

WEST BENGAL APPELLATE AUTHORITY FOR ADVANCE RULING
AT 14, BELIAGHATA ROAD, KOLKATA-700015

Before:

Mr. Shrawan Kumar, Member

Mr. Devi Prasad Karanam, Member

In the matter of

Appeal Case No. 01/WBAAAR/APPEAL/2024 dated 08.01.2024

- And -

In the matter of:

An Appeal filed under Section 100 (1) of the West Bengal Goods and Services Tax Act, 2017/ Central Goods and Services Tax Act, 2017, by PRINSEP ASSOCIATION OF APARTMENT OWNERS having GSTIN: 19AAKAP4502F1ZL at 1, New Bata Road, Calcutta Riverside, P.S. Maheshtala, Kolkata - 700140 against the Ruling passed by the West Bengal Advance Ruling Authority vide Order No. 22/WBAAR/2023-24 dated 29.11.2023.

Present for the Appellant:

Mr. Satyanarayan Gupta, CA

Present for the Respondent:

None

Matter heard on: 20.03.2024

Date of Order: 02.04.2024

1. This Appeal has been filed by M/s Prinsep Association of Apartment Owners having GSTIN: 19AAKAP4502F1ZL at 1, New Bata Road, Calcutta Riverside, P.S. Maheshtala, Kolkata – 700140 against the Ruling passed by the West Bengal Advance Ruling Authority vide Order No. 22/WBAAR/2023-24 dated 29.11.2023 (hereinafter referred to as the ‘WBAAR’).
2. The matter was originally fixed for hearing on 18.01.2024 which was adjourned upon prayer from the appellant and has been finally heard on 20.03.2024.
3. The Appellant sought an advance ruling under section 97 of the West Bengal Goods and Services Tax Act, 2017/ the Central Goods and Services Tax Act, 2017, (hereinafter collectively referred to as “the GST Act”) as to whether tax would be charged

- i) Over and above Rs. 7500/- or on the total amount collected from members in light of entry in sl. no. 77 of Notification No. 12/2017 dated 28.06.2017 read with Notification No. 02/2018 dated 25.01.2018.
 - ii) On amounts collected from the members for setting up a corpus fund for future contingencies/ major CAPEX.
 - iii) On collection of common area electricity charges paid by the members and the same is recovered on the actual electricity charges.
4. The WBAAR while giving the ruling observed that the threshold of Rs. 7500/- is applicable for the benefit of exemption under entry in Serial No. 77 of Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 specifically iterates that the Government intends to provide the exemption only in cases where contribution received from a member per month is below the specified limit of Rs.7500/-. In other words, where the contribution exceeds the limit, taxability of such services by RWA shall not get covered by entry number 77 of the aforesaid notification and tax will be leviable on the entire amount collected from the members. Regarding the second issue, the WBAAR observed that a sinking fund is created in order to meet future contingencies e.g., to meet the expenses for structural repairing, reconstruction work etc. RWA creates a sinking fund which serves as a backup fund for supply of specific services. A member contributes to the sinking fund with an agreed condition that the RWA will provide some specific services in future, as and when required out of the said fund. Thus, the amount collected by the appellant from its members for setting up a sinking fund is an advance payment towards future supply of services and such payment comes under the definition of "consideration" under clause (31) of section 2 of the GST Act. The appellant is, therefore, liable to pay tax on such supply in terms of sub-section (2) of section 13 of the GST Act. Regarding the third issue, the WBAAR observed that the appellant has collected the electricity charges consumed for common area from its members on pro-rata basis. The tax invoice issued in this case for "Common Area Maintenance" shows a consolidated amount under SAC 999598 where a fixed rate is levied per square feet of the area of the flat. Tax @ 18% is also charged on the entire amount. Any amount collected on account of consumption of electricity has not been shown separately in the said invoice. Thus, services relating to electricity charges are bundled with supply of goods and services sourcing from a third person for the common use of its members and hence forms a part of composite supply where the principal supply is the supply of common area maintenance services. Thus, in light of clarifications given in Circular No. 206/18/2023-GST dated 31.10.2023, the appellant in this case will be liable to pay tax on collection of common area electricity charges.
4. The Appellant having accepted the ruling given by the WBAAR in above mentioned Advance Ruling 22/WBAAR/2023-24 dated 29.11.2023 regarding the first issue, i.e. applicability of GST on the entire amount where the total amount collected from

members is over and above Rs. 7500/-, had filed the instant appeal against the other two issues on the grounds that:

- i) The contributions towards the corpus fund are made by the members not in relation to any rendition of services, rather the funds are maintained for future contingencies. At the time of collection of the fund, the association is not aware of as to where such funds will be utilized since the same has been collected to cater the future needs/contingencies. Relying upon the proviso to clause (31) of section 2 of the GST Act relating to the definition of 'consideration', the appellant has argued that in the instant case the corpus / sinking fund is the amount collected towards the future supply of Service if any which is not ascertainable at the time of collection of the fund. Thus, the fund so collected will be applied as a consideration towards supply of services only at the time of actual supply of services. In view thereof, the amounts collected towards Corpus/Sinking Fund shall not be considered as advance for the purpose of levying GST rather the amount collected shall be leviable to GST when the same is applied as consideration at the time of actual supply of service.
 - ii) A clarity is sought for as to whether GST is payable for future transactions if the appellant recovers the electricity charges on actual basis.
5. The appellant had relied upon the ruling of Gujarat AAR in the matter of M/s. The Capital Commercial Co-op. (Service) Society Limited [2021 (47) G.S.T.L 488 (AAR — GST — Guj)] where the Authority held that amount collected towards Common Maintenance Fund is liable to GST but the same is liable to GST at the time of actual supply of service.

The appellant reiterated the same view in his written submission dated 20.03.2024, made in this regard at the time of hearing.

6. On behalf of the Respondent, the Assistant Commissioner, CGST & CX, Maheshtala Division has made a written submission vide Memo No. GEXCOM/LGL/Misc./331/2023-CGST-DIV-MSTL-Commrte-Kol(S)/3229 dated 17.01.2024, where he had stated that:
- i) The amounts collected towards Corpus/Sinking Fund prima facie appears not to be forming a part of consideration towards supply of services at the time of collection and hence appears not liable to GST at the time of collection. However, the amounts so utilized for provision of service are liable to tax at the time of actual supply of service and the time of supply has to be determined in terms of Section 13 of the GST Act.
 - ii) The electricity bill received in relation to the consumption of electricity for the common utilities is in the name of the appellant. The appellant involved in providing the service of upkeep and maintenance of common utilities of the

apartments and for this the electricity consumed by them becomes an input. Though the electricity bill charges is distributed among its members, it is not the consideration for the supply of electricity due to the members but the value is a part of the consideration for the supply of a bundle of services to its members and hence is liable to tax at appropriate rate.

7. All the parties were duly heard and their submissions were carefully considered.
8. In the instant case, the first issue of applicability of GST on contributions towards the corpus fund made by the members of the Residents' Welfare Association (hereinafter referred to as the RWA) relies on the moot question - whether this money is in the form of a deposit or an advance payment. The meaning of the word 'deposit' has been discussed in judgement passed by Hon'ble Delhi High Court on 11 May, 2007 in the case of Lg Electronics Ltd. vs Usha (India) Ltd. and Anr. [AIR (2007) Delhi 231] as: "*In Law Lexicon by P.R. Aiyar edited by Justice Y.V. Chandrachud, the word 'deposit' is defined: "Thing stored or entrusted for safe-keeping", an act by which a person receives the thing of another person, with the obligation to keep it and to return it in kind; a naked bailment of goods, to be kept for the depositor without reward and to be returned when he shall require it; the delivery of a thing for custody, to be redelivered on demand without compensation. The essence of a deposit is that there must be a liability to return it to the party by whom or on whose behalf it is made on the fulfillment of certain conditions." [emphasis added]. Thus the most essential criterion of a deposit is that it is temporarily kept in custody of another person which is refunded/returned to the depositor after a certain period of time. But, here in this case, such money is not refunded to the contributors.*
9. In this context, the sub-clause (a) to clause (31) of section 2 of the GST Act regarding the definition of 'consideration' may be referred to:
(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; [emphasis added]*
10. Now, as per the 'ICAI Guidance Note on Terms Used in Financial Statements' [GN(A) 5 issued 1983], published by The Institute of Chartered Accountants of India, a 'Sinking Fund' is a fund created for the repayment of a liability or for the replacement of an asset. Again, in common business parlance, a 'Corpus Fund' refers to a pool of money set aside for a specific purpose or organization. It represents the principal amount or the initial investment capital, which is typically kept intact, with only the returns or earnings being utilized for designated activities. In the case of a RWA, such sinking/corpus fund is created in order to meet future

contingencies e.g., to meet the expenses for structural repairing, reconstruction work etc. RWA creates a sinking/corpus fund which serves as a backup fund for supply of specific services. A member contributes to such funds with an agreed condition that the RWA will provide some specific services in future, as and when required out of the said funds. So, it is pertinent to refer that the contributions towards the sinking/corpus fund are made by the members of the RWA with a presumption that such funds will be used for bearing the burden of expenses of future supply of services like common area maintenance and other future contingencies as may arise. This contribution is thus an acceptance of the offer of guarding future burden of expenses as made by the RWA, i.e. the appellant in this case to its members. This money is never refunded back to the members but is always in the possession of the RWA for bearing such expenses.

11. Hence, such contribution is not of the nature of a deposit in the truest sense of the term but an advance payment made by the members of the RWA for receiving a supply of common area maintenance services to be provided to them by the RWA in future. As a result, the same would be taxable and the appellant will be liable to pay tax at the time of receipt of such amount in accordance with the provisions of sub-section (2) to section 13 of the GST Act.
12. Regarding the second issue of applicability of tax on electricity charges received by the RWA, attention is drawn towards the Circular No. 206/18/2023-GST dated 31.10.2023 issued by the TRU, Department of Revenue, Ministry of Finance, Government of India, where it has been clarified that:
 - i) *whenever electricity is being supplied bundled with renting of immovable property and/or maintenance of premises, as the case may be, it forms a part of composite supply and shall be taxed accordingly. The principal supply is renting of immovable property and/or maintenance of premise, as the case may be, and the supply of electricity is an ancillary supply as the case may be. Even if electricity is billed separately, the supplies will constitute a composite supply and therefore, the rate of the principal supply i.e., GST rate on renting of immovable property and/or maintenance of premise, as the case may be, would be applicable.*
 - ii) *where the electricity is supplied by the Real Estate Owners, Resident Welfare Associations (RWAs), Real Estate Developers etc., as a pure agent, it will not form part of value of their supply. Further, where they charge for electricity on actual basis that is, they charge the same amount for electricity from their lessees or occupants as charged by the State Electricity Boards or DISCOMs from them, they will be deemed to be acting as pure agent for this supply.*
13. In this case, it is observed that the appellant has collected the electricity charges consumed for common area from its members on pro-rata basis. Further, the tax invoice issued in this case for "Common Area Maintenance" shows a consolidated amount under SAC 999598 where a fixed rate is levied per square feet of the area of the flat. Tax @ 18% has also been charged on the entire amount. This Common Area

Maintenance Charge not only includes common area electricity charges but also charges for other services like security, scavenging, water supply, maintenance of garden etc. Any amount collected on account of consumption of electricity has not been shown separately in the said invoice.

14. Thus, services relating to electricity charges are bundled with supply of goods and services for the common use of its members and hence form a part of composite supply where the principal supply is the supply of common area maintenance services. Therefore, the rate of the principal supply i.e., GST rate on maintenance of the premise would be applicable.

15. The WBAAR Ruling No. 22/WBAAR/2023-24 dated 29.11.2023 is thus confirmed and the Appeal stands rejected.

Send a copy of this order to the Appellant and the Respondent for information.

Sd/-
(Mr. Devi Prasad Karanam)

Member, West Bengal Appellate
Authority for Advance Ruling

Sd/-
(Mr. Shrawan Kumar)

Member, West Bengal Appellate
Authority for Advance Ruling