



Advance Rulings and Jurisprudence under GST

N. A. SHAH BULLETIN

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JUDGEMENTS AND ADVANCE RULINGS ON GST

We are pleased to draw your attention to following important decisions and advance ruling on GST which might be useful for you to take call on tax position.

Executive Summary:

Case & Citation	Issue involved	Decision
LGW Industries Limited & Ors. [WPA No. 23512 of 2019]	Whether purchaser can claim Input Tax Credit ['ITC'] in cases where vendors are alleged to be fake and non-existent?	High Court held that ITC cannot be denied where transactions are bonafide and genuine. The onus lies on the department to prove that there was collusion between purchaser and vendor to defraud the revenue.
MAHINDRA SPLENDOR CHS LTD [2021-TIOL-280-AAR-GST]	<p>Whether following charges recovered by co-operative housing society ('CHS') is liable to GST?</p> <ul style="list-style-type: none"> • Property taxes; • Expenses towards common area; and • Sinking fund contribution; • Building repair fund etc. <p>Where the monthly contribution from each member exceeds Rs. 7,500/-, whether amount received in excess of Rs. 7,500/- shall only be liable to GST?</p>	<p>CHS is liable to GST in respect of contribution received by it from its members including contribution towards sinking fund, expenses for common area maintenance etc.</p> <p>If monthly contribution exceeds Rs. 7,500/- per member, then entire contribution shall be liable to GST.</p>

Whether exempted or nil rated supplies to be included in the computing above threshold limit of Rs. 7,500/-?	Charges collected towards property tax, electricity charges and other statutory levies shall be excluded while calculating exemption threshold of Rs. 7,500/- per month per member.
Whether CHS can claim exemption under entry 99 of N/No. 1/2017 – CT(R) in respect of water charges?	CHS shall not be entitled to claim exemption under Entry 99 of N/No. 1/2017-CT(R) towards collection of water charges.
Whether ITC can be claimed on expenses incurred for heavy repairs & maintenance for society building?	ITC in respect of heavy repairs & maintenance shall not be available to the extent it is capitalized to the immovable property.

Please refer to brief analysis of above referred decisions / rulings given below along with our comments and views thereon.

Case 1 – LGW Industries Limited & Ors. [WPA No. 23512 of 2019]

Facts in brief & Issue Involved	<ul style="list-style-type: none"> • GST authorities issued notices to petitioner for denial of ITC availed by it on the ground that the parties from whom petitioner has purchased the goods are fake, non-existing and their registration has already been cancelled with retrospective effect.
Contentions of Petitioner	<ul style="list-style-type: none"> • Registration of vendors were valid and subsisting on the date of purchases. • Names of vendors as registered persons were available on GST portal i.e. Government records. • The payments were made to vendors through proper banking channel. • Vendors have filed proper returns and purchase Invoices are appearing in Form GSTR-2A. • Purchaser has limited capability and resources for ascertaining genuineness of invoices and vendors. • Tax authority cannot put extraordinary onus on purchasers to verify the genuineness of large number of vendors. • Tax has already been paid to the vendors and government recovering the tax again from purchasers will amount to double taxation.
Contentions of Respondent (GST authorities)	<ul style="list-style-type: none"> • Invoices issued by suppliers are fake. • Vendors are no longer in existence. • Registration of vendors are cancelled retrospectively. • Bank account of vendors were opened on basis of fake documents. • Purchaser has not verified the genuineness and identity of suppliers.
Observations & Decision of HC	<ul style="list-style-type: none"> • It cannot be said that there was any failure on the part of the purchaser in compliance of his obligations casted on him by the law. • High Court ordered revenue authorities to verify: <ul style="list-style-type: none"> ○ The documents on which purchaser relies for claiming ITC; ○ Whether purchaser has paid tax to the supplier; and ○ Whether purchases were made before or after the cancellation of GST registration of the vendors. • High Court ordered to allow ITC to the purchaser if on verification transactions are found to be genuine and entered before cancellation of registration of vendor.

NASA Comments	<ul style="list-style-type: none"> • This judgement comes as a great relief to trade and businesses as onus is now shifted to department to prove that purchaser has not acted in a bonafide manner. • The department, before initiating recovery proceedings against purchaser, will have to prove that there was collusion between purchaser and vendors to defraud the revenue.
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Case 2 – M/S. Mahindra Splendour CHS. LTD. [2021-TIOL-280-AAR-GST]

Facts in brief & Issue Involved	<ul style="list-style-type: none"> • Applicant is a Co-operative Housing Society collecting following charges / contribution from its members: <ul style="list-style-type: none"> ◦ Property tax; ◦ Electricity and other expenses for common area maintenance; ◦ Water charges; ◦ Sinking and building repair fund; etc. • Applicant has sought an advance ruling on taxability of above referred charges collected by it, eligibility to exemptions and eligibility of ITC in respect of heavy repairs expenses incurred by it for society building. <p><i>[Please refer executive summary given above for detailed list of questions put before advance ruling authority.]</i></p>
Contentions of Applicant	<ul style="list-style-type: none"> • Contribution collected by applicant from its members is not liable to GST in view of the principle of mutuality as upheld by Apex court in various landmark judgements. • Entry 77 of Notification 12/2017-CTR provides for exemption from payment of GST for a contribution received from a member up to Rs. 7,500/- per month per member. Thus, in such a case GST shall not be leviable up to an amount of Rs. 7,500/- per month per member. <p>Hon'ble Madras High Court in case of M/s Greenwood Owners Association has held that plain words employed in Entry 77 being, 'up to' an amount of 7,500/- can only be interpreted to state that any contribution in excess of the same would be liable to tax.</p> <ul style="list-style-type: none"> • Further, in light of CBIC FAQ dated 05.09.2017, contribution toward water charges paid to MCGM, electricity charges paid to MSFB and

	<p>property tax should not be included in computing threshold of Rs. 7,500/- per month per member.</p> <ul style="list-style-type: none"> • Further, amount collected towards sinking fund building repair fund etc. are in the nature of deposits and shall not be regarded as consideration for supply. Consequently, same shall not be liable to GST. • Also, Water charges recovered from members shall attract Nil rate of tax in view of entry 99 to N/No. 2/2017-CT(R) under HSN 2201. • Also, ITC on building repairs shall be available to the extent it is not capitalized in the books.
Observations & Decision of AAR	<ul style="list-style-type: none"> • Section 7 of CGST Act is amended retrospectively w.e.f. 1st July, 2017 to tax transactions between mutual concerns and its members. Person as defined u/s 2(84) of CGST Act includes an individual as well as an association of persons. There is a marked difference between the levy provisions under service tax law and GST law. Monthly contribution made by the members to the housing society/Association is for receiving the services of maintenance and upkeep of the common property. Money collected from members is used to source goods and services from third parties which is in turn used for the benefit of members. Hence, such charges received by applicant is nothing but consideration received for supply of goods and / or services. • Further, it is a settled jurisprudence that in case of ambiguity in exemption notification, the same should be interpreted in favour of revenue. In view of the clarification issued vide Circular No. 109/28/2019-GST dated 22.07.2019, if collection exceeds Rs. 7,500/-, entire amount so collected shall be liable to GST. The department has challenged judgement of Hon'ble Madras HC in case of M/s. Greenwood Owner's Association and the division bench of Madras HC has stayed the operation of said order. • If collection of amounts towards sinking fund is regarded as deposit, then it should be refunded at a later date. There is no evidence to show that the collected amount is returned to members at a later date. Society cannot accept deposit from anyone.

	<p>Further, the balance sheet also does not reflect the said amount as deposit from individual members. The said amount is collected as advance for overall maintenance of the society and thus, is liable to GST.</p> <ul style="list-style-type: none"> • Clause (b) of entry 77 of N/No. 12/2017-CT(R) expressly exempts contribution collected towards provision or carrying out any activity which is exempt from the levy of GST. Thus charges / contribution collected towards property tax, electricity charges and other statutory levies would be excluded while calculating threshold limit of Rs. 7,500/- per month per member. • Rate entry 99 of N/No. 2/2017-CT(R) does not apply to applicant since it is not engaged in selling water per se but it is providing services of water supply to its members. • ITC in respect of heavy repairs to society building shall not be available to the extent it is capitalized in the books of account. Any expenditure benefit which is likely flow over a few years needs to be capitalized and hence, ITC would not be available for such expenditure.
NASA Comments	<ul style="list-style-type: none"> • Principle of mutuality is no longer relevant under GST legislation in view of the retrospective amendment carried out in section 7 of the Act. The said amendment will be effective from 01.01.2022 vide N/No. 39/2021-CT dt. 21.12.2021. <p>A view in professional circle is prevalent that mutuality concept still survives after above referred amendment. Above referred position is highly litigious.</p> <p>Moreover, amendment creating tax liability for the period 01.07.2017 to 31.12.2021 is not legally tenable.</p> <ul style="list-style-type: none"> • Honorable Madras High Court has taken a position that amount exceeding Rs. 7,500/- per month per member should only be liable to GST which should be respectfully followed by the department as this is the correct view. • Further, as far as contribution towards water charges is concerned, same should not be included in computing threshold of Rs. 7,500/- per month per member as it is exempted under Entry 77(b) of N.No. 12/2019 – CT(R). Applicant should not have claimed exemption

under Entry 99 of N.No.2/2017 – CT(R) which applies to supplier of water and not to service provider using water in course of providing services.

- Ruling by AAR is binding only on applicant and its jurisdictional officer. It does not have general binding precedence value.

We will be glad to provide any further elaboration or elucidation you may need in this regard.

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