

GST NEWSLETTER

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ADVISORY AND BUSINESS
CONSULTING FIRM**

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In an era of rapid change, heightened scrutiny, and unprecedented technological change, quality of thinking and delivery are more important than ever. Since inception, our mission has been to provide quality services without compromising on ethics and values.

Quality and integrity is at the heart of everything we do. We are continuously investing in technology, people, and innovation to enhance our professional services. This investment of InCorp Advisory will benefit our organization and clients we serve.

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ARTICLE

GST Implications On Housing Societies

Introduction

Co-operative Housing Societies are a collective body of persons, who stay in a residential society. As a collective body, they supply certain services to its members such as collecting statutory dues from its members and remitting to statutory authorities, maintenance of the building, security etc. Co-operative Housing Societies are entities which are registered under the co-operative laws of the respective States.

In this article we will look at the implication of GST on Housing Societies

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✔ Whether GST Is Leviable On Co-operative Housing Societies?

As per GST Law, GST is applicable on supply of goods and services provided by a person. The following are relevant extracts of various definitions under the GST law to undermine whether GST is leviable on co-operative housing societies:

As per Section 2(84)(i) of the CGST Act, 2017, the definition of "person" specifically includes a co-operative society registered under any law relating to co-operative societies. Thus, a registered co-operative society is a person within the meaning of the term in the CGST Act.

As per Section 7 of CGST Act, 2017 9(a) "Supply" includes all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business."

(aa) the activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration.

Explanation - For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another;

The relevant portion of section 2(17) of the CGST Act, 2017 is as under:

"business" includes

(e) 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;

Thus, it is clear from the above definitions that the activities of co-operative societies gets covered under GST and co-operative housing societies would be required to comply with GST law.

✔ When To Take Registration Under GST?

As per section 22 of the Act, every supplier is liable to be registered: -

- If he makes any taxable supply (and)
- If his aggregate turnover in a financial year exceeds Rs. 20 Lacs (Rs. 10 Lacs in special category States).



Both the above conditions need to be fulfilled to obtain registration under GST. It means that if the aggregate turnover (total receipts) of the housing societies which generally includes society maintenance charges from its members, receipts from investments, income from advertisement board, receipts from mobile towers in premises, etc. exceeds the prescribed limit, the housing society is liable to register under the GST law. Thus, co-operative housing society or Residential Welfare Association (RWA) whose turnover exceeds Rs 20 Lakhs per annum becomes liable for registration and should charge GST (CGST + SGST) from its members on fulfilment of certain conditions.

As per section 2(6) of CGST Act, 2017 *“aggregate turnover” means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and inter-State supplies of persons having the same Permanent Account Number, to be computed on all India basis but excludes central tax, State tax, Union territory tax, integrated tax and cess;*

✔ **What Is Chargeability And Payment Of Tax On Monthly Subscription?**

Even after taking the registration under GST, it does not mean that the housing society must compulsorily charge GST in the monthly maintenance bills raised on its members. The co-operative housing societies have the benefit of the Notification No.12/2017 -Central Tax (Rate) dated 28.06.2017. As per sr.no.77 of the said notification, the following exemption is applicable to housing societies:

‘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 –

(a) as a trade union;


(b) for the provision of carrying out any activity which is exempt from the levy of Goods and Service Tax; or

(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.’

In view of the provision contained at (c) above, a co-operative housing society may be registered under GST for having turnover more than Rs. 20 lacs, however if the monthly contribution received from members is less than Rs. 7,500/-, no GST is to be charged by the housing society on the monthly bill raised by the society. Thus, GST would be applicable if the monthly contribution exceeds Rs. 7,500/-.

Also, where the monthly contribution from the members exceeds the prescribed limit of Rs. 7500/- GST is applicable on the entire amount of contribution and not the differential value of the contribution.





For instance, where the contribution received from the members is Rs.10,000/- the cooperative housing societies will charge GST on the entire contribution of Rs. 10,000/- and not on the differential value of Rs. 2,500/- (10000-7500).

Further, if the aggregate turnover of such RWA/ cooperative housing societies is up to Rs.20 Lakh in a financial year, then such supplies would be exempted from GST even if charges per member are more than Rs. seven thousand five hundred.

Tax liability under Reverse Charge as defined under Sec 2(98) of CGST Act is also applicable to the housing societies. Hence, tax shall be payable by the Housing Society when supplies are received which are notified services as per Sec 9(3) of CGST Act like services of Goods Transport Agency, security services received from any person other than body corporate, advocate services etc. and also supplies from un-registered person under Sec 9(4) of CGST Act. The society can claim ITC on tax paid under RCM.

However, it's to be noted that the exemption of GST is only on members monthly contribution up to Rs. 7,500. This exemption is not extended to other receipts such as rental of society auditorium, charges collected for usage of other facilities from non-members, recreational services etc.

✔ **What Are The Inclusion And Exclusion Of Expenses Under The Limit?**

The housing societies collect various charges from its members. While calculating the limit of Rs.7500/- there are certain expenses which are included in determining the taxable limit and certain statutory expenses which are excluded. The expenses which are collected by the RWA/Co-operative Society on behalf of the individual flat owners are **not** included while determining the taxable limit which are in the nature of reimbursement. examples

- **Property Tax**
- **Water Tax**
- **Electricity Charges**
- **Non-Agricultural Tax**

Whereas charges such as maintenance charges, non-occupancy charges, sinking fund, parking charges, interest on late payments, etc. which are provided by the co-operative housing societies to its members are chargeable to GST.

✔ Whether Cooperative Housing Societies Can Avail ITC?

When the cooperative housing societies become liable to pay GST, it is allowed to take Input Tax Credit (ITC) under Sec 16 (1) of CGST Act subject to conditions for taking input tax credit. Housing Society is entitled to ITC in respect of taxes paid by them on capital goods (generators, water pumps, lawn furniture etc.), goods (taps, pipes, other sanitary/hardware fillings etc.) and input services such as repair and maintenance services – Lift AMC, Housekeeping, Security, Fire AMC, Repairs & Maintenance, Contract staff, Accounting & Auditing Services and other such services.

But ITC that is considered as ineligible under Sec. 17(5) shall not allowed for claim. Further, in case where the membership fees collected is below Rs. 7,500 then, the same is considered as exempt supply and any specific ITC and all common ITC incurred for earning such fees shall be liable for reversal in terms of Rule 42/43 of the GST laws. For example:

Particulars	Amount	% / Status
Fees collected from members (6,500 per member/per month * 10 members) – exempt from GST	65,000	39%
Other receipts taxable to GST in a month	1,00,000	61%
Total Receipts	1,65,000	100%
Input tax credit incurred on the above		
a) ITC of Rs. 5,000 from MyGate App services for collection of membership fees	5,000	Specific ITC incurred on fees - fully reversible
b) ITC on accounting services provided to society	5,000	Common ITC eligible proportionately – 61%
Total ITC eligible for claim	3,050	ITC eligible for claim

Conclusion

In so far as tax implications on housing societies are concerned, the tax burden under GST will be lower as the society would be entitled to take ITC which was hitherto not allowed under service tax. Moreover, the exemptions given ensure that there would be no tax burden on smaller societies where the monthly contribution of the individual members does not exceed Rs. 7,500/-. In a nutshell GST will be a favorable tax regime for housing societies vis a vis service tax. But societies need to ensure accurate and appropriate compliance with GST provisions from their inception so as to avoid expensive litigations.

CASE LAWS

Provisional Attachment Amount Restricted To The Quantum Of Government Revenue

Facts Of The Case

R Enterprises Vs Union of India (Delhi High Court) – W.P. (C) 17436/2022 dated 21-12-2022

The petitioner's current bank account in ICICI Bank was frozen and denied access on 05-11-2022 without informing him the reason for such denial and claiming to be confidential.

On 06-12-2022, the petitioner received an order under section 83 of CGST Act 2017 stating that the petitioner was found to be non-existent and had not responded to the summons issued on 04-11-2022 to appear before the authority on 10.11.2022 on 12.:30 PM.

The information was received from another Commissionerate (DGGI, Ghaziabad) that certain entities have colluded to fraudulently avail GST and the petitioner was named as one of the suspicious entities.

Further, petitioner has availed of a GST refund of Rs.2.4 crores and the same was under investigation.

Provision Of The Law

Section 83 of the CGST Act empowers the concerned authority to provisionally attach assets, in cases where the proceedings have been initiated under Chapter XII, XIV or XV of the CGST Act and the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue, it is necessary to issue provisional attachment.

However, provisional attachment of the bank account should not exceed the amount of interest of government revenue.

Ruling

The Hon'ble High Court of Delhi held that it was not appropriate to provisionally attach the petitioner's bank account for any amount in excess of Rs.2.4 crores, the amount of interest of government revenue which is under investigation. The petitioner thus, would be free to operate the bank account over and above a minimum balance amount of Rs.2.4 crores.

Further, in so far as the reason for freezing the bank account is concerned, the petitioner is at liberty to approach the ICICI Bank for seeking the reasons for freezing the bank account. The bank is directed to provide the petitioner the reasons for the same.

CASE LAWS

Readily Available Food And Beverages (Not Prepared In The Restaurant) Sold Over The Counter Do Not Qualify As 'Restaurant Services'

Facts Of The Case

Ridhi Enterprise ., In re - Gujarat AAR No. GUJ/GAAR/R/2022/51 dated 30-12-2022

M/s Riddhi Enterprise, the applicant is in the restaurant business offering variety of food items including food and beverages prepared at the restaurant as well readily purchased food and beverage sold over the counter. The applicant also delivers such prepared food and beverages to the customer at their home. The applicant standalone restaurants exclusively serving food and beverages and are not hotel accommodation

The applicant provides its restaurant for consuming food/ beverage prepared at the restaurant as well as for consumption of readily available food/beverages. The customers can also choose to take away the food items or beverages of their choice and consume them elsewhere.

The infrastructure facility, the staff service, the billing counter, software and books of accounts at the restaurant is uniformly same for all the customers irrespective of whether they choose to consume the food/beverages at the restaurant premise or take it away for consumption elsewhere.

Provision Of Law

“Restaurant service” as defined Notification No. 11/2017 to mean supply, by way of or as part of any service, of goods, being food or any other article for human consumption or any drink, provided by a restaurant, eating joint including mess, canteen, whether for consumption on or away from the premises where such food or any other article for human consumption or drink is supplied.

The food and beverages prepared and supplied to the customer whether consumed in the restaurant or by way of takeaway qualify as 'restaurant services' classifiable under SAC '996331 leviable to GST @ 5% with no input tax credit ('ITC').

Circular No. 164 120 12021-GST dated October 6, 2021, has clarified that 'restaurant service' includes services provided by Restaurants, Cafes. The circular has further clarified that takeaway services and door delivery services for consumption of food are also considered as 'restaurant service'.

Advance Ruling

AAR held that the food and beverages **prepared/cooked in the restaurant** and supplied by the applicant to its customers either consumed in the restaurant or by way of takeaway qualifies as 'restaurant services' classifiable under SAC 996331 leviable at tax rate of GST @ 5% (2.5% CGST +2.5% SGST) with no input tax credit.

Further, AAR held that the **readily available food items** (not prepared/cooked in the restaurant) sold over the counter by the Applicant to the customer whether consumed in the restaurant or by way of takeaway **does not qualify** as 'restaurant services' but instead falls under supply of goods which is liable to applicable rate of GST Tax. Thus, the supply of already cooked/prepared food-items purchased from local market will attract GST rate as per food items sold and cannot be clubbed under restaurant services.



NOTIFICATIONS AND CIRCULARS FOR THE MONTH OF DECEMBER 2022

✔ One Central Tax Notification. - [Click here](#)

Sl. No	Subject	Notifications/Circulars No. Date of Issue
1.	Clarification to deal with difference in Input Tax Credit (ITC) availed in FORM GSTR-3B as compared to that detailed in FORM GSTR-2A for FY 2017-18 and 2018-19.	183/15/2022-GST dated 27-12-2022
2.	Clarification on the entitlement of input tax credit where the place of supply is determined in terms of the proviso to sub-section (8) of section 12 of the Integrated Goods and Services Tax Act, 2017.	184/15/2022-GST dated 27-12-2022
3.	Clarification with regard to applicability of provisions of section 75(2) of Central Goods and Services Tax Act, 2017 and its effect on limitation.	185/15/2022-GST dated 27-12-2022
4.	Clarification on various issue pertaining to GST.	186/15/2022-GST dated 27-12-2022
5.	Clarification regarding the treatment of statutory dues under GST law in respect of the taxpayers for whom the proceedings have been finalized under Insolvency and Bankruptcy Code, 2016.	187/15/2022-GST dated 27-12-2022
6.	Prescribing manner of filing an application for refund by unregistered persons.	188/15/2022-GST dated 27-12-2022
1.	Seeks to make fifth amendment (2022) to CGST Rules.	26/2022-Central Tax dated 26-12-2022
2.	Notification under sub-rule (4B) of rule 8 of CGST Rules, 2017.	27/2022-Central Tax dated 26-12-2022
3.	Seeks to extend the due date for furnishing FORM GSTR-1 for November, 2022 for registered persons whose principal place of business is in certain districts of Tamil Nadu.	25/2022-Central Tax dated 13-12-2022

DUE DATES OF GST FOR THE MONTH OF JANUARY 2023

JANUARY

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1	2	3	4	5	6	7
8	9	GSTR-7, GSTR-8	* GSTR-1	12	* GSTR-1, GSTR-6 * IFF (Optional)	14
15	16	17	CMP-08	19	* GSTR-3B GSTR-5 GSTR-5A	21
* GSTR-3B (G-1)	23	* GSTR-3B (G-2)	25	26	27	28
29	30	31				

2023

- * Monthly return for taxpayers with Annual Turnover more than 1.5 Crore or Taxpayer who has opted Monthly return option.
- * Monthly return for taxpayers with Annual Turnover up to 1.5 Crore or Taxpayer who has opted Quarterly return option (October 2022- December 2022).
- * Quarterly returns for taxpayers with Annual Turnover less than Rs. 5 Crores and opted for quarterly return monthly payment option (QRMP).
- * Monthly return for taxpayers with Annual Turnover of up to or more than INR 5cr in Previous FY Monthly Filing – December 2022
- * Quarterly (October 2022- December 2022)



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