

**AUTHORITY FOR ADVANCE RULING
TAMILNADU ADVANCE RULING AUTHORITY**

PAPJM Buildings, II Floor, No.1, Greams Road, Chennai-6

**PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING U/s.98 OF THE
GOODS AND SERVICES TAX ACT, 2017.**

Members present are:

1. Ms. Manasa Gangotri Kata, I.R.S., Joint Commissioner/Member,
Office of the Commissioner of GST & Central Excise, Chennai -34

2. Thiru Kurinji Selvaan V.S., M.Sc., (Agri.), M.B.A.,
Joint Commissioner (CT) / Member,
Office of the Authority for Advance Ruling, Tamil Nadu, Chennai-6.

ORDER No.25 /ARA/2019 Dated 21.06.2019

GSTIN Number, if any / User id		33AAAAL7352D1ZZ
Legal Name of Applicant		TVH LUMBINI SQUARE OWNERS ASSOCIATION
Trade Name of the Applicant		TVH LUMBINI SQUARE OWNERS ASSOCIATION
Registered Address / Address provided while obtaining user id		Near 2 nd Block, 127a, Tvh Lumbini Square, Bricklin Road, Purasawalkam, Chennai - 600 007.
Details of Application		Form GST ARA – 001 Application SI.No.07 Dated 15.02.2019
Concerned Officer		State: The Assistant Commissioner(ST), Purasavakkam Assessment Circle. Centre: Chennai North , Division: Anna Nagar
Nature of activity(s) (proposed / present) in respect of which advance ruling sought for		
A	Category	Provision of services.
B	Description (in brief)	The Applicant is engaged in residential welfare association maintenance services.
Issue/s on which advance ruling required		Applicability of a notification issued under the provisions of the Act.

Question(s) on which advance ruling is required	If the monthly maintenance charges payable by a member of the association exceeds Rs.7500 per month, in the context of exemption as per S.No. 77 of Notification 12/2017 – Central tax (Rate) dated 28.06.2017 as amended by Notification 2/2018 – Central Tax (Rate) dated 25.01.2018, the applicant is liable to pay GST only on the amount in excess of Rs.7500 or on the entire amount?
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Note : Any appeal against the advance ruling order shall be filed before the Tamil Nadu State Appellate Authority for Advance Ruling, Chennai under Sub-section (1) of Section 100 of CGST ACT/TNGST Act 2017 within 30 days from the date on which the ruling sought to be appealed against is communicated.

At the outset, we would like to make it clear that the provisions of both the Central Goods and Service Tax Act and the Tamil Nadu Goods and Service Tax Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Service Tax Act would also mean a reference to the same provisions under the Tamil Nadu Goods and Service Tax Act.

M/s. TVH Lumbini Square Owners Association, near 2nd Block, 127a, Tvh Lumbini Square, Bricklin Road, Purasawalkam, Chennai 600 007 (hereinafter referred to as 'Applicant') is a residential welfare association registered under the Societies Act. They are registered under GST vide GSTIN No. 33AAAAL7352D1ZZ. The Applicant has preferred an application seeking Advance Ruling on the following Question:

If the monthly maintenance charges payable by a Member of the association exceeds Rs.7,500 per month, in the context of exemption as per S.No. 77 of Notification 12/2017 – Central tax (Rate) dated 28.06.2017 as amended by Notification 2/2018 – Central Tax (Rate) dated 25.01.2018, the applicant is liable to pay GST only on the amount in excess of Rs. 7,500 or on the entire amount?

The Applicant has submitted the copy of application in Form GST ARA – 01 and submitted a copy of Challan evidencing payment of application fees of Rs.5,000/- each under Sub-rule (1) of Rule 104 of CGST rules 2017 and SGST Rules 2017.

2. The applicant in the statement of facts has stated that they are a residential welfare association registered under the societies Act, Goods and services tax Act and also assessed to Income tax, which has been duly filing the returns with the Registrar of Societies, GST and Income Tax Departments. . The society consists of 9 Residential Blocks. There are 448 flats in total wherein each block contains an approximate of 50 flats. The sizes of the flats vary from 1429 Sq. Ft to 5981 Sq. Ft.

2.1 The applicant has further stated that they are currently collecting Maintenance charges on a quarterly basis at Rs.3.50 Per Square feet per month along with applicable GST, if any. They are claiming exemption of Rs.7,500/- as per S.No.77 of Notification 12/2017- Central Tax (RATE) dated 28.06.2017 as amended by Notification 2/2018 – Central Tax (Rate) dated 25.01.2018 in respect of those members whose contribution toward maintenance charges does not exceed 7,500/- per month. They have stated that there are two possible interpretations regarding the correct method of claiming the exemption as per S.No. 77 of Notfn. 12/2017-C.T.(Rate) dt. 28.06.2017 as amended by Notfn. No. 2/2018-C.T.(Rate) dt. 25.01.2018 on which advance ruling is sought. There are two possible interpretations as to the adoption of the exemption notification., Whether a resident must pay GST on the value over and above Rs. 7,500/- or on the entire amount? For example, where maintenance charges are Rs. 8000/- for an individual resident, does GST liability arise on the value over and above Rs. 7,500 (on Rs. 500/-); or on the entire amount of Rs.8,000/-?

2.2 The applicant on their interpretation of law has stated that Notification 12/2017 Central Taxes(Rates) dated 28.06.2017, provides for various exemptions from payment of GST and the exemption mentioned under Sl.No.77 of the cited notification is on the exemption extended to the extent of Rs.7500/- per month, collected from the members for sourcing of goods or services from a third person for the common use of the members in a housing society of a residential complex. In view of the above the applicant has stated that, if the monthly maintenance charges are Rs.8000/- per month, the liability of GST will only be on difference of Rs.500/- and not on the entire amount of Rs.8000/- which can be inferred from the language of Sl.No 77 the of the exemption Notification No. 12/2017 CT (Rate)dt. 28.06.2017 wherein the words **“Up to an amount of five thousand rupees per month per member”** which was later substituted to **“Seven thousand and five hundred”** as per Notification Rs.2/2018 –Central Tax (Rate) dated 25.01.2018. Hence, the applicant is of the view that, the exemption is up to Rs. 7,500 per month and it does

not lay down that this exemption would be lost, if the amount exceeds Rs.7,500 per month, the exemption would have been worded differently whereby the exemption is made conditional subject to the monthly charges being less than Rs. 7,500. The applicant has also submitted the E-flier issued by CBIC on Co-operative Housing Societies to support the above view. They have also made a reference to the FAQ's released by TRU vide F.No.332/04/2017-TRU on levy of GST on supply of services to the Co-operative Society.

3 The applicant was given an opportunity to be personally heard on 22.05.2019. The authorized representative of the applicant Ms.S. Sridevi, Advocate appeared before the authority for ruling and stated that as per Notification 12/2017 Sl.No.77, as amended, an exemption upto Rs. 7,500/- (previously Rs. 5,000/-) is given for the services from a third party for common use of member in a housing society. The applicant is a registered society and procure various services such as maintenance, security etc., from third party. They stated that GST should be chargeable only on excess of Rs.7,500/- per month per member. They further stated that CBIC E-Fliers also endorses this view. The state jurisdictional officer also agreed to this view in their written submission made. They stated that they would submit registration certificate and invoices of common services being provided from 3rd party sources in 10 days.

3.1 As stated in the personal hearing, the applicant submitted sample copies of invoices for the procurement of "annual maintenance contract for services contract", "maintenance and repair services of elevators", "maintenance of swimming pool", "facility management services", "de-mosquitoes solutions", "from third party invoiced to the applicant, the registration certificate of the applicant under Tamilnadu Societies Registration Act, 1975.

4. The applicant is under the administrative jurisdiction of Chennai North Commissionerate. The Jurisdictional Commissioner, Chennai North vide letter dated 28.03.2019 has stated that Notification 12/2017 -CT(Rate) dt. 28.06.2017 as amended by Notification No.2/2018- CT(rate) dt 25.01.2018 provides for the exemption of intra-state supply of services as described in column Sl.No.77 of the said notification which provides for exemption of the "**Service by unincorporated body or a non-profit entity... to its own members by way of reimbursement of charges or share of contribution- (c) up to an amount of 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”. However, if the housing society charges in excess of Rs.7500 per month per person, the said activities will not be covered under the description of the said notification. Hence, the whole amount would be liable for the levy of GST and the amount in excess of Rs.7500/-

5. The State Jurisdiction Officer has offered their comments on the query raised by the applicant, which, is summarized below:

- As per the definition of 'person' in Section 2(84)(i) of the CGST Act,2017 a registered co-operative society is a person within the meaning of the term in the CGST Act.
- 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.
- As per clause (c) of the above exemption, the exemption limit of Rs,5000/- has been amended to Rs.7500/- as per notification no 2/2018 — Central Tax (Rate) Dated :25.01.2018.
- As per the amended notification, monthly maintenance amounts up to Rs.7,500/- is exempted. So, if the monthly maintenance amount exceeds Rs.7,500/- say Rs.8,500/- the amount up to Rs7,500/- is exempted and the balances amount of Rs.1,000/- is liable to GST. if it is the intention of Government to Tax entire amount above Rs.7500 it would have been ordered differently, In the frequency asked question on GST on Co-Operative Housing Societies, it has been clarified, as below: -

Further, the question would then arise that if the monthly bill is say Rs.6,000/- (and the same is on account of services for common use of its members), will GST be applicable on Rs.6,000/- or Rs.1000, In such cases, exemption is available up to an amount of Rs.5,000/- and GST would be applicable on the amount in excess of Rs.5000/- .(TRU vide F.No.332/04/2017, has released FAQs on levy of GST on supply of service to the Co-operative Society and clarified the same).

- Hence, in cases of Monthly Maintenance Charges above Rs. 7,500/- GST is liable to be paid on the amount in excess of Rs. 7500/- and not on the full amount.

6. We have carefully examined the submissions made by the applicant, in the application and during the personal hearing and have also examined the comments offered by both the State and the Central Authorities. We find the question raised and to be decided is as follows:

If the monthly maintenance charges payable by a Member of the association exceeds Rs.7,500 per month, in the context of exemption as per S.No. 77 of Notification 12/2017 – Central tax (Rate) dated 28.06.2017 as amended by Notification 2/2018 – Central Tax (Rate) dated 25.01.2018, the applicant is liable to pay GST only on the amount in excess of Rs. 7,500 or on the entire amount?

7. The applicant is a Society registered under Tamil Nadu Societies Registration Act 1975; they are also registered under GST Act. They are a resident welfare association with members being the residents of certain apartment blocks. They receive various services from third party such as management services, maintenance of elevators, swimming pool, security etc., to the owners of the flats .Currently, they are collecting maintenance charges on a quarterly basis at Rs.3.50 Per Square feet per month along with applicable GST, if any from each member. They are claiming exemption of Rs.7,500/- as per S.No. 77 of Notification 12/2017- Central Tax (RATE) dated 28.06.2017 as amended by Notification 2/2018 – Central Tax (Rate) dated 25.01.2018 in respect of those members whose contribution toward maintenance charges does not exceed 7,500/- per month. The query raised by them is as to whether they should pay tax on the entire amount if it exceeds the limit Rs.7500/- or they can avail the rebate of Rs.7500/- and pay tax on the amount in excess of Rs.7500/-.

7.1 The relevant extract of Sl.No.77 of Notification No.12/2017-C.T.(Rate) dated 28.06.2017 as amended by Notification No. 2/2018-C.T.(Rate) dated 25.01.2018, effective from 25.01.2018 are extracted below for ease of reference:

“In exercise of the powers conferred by sub-section (1) of section 11 of the Central Goods and Services Tax Act, 2017,(12 of 2017), the Central Government, on being satisfied that it is necessary in the public interest so to do, on the recommendations of

the Council, hereby exempts the intra- State supply of services of description as specified in column (3) of the Table below from so much of the central tax leviable thereon under sub-section (1) of section 9 of the said Act, as is in excess of the said tax calculated at the rate as specified in the corresponding entry in column (4) of the said Table, unless specified otherwise, subject to the relevant conditions as specified in the corresponding entry in column (5) of the said Table, namely:-"

Sl. No	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (Percent)	Condition
77	Heading 9995	<p>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 –</p> <p>(a).....;</p> <p>(b).....; or</p> <p>(c) up to an amount of 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.</p>	Nil	Nil

7.2 In the case at hand from the submissions, it is evident from the sample copies of invoices, that the applicant procures various services such as Facility Management Services, De-Mosquitoes Solutions, Maintenance of Swimming Pool, Servicing and Maintenance of lifts. The complex is stated to consist of 9 Residential blocks and 448 flats, and the applicant collects maintenance charges from the members towards maintenance. The applicant claims that if the individual contributions for availing such services/goods by the society from third parties exceeds Rs. 7500/- per month (effective from 25.01.2018 and Rs.5000/- upto 24.01.2018), then GST is liable to be paid only on the charges over and above

Rs.7500/- at the appropriate rate of tax. The State jurisdiction officer has stated that this is the explanation given by TRU in F.No.332/04/2017 dated 05.09.2017. However, there is no such clarification in the above letter. Further, this is an incorrect way of reading the notification.

7.3 The start of the Notification No.12/2017-C.T.(Rate) dated 28.06.2017 as amended states that the Central government “*exempts the intra- State supply of services of description as specified in column (3) of the Table*” from “*so much of the central tax*” “*as is in excess of the said tax calculated at the rate as specified in the corresponding entry in column (4) of the said Table*”. In respect to Sl No 77(c) of this notification the description of the services is “*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 up to an amount of 7500 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*” . For these services the applicable central tax rate is nil as specified in column (4). Only services which exactly match this description are covered under this Sl No 77(c)of said Notification. In the instant case , this exemption is applicable only if the service by the applicant ,a resident welfare association/housing society , to its members by way of reimbursement of charges or share of contribution ,for sourcing of goods or services from a third person for the common use of its members, is up to an amount of 7500 rupees per month per member. In the event the charges or share of contribution goes above 7500 rupees per month per member, such service will not fit the above description and hence, such service is not exempt. Such services are then fully chargeable to GST at the applicable tax rate. There is no option to the taxpayer to pick and choose from the description of the services mentioned in column (3) to make any service partly applicable to the notification and partly chargeable. Any service either falls within the scope of the description in column (3) or it does not. If a service by the applicant to its members by way of reimbursement of charges or share of contribution ,for sourcing of goods or services from a third person for the common use of its members, is such that it is above 7500 rupees per month, it squarely falls outside the description of Sl No 77 (c) of Notification No.12/2017-C.T.(Rate) dated 28.06.2017 as amended for CGST and of Sl No 77 (c) of Notification No.II(2)/CTR/532(d-15)/2017 vide G.O. (Ms) No. 73 dated 29.06.2017 as amended for SGST. GST at appropriate rates are to be charged on the full amount of reimbursement of charges or share of contribution.

8. In view of the above discussions, we rule as under:

RULING

If a service by the applicant, a registered housing society/resident welfare association to its members by way of reimbursement of charges or share of contribution ,for sourcing of goods or services from a third person for the common use of its members, is such that it is above 7500 rupees per month effective from 25.01.2018 (5000 rupees before), it is not eligible SI No 77 (c) of Notification No.12/2017-C.T.(Rate) dated 28.06.2017 as amended for CGST and of SI No 77 (c) of Notification No.II(2)/CTR/532(d-15)/2017 vide G.O. (Ms) No. 73 dated 29.06.2017 as amended for SGST. CGST and SGST at appropriate rates are to be paid by the members on the full amount of reimbursement of charges or share of contribution.

K-Manasa 21/6/19

Ms. Manasa Gangotri Kata, IRS
Member, CGST

Shri.KurinjiSelvaan 21.06.2019

Shri.KurinjiSelvaan.V.S., MSc.,(Agri),M.B.A
Member, TNGST

To

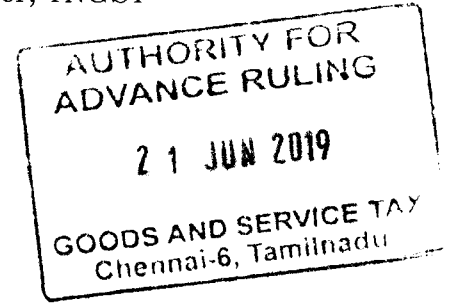
TVH LUMBINI SQUARE OWNERS ASSOCIATION

Near 2nd Block,

127a, Tvh Lumbini Square,

Bricklin Road, Purasawalkam,

Chennai - 600 007 // **By Speed Post with Ack due**//



Copy submitted to :-

1. The Additional Chief Secretary / Commissioner of Commercial Taxes,
2nd Floor, Ezhilagam, Chepauk, Chennai – 600 005.
2. The Principal Chief Commissioner of CGST & Central Excise,
No. 26/1, Uthamar Mahatma Gandhi Road, Nungambakkam, Ch – 600 034.

Copy to:

3. The Commissioner of GST & Central Excise.,
Chennai North Commissionerate.

4. The Assistant Commissioner (ST)
Purasawalkam Assessment Circle,
F-50 First Avenue, Anna Nagar East,
Chennai-102.

5. Master/ Spare