anything about the chargeability of GST from those members of same residential complex whose monthly maintenance is less than Rs. 7,500 per month and whereas other members of the same residential complex are contributing more than Rs. 7,500 per month.

3. Submission of the Revenue

The concerned officer from the revenue has not expressed any view on the issue raised by the applicant.

4. Observations & Findings of the Authority

4.1 We have gone through the records of the issue as well as submissions made by the authorized representative of the applicant during personal hearing.

4.2 We find that the applicant has raised four questions in the application made in FORM GST ARA-01. However, all the four questions, being repetitive in nature, may be summarized into a single issue which is to determine the taxability of supply of services by a RWA to its members whose monthly subscription doesn't exceed Rs.7500/- per month considering the fact the RWA also collects monthly subscription exceeding Rs.7500/- from other members.

4.3 We find that several issues related to GST on monthly subscription/contribution charged by a Residential Welfare Association from its members have been clarified by the Tax Research Unit, Department of Revenue, Ministry of Finance vide Circular No. 109/28/2019- GST dated 22.07.2019 [West Bengal Trade Circular No. 30/2019 dated 31.07.2019]. The aforesaid circular clarifies inter alia following issues:

- *Are the maintenance charges paid by residents to the Resident Welfare Association (RWA) in a housing society exempt from GST and if yes, is there an upper limit on the amount of such charges for the exemption to be available?*

Supply of service by RWA (unincorporated body or a non- profit entity registered under any law) to its own members by way of reimbursement of charges or share of contribution up to an amount of Rs. 7500 per month per member for providing services and goods for the

common use of its members in a housing society or a residential complex are exempt from GST.

Prior to 25th January 2018, the exemption was available if the charges or share of contribution did not exceed Rs 5000/- per month per member. The limit was increased to Rs. 7500/- per month per member with effect from 25th January 2018. [Refer clause (c) of Sl. No. 77 to the notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 as amended vide notification No. 2/2018- Central Tax (Rate), dated 25.01.2018]

- Where a person owns two or more flats in the housing society or residential complex, whether the ceiling of Rs. 7500/- per month per member on the maintenance for the exemption to be available shall be applied per residential apartment or per person?*

As per general business sense, a person who owns two or more residential apartments in a housing society or a residential complex shall normally be a member of the RWA for each residential apartment owned by him separately. The ceiling of Rs. 7500/- per month per member shall be applied separately for each residential apartment owned by him.

For example, if a person owns two residential apartments in a residential complex and pays Rs. 15000/- per month as maintenance charges towards maintenance of each apartment to the RWA (Rs. 7500/- per month in respect of each residential apartment), the exemption from GST shall be available to each apartment.

4.4 Earlier, in a Press Release also it has been clarified that “RWA shall be required to pay GST on monthly subscription/contribution charged from its members if such subscription is more than Rs. 5000 per member and the annual turnover of RWA by way of supplying of services and goods is also Rs. 20 lakhs or more.”

4.5 It thus appears that the benefit of exemption as allowed vide serial no 77 of the Notification 12/2017 Central Tax (Rate) dated 28.06.2017, as amended, is entirely member specific meaning thereby if a RWA collects up to an amount of Rs.7500/- per month from a member by way of reimbursement of charges or share of contribution, the RWA shall not be liable to pay tax on such amount irrespective of the fact that there may be other members (even from the same person if he owns another flat in the same housing society or residential complex) in respect of whom such quantum exceeds Rs.7500/- per month. To illustrate, if a RWA who is registered under the GST Act, collects Rs.7000/- per month as maintenance charges from one of its member and Rs.9000/- from another member in the same residential complex, the RWA shall not be liable to pay tax on Rs.7000/-.

In view of the foregoing, we rule as under:

RULING

The applicant shall not be liable to pay tax on the amount which is collected from its members by way of reimbursement of charges or share of contribution where such amount does not exceed Rs.7500/- per month per member.

(Dr. Tanisha Dutta)
Member
West Bengal Authority for Advance Ruling

(JOYJIT BANIK)
Member
West Bengal Authority for Advance Ruling

To,
Fortune Estates Association of Apartment Owners
Fortune Estate, Chetla Road, Kolkata, West Bengal, Pincode-700027

Copy to,

- (1) The Principal Chief Commissioner, CGST & CX, 180, Shantipally, R.B.Connector, Kolkata-700107
- (2) The Commissioner of State Tax, West Bengal, 14, Beliaghata Road, Kolkata-700015
- (3) The Commissioner, Kolkata South Commissionerate, CGST & CX, 180, Shantipally, R.B. Connector, Kolkata-700107
- (4) The Charge Officer, Alipore Charge, 620, Diamond Harbour Road, Behala Industrial Complex, Kolkata-700034
- (5) Office Copy