

“The best way to find yourself is to lose yourself in service of others”

- Mahatma Gandhi

Greenwood Owners Vs. Union of India (Madras High Court)

**RESIDENTS’ WELFARE ASSOCIATION LIABLE TO PAY GST ON MEMBERS’ MONTHLY CONTRIBUTION
ONLY ON AN AMOUNT EXCEEDING RS. 7500/-**

Residents’ Welfare Association (RWA) and legally elected bodies that manages housing societies, are free to charge maintenance amount from residents based on the size of members’ flat. Usually housing societies levy maintenance charges as per the area of flat or on other variables if the apartments are of the same size. According to GST exemption notification No. 02/2018- Central Tax (rate) dated 25.01.2018, service provided by such association to its member for reimbursement of charges or share of contribution upto Rs. 7,500/- (earlier it was 5,000) per month per member for sourcing of goods or service for common use of member in a residential complex are exempt from GST. However, if aggregate turnover is more than Rs. 20 lakhs yearly, the society needs to register and pay 18% GST on member’s contributions which are taxable.

The Authority of Advance ruling (AAR) and Circular No. 109 dated 22.07.2019 have interpreted the examination Notification No. 02/2018 – CT (R) and taken stand once the contribution per month per member exceeds Rs. 7,500/- then exemption is not available and entire amount of contribution is taxable. The said AAR and circular were challenged before the Madras High Court. The Madras High Court while quashing the AAR and Circular No. 109 held that RWA liable to pay GST on the members’ monthly contribution only on the amount exceeding Rs. 7,500/- not on the entire amount.

The Hon’ble Court ruled in favour of the RWA stating that GST is applicable only on the portion of maintenance charges above Rs. 7500 per month per member on the following major grounds:

a. The term ‘upto’ hardly needs to be defined and connotes an upper limit. It is interchangeable with the term ‘till’ and means that any amount till the ceiling of Rs. 7,500/- would exempt for the purposes of GST.

b. Comparison could be drawn from other exemption entries of the Service Tax and GST. For prescribing a condition of exemption upto a certain limit and full taxability if such limit is breached, the law used a distinct language. For example, the language deployed in the proviso to clause 56 in Notification 25 of 2012 where it is stated ‘the exemption shall apply only where

the gross amount charged for such service does not exceed Rs. 5,000/- in a financial year. This talks about a condition and if this condition is breached, exemption is not applicable at all.

c. The prescription of a slab connotes that income upto that slab would stand outside the purview of tax on eligible to a lower rate of tax and income above that slab would be treated differently. The intendment of the exemption Entry in question is simply to exempt contributions till a certain specified limit. The clarification by the GST Department even as early as in 2017 has taken the correct view.

d. In the case of Commissioner of Customs Import, Mumbai V. Dilip Kumar & Company (361 ELT 577), the Supreme Court held that in the case of ambiguity in interpretation of a tax exemption provision or Notification in regard to its applicability qua entitlement or rate of tax to be applied, the interpretation should be strict and the burden of proving applicability would fall on the assessee. The ratio of that decision would apply only in a case where the provisions granting exemptions are ambiguous, whereas, in the present case, the Exemption Entry is clear and hence it is only a question of interpreting the same.

This judgement of Madras High Court has provided relief to those RWA who had been charging GST on the balance exceeding Rs. 7,500. The impact of GST on the individual flat owner would reduce to great extent. If there are further judgements of any other High Court or Apex court, the Madras High Court judgement would attain finality.

23.07.2021

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