



TELANGANA STATE AUTHORITY FOR ADVANCE RULING
CT Complex, M.J Road, Nampally, Hyderabad-500001.
(Constituted under Section 96(1) of TGST Act, 2017)

Present:

Sri S.V. Kasi Visweswara Rao, Additional Commissioner (State Taxes)
Sri Sahil Inamdar, I.R.S., Additional Commissioner (Central Taxes)

A.R.Com/10/2023

Date: 29.09.2023

TSAAR Order No. 18/2023

**[ORDER UNDER SECTION 98(4) OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017
AND UNDER SECTION 98(4) OF THE TEALANGANA GOODS AND SERVICES TAX ACT,
2017.]**

1. M/s. NCC URBAN ONE APARTMENT OWNERS MUTUALLY AIDED CO-OP SOCIETY LIMITED (NCCLIOMACS), Narsingi, Puppalaguda Main Road, Hyderabad, Rangareddy, Telangana-500089 (36AAGAN5854N1ZX) has filed an application in FORM GST ARA-01 under Section 97(1) of TGST Act, 2017 read with Rule 104 of CGST/TGST Rules.

2. At the outset, it is made clear that the provisions of both the CGST Act and the TGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the TGST Act. Further, for the purposes of this Advance Ruling, the expression 'GST Act' would be a common reference to both CGST Act and TGST Act.

3. It is observed that the queries raised by the applicant fall within the ambit of Section 97 of the GST ACT. The Applicant enclosed copies of challans as proof of payment of Rs. 5,000/- under SGST and Rs. 5,000/- under CGST towards the fee for Advance Ruling. The Applicant has declared that the questions raised in the application have neither been decided nor are pending before any authority under any provisions of the CGST/TGST Act'2017. The application is, therefore, admitted after examining it and the records called for and after hearing the applicant as per section 98(2) of TGST Act'2017.

4. BRIEF FACTS OF THE CASE:

4.1 The applicant NCC URBAN ONE APARTMENT OWNERS MUTUALLY AIDED CO-OP SOCIETY LIMITED (NCCLIOMACS) is a non-profit entity, registered under Telangana Mutually Aided Co-Op Society Act, and consists of only residential flats/members with GSTIN-36AAGAN5854N1ZX

- a) The applicant submitted that NCCUOMACS currently collects monthly maintenance charges from its members to meet the society's maintenance costs.
- b) That the monthly collection charges also include common area electricity charges. The actual common area electricity bill is divided by total carpet area and pro rata charges are collected from each of the members as per their flat area.
- c) That in addition to the monthly maintenance charges NCCUOMACS presently has some rental incomes from commercial establishments in the society. The applicable GST is collected on the rent and is deposited with the department on a regular basis.

4.2 That post introduction of GST exemption was granted on contributions made by the members of RWA vide Notification 12/17- CT dated 28.06.2017, wherein exemption was granted for contributions made up to INR 5,000 per month per member. The limit of INR 5,000 was amended up to INR 7,500 vide Notification No.2/18 dated 25.01.2018.

4.3 That as the supply of electricity is exempted under GST as per the Notification 02/2017 (Central Tax) dated 28 June 2017 under the heading "Electrical Energy" (HSN Code: 27160000). From the notification', the applicant understands that the Electricity supply is treated as an exempt supply and is not liable to GST.

5. QUESTIONS RAISED:

1. In the present case the common area electricity charges are collected from the members on actual basis. The rate of contribution from each of the members is decided on the basis of the actual flat area of each of the members. There is no additional loading of any nature on the actual charges, Since Electricity is an exempted supply, are common area electricity charges exempt from GST?
2. NCCUOMACS, at times collects advance maintenance charges from its members. The advance is collected only with the intention of minimizing the manual effort of collecting contributions every month. Is the GST amount collected in advance to be deposited with the government at the time of collection or is the amount to be deposited in the respective months?
3. Few of the existing towers have a system of Hi tension Residential electricity supply wherein there is only a single meter from the electricity department for the whole tower. The individual consumption of each of the flats is measured by means of a sub-meter. Amounts are collected from each of the members, and the total consumption cost is deposited with the Electricity department. The electricity charges collected from members is totally paid to the electricity department. NCCUOMACS acts as a facilitator only, and there is no margin to NCCUOMACS: Since Electricity is an exempted supply, are these electricity charges being collected and totally paid to the electricity department exempt from GST?
4. The threshold limit for collection of GST in case of collections from member of Resident Welfare Association is Rs7500/-. As per the terms of Notification 12/17- CT dated 28.06.2017, exemption was granted for a contribution made up to INR 5,000 per month per member. A limit of INR 5,000 was amended up to INR 7,500 vide Notification No.2/18 dated 25.01.2018, the association would be liable to collect GST in cases where the contribution from members exceeds Rs 7500/- per month. Should the RWA collect GST on the total contribution in cases where the monthly contribution exceeds Rs7500/- or should GST be charged only on the contribution in excess of RS 7500/- per month, in line with the recent judicial pronouncements?

6. PERSONAL HEARING:

1. The authorized representative Ravi Shanker Chittiboyina, CA appeared before the AAR on 24.05.2023 and reiterated their averments in the application submitted and averred as follows:
2. That, they are NCC Urban One Apartments Owners Macs Limited. And as such they are collecting Electricity charges incurred for common facilities on actual bill basis and paying the same to TSSPDCL.
3. That, they are pure agents and that value of supply of services under Rule 33 of CGST Rules, 2017 shall not include the consideration received and passed on to TSSPDCL.

4. During the course of hearing the applicant was requested to submit the following documents:
 - a. Electricity bill for last (3) months.
 - b. Attested Ledger copies of the bills raised on the residents.
5. Further, the Authorised Representative/Applicant M/s. NCC Urban One Apartment Owners Mutually Aided Coop Society Limited, Hyderabad, reiterated that their case /Similar Case is not pending in any proceedings in the applicant's case under any of the provision of the Act and have not already decided in any proceedings in the applicant's case under any of the provisions of the Act.

7. DISCUSSION & FINDINGS:

i) Discussion for the questions 1 & 3: Section 11 (1) of the CGST Act 2017 enumerates the power of Government to grant exemption on Goods or Services or both either absolutely or subject to any conditions on the recommendation of the council by a notification. Accordingly by Notification No. 02/2017 dated: 28.06.2017 the Government of India provided for exemption from tax under CGST Act, 2017 on Electrical energy at Serial No. 104 with Chapter heading '2716 00 00'. As seen from the notification there are no conditions specified for this exemption, therefore the supply of water and electricity as described the notification is exempt.

Further the applicant is a mutually aided cooperative society which is collecting electricity charges from its members and paying the same to the Electricity Department without collecting any additional amounts.

The rule 33 of the CGST Rules excludes the expenditure or costs incurred by a supplier as a pure agent of the recipient of the supply subject to the conditions prescribed in the rule. The rule also has an illustration for describing a pure agent:

"Illustration to rule 33 of the CGST rules: Corporate services firm A is engaged to handle the legal was pertaining to the incorporation of Company B. Other than its service fees, A recovers from B, registration fee and approval fee for the name of the company paid to the Registrar of Companies. The fees charged by the Registrar Companies for the registration and approval of the name are compulsorily level on B. A is merely acting as a pure agent in the payment of those fees. Therefore A's recovery of such expenses is a disbursement and not part of the value supply made by A to B".

The Hon'ble Supreme court of India in a catena of case law has ruled that illustrations in a statute are part of the statute and help to elucidate the principle of the Section (Dr. Mahesh Chandra Sharma Vs Smt. Raj Kumari Sharma – AIR 1996 SC 869).

The applicant being a mutually aided cooperative society and also by his submissions in the application filed before the AAR, will be a pure agent in the light of the above illustration to rule 33 of the CGST rules.

A combined reading of the above notification and the rule reveals that the cost of electrical energy supplied by the applicant to its members as a pure agent is not taxable at the hands of the applicant. So also by the notification cited above the electrical energy as such remains exempt from taxation and cannot be combined with others supplies being made by the applicant as a composite supply because a composite supply by definition should consist of two or more taxable supplies.

ii) Discussion for question no.2: The Section 13 (2) of the CGST Act enumerates that the time of supply of services shall be the earliest of the date of issue of invoice or the date of receipt of payment. Section 31 (2) states that a registered person supplying taxable services shall issue a invoice either before or after the provision of service. A combined reading of both would make it clear that as an invoice can be issued even prior to provision of a service a time of supply of service will be the date of receipt of advance.

In the Sr. no. 11 of GSTR -1 the details of advances received, in the current tax period, by a registered person for which invoice has not been issued needs to be provided under sr. no. 11A.

Further, vide notification no. 66/2017 – Central Tax dated 15th November, 2017, specific exemption from the payment of GST on advance receipt has been granted to the supplier of goods. In order words, when `supplier of goods` receives advance payment, he is not required to pay GST at the time of the receipt of advance payment, however, under this situation, the time of supply would arise only at the time of issuance of the invoice and the tax liability needs to be discharged only at that time.

Thus advances received towards the supply of a service have to be reported in the GSTR-1 / GSTR-3B for the relevant tax period and the liability needs to be discharged in GSTR-3B.

iii) Discussion for question no.4:
The Serial No. 77 of Notification No. 12/2017 as amended vide Notification No. 02/2018 dt: 25.01.2018 states that service by an unincorporated body or a non-profit entity to its own members is exempt upto an amount of Rs. 7500 per member for sourcing goods or services from a 3rd person for the common use of its members in a housing society or a residential complex. Therefore where the aggregate turnover of a Residents Welfare Association (RWA) exceeds Rs.20 lakhs in a financial year and the amount collected for maintenance per member exceeds Rs.7500/- then the entire amount is chargeable to GST at the rate of 18%. For example: if the maintenance charges are Rs.9000 per month per member, GST @18% shall be payable on the entire amount and not on the difference amount.

Further even if the annual turnover of the RWA is greater than Rs.20 lakhs but the monthly maintenance charged per person is less than Rs. 7500/-, then such RWA need not pay tax on the amounts so collected.

Therefore they are taxable if the total amount collected by the RWA equal or exceeds Rs.7500/-.

8. In view of the foregoing, we rule as follows:

In view of the above discussion, the questions raised by the applicant are clarified as below:

Questions	Ruling
1. In the present case the common area electricity charges are collected from the members on actual basis. The rate of contribution from each of the members in decided on the basis of the actual flat area of each of the members. There is no additional loading of any nature on the actual charges, Since Electricity is an exempted supply, are common area electricity charges exempt from GST?	As mention at para 7(i)
2. NCCUOMACS, at times collects advance maintenance charges from its members. The advance is collected only with the intention of minimizing the manual effort of collecting contributions every month. Is the GST amount collected in advance to be deposited with the government at the time of collection or is the amount to be deposited in the respective months?	As mention at para 7(ii)

3. Few of the existing towers have a system of Hi tension Residential electricity supply wherein there is only a single meter from the electricity department for the whole tower. The individual consumption of each of the flats is measured by means of a sub-meter Amounts are collected from each of the members, and the total consumption cost is deposited with the Electricity department. The electricity charges collected from members is totally paid to the electricity department NCCUUMACS acts as a facilitator only, and there is no margin to NCCUOMACS: Since Electricity is an exempted supply, are these. electricity charges being collected and totally paid to the electricity department exempt from GST?	As mention at para 7(i)
4. The threshold limit for collection of GST in case of collections from member of Resident Welfare Association is Rs7500/-. As per the terms of Notification 12/17- CT dated 28.06.2017, exemption was granted for a contribution made up to INR 5,000 per month per member. A limit of INR 5,000 was amended up to INR 7,500 vide Notification No.2/18 dated 25.01.2018, the association would be liable to collect GST in cases where in the contribution from members exceeds Rs 7500/- per month. Should the RWA collect GST on the total contribution in cases where the monthly contribution exceeds Rs7500/-or should GST be charged only on the contribution in excess of RS 7500/- per month, in line with the recent judicial pronouncements?	As mention at para 7(iii)


 (S.V. KASI VISWESWARA RAO)
 (ADDL. COMMISSIONER (STATE TAXES))


 (SAHIL INAMDAR)
 (ADDL. COMMISSIONER (CENTRAL TAXES))

[under Section 100 (1) of the CGST/TGST Act, 2017, any person aggrieved by this order can prefer an appeal before the Telangana State Appellate Authority for Advance Ruling, Hyderabad, within 30 days from the date of receipt of this order]

To
 M/s. NCC URBAN ONE APARTMENT OWNERS
 MUTUALLY AIDED CO-OP SOCIETY LIMITED (NCCLIOMACS)
 Narsingi, Puppalaguda Main Road,
 Hyderabad, Rangareddy,
 Telangana-500089

Copy submitted to :
 1. The Commissioner (State Taxes) for information.
 2. The Commissioner (Central Taxes), Secunderabad Commissionerate, 4th Floor, GST Bhavan, Hyderabad, Telangana - 500004.

Copy to:
 3. The Superintendent (Central Taxes), Shamshabad Range.