

# TAX FLASH NEWS

14 July 2021

## Contribution to Resident Welfare Associations (RWA) in excess of INR 7,500 would only be taxable under GST

Members of RWA and other housing societies are exempted from payment of GST on account of entry 77(c) of Notification No. 12/2017-Central Tax (Rate) dated 28 June 2017.

In this regard, the Madras High Court<sup>1</sup> has quashed Circular No. 109/28/2019-GST dated 22 July 2019 and held that contribution to RWA in excess of INR 7,500 per month per member would only be taxable under GST.

### Facts of the case

- Entry 77(c) of aforementioned notification exempts housing societies from the ambit of GST if the contribution from members is upto an amount of INR 7,500 per month per member.
- CBIC had issued a Flyer on GST on Co-operative Housing Societies wherein it had categorically clarified that exemption from GST would be applicable on the prescribed limit specified in the entry in question and GST would be applicable on the amount in excess of the prescribed amount per month per member.
- One of the petitioners approached Authority of Advance Ruling (AAR) seeking clarification in this regard. The AAR gave an adverse ruling stating that :
  - Grant of exemption was conditional upon the contribution being an amount of INR 7,500 or less.
  - If the contribution exceeded the sum of INR 7,500 then entirety of the amount collected would be liable to tax.

- Subsequently, Circular No. 109/28/2019-GST dated 22 July 2019 was issued clarifying that the exemption from GST on maintenance charges collected by RWA from residents is available only if such charges do not exceed INR 7,500 per month per member and in case the charges exceed INR 7,500 per month per member, the entire amount would be taxable.
- Petitioners filed the writ petitions challenging the order of the AAR levying GST on the entire contribution made to RWA and challenged Circular No. 109/28/2019-GST dated 22 July 2019.

### Petitioners contentions

- Interpretation is contrary to the express language as well as the intendment of the exemption granted;
- Comparison of entry in notification (supra) with entries in other erstwhile notifications granting exemptions reveal that there is difference in language used and the meaning conveyed and the emphasis on the use of the phrase 'upto' in the relevant entry;
- Withdrawal of a statutory exemption by way of a Circular is contrary to the provisions of the Constitution.

### High Court's decision

The Hon'ble Madras High Court allowed the appeal in favor of the 'Petitioners' stating that –

- There is no ambiguity on a plain reading of the entry 77 of Notification No. 12/2017-Central Tax (Rate) dated 28 June 2017 and that the intention is clear, so as to remove from the purview of GST, contribution upto an amount of INR 7,500.

<sup>1</sup> Greenwood Owners Association, Oceanic Owners Association, M/S TVH Lumbini Square Owners Association, Sanjay Kumar Gupta v. The Union Of India And Others [2021-TIOL-1505-HC-MAD-GST]

- In the case of Commissioner of Customs Import, Mumbai v. Dilip Kumar & Company (361 ELT 577), the Supreme Court reiterates the settled proposition that an Exemption Notification must be interpreted strictly. Thus, the plain words employed in entry in question being 'upto' an amount of INR 7,500 can thus only be interpreted to state that any contribution in excess of the same would be liable to GST.
- The term 'upto' connotes an upper limit and is interchangeable with the term 'till', which means that any contribution till the ceiling of INR 7,500 would be exempt for the purpose of GST.
- Conclusion of the AAR as well as the Circular to the effect that any contribution above INR 7,500 would disentitle the RWA from GST exemption, is contrary to the express language of the entry in question and both stand quashed.

### Our comments

This is an important judgment as it will give big relief to the members of Resident Welfare Association and Co-operative Housing Societies. It would be interesting to see if the 'Revenue' challenges this decision. If not, this decision would act as a jurisprudence even for interpretation of the word 'upto'.



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