

NGO, Trusts & Co-operative Societies

GST Applicability & Taxability

Webinar arranged by WIRC of ICAI

GST Applicability
NGO, Trusts, Societies

Applicability

GST Applicability

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Applicability

Levy of GST –

Government is empowered to levy tax on all intra-State or inter-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption.

Supply - The expression "supply" includes

- ❑ all forms of supply of goods or services or both for a consideration by a person in the course or furtherance of business;
- ❑ 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;
- ❑ import of services for a consideration whether or not in course or furtherance of business; and
- ❑ the activities specified in Schedule I, made or agreed to be made without a consideration.

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Person –

"person" includes-

-
- an association of persons or a body of individuals, whether incorporated or not, in India or outside India;
- any body corporate incorporated by or under the laws of a country outside India;
- a co-operative society registered under any law relating to co-operative societies;
- society as defined under the Societies Registration Act, 1860 (21 of 1860);
- trust;
-

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Business –

"business" includes -

- ❑ any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;
- ❑ any activity or transaction in connection with or incidental or ancillary to sub-clause (a);
- ❑ any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;
- ❑ 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;
- ❑

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Consideration –

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

- ❑ 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;
- ❑ 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;

❑

❑

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Judicial Pronouncements –

- **Jayshankar Gramin and Adivasi Vikas Sanstha [AAAR – Maharashtra]**
- The term "consideration" shall not include any "subsidy" given by the Central Government or State Government. Here, it is seen that the term "subsidy" has not been defined under the CGST Act, 2017. The term "subsidy", it is apparent that any money/amount granted by a government to any private person or company for undertaking any charitable activities, which are beneficial to the public, will be construed as subsidy. In the present case, the Appellant are being granted a fixed amount of money from the Government of Maharashtra under the "One stop crises Centre Scheme" for taking overall care of the destitute women who are litigating divorce, or homeless, or the victims of domestic violence. The said activities undertaken by the Appellant are clearly for the welfare of these destitute women, and thereby, serving the mankind in general. Held, no Supply in absence of consideration.

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Judicial Pronouncements –

- **Jayshankar Gramin and Adivasi Vikas Sanstha [AAR – Maharashtra]**
- It may be noticed that there is no reference or mention of any business activity of the donor which otherwise would have got advertised. Thus where all the three conditions are satisfied namely
 - the gift or donation is made to a charitable organization;
 - the payment has the character of gift or donation; and
 - the purpose leads to no commercial gain and not advertisement,
- GST is not leviable.

Exemptions

Charitable Trust

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Exemptions

Entry No.1 – [Notification No.12/2017-Central Tax (Rate)]

Services by an entity registered under section 12AA or 12AB of the Income-tax Act, 1961 by way of charitable activities. “charitable activities” means activities relating to -

(i) public health by way of , -

(A) care or counseling of

(I) terminally ill persons or persons with severe physical or mental disability;

(II) persons afflicted with HIV or AIDS;

(III) persons addicted to dependence-forming substance such as narcotics drugs or alcohol;

(B) public awareness of preventive health, family planning or prevention of HIV infection;

... continued

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Exemptions

Entry No.1 – [Notification No.12/2017-Central Tax (Rate)]

“charitable activities” means activities relating to – (continued...)

- (ii) advancement of religion, spirituality or yoga;
- (iii) advancement of educational programmes or skill development relating to,-
 - (A) abandoned, orphaned or homeless children;
 - (B) physically or mentally abused and traumatized persons;
 - (C) prisoners; or
 - (D) persons over the age of 65 years residing in a rural area;
- (iv) preservation of environment including watershed, forests and wildlife.

[Definition 2(r)]

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Exemptions

Judicial Pronouncements –

- **World Researchers Associations [AAR – Madhya Pradesh]**
- The definition of Charitable Activity is not an inclusive definition but an exclusive one, meaning that the specific activities which are treated to be falling under Charitable Activity are an exhaustive list and there is no scope of interpretation as to which activities might fall under charitable category.

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Exemptions

Judicial Pronouncements –

- **Children of the World India Trust [AAR – Maharashtra]**
- The activities, including the activity of facilitating the adoption of the children by the Adoptive parents, are in the nature of “Charitable Activities” , which also consists of advancement of educational programmes or skill development relating to abandoned, orphaned or homeless children. Such activities are clearly covered under Sr. No.1 of Notification No.12/2017-C.T. (Rate) dated 28.06.2017 and are exempted by the said notification. Therefore the receipt of the Adoption Fees by the applicant from the Prospective Adoptive Parents to the Trust is exempted from the levy of Goods and Services Tax.

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Exemptions

Judicial Pronouncements –

- **Vikas Centre for Development [AAR – Gujarat]**
- The benefits of plantation of Mangroves along coastal and looking to the impact of plantation of mangrove on environment, social and economic, it is held that the activities of plantation of mangrove carried out by the applicant are covered under point (iv) of Charitable under clause 2 (r) of Notification No. 12/2017-CT (R) dated 28-6-2017 as amended.

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Exemptions

Judicial Pronouncements –

- **All India Disaster Mitigation Institute [AAR – Gujarat]**
- the activities of the applicant relating to disaster prevention, disaster mitigation and disaster management are activities relating to “preservation of environment”. Thus, the activities of the applicant are considered as charitable activities and hence, activities of the applicant, being registered under Section 12AA of the Income Tax Act, 1961, exempt from tax under the GST Acts, by virtue of Entry No. 1 of the Notification No.12/2017-Central Tax (Rate) dated 28.06.2017

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Exemptions

Entry No.9D – [Notification No.12/2017-Central Tax (Rate)]

Services by an old age home run by Central Government, State Government or by an entity registered under section 12AA or 12AB of the Income-tax Act, 1961 to its residents (aged 60 years or more) against consideration upto Rs.25,000/- per month per member, provided that the consideration charged is inclusive of charges for boarding, lodging and maintenance.

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Exemptions

Entry No.13 – [Notification No.12/2017-Central Tax (Rate)]

Services by a person by way of-

- (a) conduct of any religious ceremony;
- (b) renting of precincts of a religious place meant for general public, owned or managed by
 - ❑ an entity registered as a charitable or religious trust under section 12AA or 12AB of the Income-tax Act, 1961 or
 - ❑ a trust or an institution registered under sub clause (v) of clause (23C) of section 10 of the Income-tax Act;
 - ❑ a body or an authority covered under clause (23BBA) of section 10 of the said Income-tax Act;

.....Continued

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Exemptions

Entry No.13 – [Notification No.12/2017-Central Tax (Rate)]

(Continued...)

Provided that nothing contained in entry (b) of this exemption shall apply to,-

- (i) renting of rooms where charges are Rs.1,000/- or more per day;
- (ii) renting of premises, community halls, kalyanmandapam or open area, and the like where charges are Rs.10,000/- or more per day;
- (iii) renting of shops or other spaces for business or commerce where charges are Rs.10,000/- or more per month.

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Exemptions

Entry No.74A – [Notification No.12/2017-Central Tax (Rate)]

Services provided by rehabilitation professionals recognised under the Rehabilitation Council of India Act, 1992 by way of rehabilitation, therapy or counselling and such other activity as covered by the said Act at medical establishments, educational institutions, rehabilitation centers established by Central Government, State Government or Union territory or an entity registered under section 12AA or 12AB of the Income-tax Act, 1961.

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Exemptions

Entry No.77A – [Notification No.12/2017-Central Tax (Rate)]

Services provided by an unincorporated body or a non-profit entity registered under any law for the time being in force, engaged in,-

- (i) activities relating to the welfare of industrial or agricultural labour or farmers; or
- (ii) promotion of trade, commerce, industry, agriculture, art, science, literature, culture, sports, education, social welfare, charitable activities and protection of environment,

to its own members against consideration in the form of membership fee upto an amount of Rs.1000/- per member per year.

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Exemptions

Entry No.80 – [Notification No.12/2017-Central Tax (Rate)]

Services by way of training or coaching in -

- (a) recreational activities relating to arts or culture, by an individual, or
- (b) sports by charitable entities registered under Section 12AA or 12AB of the Income Tax Act.

Judicial Pronouncements –

- **Navi Mumbai Sports Association [AAR – Maharashtra]**
- They are registered under Section 12AA of the Income Tax Act and are providing training and coaching. Football, Basketball, Athletic, Cricket, swimming, and Karate are sports and 'Dance' would be covered under Arts. However, Physical fitness can neither be considered as sports nor Arts or culture. Further, the term 'summer coaching' is a general term which cannot be said to cover sports, Arts or culture.

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Exemptions

Entry No. 10 – [Notification No.9/2017-Integrated Tax (Rate)]

Services received from a provider of service located in a non- taxable territory by,-

- (a)
- (b) an entity registered under section 12AA of the Income-tax Act, 1961 for the purposes of providing charitable activities; or
- (c)

Provided that the exemption shall not apply to –

- (i) online information and database access or retrieval services received by persons specified in entry (a) or entry (b); or
- (ii) services by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India received by persons specified in the entry.

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Exemptions

Entry No.98 – [Notification No.2/2017-Central Tax (Rate)]

Prasadam supplied by religious places like temples, mosques, churches, gurudwaras, dargahs, etc.

Entry No.148 – [Notification No.2/2017-Central Tax (Rate)]

Puja samagri namely,-

- (i) Rudraksha, rudraksha mala, tulsi kanthi mala, panchgavya (mixture of cowdung, desi ghee, milk and curd);
- (ii) Sacred thread (commonly known as yagnopavit);
- (iii) Wooden khadau;
- (iv) Panchamrit,

Continued ...

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Exemptions

Entry No.148 – [Notification No.2/2017-Central Tax (Rate)]

Puja samagri namely,- (continued...)

(v) Vibhuti

(vi) Unbranded honey

(vii) Wick for diya.

(viii) Roli

(ix) Kalava (Raksha sutra)

(x) Chandan tika

Entry No.119 – [Notification No.2/2017-Central Tax (Rate)]

Printed books, including Braille books

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Registration

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Registration

Liability to Register –

- As per Section 22(1) of CGST Act, **every supplier** making a **taxable supply of goods or services or both** whose **aggregate turnover** in a financial year **exceeds Rs.20,00,000/-** shall be liable to register himself.
- Section 2(6) of CGST Act defines "**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 PAN, to be computed on all India basis but excludes central tax, State/Union territory tax, integrated tax & cess.

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Exemption from Registration

As per Section 23(1)(a) of CGST Act, any person engaged **exclusively in the business of supplying** goods or services or both **that are not liable to tax or wholly exempt from tax** under this Act or under the Integrated Goods and Services Tax Act shall **not be liable to registration**.

IMP Conditions -

- Engaged exclusively in
 - Supply that is not liable to tax or
 - Supply that is wholly exempt from tax

Whether it will be helpful to Co-operative Housing Societies ?

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Compulsory Registration

Section 24 of CGST Act states that, Notwithstanding anything contained in Section 22(1), following persons shall be required to register –

Most Common Applicable clause of Section 24 to Co-op. Hsg. Societies

(iii) persons who are required to pay tax under reverse charge

Whether Section 24 overrides Section 23 ?

Refer : Jalaram Feeds (AAR, Maharashtra) dated 10-04-2019.

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Compulsory Registration

Most Common Services liable to RCM used by Co-op. Hsg. Societies

- Supply of Services by GTA, [who is not charging GST on Forward charge basis whether 5% or 12%] for transportation of goods by road; [Refer Exemptions]
- Services supplied by way of legal services to a business entity; [Refer Exemptions]
- Services supplied by the Central or State Government, Union territory or local authority to a business entity other than renting of immovable property and other specified services; [Refer Exemptions]
- Services supplied by the Central or State Government, Union territory or local authority by way of renting of immovable property to a person registered under the CGST Act [25/01/18];
- Services provided by way of supply of security personnel provided to registered person by person other than body corporate [01/01/2019]

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Exemptions to Services liable to RCM

Supply of Services by GTA for transportation of goods by road

Notification No.12/2017-Central Tax (Rate) provides NIL rate of tax for

Entry 21 - the Services provided by a goods transport agency by way of transport in a goods carriage of goods, where consideration charged for transportation of all such goods for a single consignee does not exceed Rs.750/-.

Though Entry 21A inserted vide Notification No.32/2017-Central Tax (Rate) w.e.f. 13-10-2017 provides exemption for services provided to un-registered person but it excludes

- ❑ any Co-operative Society established by or under any law for the time being in force,
- ❑ any Society registered under the Societies Registration Act, 1860 or under any other law for the time being in force in any part of India;
- ❑ any body corporate established, by or under any law for the time being in force; and few more.

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Exemptions to Services liable to RCM

Services supplied by way of legal services to a business entity

Entry 45(b) of Notification No.12/2017-Central Tax (Rate) provides NIL rate of tax for Services provided by a partnership firm of advocates or an individual as an advocate including a senior advocate, by way of **legal services to a business entity with an aggregate turnover up to such amount as makes it eligible for exemption from registration under the Central Goods and Services Tax Act, 2017 in the preceding financial year;**

Clause (zm) in Definitions given below the said Notification defines “legal service” means any service provided in relation to advice, consultancy or assistance in any branch of law, in any manner and includes representational services before any court, tribunal or authority.

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Exemptions to Services liable to RCM

Services supplied by the Central or State Government, Union territory or local authority to a business entity other than renting of immovable property and other specified services

Notification No.12/2017-Central Tax (Rate) provides NIL rate of tax for

Entry 4 - Services by governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243W of the Constitution.

Entry 5 -Services by a governmental authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution.

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Exemptions to Services liable to RCM

Services supplied by the Central or State Government, Union territory or local authority to a business entity other than renting of immovable property and other specified services

Clause (zf) in paragraph 2 of Notification No.12/2017-Central Tax (Rate) defines “government authority” means an authority or a board or any other body,

- ❑ set up by an Act of Parliament or a State Legislature; or
- ❑ established by any Government,

with 90% or more participation by way of equity or control, to carry out any function entrusted to a Municipality under article 243W of the Constitution or to a Panchayat under article 243G of the Constitution.

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Functions under Article 243W

Services supplied by the Central or State Government, Union territory or local authority to a business entity other than renting of immovable property and other specified services

Article 243W of the Constitution refers to functions in respect of matters listed in Twelfth Schedule of Constitution which mainly includes –

- ❑ Urban planning including town planning.
- ❑ Regulation of land use and construction of buildings.
- ❑ Roads and bridges.
- ❑ Water supply for domestic, industrial and commercial purposes.
- ❑ Public health, sanitation conservancy and solid waste management,
- ❑ Fire services.

continued...

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Functions under Article 243W

Services supplied by the Central or State Government, Union territory or local authority to a business entity other than renting of immovable property and other specified services

Article 243W of the Constitution refers to functions in respect of matters listed in Twelfth Schedule of Constitution which mainly includes –

- ❑ Provision of urban facilities such as parks, gardens, playgrounds.
- ❑ Burials and burial grounds, cremations, cremation grounds and electric crematoriums,
- ❑ Vital statistics including registration of births and deaths.
- ❑ Public amenities including street lighting, parking lots, bus stops and public conveniences and so on

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Functions under Article 243G

Services supplied by the Central or State Government, Union territory or local authority to a business entity other than renting of immovable property and other specified services

Article 243G of the Constitution refers to functions in respect of matters listed in Eleventh Schedule of Constitution which mainly includes –

- ❑ Agriculture, including agricultural extension.
- ❑ Land improvement, implementation of land reforms.
- ❑ Minor irrigation, water management and watershed development.
- ❑ Animal husbandry, dairying and poultry, Fisheries.
- ❑ Small scale industries, including food processing industries.
- ❑ Khadi, village and cottage industries.

continued...

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Functions under Article 243G

Services supplied by the Central or State Government, Union territory or local authority to a business entity other than renting of immovable property and other specified services

Article 243G of the Constitution refers to functions in respect of matters listed in Eleventh Schedule of Constitution which mainly includes –

- ❑ Rural housing.
- ❑ Drinking water.
- ❑ Roads, culverts, bridges, ferries, waterways and other means of communication.
- ❑ Rural electrification, including distribution of electricity.
- ❑ Education, including primary and secondary schools.

continued...

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Functions under Article 243G

Services supplied by the Central or State Government, Union territory or local authority to a business entity other than renting of immovable property and other specified services

Article 243G of the Constitution refers to functions in respect of matters listed in Eleventh Schedule of Constitution which mainly includes –

- ❑ Technical training and vocational education.
- ❑ Libraries.
- ❑ Cultural activities.
- ❑ Markets and fairs.
- ❑ Health and sanitation, including hospitals, primary health centers, Family welfare, Women and child development.
- ❑ and so on

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Exemptions to Services liable to RCM

Services supplied by the Central or State Government, Union territory or local authority to a business entity other than renting of immovable property and other specified services

Notification No.12/2017-Central Tax (Rate) provides NIL rate of tax for

Entry 7 - Services other than renting of immovable property and other specified services provided by the Central or State Government, Union territory or local authority to a business entity with an aggregate turnover of up to such amount as makes it eligible for exemption from registration under Central Goods and Services Tax Act, in the preceding financial year.

Entry 9 - Services provided by Central or State Government, Union territory or a local authority where the consideration for such services does not exceed Rs.5,000/- (if continuous supply of service is provided, exemption shall apply only if consideration charged for such service does not exceed Rs.5,000/- in a financial year).

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Exemptions to Services liable to RCM

Services supplied by the Central or State Government, Union territory or local authority to a business entity other than renting of immovable property and other specified services

Notification No.12/2017-Central Tax (Rate) provides NIL rate of tax for

Entry 47 - Services provided by the Central Government, State Government, Union territory or local authority by way of -

- (a) registration required under any law for the time being in force;
- (b) testing, calibration, safety check or certification relating to protection or safety of workers, consumers or public at large, including fire license, required under any law for the time being in force.

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Exemptions to Services liable to RCM

Services supplied by the Central or State Government, Union territory or local authority to a business entity other than renting of immovable property and other specified services

Notification No.12/2017-Central Tax (Rate) provides NIL rate of tax for Services provided by the Central or State Government, Union territory or local authority

Entry 62 - by way of tolerating non-performance of a contract for which consideration in the form of fines or liquidated damages is payable to Government, Union territory or local authority under such contract.

Entry 65 - by way of deputing officers after office hours or on holidays for inspection or container stuffing or such other duties in relation to import export cargo on payment of Merchant Overtime charges.

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Taxability

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Tax Rate

HSN Code and Rate for services provided by Co-op. Hsg. Society –

Notification No.11/2017-Central Tax (Rate) has prescribed the rate of CGST on services and entry no.33 covers Heading 9995 – Services of Membership Organisations and the rate of CGST has been mentioned as 9% i.e. Total 18% [CGST 9% + SGST 9%].

Co-operative Housing Societies charge amounts under various heads such as contribution to Funds, share towards various expenditure such as property taxes, electricity, water, maintenance etc.

Whether supply by Society to its member to be treated as Composite Supply or Mixed Supply or individual supplies ?

Composite Supply -

Section 2(30) of CGST Act defines “composite supply” means a supply made by a taxable person to a recipient **consisting of two or more taxable supplies** of goods or services or both, or any combination thereof, which are **naturally bundled** and **supplied in conjunction with each other** in the ordinary course of business, **one of which is a principal supply**.

Whether supply by Society to its member are naturally bundled with each other and what will be the principal supply ?

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Mixed Supply

Mixed Supply -

Section 2(30) of CGST Act defines "mixed supply" means **two or more individual supplies** of goods or services, or any combination thereof, made in conjunction with each other by a taxable person **for a single price** where such supply **does not constitute a composite supply**.

Basic condition of charging a single price for combination of two or more individual supplies is not fulfilled as the Society is charging separately.

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Exemption

Exempted Supply – [Sr No.77 of Noti. No.12/2017- Central Tax (Rate)]

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** –

- (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 **Rs.7,500/- p.m. 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.

The said limit was raised to Rs.7,500/- from earlier Rs.5,000/- w.e.f. 25-01-2018 vide Notification No. 2/2018-Central Tax (Rate).

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Exemption of Rs.7,500/-
p.m. per member

Meaning of Exemption upto Rs.7,500/- per month per member –

Sr No.77 of Notification No.12/2017- Central Tax (Rate) grants exemption upto Rs.7,500/- per month per member.

- ❑ Madras High Court stays single-Judge ruling on GST exemption for RWA contributions upto ₹ 7,500/- in the case of TVH Lumbini Square Owners Association
- ❑ Single-Judge ruling was in favor of taxpayers specifying that GST will be applicable only on the monthly contribution exceeding ₹ 7,500/-.

Whether Rs.7,500/- includes both taxable as well as exempt supplies procured from third party?

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Exemption of Rs.7,500/-
p.m. per member

Circular No.109/28/2019- GST dated 22nd July, 2019 –

While answering the question regarding calculation of GST in case of maintenance charges exceeds Rs.7,500/- per month per member, it states –

The exemption of GST on maintenance charges charged is available only if such charges does not exceed Rs.7,500/- per month per member. In case the charges exceeds Rs.7,500/- per month per member, the entire amount is taxable.

For example, if the maintenance charges are Rs.9,000/- per month per member, GST @18% shall be payable on the entire amount of Rs.9,000/- and not on Rs.1,500/- [Rs.9,000 – Rs.7,500/-].

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Exemption of Rs.7,500/-
p.m. per member

Under Service Tax -

Notification No.25/2012- Service Tax starts with –

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) and in supersession of notification number 12/2012- Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 210 (E), dated the 17th March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do, **hereby exempts the following taxable services from the whole of the service tax leviable** thereon under section 66B of the said Act, namely:-

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Exemption of Rs.7,500/-
p.m. per member

Under GST Act -

Notification No.12/2017- Central Tax (Rate) starts with –

In exercise of the powers conferred by sub-section (1) of section 11 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, **hereby exempts the intra-State supply of services** of description as specified in column (3) of the Table below **from so much of the central tax leviable thereon** under of section 9(1) of the said Act, **as is in excess of the said tax calculated at the rate as specified** in the corresponding entry in column (4) of the said Table, unless specified otherwise, subject to the relevant conditions as specified in the corresponding entry in column (5) of the said Table, namely:-

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Exemption of Rs.7,500/-
p.m. per member

Notification No.12/2017- Central Tax (Rate) rearranged with read as –

In exercise of the powers conferred ... the Central Government, ... hereby exempts the intra-State supply of 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 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 from so much of the central tax leviable thereon under sub-section (1) of section 9 of the said Act, as is in excess of the said tax calculated at the **Nil** rate, unless specified otherwise, subject to the **Nil** conditions.

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Taxability of Certain Collections

Property / Municipal Taxes, charged separately –

Whether to be included in Aggregate Turnover?

A society is a mere collecting agent and pays the same to the authority. If the Society collects from each member actual amount levied by the authority in respect of that member then Society acts as pure agent, if all other conditions are satisfied, and thus the said collection will not form the part of Aggregate Turnover in such case.

If Property Tax for Society Office, Watchman Cabin etc. is included, whether Society will be considered as Pure Agent ?

Whether to consider in calculation of Rs.7,500/- exemption limit?

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Pure Agent

Exclusion from Value of Supply –

Under Rule 33 of Central Goods and Service Tax Act, **the expenditure or costs incurred** by a supplier **as a pure agent** of the recipient of supply **shall be excluded** from the value of supply, if all the following conditions are satisfied, namely,-

- ❑ supplier acts as a pure agent of recipient of supply, when he makes the payment to the third party on authorisation by such recipient;
- ❑ the payment made by the pure agent on behalf of the recipient of supply has been **separately indicated in the invoice** issued;
- ❑ **supplies procured** by pure agent from third party as a pure agent are **in addition to the services** he supplies **on his own account**.

GST Applicability NGO, Trusts, Societies

Pure Agent

Exclusion from Value of Supply –

Explanation to Rule 33 of Central Goods and Service Tax Act describe the expression "pure agent" to means a person who –

- (a) enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in course of supply of goods or services or both;
- (b) neither intends to hold nor holds any title to goods or services or both so procured or supplied as pure agent of recipient of supply;
- (c) does not use for his own interest such goods or services so procured; and
- (d) receives actual amount incurred to procure said goods or services.

GST Applicability NGO, Trusts, Societies

Taxability of Certain Collections

Water Charges charged separately –

Whether Water Charges to be considered in calculation of Rs.7,500/- exemption limit?

If Society is charging Rs.7,000/- as Service Charges and Rs,1,000/- as Water Charges, whether GST is payable on Total Rs.8,000/- as total collection exceeds Rs.7,500/- ?

In case exemption of Rs.7,500/- is not applicable, GST will not be applicable on water charges being exempted vide Entry 99 in Notification No.02/2017-Central Tax (Rate) read with Entry 77(b) in Notification No.12/2017-Central Tax (Rate).

Refer - Mahindra Spendour CHS LTD [AAR – Maharashtra]

GST Applicability NGO, Trusts, Societies

Taxability of Certain Collections

Electricity Charges charged separately –

Whether exemption under entry 104 in Notification No.02/2017-Central Tax (Rate) in respect of “electrical energy” can be claimed for electricity charges levied ?

Whether Society is supplying Electricity or using Electricity for providing other services to the members ?

As the Electricity is not directly provided to the members of the Society but used for providing other services such as lift, common electricity in corridor and surroundings, water pump etc. the electricity charges collected are towards the input services used by Society and thus exemption under entry 104 of Notification No.02/2017-Central Tax (Rate) will not be available.

However, it will be covered under Rs.7,500/- exemption limit.

GST Applicability NGO, Trusts, Societies

Taxability of Certain Collections

Parking Charges charged separately –

Vehicle parking charges are for using the area or providing right to park the vehicles of the members into society's area belonging to the society for a consideration.

Whether to considered in calculation of Rs.7,500/- exemption limit?

As the society is NOT collecting towards services procured from the third party and collects charges from the individual members who are using Society's property, the said amount is not covered under Sr.No.77 of Notification No.12/2017-Central Tax (Rate) and does not fall in exemption limit of Rs.7,500/- per month per member.

In the case of stilt parking, it may be covered under Rs.7,500/- limit or exclude being pure agent.

GST Applicability NGO, Trusts, Societies

Taxability of Certain Collections

Non-Occupancy Charges charged separately –

Non-occupancy charges [NOC] are levied by a housing society when a flat or unit is let out by its members. Such charge is a consideration for allowing letting out or allowing tenant to avail the facilities provided by Society.

Whether to considered in calculation of Rs.7,500/- exemption limit?

As the society is NOT collecting towards services procured from the third party and collects charges from the individual members letting out, the said amount is not covered under Sr.No.77 of Notification No.12/2017-Central Tax (Rate) and does not fall in exemption limit of Rs.7,500/- per month per member.

GST Applicability NGO, Trusts, Societies

Taxability of Certain Collections

Delayed Payment Charges or Penalty, charged separately –

Society levies Delayed Payment Charges or Interest on delayed payment when member defaults in payment of regular charges. Similarly, Society also levies penalties for contravention of Rules made by it. Such charge is a consideration for allowing delayed payment or tolerating an act.

Whether to considered in calculation of Rs.7,500/- exemption limit?

As the society is NOT collecting towards services procured from the third party and collects charges from the individual members for tolerating his act or a situation, the said amount is not covered under Sr.No.77 of Notification No.12/2017-Central Tax (Rate) and does not fall in exemption limit of Rs.7,500/- per month per member.

GST Applicability NGO, Trusts, Societies

Taxability of Certain Collections

Effect on Value of Supply and Time of Supply of Delayed Payment Charges –

Section 15(2)(d) provides that the Value of Supply shall include interest or late fee or penalty for delayed payment of any consideration for any supply.

Accordingly, if the interest is charged on exempt supply, will GST will be applicable ?

Similarly, if the Value of Supply increased beyond the exemption limit of Rs.7,500/- p.m., will the Society should charge the GST on the entire amount ?

Section 13(6) provides that the time of supply to the extent it relates to an addition in the value of supply by way of interest, late fee or penalty for delayed payment of any consideration shall be the date on which the supplier receives such addition in value.

GST Applicability NGO, Trusts, Societies

Taxability of Certain Collections

Other Charges by Society, charged separately –

Society charge and collects for various other type of services such as

- Admission Fee, Transfer Fee, Nomination or it's reversal Fee etc.
- Xeroxing or Copying Charges, Society's Property usage charges etc.

Whether to considered in calculation of Rs.7,500/- exemption limit?

As the charges are collected from the members for services provided by Society itself, and the society is providing such services to Individual member and not **for common use of its members** the said amount is not covered under Sr.No.77 of Notification No.12/2017-Central Tax (Rate) and does not fall in exemption limit of Rs.7,500/- per month per member.

GST Applicability NGO, Trusts, Societies

Taxability of Certain Collections

Contribution to Funds, charged separately –

Society collects certain amounts as a contribution to various Funds e.g. Sinking Fund, Repairs Fund etc. to be used in future, if required, to provide services to its members.

- As future supply is also covered under supply definition, it's a supply, or
- It's a Advance receipt from the members for services to be provided

As per the provisions of GST Act, the GST will be payable at the time of provision of services or receipt of payment , which ever is earlier. Under Both GST is payable today.

Whether to considered in calculation of Rs.7,500/- exemption limit?

Whether a ad-hoc collection for uncertain expenditure or contingent liability can be considered for exemption by inclusion in exemption limit of Rs.7,500/- ?

GST Applicability NGO, Trusts, Societies

Taxability of Certain Collections

Judicial Pronouncements –

- **Monalisa Co-operative Housing Society Ltd [AAAR – Maharashtra]**
- The appellant is trying to give a colour of 'voluntary and gratuitous' payment for amount received from a Transferor/Outgoing member which is collected and will be used for carrying out Major Repairs in future as is evident from the Affidavits submitted by the outgoing member and Treasurer of the Appellant Society. Accounting entries in the books of accounts also supports the view taken by MAAR. The observations of MAAR agreed upon, that the said contribution by the outgoing member is nothing but Advance amounts paid to the society taxable as per the GST Laws.

Facts of the case are very important in this case and decision can not be treated as of general applicability.

GST Applicability
NGO, Trusts, Societies



Input Tax Credit

GST Applicability NGO, Trusts, Societies

Input Tax Credit [ITC]

Eligibility for taking input tax credit –

Section 16(1) states that every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business.

Section 17(2) also states that where the goods or services or both are used by the registered person partly for effecting taxable supplies and partly for effecting exempt supplies, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies.

Proportionate input tax credit [Rule 42] –

The input tax credit in respect of inputs or input services, being partly used for effecting taxable supplies and partly for effecting exempt supplies, shall be attributed for effecting taxable supplies in the following manner, namely,-

- the amount of input tax credit attributable to inputs and input services intended to be used exclusively for effecting exempt supplies is not allowed;
- the amount of input tax credit attributable to inputs and input services intended to be used exclusively for effecting supplies other than exempted is fully allowed; and

GST Applicability NGO, Trusts, Societies

Input Tax Credit [ITC]

Proportionate input tax credit Calculation [Rule 42] –

- the remaining amount of input tax credit attributable to inputs and input services is referred as common credit;
- the amount of common credit attributable towards exempt supplies is calculated by multiplying common credit
 - ▣ by aggregate value of exempt supplies during the tax period, and
 - ▣ dividing by total turnover in the State of the registered person during the tax period.
- the amount of balance input tax credit, remaining after deducting the above calculated input tax credit attributable to exempt supplies from common credit, is allowed.

Proportionate input tax credit [Rule 43] –

The input tax credit in respect of capital goods, being partly used for effecting taxable supplies and partly for effecting exempt supplies, shall be attributed for effecting taxable supplies in the following manner, namely,-

- the amount of input tax credit attributable to capital goods intended to be used exclusively for effecting exempt supplies is not allowed;
- the amount of input tax credit attributable to capital goods intended to be used exclusively for effecting supplies other than exempted is fully allowed; and

GST Applicability

NGO, Trusts, Societies

Input Tax Credit [ITC]

Proportionate input tax credit Calculation [Rule 43] –

- the remaining amount of input tax credit attributable to capital goods is referred as common credit;

IMP to note -

- where any capital goods earlier intended to be used exclusively for effecting exempt supplies or exclusively for effecting taxable supplies, is subsequently partly used for effecting taxable supplies and partly for effecting exempt supplies
- the value of input tax credit on such capital goods arrived at by calculating at the rate of 5% for every quarter or part thereof during which it was used exclusively for effecting exempt supplies be added to Output liabilities and total amount of Input Tax Credit shall be added to common credit.

Proportionate input tax credit Calculation [Rule 43] (continued...) –

- ❑ the amount of input tax credit attributable to a tax period will be calculated by dividing common credit by 60;
- ❑ the amount of common credit attributable towards exempt supplies is calculated by multiplying amount calculated as above
 - ❑ by aggregate value of exempt supplies during the tax period, and
 - ❑ dividing by total turnover of the registered person during the tax period.
- ❑ the amount of balance input tax credit, remaining after deducting the above calculated input tax credit attributable to exempt supplies from amount arrived by dividing common credit by 60, is allowed.

GST Applicability NGO, Trusts, Societies

Allowability of Input Tax Credit [ITC]

Allowability of Input Tax Credit -

- Can Society claim input tax credit of GST on Building Repairs ?
 - As per Section 17(5), input tax credit shall not be available in respect of –
 - works contract services when supplied for construction of an immovable property (other than plant and machinery)
 - goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account.
 - Explanation.- For the above purposes, the expression "construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property;

Note – Accounting and Audit Standards are made applicable to Societies as per MCS Law.

GST Applicability NGO, Trusts, Societies

Taxability of Certain Collections

Judicial Pronouncements –

- **Mahavir Nagar Shiv Shrushti Co-operative Housing Society Ltd [AAAR – Maharashtra]**
- Society itself is not works contract service provider, nor it is in the business of providing works contract services. The works contract services received by society, from appointed contractor, are for the common benefit of the members. Hence, the Society's contention that they are providing works contract services to their members, and hence, eligible for the ITC of the tax paid to their appointed contractor can't be agreed to. Accordingly, they are not eligible for the ITC of tax paid to their contractors.

Capitalisation of Repair expenses is not under consideration.

GST Applicability NGO, Trusts, Societies

Allowability of Input Tax Credit [ITC]

Allowability of Input Tax Credit -

- Whether the Society can claim the Input Tax Credit on the Lift Installed in the premises ?
 - Supply and Installation of Lift amounts to Works Contract Service and as per Section 17(5) of the CGST Act Input Tax Credit in respect of Works Contract resulting in the immovable property is not allowable and thus ITC will not be allowable.
 - Refer – Las Palmas Co-op. Hsg. Soc. Ltd – AAAR Maharashtra dated 20-07-2020
- If the Society charges are less than Rs.7,500/- per month per member for all members throughout the tax period, whether input tax credit can be claimed for GST charged on –
 - Lift Maintenance or Security Charges,
 - Accounting or Audit or other Professional Charges.

GST Applicability NGO, Trusts, Societies

Input Tax Credit [ITC]

Blocked input tax credit [Section 17(5)] –

Input tax credit is not available in respect of following supply of goods or services or both (listed only commonly relevant to Co-op Society) –

- ❑ food and beverages or outdoor catering;
- ❑ leasing, renting or hiring of motor vehicles, vessels or aircraft;
- ❑ life insurance or health insurance unless it is obligatory for an employer to provide the same to its employees under any law for the time being in force;
- ❑ membership of a club, health and fitness centre.

GST Applicability

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Date : 19-04-2023

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