

# TAX FLASH NEWS

16 July 2021



## Society and members are distinct persons and will fall under the ambit of GST

Union Budget for the year 2021-22 amended the scope of “supply” under section 7 of the CGST Act, 2017 retrospectively with effect from 1 July 2017.

In this regard, Maharashtra Authority for Advance Ruling (AAR)<sup>1</sup> has held that the issues surrounding the doctrine of mutuality is settled on account of insertion of clause (aa) to sub-section (1) of section 7.

### Facts of the case

- ‘Applicant’ a co-operative housing society raises monthly bills on its members in two parts. One part of the bill is for property tax on which GST is not charged and the other part is for maintenance charges on which GST is charged.
- It made an application to the AAR for determination of liability to pay GST on maintenance charges.

### Applicant’s contention

- Doctrine of mutuality would come into play as there is no supply of goods or services by the ‘Applicant’ to its members. Reliance was placed on the judgements under the erstwhile law:
  - Supply of article to a member at a fixed price by the club cannot be regarded as a “sale” as held by Supreme Court in the case of The Cosmopolitan Club, Madras, The Youngmen’s Indian Association, Madras and the Lawley Institute, Ootacamund;
  - Service tax levy is illegal on the principle of mutuality as held in the case of Sports Club of Gujarat Limited and Ranchi Club Limited;

- Clubs are not entitled to charge, collect and pay taxes on any services / sales made to their members as held by the Supreme Court in case of Calcutta Club Limited.

- Retrospective amendment to section 7 of the GST Act is not yet effective / notified.
- It is not doing any business. Charging of GST by Cooperative Housing societies to its members would totally be unfair and beyond the actual concept of charging GST on business activities.

### AAR’s order

- Retrospective amendment to section 7 of the GST Act has received the assent of President of India on 28 March 2021. In view of this amendment, issue of principles of mutuality has been settled.
- ‘Applicant’ and its members are distinct persons and the amounts received by the ‘Applicant’ against maintenance charges from its members is nothing but consideration received for supply of goods / services as a separate entity.

### Our comments

In view of this AAR and considering the retrospective amendment, clubs, associations and societies could face challenges if they have not paid GST on the principles of mutuality.

<sup>1</sup> Emerald Court Co-Operative Housing Society Limited [2021-VIL-264-AAR]

## KPMG in India addresses:

### Ahmedabad

Commerce House V, 9th Floor,  
902, Near Vodafone House, Corporate  
Road,  
Prahlad Nagar,  
Ahmedabad – 380 051.  
Tel: +91 79 4040 2200

### Bengaluru

Embassy Golf Links Business Park,  
Pebble Beach, 'B' Block,  
1st & 2nd Floor,  
Off Intermediate Ring Road, Bengaluru –  
560071  
Tel: +91 80 6833 5000

### Chandigarh

SCO 22-23 (1st Floor),  
Sector 8C, Madhya Marg,  
Chandigarh – 160 009.  
Tel: +91 172 664 4000

### Chennai

KRM Towers, Ground Floor,  
1, 2 & 3 Floor, Harrington Road,  
Chetpet, Chennai – 600 031.  
Tel: +91 44 3914 5000

### Gurugram

Building No.10, 8th Floor,  
DLF Cyber City, Phase II,  
Gurugram, Haryana – 122 002.  
Tel: +91 124 307 4000

### Hyderabad

Salarpuria Knowledge City,  
6th Floor, Unit 3, Phase III,  
Sy No. 83/1, Plot No 2, Serilingampally  
Mandal,  
Ranga Reddy District,  
Hyderabad – 500 081.  
Tel: +91 40 6111 6000

### Jaipur

Regus Radiant Centre Pvt Ltd.,  
Level 6, Jaipur Centre Mall,  
B2 By pass Tonk Road,  
Jaipur – 302 018.  
Tel: +91 141 - 7103224

### Kochi

Syama Business Centre,  
3rd Floor, NH By Pass Road,  
Vytilla, Kochi – 682 019.  
Tel: +91 484 302 5600

### Kolkata

Unit No. 604,  
6th Floor, Tower – 1,  
Godrej Waterside,  
Sector – V, Salt Lake,  
Kolkata – 700 091.  
Tel: +91 33 4403 4000

### Mumbai

1st Floor, Lodha Excelus,  
Apollo Mills,  
N. M. Joshi Marg,  
Mahalaxmi,  
Mumbai – 400 011.  
Tel: +91 22 3989 6000

### Noida

Unit No. 501, 5th Floor,  
Advant Navis Business Park,  
Tower-A, Plot# 7, Sector 142,  
Expressway Noida,  
Gautam Budh Nagar,  
Noida – 201 305.  
Tel: +91 0120 386 8000

### Pune

9th floor, Business Plaza,  
Westin Hotel Campus, 36/3-B,  
Koregaon Park Annex,  
Mundhwa Road, Ghorpadi,  
Pune – 411 001.  
Tel: +91 20 6747 7000

### Vadodara

Ocean Building, 303, 3rd Floor,  
Beside Center Square Mall,  
Opp. Vadodara Central Mall,  
Dr. Vikram Sarabhai Marg,  
Vadodara – 390 023.  
Tel: +91 265 619 4200

### Vijayawada

Door No. 54-15-18E,  
Sai Odyssey,  
Gurunanak Nagar Road, NH 5,  
Opp. Executive Club, Vijayawada,  
Krishna District,  
Andhra Pradesh – 520 008.  
Tel: +91 0866 669 1000

[home.kpmg/in](https://home.kpmg/in)



[home.kpmg/in/socialmedia](https://home.kpmg/in/socialmedia)



The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

KPMG Assurance and Consulting Services LLP, Lodha Excelus, Apollo Mills Compound, NM Joshi Marg, Mahalaxmi, Mumbai - 400 011  
Phone: +91 22 3989 6000, Fax: +91 22 3983 6000

© 2021 KPMG Assurance and Consulting Services LLP, an Indian Limited Liability Partnership and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved.

KPMG (Registered) (a partnership firm with Registration No. BA- 62445) converted into KPMG Assurance and Consulting Services LLP (a Limited Liability partnership firm) with LLP Registration No. AAT-0367 with effect from July 23, 2020.

The KPMG name and logo are trademarks used under license by the independent member firms of the KPMG global organization.

This document is meant for e-communication only.