

**THE AUTHORITY ON ADVANCE RULINGS
IN KARNATAKA
GOODS AND SERVICES TAX
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD
GANDHINAGAR, BENGALURU - 560 009**

Advance Ruling No. KAR ADRG 12 / 2021

Dated : 10-03-2021

Present:

1. Dr.M.P.Ravi Prasad
Additional Commissioner of Commercial Taxes Member (State)
2. Sri.Mashhood Ur Rehman Farooqui,
Joint Commissioner of Customs & Indirect Taxes, Member (Central)

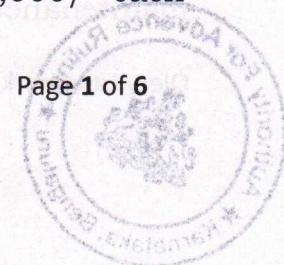
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|----|---|--|
| 1. | Name and address of the applicant | M/s. Olety Landmark Apartment Owner's Association, Flat No.9/1, Ground Floor, Pipeline Road, Kurubarahalli, Mahalalakshampuram, Bengaluru-560 086. |
| 2. | GSTIN or User ID | 29AAAAO9149D1ZE |
| 3. | Date of filing of Form GST ARA-01 | 27-10-2020 |
| 4. | Represented by | Sri Harish, Vice President, Advocate & Authorised Representative |
| 5. | Jurisdictional Authority - Centre | The Principal Commissioner of Indirect Taxes, Bangalore West Commissionerate Bengaluru, (Range-CWD3) |
| 6. | Jurisdictional Authority - State | LGSTO-50 A, Bengaluru |
| 7. | Whether the payment of fees discharged and if yes, the amount and CIN | Yes, discharged fee of Rs.5,000/- under CGST Act vide CIN RBIS20112900047138 dated 06/11/2020 & Rs.5,000/- under KGST Act vide CIN RBIS20102900160027 dated 13/10/2020 |

**ORDER UNDER SECTION 98(4) OF THE CGST ACT, 2017
& UNDER SECTION 98(4) OF THE KGST ACT, 2017**

M/s Olety Landmark Apartment Owner's Association, (OLAOA) (called as the 'Applicant' hereafter) Flat No.9/1, Ground Floor, Pipeline Road, Kurubarahalli, Mahalalakshampuram, Bengaluru-560086, having GSTIN 29AAAAO9149D1ZE, have filed an application for Advance Ruling under Section 97 of CGST Act, 2017 & KGST Act, 2017 read with Rule 104 of CGST Rules 2017 & KGST Rules 2017, in form GST ARA-01 discharging the fee of Rs.5,000/- each under the CGST Act and the KGST Act.



Olety Landmark



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2. The Applicant is a non-profit making residents welfare Association formed by individual apartment/flat owners for the purpose of maintaining and managing the common areas and facilities in the condominium and the Applicant is duly registered under the provisions of the Karnataka Apartment Ownership Act, 1972 ('KAOA Act'). The applicant is also registered under GST Act.

The applicant submits that in addition to the regular maintenance, they also required to undertake periodic up-keep of the structure of the building by painting the exterior/common areas; replacement/repair of major equipment such as lifts, generators etc., for which they collect certain amount towards "Sinking Fund" from the members, under its bye-laws to meet the aforesaid planned/unplanned capital outlay in future. The accounts of the said sinking fund will be maintained separately and will be utilized for the specific purpose but not for the regular maintenance activity.

In view of the above the applicant sought advance ruling in respect of the following question:

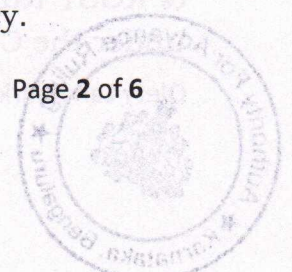
Whether the Applicant is liable to pay GST on amounts which it collects from its members for setting up the 'Sinking Fund'/Corpus Fund?

3. **Admissibility of the application:** The applicant has sought advance ruling in respect of the question "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", on the issues covered under Section 97(2)(g) of the CGST Act 2017 and hence the application is admitted

4. **BRIEF FACTS OF THE CASE:** The applicant furnished the following relevant facts having a bearing on the questions raised

4.1 The Applicant, a residents welfare Association formed by individual apartment/flat owners is duly registered under the provisions of the Karnataka Apartment Ownership Act, 1972 ('KAOA Act') & also under the GST Act. The Applicant performs its activities in accordance with its registered Bye-laws and also as per the KAOA Act.

4.2 The Applicant, having about 208 members, is engaged in providing maintenance and repairs of common areas such as the corridors, garden, play area, pathway, clubhouse, swimming pool, gymnasium, electric equipment etc., and payment of electricity and other outgoings by collecting monthly maintenance charges from its members based on the area of occupancy.



FINDINGS & DISCUSSION

4.3 The applicant also collects certain amounts towards sinking fund, in addition to regular maintenance amounts, to meet the expenditure of planned / unplanned outlay in future, under its bye-laws.

5. Applicant's Interpretation of Law:

5.1 The Applicant submitted that they perform the duties in accordance with the provisions of the KAOA Act and on the basis of its Bye-laws that are duly declared/approved. The Bye-laws of Applicant provides for collection of deposits from members in the form of 'Sinking Fund', to meet certain future unforeseen or planned events. Thus the Applicant is performing the activities as mandated under the Statute and not on the basis of any contract between itself and its members.

5.2 The Applicant contends that, in terms of Section 9 of the CGST Act, the amounts received become taxable only when such amounts are received as "consideration for supply of goods or services or both". The term "Consideration" is defined under Section 2(31) of the Act and it reads as under:

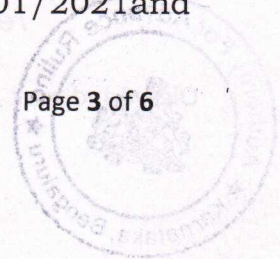
"Consideration" in relation to the supply of goods or services or both includes -

- 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.*
- 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."*

5.3 The Applicant contends that it is clear from the above definition that for an amount collected to get transformed into "consideration", there should be actual supply of goods or services or there should be a promise to supply goods or services. In the instant case, the amount to be received by the Applicant Association is in the nature of deposit for future planned/unplanned event and not for the purpose of supplying any goods or services in discharge of any contractual obligation. Hence, the amount received by the Applicant for setting up Sinking Fund would not be liable to tax under the Act.

PERSONAL HEARING PROCEEDINGS HELD ON 28/01/2021

6. Sri K.S.Harish, Vice President, Advocate & Authorized Representative of the applicant appeared for personal hearing proceedings held on 28/01/2021 and reiterated the facts narrated in their application.



FINDINGS & DISCUSSION

7. We have considered the submissions made by the applicant in their application for advance ruling. We also considered the issues involved, on which advance ruling is sought by the applicant and relevant facts. At the outset, we would like to state that the provisions of both the CGST Act and the KGST 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 KGST Act.

8. The Applicant sought advance ruling with regard to the liability to pay GST on amounts which it collects from its members for setting up the 'Sinking Fund'/Corpus Fund.

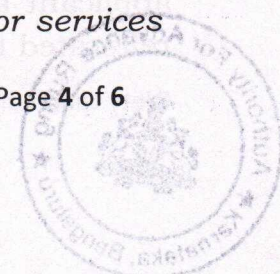
9. The applicant making specific reference to the bye law at Sl.No.23, which deals with sources of funds and accounting and sub entry 3 of the said entry deals with sinking fund, claims that the fund shall be utilized exclusively for replacing plant, machinery or equipment as and when such items become unserviceable; they collect the amount towards corpus / sinking fund for future supply of services meant for its members; the corpus fund or sinking fund is mandatory under the Bye-laws of the Co-operative Societies / Resident Welfare Associations and is in the nature of deposit towards unforeseen events or planned events. Further, the applicant relies upon the ruling of this authority in the case of M/s. Prestige South Ridge Apartment Owners' Association, Bengaluru.

10. Now we proceed to examine whether the amounts collected by the applicant towards sinking fund form part of consideration towards the services being provided by them. In this regard we invite reference to Section 2(31) of the CGST Act, 2017, which defines the term "consideration" and the same 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;

The proviso to Section 2(31) above 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.

11. The applicant furnished copy of resolution dated 22.01.2021, of the Management Committee, to collect Rs.10,000/- every year towards the sinking fund. Also there exists no bye law to state that the balance amount of the sinking fund will be refunded to the members after utilizing the same in future.

In view of the above the issue before us to decide is whether the amounts collected towards sinking fund amounts to advances for supply of future services or deposits. There are certain distinguishable features of both advance and deposit and advances defer from the deposits. The amounts that are not returnable can be termed as advances. Also the bye laws of the applicant association are silent on this issue and hence the amounts collected are indubitably advances but not the deposits.

12. Section 13(2)(a) stipulates that the time of supply of services shall be the earliest of the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under Section 31 of the CGST Act 2017 or the receipt of payment, whichever is earlier. In the instant case the applicant receives the payment earlier and hence the time of supply is the date of receipt of amount towards the sinking fund. Therefore the said amounts are liable to GST as they are advances towards future supply of services but not the deposits.

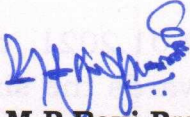
13. Now we proceed to decide the classification of the service to be provided by the applicant as the taxability of the amounts collected towards sinking fund has already been decided at para 12 supra. SAC 9995 covers the services provided / to be provided by the applicant to its members under "Services of Membership Association". The said services are taxable to GST @ 18% in terms of Sl.No.33 of Notification No.11/2017-Central Tax (Rate) dated 28.06.2017, as amended.



14. In view of the foregoing, we rule as follows

RULING

The amounts collected by the applicant towards Sinking Fund amount to advances meant for future supply of services to members, covered under SAC 9995 as "Services of Membership Association" and are taxable to GST @ 18% in terms of Sl.No.33 of Notification No.11/2017-Central Tax (Rate) dated 28/06/2017 as amended, as the time of supply is receipt of the advance amounts in terms of Section 13(2)(a) of the CGST Act 2017.



(Dr.M.P.Ravi Prasad)
Member

MEMBER
Karnataka Advance Ruling Authority
Place : Bengaluru
Bengaluru - 560 009

Date : 10-03-2021

Copy to :

1. The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.
2. The Commissioner of Commercial Taxes, Karnataka, Bengaluru.
3. The Commissioner of Indirect Taxes, Bangalore North Commissionerate, Bengaluru, for information.
4. The Asst. Commissioner, LGSTO-50 A, Bengaluru.
5. Office Folder.



(Mashhood Ur Rehman Farooqui)
Member

MEMBER
Karnataka Advance Ruling Authority
Bengaluru - 560 009

10.03-2021

