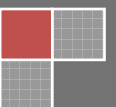


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GST on Housing Societies for rendering Services to its Members

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GST on Housing Societies for Rendering Services to its Members



First of All housing societies means unincorporated body or Non –Profit entity registered under any law for the time being in force whether it is cooperative society or society register under Societies Act.

“Simply put these are a collective body of persons, who stay in a residential society. As a collective body, they would be supplying certain services to its members, be it collecting statutory dues from its members and remitting to statutory authorities, maintenance of the building, security etc.”

A Society is akin to a club, which is composed of its members. So, can a service provided by a Housing Society to its members be treated as service provided by one person to another. The answer is yes. The following extracts of the GST law will make the position clear.

Section- 9 of the CGST Act says that GST is applicable on “supply of Goods and Services”.

Section -7 of the CGST Act narrated Supply as ;

“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;”

Society is person as per section 2(84) of the CGST Act,2017.

Next question arises here is whether activity of the society can be said to be in the course or furtherance of business .

Section -2(17) of the CGST Act is defined as under;

“business” includes--

- (a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;
- (b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);
- (c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;
- (d) supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;
- (e) 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;
- (f) admission, for a consideration, of persons to any premises;
- (g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;
- (h) services provided by a race club by way of totalisator or a licence to book maker in such club ; and
- (i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities.

Thus, as per section 2(17)(e) of the CGST Act, 2017 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 is deemed to be a business. The activities of the housing society would thus attract the levy of GST and the housing society would be required to register and comply with the GST Law.

Hence herein above, it is proved that society need to pay GST on services provided to its members . But this is subject to Notification No. 12/2017 dated 28.06.2017 where S.N. 77 (c) provide the following exemption to

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 –

- (a) as a trade union;
- (b) for the provision of carrying out any activity which is exempt from the levy of Goods and service Tax; or
- (c) up to an amount of five thousand 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

Now from 25.01.2018 by Notification No. 2 the limit of Rs. 5,000 increase to Rs. 7,500.

Means thereby if the housing society charge Rs. 8500 per month for all services provided to its members , GST shall be charged on Rs. 1000 only. Therefore charges collected by the society on account of property tax, electricity charges shall be excluded while calculating the limit of Rs. 7500.

A per the TRU F.N. 332/04/2017 issued by the Ministry of Finance , the following FAQ has been released .

Subject: FAQs on levy of GST on supply of services to the Co-operative society- reg S. No.

Answer

- | | | |
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| 1. | The society collects the following charges from the members on quarterly basis as follows:
1.Property Tax-actual as per Municipal Corporation of Greater Mumbai (MCGM)
2.Water Tax- Municipal Corporation of Greater Mumbai (MCGM)
3.Non- Agricultural Tax- Maharashtra State Government
4.Electricity charges | 1. 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, if collected by the RWA/Co-operative Society on behalf of the MCGM from individual flat owners, then GST is not leviable.
2. Similarly, GST is not |
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| | 5.Sinking Fund- mandatory under the Bye-laws of the Co-operative Societies | leviable on Non Agricultural Tax, Electricity Charges etc, which are collected under other statutes from individual flat owners. However, if these charges are collected by the Society for generation of electricity by Society's generator or to provide drinking water facility or any other service, then such charges collected by the society are liable to GST. |
| | 6.Repairs & maintenance fund | |
| | 7.Car parking Charges | |
| | 8.Non Occupancy Charges | |
| | 9.Simple interest for late payment. | |
| | From the tax/ charge as listed above, on which GST is not applicable. | |
| | | 3. Sinking fund, repairs & maintenance fund, car parking charges, Non- occupancy charges or simple interest for late payment, attract GST, as these charges are collected by the RWA/Co-operative Society for supply of services meant for its members. |
| 2. | As per guidelines on maintenance charges upto Rs. 5000/- no GST is applicable. Maintenance charges means only maintenance or collection of all charges | This is applicable to only the reimbursements of charges or share of up to an amount of five thousand rupees per month per member for sourcing of goods or services from a third person for the common use of its members. Here, charges mean the individual contributions made by members of the society to avail services or goods by the society from a third party for common use. [*Entry 77(c) of notification no 12/2017 Central Tax (Rate) dated 28.6.2017 refers] |
| 3. | Monthly maintenance (all above charges) are below Rs.5000/-but yearly | Reimbursement of charges or share of contribution up to an amount of Rs. 5000/- per |

*Amount of Rs. 5000 shall be read as Rs. 7500 amended since 25.01.2018.

All Housing Societies Falls under the Parameter of Notification No. 12 dated 28.06.2017.

----- > Answer is No

Reason of the above answer is as follows:

If the turnover of housing society is above 20 lakhs, it needs to take registration under GST in terms of Section 22 of the CGST Act, 2017. If the turnover of the society is less than or equal to Rs. 20 lacs , no GST shall be applicable on housing society.

Whether the activities of housing society shall be costlier as compared earlier.

Answer is No. because of the simple reason that Housing Society will get the ITC on all supply of Goods and services to society and capital goods.

Is the Society will get the benefit of only Part of the total Input Tax Credit

Yes, the Society will get only part of the credit as per Rule 42 and 43 of the CGST Rules,2017. Simple reason is that Housing Society provides both Taxable and Exempted Services and portion of the credit of ITC belong to exempted services as well . Therefore, the proportion of credit belongs to exempted and non GST Supply shall be added back.

Conclusion

As long as tax implication are concerned, the status under Service Tax is sought to be continued under GST. The tax burden under GST will be lower on the society as they will be entitled to take ITC which was hitherto not allowed under service tax. Moreover, the exemptions given ensure that there would be no tax burden on smaller societies where the monthly contribution of the individual members does not exceed Rs.7500 . In a nutshell, GST is more favourable tax regime for housing societies vis a vis service tax.

Disclaimer :

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