

**GUJARAT AUTHORITY FOR ADVANCE RULING,  
GOODS AND SERVICES TAX,  
D/5, RAJYA KAR BHAVAN, ASHRAM ROAD,  
AHMEDABAD – 380 009.**



ADVANCE RULING NO. GUJ/GAAR/R/103/2020  
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2020/AR/39)

Date:14 .10.2020

Name and address of the applicant	:	M/s. The Capital Commercial Co-op. (Service) Society Limited, 717/1, Near Krishna Kunj, Sola, Ahmedabad-380060, Gujarat.
GSTIN of the applicant	:	24AAGAT1740F1ZS
Date of application	:	03.09.2020
Clause(s) of Section 97(2) of CGST/GGST Act, 2017, under which the question(s) raised.	:	(e) Determination of the liability to pay tax on any goods or services or both. (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.
Date of Personal Hearing	:	24.09.2020 (through Video Conferencing)
Present for the applicant	:	CA Pratik P. Shah

**BRIEF FACTS:**

M/s. The Capital Commercial Co-op. (Service) Society Limited, 717/1, Near Krishna Kunj, Sola, Ahmedabad-380060, Gujarat (herein after referred to as the “applicant” or the “Society” for the sake of brevity), is a registered Commercial Co- Operative service society providing services of maintenance of common facilities/amenities to their members. The applicant has collected money from their members under following heads:

1. Monthly maintenance fees (Recurring basis).
2. Common Maintenance Fund/Deposit (one-time basis).

**STATEMENT OF RELEVANT FACTS HAVING A BEARING ON THE QUESTION(S) RAISED:**

2. The Developer M/s. Sahjanand Buildtech LLP has promoted a scheme of commercial complex– commercial project thereon, known or described as “**The Capital**” (Project / Complex / Scheme), consisting of commercial premises, being shops, offices and showrooms.

3. For the purpose of convenience and efficient management, running and maintenance of the project, and to hold the land and Project, and for the

common object and purposes of the purchasers of the premises in the project, and to meet the requirement of law, said Service Society under the Gujarat Co-operative Societies Act 1961 has been formed and it consist of purchasers of the premises in the Project as its Members and Shareholders and the Purchaser agrees to become member of the Society.

4. It was decided by way of executing respective sale deed between the developer, M/s. Sahjanand Buildtech LLP and all the individual purchasers of premises in the scheme that:

- a. *“The Purchaser shall pay by way of Common Maintenance Fees the amount at the rate of Rs.6.50 per square foot per month of Built-up Area for initial period of 24 months from the date/ obtaining of Building Use Permission and thereafter as may be fixed by the Owner – Developer. This Maintenance amount will be utilised to meet with/pay for the common electricity bills, water bills, staff salaries, repair, replacement, addition, modifications, renovation, administration, management, etc. of common amenities, facilities, services and infrastructure of the Project. The Maintenance amounts for other unit in the Project will be payable similarly. If the Maintenance amounts are found to be insufficient, the Purchaser may be required to pay an additional amount as may be sufficient, in the opinion of Developer/Society, to make good the deficit in such expenses. The decision of the Developer/Society in all matters herein shall be final and binding upon the Purchaser.*
- b. ***In addition to aforesaid, Common Maintenance Fund [Deposit] at the rate of Rs.250/- per square foot of Built-up Area shall be paid by the Purchaser. Similar Common Maintenance Fund will be generated from the other prospective purchasers of the units in the scheme, and the income thereof [i.e. income generated from the accumulated fund in form of interest on fixed deposit etc.] will be utilized to meet the expenses of maintenance, repair, etc. of the common amenities, facilities, services, conveniences, utilities and common infrastructure of the scheme.***
- c. *The Project will finally be handed over to the Society upon the same is fully and finally executed, all premises thereof have been sold and disposed of and all the amounts and revenues to be recovered from Project by Developer and agencies claiming under it are fully and finally recovered.”*

5. Accordingly, based on such respective sale deeds executed between the developer and all the individual purchasers of the units under this commercial complex scheme, the applicant service society has received advance maintenance fees of Rs.6.50 per square foot per month and also Rs.250/- per square foot of built -up area from each purchasers of units in this commercial complex scheme who have eventually become member of this service society now.

6. The Applicant has filed their return of income also by showing the Monthly maintenance fees collected by them as their direct income under profit and loss account and paid income tax on the net profit portion. Whereas the one time common Maintenance fund collected from members has been shown

as “Maintenance Deposits” under their current liability head of Balance Sheet. And, thus, it is not forming part of their income as per income tax return filed by applicant.

7. The applicant understands that advance received for initial 24 months for maintenance fees is against the future supply of maintenance services by it to their members which is covered under section 7 of CGST Act and thus has paid the GST on the same.

8. For understanding the applicability of GST on the Rs.250/- per square foot of built -up area received from each member as “Common Maintenance Fund / Deposit” this advance ruling has been sought.

9. They have also submitted the Sample Copy of Sale Deed executed by the developer with all the individual purchasers of units in this commercial complex scheme and the Copy of Audited Financials along with income tax return and computation of income for Financial Year 2018-19 for the applicant.

10. In view of the above backdrops, the applicant has sought for advance ruling in respect of following questions:

*Question 1: Whether applicant is liable to pay GST on the common maintenance fund/deposit collected from their members?*

*Question 2: If Yes, then, what shall be considered as the time of supply for such transaction?*

**Statement containing the applicant’s interpretation of law and/or facts, as the case may be, in respect of the aforesaid question(s) (i.e. applicant’s view point and submissions on issues on which the advance ruling is sought).**

**Applicant’s submission for Question No:1:**

11. The taxable event in GST is supply of goods or services or both. Term Supply has been defined under section 7(1) of the CGST Act, 2017 as under:

<p><i>Section 7 (1):</i> <i>“For the purposes of this Act, the expression "supply" includes—</i> <i>(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made <b>for a consideration</b> by a person in the course or furtherance of business;</i> <i>...”</i></p>
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Thus, besides other parameters, for any transaction to get considered as supply, there has to be consideration involved in the same.

11.1 The Term consideration has been defined in the section 2(31) of the CGST Act, 2017, as under:

2(31)	<i>"consideration" in relation to the supply of goods or services or both includes—</i>
(a)	<i>any payment made or to be made, whether in money or otherwise, <b><u>in respect of, in response to, or for the inducement of, the supply of goods or services or both</u></b>, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;</i>
(b)	<i>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:</i>
	<b><u>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;</u></b>

Thus, Prima facie a conclusion can be drawn without much difficulty that a deposit given in respect of the supply shall not be considered as payment made for such supply unless the supplier appropriates such deposit as consideration for the said supply.

12. In the present matter, applicant has received “Common Maintenance Fund” from each member as one-time event and booked the same as “Maintenance Deposit” under current liability in their audited books of accounts. Further, it is not also forming part of his income as per return of income filed with the Income Tax department.

- Further, the intention of creating such common maintenance fund by applicant is to park such fund in form of fixed deposit and then to earn interest on the same and then use this interest income generated for common expenses of society including maintenance and renovation.
- As per applicant this is a form of deposit only received from the members, which is also refundable to members in case a person ceases to be member of this society.
- In a situation when any person ceases to be member of this society and transfers his unit/ office/ showroom in this commercial complex to other person, then that new person shall become member in his

place and thus share certificates and maintenance deposit standing the name of the person who is leaving this society shall get transferred to new person who is coming in as new member of this society in his place. This transfer process take place as per the provisions given in the bylaws of society.

- As per the general practice undertaken in this trade and industry, such refund of maintenance deposit and share certificate money of member who is leaving the society and acceptance of fresh maintenance deposit and share certificate money from new incoming member, takes place by passing of book adjustment entries in the books of accounts and records of applicant society.
- Whereas, a new member coming in the society makes payment of such share certificate and maintenance deposit amount along with final consideration payable to earlier member for purchase of unit/ office/showroom in this society.
- So, it transpires that this common maintenance fund received by the applicant is a deposit only which is also refunded to members when they cease to be member of this society in future. And so, it gets covered within the proviso given in the definition of “consideration” u/s. 2(31) of the act.

13. Hence, it is not consideration for applicant and thus this transaction does not qualify as “supply” as per GST law. And so, the Applicant is not liable to make GST on this transaction.

14. Without prejudice to one another, applicant further submitted other submissions as follow:

14.1 As per the definition given of consideration in section 2(31) of the Act, for any payment to be considered as “consideration” it has to be made, either

- I. in respect of,
- II. in response to,
- III. or for the inducement of,

the supply of goods or services or both.

14.2 Whereas in present case, common maintenance fund (deposit) paid by members to applicant are having no nexus with respect of, or in response of or for the inducement of supply of any specific goods or services by the applicant. The purpose of making payment by members to applicant is simply to create common fund to generate such income thereof, which can be used to meet the future common expenses for the members of the society.

14.3 As the basic condition laid down in the definition of consideration is not getting fulfilled in the present transaction and, thus, such payments made by members to applicant society cannot be considered as “consideration” as per GST Act and, hence, it also does not fulfill the inclusive requirements of any transaction being considered as “Supply” under GST law.

14.4 Thus, applicant is not liable to pay GST on this transaction unless said deposit is applied as Consideration against supply of services of maintenance/other revenue or capital expenditure of such society.

**For Question No:2**

15. As per the above given submissions, GST is not payable at the time of receipt of Maintenance deposit thus, there is no need to ascertain the time of supply for this transaction.

15.1 If, in future at any point of time such deposit is adjusted against supply of service of maintenance then in that case GST shall be payable and time of supply shall be the date on which such deposit is adjusted against consideration receivable for supply of such maintenance services.

16. At the time of personal hearing held through Video Conferencing on 24.09.2020, the Authorised Representative of the applicant, CA Pratik P. Shah reiterated the facts as stated in the application and as mentioned herein above.

**DISCUSSION & FINDINGS:**

17. We have carefully gone through the facts of the case, written and oral submissions made by the applicant in their application for advance ruling as well as at the time of personal hearing and the applicable provisions of the GST Laws in this regard.

At the outset, we would like to state that the provisions of both the CGST Act and the GGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the GGST Act.

18. Few facts relevant for the present purpose, those are as follows:

- The applicant is a registered Commercial Co-Operative Service Society providing services of maintenance of common facilities/amenities to its members.

- The Developer, viz. M/s. Sahjanand Buildtech LLP has promoted a scheme of commercial complex, known or described as “The Capital” (Project/Complex/Scheme), consisting of commercial premises, being shops, offices and showrooms.
- Based on the respective Sale Deeds executed between the developer and all the individual purchasers of the units, the applicant service society has received **advance “Maintenance Fees”** @ Rs.6.50/- per square foot per month of Built-up Area for initial period of 24 months from the date/ obtaining of Building Use Permission and thereafter as may be fixed by the Society.
- In addition to aforesaid, the applicant has also collected an amount as **“Common Maintenance Fund”** @ Rs.250/- per square foot of Carpet Area from each purchaser of units under said scheme. The income thereof will be utilized to meet the expenses of maintenance, repair etc. of the common amenities, facilities, services, conveniences, utilities and common infrastructure of the Scheme.
- The applicant is discharging liability under the provisions of GST Act on said amount of advance maintenance fees received against the future supply of maintenance services from each member.
- The said “Common Maintenance Fund (Deposit)” is the central point of this application and the applicant has sought clarification/advance ruling on the levy of GST on such fund/deposits.

19. The applicant sought advance ruling in respect of the following questions:

*Question 1: Whether applicant is liable to pay GST on the common maintenance fund/deposit collected from their members?*

*Question 2: If Yes, then, what shall be considered as the time of supply for such transaction?*

20. Thus, the issue for our consideration in this application is the leviability of GST on the common maintenance fund/deposit collected from their members. The taxable event in GST is supply of goods or services or both. The term ‘supply’ is inclusive in nature can be understood in terms of following parameters namely:-

- (i) Supply of goods or services. Supply of anything, other than goods or Services, does not attract GST.

- (ii) Supply should be made for a consideration.
- (iii) Supply should be made in the course or furtherance of business.
- (iv) Supply should be made by a taxable person.
- (v) Supply should be a taxable supply.

Besides above parameters, GST Laws have provided certain exceptions to the requirement of supply being made for consideration and in the course of furtherance of business.

21. We, therefore, have to find whether the “Common Maintenance Fund (Deposit)” taken from their members on account of maintenance, repair etc. of the common amenities, facilities, services, conveniences, utilities and common infrastructure of the Scheme, constitute consideration is *vis a vis* any supply under the provisions of GST Acts.

22. As per Section 2(17) of the CGST Act, 2017, the term “*business*” includes *the provision, by a club, association, society, or anybody (for a subscription or any other consideration) of the facilities or benefits to its members.*

22.1 Section 7(1) of the CGST Act, 2017 deals with the Scope of Supply and stipulates that *for the purposes of the said Act, the expression "supply" includes all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made **for a consideration** by a person in the course or furtherance of business.*

22.2 Further, the Clause (31) of Section 2 of the CGST Act, 2017 defines the term “consideration”, which is as under:

*“(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;”*

22.1 The definition of consideration is inclusive and consideration may be in cash or kind. The payment received will not be treated as consideration, if there is no direct link between the payment and supply. From the close scrutiny of above definition, it is clear that there should be a close nexus between the payment and supply and thus, any payment/exchange/barter etc. would be treated as consideration for supply and liable to GST. Prima facie a conclusion can be drawn without much difficulty that a deposit given in respect of the supply shall not be considered as payment made for such supply unless the supplier appropriates such deposit as consideration for the said supply.

23. In view of the above, we take up the subject matter for discussion. The term “deposit” is not defined in the GST Act. From the perusal of Dictionary meaning, deposit has several dimensions that include part or full price of the purchase, sum money paid into bank account, a sum you pay when you start a renting something etc. One needs to apply following test on amount/deposit received from customer to determine whether such deposit / amount will be taxable or not:

1. Whether amount received is refundable or not?
2. Whether such amount can be adjusted as consideration of supply?

23.1 If answer to any one question given above is NO i.e., deposit is non-refundable or any outstanding sum of amount against supply made to customer can be adjusted from this deposit, then such deposit will be taxable under GST. Above discussion is based on the Proviso to Section 2(31) of the CGST ACT,2017 i.e. *“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”*.

24. In the instant case, we find that the applicant is a registered entity as an Association of Persons and has a legal existence separate from its members. The applicant is collecting the amounts towards “Common Maintenance Fund (Deposit)” @ Rs.250/- per square foot of built-up area for future supply of services viz. maintenance, repair etc. of the common amenities, facilities,

services, conveniences, utilities and common infrastructure of the Scheme meant for its members. It is a fact that the Common Maintenance Fund (Deposit) is mandatory under the Bye-laws of the Co-operative Societies/Resident Welfare Associations and is in the nature of a **non-returnable** deposit towards unforeseen events or planned events. Such deposit is never to be returned to the members, but same along with its interest will be used as and when required in future for maintenance, repair etc. of the common amenities, facilities, services, conveniences, utilities and common infrastructure of the Scheme meant for its members. Thus, the applicant, in addition to maintenance charges, also collected amount as Common Maintenance Fund (Deposit) from their members which is non-returnable. Since, the said amount is collected as non-returnable common maintenance fund, such deposits can be considered for such supply of service as mentioned above and, hence, will be liable to tax.

25. The applicant has contended that said common maintenance fund received by the applicant is a deposit only which is also refunded to members when they cease to be member of this society in future. And so, it gets covered within the proviso given in the definition of “consideration” u/s. 2(31) of the Act. Hence, it is not consideration for applicant and thus this transaction does not qualify as “supply” as per GST law. And so, the Applicant is not liable to make GST on this transaction. In this regard, it is worthwhile to mention that the applicant themselves stated in the application that sometimes, maintenance deposit standing the name of the person who is leaving this society shall get transferred to new person who is coming in as new member of this society in his place. Thus, in this case, said deposit is also not refunded but transferred the same into account of new member by making accounting entry. We, thus, find that said deposit cannot be considered as non-refundable and, hence, will be taxable under GST.

26. After deciding the taxability of the common maintenance fund/deposit, now we have to decide the time of supply for such transaction. The proviso to the clause (31) of the Section 2 of the CGST Act, 2017, as discussed in foregoing paras, states that the deposit given in respect of a future supply shall not be considered as payment made for such supply until the supplier applies such deposit as consideration. In the instant case, the common maintenance fund/deposit so collected is the amount collected towards the future supply of service of maintenance, repair etc. and accordingly, gets applied as consideration towards supply of services only at the time of actual supply of services. Therefore, the amount collected towards the common maintenance fund/deposit do not form part of consideration towards supply of services at

the time of collection, however, the amounts so utilized for provision of service are liable to GST at the time of actual supply of service.

27. In light of the foregoing, we rule as under –

**R U L I N G**

Question 1: Whether applicant is liable to pay GST on the common maintenance fund/deposit collected from their members?

Answer: Answered in affirmative.

Question 2: If Yes, then, what shall be considered as the time of supply for such transaction?

Answer: The amounts so utilized for provision of service are liable to tax at the time of actual supply of service.

**(SANJAY SAXENA)**  
**MEMBER**

**(MOHIT AGRAWAL)**  
**MEMBER**

Place: Ahmedabad  
Date: 14.10.2020.