

**THE MAHARASHTRA APPELLATE AUTHORITY FOR ADVANCE RULING FOR
GOODS AND SERVICES TAX**

(Constituted under Section 99 of the Maharashtra Goods and Services Tax Act, 2017)

ORDER NO. MAH/AAAR/DS-RM/18/2022-23

Date- 23.03.2023

BEFORE THE BENCH OF

(1) Dr. D K Srinivas, MEMBER (Central Tax)

(2) Shri Rajeev Kumar Mital, MEMBER (State Tax)

Name and Address of the Appellant:	M/s Monalisa Co-Operative Housing Society Limited, 33 Monalisa, 3 Bomanji Petit Road, Near Parsee General Hospital, Maharashtra, Mumbai 400026
GSTIN Number:	27AABAS0695K1Z5
Clause(s) of Section 97, under which the question(s) raised:	Section 97 (a), (b), (c), (e), (f) and (g).
Date of Personal Hearing:	28.02.2023
Present for the Appellant:	(i) Shri. Akshay Shah, CA. (ii) Shri. Adit Shah, Consultant.
Details of appeal:	Appeal No. MAH/GST-AAAR/07/2022-23 dated 29-06-2022 against Advance Ruling No. ARA-30/2020-21/B-71 dated 31.05.2022.
Jurisdictional Officer:	Assistant Commissioner of State Tax, MUM-VAT-D-821, Nodal Division-02.

(Proceedings under Section 101 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

1. At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the MGST Act.
2. The present appeal has been filed under Section 100 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [**hereinafter referred to as**

“CGST Act” and “MGST Act”] by M/s. **Monalisa Co-operative Housing Society Ltd**, situated at 33 Monalisa, 3 Bomanji Petit Road, Near Parsee General Hospital, Maharashtra, Mumbai 400026, (**“hereinafter referred to as “Appellant”**) against the Advance Ruling No. GST- ARA-30/2020-21/B-71 dated 31.05.2022, pronounced by the Maharashtra Authority for Advance Ruling (hereinafter referred to as **“MAAR”**).

BRIEF FACTS OF THE CASE

- 3.1 M/s Monalisa Co-operative Housing Society Ltd (the ‘**Appellant**’) is a co-operative housing society registered under the Maharashtra Co-operative Housing Society Act (MCHS Act) having 48 Flats which provides services to its members and charges GST on maintenance charges recovered from its Members.
- 3.2 Appellant has submitted that when there is a transfer of a flat, the outgoing member makes a gratuitous & voluntary payment to the society. The same does not have any implications on outgoing formalities to be completed as per MCHS Act. The Appellant stated that the above contribution made is entirely voluntary and is not at all a consideration received in lieu of services provided by the Appellant.
- 3.3 The Appellant is also collecting funds from its members for future major repairs and renovation of the premises. Such funds have no immediate utilization purpose. The amount will only be utilized once the Appellant finalizes on the bids received for the repairs to be carried out.
- 3.4 The appellant referred to the provisions of Sec 7 and Sec 2 (84) of the CGST Act, 2017, decision of the Hon’ble Supreme Court of India, in the Case of Calcutta Club Limited v State of West Bengal vide C.A. No. 4184 of 2009, decision of the Hon’ble Jharkhand High Court in case of Ranchi Club Ltd v Chief Commissioner, decision of the Hon’ble Gujarat High Court in the case of Sports Club of Gujarat Ltd v UOI and the decision of the Maharashtra AAAR Ruling for Rotary Club of Mumbai Nariman Point to support its contention that maintenance charges collected by the society are in the form of reimbursement collected for upkeep of the premises, where no benefit goes to the society & each & every expense is incurred from the maintenance charges collected by the society is to maintain the society premises. Similarly, the expenses incurred by the society are already subject to GST and charging tax on maintenance fees would amount to double taxation.
- 3.5 Appellant submitted that as per Sec 7 of the CGST Act, 2017, supply should be made in the course of furtherance of business. A gratuitous payment by an outgoing member cannot be regarded as a consideration but rather in substance is a gift to the society as the member is paying on his own volition. The appellant further submitted that such payment cannot be treated

as consideration as there is no business transacted and the person acts on his own volition in its entirety.

3.6 In view of the above factual position, the Appellant, for the purpose of seeking clarity regarding the applicability of GST on the transactions under question had filed an application for the Advance Ruling before the MAAR. The questions asked by the Appellant in their Advance Ruling Application were as under:

1. *Whether the charges received by the applicant towards upkeep and maintenance from its members are covered under Sec 7 of the CGST Act?*
2. *Whether the receipt of a gratuitous payment from an outgoing member for the time he has resided in the society be taxable under the CGST Act, 2017 as there is no corresponding service being provided separately by the tax payer society?*
3. *Whether major repairs to be made in the future for the co-operative housing society, for which amounts are collected, be taxable at all as it is for the members only? And if taxable, whether the same is taxable at the time of its collection or whether the same would be taxable on utilization of such funds?*

However, Question No. 1 raised in the application was withdrawn by the appellant during the course of the Preliminary Hearing and Question No. 3 raised in the application was withdrawn by the appellant during the course of the Final Hearing and therefore, both the questions were not taken up for discussion by the MAAR.

3.7 The MAAR, vide Order No. GST- ARA-30/2020-21/B-71 dated 31.05.2022, held in respect of the Question No. 2 asked by the Appellant, as under:

3.7.1 MAAR discussed that whether the appellant society can legally collect the so called gratuitous and voluntary donation from a transferor of a flat in the society. MAAR therefore referred to the 'Model Bye Laws of the Co-operative Housing Societies' in Maharashtra. Bye Law No 38 is very relevant in the present case and is therefore reproduced as under:

Bye Laws No. 38

Notice of transfer of Shares and interest in the capital /property of the Society.

(a) A member, desiring to transfer his shares and interest in the capital/property of the Society shall give 15 days' notice of his intention to do so the Secretary of the Society in the prescribed form, along with the consent of the proposed transferee in the prescribed form.

(b) On receipt of such notice, the Secretary of the Society shall place the same before the meeting of the Committee, held next after the receipt of the notice, pointing out

whether the member is prima facie eligible to transfer his shares and interest in the capital/property of the Society, in view of the provisions of Section 29(2)(a) of the Act. (c) In the event of ineligibility (in view of the provisions of section 29(2)(a) & (b) of the Act) of the member to transfer his shares and interest in the capital/property of the Society, the Committee shall direct the Secretary of the Society to inform the member accordingly within 8 days of the decision of the Committee.

(d) "No Objection Certificate" of the Society is not required to transfer the shares and interest of the transferor to transferee. However, in case such a certificate is required by the transferor or transferee, he shall apply to the Society and Committee of the Society may consider such application on merit, within one month.

(e) The Transferor/Transferee shall submit following documents and make the compliance as under:

(i) Application, for transfer of his shares and interest in the capital/ property of the society, in the prescribed form, along with the share certificate;

(ii) Application for membership of the proposed transferee in the prescribed form;

(iii) Resignation in the prescribed form;

(iv) Stamp duty paid agreement;

(v) Valid reasons for the proposed transfer;

(vi) Undertaking to discharge the liabilities to the society by the transferor;

(vii) Payment of the transfer fee of Rs. 500/-;

(viii) Remittance of the entrance fee of Rs. 100/- payable by the proposed transferee;

(ix) Payment of amount of premium at the rate to be fixed by the general body meeting but within the limits as prescribed under the circular, issued by the department of co-operation government of Maharashtra from time to time.

No additional amount towards donation or contribution to any other funds or under any other pretext shall be recovered from transferor or transferee;

(x) Submission of 'no objection' certificate, required under any law for the time being in force or order or sanction issued by the government, any financing agency or any other authority;

(xi) The undertaking/declaration in compliance with the provisions of any law for the time being in force, in such form as is prescribed under these bye-laws.

Note : The condition of Sr. No. (ix) above shall not apply to transfer of shares and interest of the transferor in the capital/property of the society to the member of his family or to his nominee or his heir/legal representative after his death and in case of mutual exchange of flats amongst the members.

- 3.7.2 In view of the above clause (ix), MAAR observed that, **No additional amount towards donation or contribution to any other funds or under any other pretext shall be recovered from transferor or transferee by the housing society.**
- 3.7.3 Further Model Bye law No. 7 of the Cooperative Housing Societies, pertaining to 'raising of Funds' by a housing society, states the various ways how funds can be raised by a Housing Society and **clause (e) specifically states that funds can be raised by voluntary donations but not from Transferor or Transferee.**
- 3.7.4 Thus, in view of the Model Bye Laws No. 7 (e) & 38 (e) (ix) of the Cooperative Housing Societies, MAAR observed that the appellant cannot collect amounts as voluntary donations from Transferor or Transferee in excess of premium i.e Rs. 25,000/- (as also mentioned by the appellant during the course of the final hearing) fixed by the society for transfer of flats. **Therefore, MAAR found that the society cannot at all accept voluntary donations from a Transferor or Transferee in transgression of the Model Bye Laws of Cooperative Housing Societies in Maharashtra and therefore the amounts received by the society from the Transferor cannot be considered as voluntary donations.**
- 3.7.5 Vide its reply dated 29.04.2022, the appellant has stated that it was submitting an Affidavit by an outgoing member (Mr. Sanjay Prakash Sahjwani), which states that the payment is solely made out of his own discretion and not in lieu of NOC or any other Service. MAAR have perused the said document submitted by the appellant and found that the said document is not clear and complete. **However, from whatever can be seen in the said Affidavit, MAAR observed that the amount of Rs. 17,70,000/- has been given to the society by the outgoing member towards Building Betterment Fund of the Society and it is clearly stated that the amount is inclusive of GST.** The signature of the Deponent in the copy produced in advance ruling hearing Affidavit, date, etc were also missing. MAAR note that the appellant has produced unclear incomplete copy of affidavit and avoided to produce the original of said affidavit before the MAAR.
- 3.7.6 This issue of transfer charges was before the Bombay High Court in the case of Alankar Sahkari Griha Rachana Sanstha Maryadit vs Atul Mahadev and another (Writ Petition No 4457 of 2014, decided on August 6, 2018), where the Bombay High Court, relying on the provisions of the Bye Laws adopted by the society and the circular dated August 9, 2001, observed that there was a ceiling of Rs 25,000 for transfer fees and that different ways were being invented by societies, to earn more money through legally impermissible means. Further, the Bombay High Court, in the Alankar Sahkari case, recognized that in a situation where a flat purchaser wants a smooth transaction and transfer of the share certificate in his name, the society enjoys a dominant position. Under such circumstances, the society demands payment of exorbitant amounts from the flat purchaser, under the garb of 'voluntary donations'.

- 3.7.7 Further, MAAR observed that in the instant case, the contributions are received from the outgoing members who have been members of the society in the past and, have received services from the society as envisaged under the GST Act. Thus, it can be said that, Payment from an outgoing member to a society is a payment made for the services rendered by society to the outgoing member during his stay as a member in society. As outgoing member is satisfied with the quality of services received by him and provided by society during his stay as a member in society. Hence, it is a consideration received to the society against satisfaction of the said member on supply of services received from the society. This is akin to the service charges levied by restaurants on which GST is collected. The restaurant collects GST on sale of food and many a times collect a percentage of the Bill amount as service charges (on which GST is levied) which are paid by customers. These service charges can be refused to be paid by the customer in the event that the customer is not happy with the services rendered by the restaurant. Similarly, in the subject case the outgoing member being happy with the services received has paid contributions to the Appellant society which is liable to be taxed under GST Laws as consideration for good services received in the past. Further, the contributions are made by the outgoing members only because they have been a part of the said society. It is not that an outsider has given any contribution to the Appellant society. The receipt of contribution by the Appellant from its members whether outgoing or not, is only because of the fact that the members are or have been a part of the society. If the Appellant society had received contributions from outsiders to the effect that the same was a donation then probably on case to case basis it could have been treated differently.
- 3.7.8 MAAR further observed that incomplete copy of affidavit submitted by the appellant in respect of an outgoing member by the name Mr. Sanjay Prakash Sahjwani mentions that the amount is being given towards '**Building Betterment Fund**'. Further, the appellant has also submitted a copy of the Affidavit of Shri Chandresh Thakker, Treasurer of the Appellants Society, wherein it is mentioned that the amount given by the outgoing member Mr. Sanjay Prakash Sahjwani (towards '**Building Betterment Fund**') has been transferred by the Appellant Society towards '**Major Repairs Fund**'. MAAR observed that the amount is paid for receipt of services from the society when the Major Repairs are being carried out or will be carried out. Therefore, the said contribution is nothing but Advance amounts paid to the society for services to be received in future by the members of the Society and is therefore taxable as per the GST Laws. In fact, services are very definitely going to be provided by the Appellants Society to its members in future when Major Repairs are undertaken and amounts form the Major Repairs Fund are utilized towards rendering of the said services and the outgoing member has clearly specified that the amount given is to be used for Major repairs of the Society.

3.7.9 MAAR also observed that the Affidavit of Shri Chandresh Thakker, Treasurer of the Appellant Society is dated 09.11.2021 (date when the Affidavit was notarised), whereas from the submissions of the appellant, the outgoing member has supposedly received the NOC on 11.02.2020 and the contribution made by the said member appears to be on 07.03.2020 (the Appellant has mentioned 07.03.2019 which appears to be an inadvertent error). Thus the Hon. Treasurer found it fit to make an Affidavit on 09.11.2021 i.e. more than one year after the subject application was filed and that too, after the date of the Preliminary hearing i.e. 27.07.2021 during which: the Appellant was directed to produce details of income collected as mentioned in Q-2 together with vouchers and details as to what treatment to said income is given in the final accounts and in the income tax returns; the appellant was asked also to produce declaration or proof taken from such members to prove the fact that said contribution is voluntary and not binding on outgoing member; the appellant was further asked to produce details as to NOC or No dues certificate issued (or not issued) to such members who have made contribution. The Affidavit of the Treasurer of the Appellant Society was prepared and made only after these above observations were made by MAAR during the Preliminary Hearing, and therefore preparation of the concerned Affidavit appears to be an afterthought on part of the Appellant society.

3.7.10 MAAR observed that the Appellant Society cannot take Voluntary Contributions at all from an outgoing member (transferor of a flat) in view of Bye Laws No. 7 (e) and 38 (e) (ix) of the Model Bye laws for Cooperative Housing Societies in Maharashtra. MAAR observed that 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 seen from the Affidavit submitted by Shri Chandresh Thakker, Treasurer of the Appellant Society.

3.7.11 MAAR further observed that activities rendered by the appellant Society to its members are supply of services in view of the amended Section 7 of the CGST Act, 2017 and contributions/charges collected by the Appellant Society from its members are chargeable to tax under the GST Laws. This has been accepted by the appellant and accordingly it has withdrawn Question Nos. 1 and 3 of the application. MAAR has held above that the contributions received from outgoing members are payments for taxable services received from the appellant in the past and for taxable activities of the Appellant in future pertaining to Major Repairs to be undertaken.

3.7.12 MAAR also considered the contents of para 2 of the application which are as under:

When there is a transfer of a flat, the outgoing member makes a gratuitous payment in gratitude of payment. The same does not have any implications on outgoing formalities to be completed as per the Maharashtra Co-operative Societies Act. The Applicant states that the above

contribution made is entirely voluntary and is not at all a consideration received in lieu of services provided by the Applicant. The outgoing member makes such contribution on his own volition.

From the said submissions made by the appellant, MAAR observed that each and every outgoing member makes a gratuitous payment to the appellant in gratitude thus leading to a conclusion that all sellers/Transferor of flat in the society, without a single exception are in gratitude towards the Appellant Society. Thus, it appears that the appellant society has laid down norms albeit orally it seems, that there is a compulsion for an outgoing member to show gratitude to the Appellant Society by way of making gratuitous/voluntary payments to the Society. MAAR has already mentioned above that such voluntary payments cannot be accepted by the Appellant Society from the Transferors/Transferee as per the Model Bye Laws. MAAR was of the opinion that the amounts are collected for smooth transfer of the flat from the Transferor to the Transferee.

- 3.7.13 MAAR further reiterated the observation made by Hon'ble Bombay High Court in the case of Alankar Sahkari Griha Rachana Sanstha Maryadit vs Atul Mahadev and another, mentioned above that, in a situation where a flat purchaser wants a smooth transaction and transfer of the share certificate in his name, the society enjoys a dominant position and under such circumstances, the society may demand payment of amounts from the flat purchaser, under the garb of 'voluntary donations'.
- 3.7.14 Finally, MAAR found that the contribution made by the outgoing member is nothing but consideration as per the definition of term "consideration" provided u/s 2 (31) of the CGST Act, 2017.
- 3.7.15 From the definition of 'consideration', it is clear that "consideration" includes – any payment made (in the subject case payment is made by the Transferor which is termed as voluntary contribution by the Appellant) in money and since the payment is made towards Major Repair Funds of the Society, it is clear that the said payment is for the inducement of, the supply of goods or services or both, either by the recipient if he continues to be a member, or by any other person (meaning, other members). There is a famous case of M/s MP Finance Group CC (In Liquidation) v C SARS reported in 69 SATC 141 in which one important legal proposition explained and the High Court of Appeal ruled that income 'received by' a taxpayer from illegal gains will be taxable in the hands of the taxpayer. Thus though the collection of charges of society might be illegal under some other law, but since it is covered by the scope of supply and other ingredients of GST levy, it is taxable.
- 3.7.16 Finally, MAAR held that the receipt of amount from an outgoing member in the name of gratuitous payment from an outgoing member is taxable under the CGST Act, 2017.

4. Therefore, being aggrieved of the Impugned Order passed by MAAR, the present appeal is being filed before MAAAR, on basis of following the grounds.

GROUND OF APPEAL

5. The Appellant, in their Appeal memorandum, have, inter-alia, mentioned the following grounds:

1. The Contention of the ARA that Contributions from Outgoing Members are for Services received during their stay as members is incorrect.

- i. The ARA errs in stating that the contribution received from Members are for services received during their stay.
- ii. We had already shared a copy of the maintenance bill with the ARA that supply provided explains that the supply provided by the society to the member is in the form of maintenance services for which regular quarterly billings are done by the Society to its members. We state that any amount to be collected from the members above and over the maintenance has to be done by means of a resolution passed at the members meetings.
- iii. Any further collections done from the members has to necessarily be supported by a resolution passed at a general meeting of its members. Such amounts are quantified based on square feet per member basis. There cannot be a case where in any amount is being taken in excess or in shortfall of the proposed resolution. No such resolution is passed where an ad hoc amount is taken only from a specific member.

When a member makes a "voluntary" contribution-the same is contributed by him to the society out of his own free will. It is not made against a "demand" by the society. It is open to a member to seek the transfer of a flat without making such voluntary contribution. Therefore, the contribution provided by any outgoing member cannot be said to be in lieu of the said resolutions.

- iv. Also it is well known under the Contract Act that **"parties to a contract must either perform, or offer to perform, their respective promises, unless such performance is dispensed with or excused under the provisions of this Act, or of any other law.** "On receipt of such voluntary contributions, there is no promise by the society of performing any Service of any kind to the outgoing member.
- v. The entire argument that the contribution is received for any past service performed or in lieu of building betterment fund is devoid of logic. There is no proof to tie the consideration received to service provided by the Society to the outgoing member. Further, if that were to

be the case, if a member who remains in the society perpetually would never make a payment of an amount demanded by the society as he is not transferring his flat and the society would not get the funds intended. Therefore, there is no service performed by the Society at all.

- vi. The Contribution does not pass the test given u/s 2(31) of the CGST Act which states that any consideration received should be in inducement of supply of services or goods. Since there is no supply of services or goods by the society, the entire contribution should not be subject to GST.
- vii. We further rely on CESTAT judgement of **Futura Polyster Ltd. vs Commissioner of Central Excise, Chennai [2006] 5 STT 154 (CHENNAI-CESTAT)** which stated in case of facts found that "No Tax is payable merely on the basis of entries passed in books of accounts". The ARA has failed to prove that there was indeed any service that was passed between the Society and the outgoing member. Further it only relies on the basis of Ledger accounts.

2. Statement that Voluntary Contributions are not Voluntary but for Building Betterment and Repairs is Incorrect

- i. The Learned ARA Authority errs in stating that Voluntary Contribution is not Voluntary but a compulsory payment against Building Betterment and Repairs is incorrect.
- ii. We have submitted an Affidavit which the ARA states in its order as "Half Baked" which specifically mentions that the Voluntary Contribution is paid by the member on his own free will and only for the welfare of the society and that the **society is free to use the fund in any manner as they require.**
- iii. The ARA has conveniently ignored the entire affidavit and only focus on point 1 which states that the amount is being given as Voluntary Contribution for Building Betterment fund. The ARA has also exceeded its jurisdiction on stating that the Affidavit submitted is an incomplete one. The Affidavit has been duly signed and notarized as required under the Code of Civil Procedure, 1908. The original affidavit can be produced at the time of the hearing.
- iv. More specifically to our case for which affidavit has been given, a Member who has paid a contribution to the society purely voluntary and is allowing the society to use the funds however they deem fit. There is no agreement between the member or understanding that the society will have to use the same payments against Building Betterment. The documentary evidence executed by the member at the time of issuing the cheque to the society states that it is being given voluntary.

- v. Transfer by society to Major Repairs Fund is an accounting entry and does not determine the nature of the transaction being voluntary. Even if assuming major repairs are to be carried out- there has to be a nexus between the person paying the monies and the beneficiary of the service. An outgoing member has paid the amount and when major repairs are carried out-the benefit will be to the existing members. Therefore, there is no benefit got to the member making the payment for which a supply is received by him. For this to be taxable as received as advance for services is true if the member giving is going to be getting the benefit and paying in advance.
- vi. We further want to quote the CESTAT Judgement of Karnataka Co-operative Milk Producers **Federation Ltd. vs Commissioner of Central Excise [2022] 138 taxmann.com 486 (Bangalore - CESTAT) which states that "in case of an absence of a service provider and a service recipient relationship there cannot be any levy of service tax"**. Here the outgoing member is not a recipient of any service and neither the CHS is a Service Provider.

3. The Statement that Voluntary Contributions as a procedure is asked from all outgoing members is incorrect

- i. The ARA has not provided any reasonable explanation that the voluntary contributions provided by outgoing members is in fact not voluntary but in lieu of NOC provided as per By Laws.
- ii. We have already given affidavits by the Treasurer of the Society which clearly states that no contribution is being taken in lieu of NOC. It is entirely out of its own free will that an outgoing member makes the said contribution.
- iii. It is incorrect and objectionable to doubt the authenticity of the above affidavit. The ARA Authority states that preparation of the Affidavit is an afterthought on the part of the Treasurer of the Society.
- iv. We hereby state that the Affidavit itself was made mandatory due to the observations made by the concerned ARA authority to prove without an iota of doubt that the said contributions were being taken voluntarily. It is extremely unfair to doubt the intention of the affidavit where the intention was only to remove any doubts regarding the nature of such voluntary contributions.
- v. The ARA further goes on to state that we have submitted in our ARA 01 that **"Every outgoing member makes a gratuitous payment in gratitude of the years he has stayed in the society"** where the same has been grossly interpreted as a statement that the outgoing members are somehow coerced by the society to make such payments. It has been already established by the Affidavit given by the Treasurer of the Society that no payments are taken

in lieu of any services and every Voluntary Contribution is made out of the free will of the member. The ARA somehow deems fit to remark that we are trying to establish something absurd as "Every Member is in gratitude to the society" which is unjustified. Our intention of providing the submission was that if any member is giving such a payment then it is completely voluntary. It will be erroneous and unjust to assume anything else. Further, for the period since GST has come into existence w.e.f 1st July 2017, there is only one member who has contributed voluntarily. We further provide by way of evidence the NOC letter given by the society that there are no outstanding amounts due to the society from the outgoing member and his transfer application will be processed. It is pertinent to note that his voluntary contribution has come to society after the said NOC was issued by the Society. If it was mandatory to make the said contribution, the NOC from the society would have stated that the amount was outstanding from the member prior to consideration of the transfer by the Committee. Therefore, the allegation by the ARA that in each case a contribution is sought by the society is unfounded and devoid of merit and complete contrary to the factual position so far as our society is concerned.

- vi. The above statements by the ARA authorities are followed by reference to Bombay HC Judgement of Alankari Sahakari Griha Sanstha Maryadit vs Atul Mahadev. The said case pertains to intention of the society for transfer of flats and position of the society in asking for voluntary contributions. We submit that the same has no relevance under GST since the issue in question is of applicability of GST to Voluntary Contributions and nowhere relates to the reference made in the Judgement.
- vii. The statement that voluntary contribution is akin to service charges paid in a restaurant mentioned by the authorities in Para 5.9 of the ARA Order is devoid of any logic. Service Charges in a restaurant are paid as a percentage of the total bill and are part of the invoice that is raised by the restaurant itself along with the food and beverage bill. Therefore, in case of a restaurant the first act is done by the restaurant to add a service charge which is then presented to the customer. The other way of rewarding the restaurant staff is by way of giving a tip to the waiter. When the waiter is given a tip, the same is voluntary as an act first done by the customer and there is no GST added by him on that. Similarly, in case of voluntary contribution, it is an initial act done gratuitously by the outgoing member to the society and contrary to a service charge, is not invoiced by the society to the member. Therefore, the comparison drawn by the AAR is unfounded and not comparable to a voluntary contribution by the member to the society.
- viii. Further we would like to point out as also pointed out by the ARA authorities that the Model Bye Laws under the Maharashtra Co-operative Societies Act do not allow us to collect any amount of more than Rs 25,000/- in lieu of NOC. Any deviation from the Model Bye Laws

needs to be discussed in the AGM. We have already provided the Affidavit from an outgoing member that the amount was collected out of his own free will. Any more scrutiny of the same should not be required in case of the limited point of Advance Ruling.

- ix. We hence submit that there is no standard procedure of voluntary payments required from Outgoing Members.

4. If something is illegal it cannot be taxed

- i. The ARA has made an allegation at the beginning of the order itself that the collection of such an amount is illegal.
- ii. Without prejudice to the above submissions made above if the amount collected does get declared illegal by a court of law, that itself amounts to an admission that there is no supply by the Society to its member and therefore, the question of the same being a taxable supply under GST does not arise.
- iii. We rely on judgement passed by the Gujarat HC in the case of **Commissioner Of Income Tax vs S.C. Kothari (1968 69 ITR 1 Guj)** which stated that the taint of illegality or wrongdoing associated with income, profits and gains is immaterial for the purpose of taxation. Even if the said voluntary contribution was declared illegal in a court of law, the nature of the same does not change for the purpose of the transaction.
- iv. We hence submit that it is illogical in going into the legality of the transaction and further state that the same has no bearing in our case.

JURISDICTIONAL OFFICER SUBMISSIONS

6. The Jurisdictional Officer vide his letter dated 12.08.2022 have made the following submission:

The claim of applicant that the receipt of gratuitous payment from an outgoing member for the time he has resided in the society cannot be taxable under the said CGST Act,2017 as there is no corresponding service being provided separately by the taxpayer society, is not tenable.

As outgoing member has received the services provided by the society during his stay as a member in society, as he has satisfied with the services received by him, he has a gratitude towards society and accordingly he makes voluntary payment to the society. Hence, it is consideration received to the society against supply of services. Hence, taxable under the CGST Act-2017.

Further, the Jurisdictional Officer vide his letter 28.2.2023 have also made the following submissions:

Payment (Contribution) made by the outgoing member to a society is a consideration. Definition of consideration under Section 2(31) of CGST Act-2017 is reproduced below-
“consideration”; in relation to the supply of goods or services or both includes-

(a) 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;

(b) 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:

Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply.

From the above definition “Consideration” includes – any payment made (in the subject case payment is made by Transferor which is termed as voluntary contribution by applicant) in money and since the payment is made towards **Major Repair Funds** of the society, it is clear that the said payment is for the inducement of, the supply of goods or service or both, either by recipient if he is continues to be a member, or by any other person (meaning other member), it is covered by the scope of supply and other ingredients of GST levy. Hence, the receipt of gratuitous payment from an outgoing member is taxable under CGST Act-2017.

PERSONAL HEARING

7. The personal hearing in the matter was conducted on 28.02.2023 which was attended by Shri. Akshay Shah, CA & Shri. Adit Shah, Consultant on behalf of the Appellant, wherein the Appellant reiterated their earlier submissions made while filing the Appeal under consideration.

DISCUSSIONS AND FINDINGS

8. We have carefully gone through the entire appeal memorandum containing the submissions made by the Appellant vis-a-vis the Advance Ruling passed by the MAAR, wherein the MAAR has held that payment received by the appellant from the outgoing member in the name of

gratuitous payment/voluntary contribution is a consideration for the supply of services by the appellant and hence taxable under GST law.

9. As regards the aforesaid observations of the MAAR, the Appellant have contended that as per Sec 7 of the CGST Act, 2017, supply should be made for a consideration in the course or furtherance of business. A gratuitous payment by an outgoing member cannot be regarded as a consideration but rather in substance is a gift to the society as the member is paying on his own volition. The voluntary contribution is paid by the outgoing member on his own free will and only for the welfare of the society and society is free to use the fund in any manner as they require. Appellant further contended that the contribution does not pass the test given u/s 2(31) of the CGST Act which states that any consideration received should be in inducement of supply of services or goods. Since there is no supply of services or goods by the society, the entire contribution should not be subject to GST.
10. On perusal of the aforesaid contention of the Appellant vis-à-vis the impugned advance ruling of the MAAR, the moot issue before us is whether payment received from the outgoing member in the name of voluntary contribution is a consideration in response to or for the inducement of the supply of goods or services or both.
11. To decide the aforesaid issue, we would like to first look after the nature of the activity carried out by the appellant and exact nature of transaction where outgoing member has paid an amount to the appellant which appellant claims to be voluntary contribution. It is observed that the appellant is a co-operative housing society registered under the Maharashtra Co-operative Housing Society Act (MCHS Act) which provides services to its members and charges GST on maintenance charges recovered from its Members. The Appellant is also collecting funds from its members for future major repairs and renovation of the premises to keep the building in better condition. Such funds may not have immediate utilization purpose. The amount will only be utilized as and when need of repair to society building arises and once the Applicant finalizes on the bids received for such repairs to be carried out. Any amount collected by society for the repair services agreed to be supplied by society in the near future is an advance and is exigible to tax at the time of receipt of the amount from members.
12. In the instant case, outgoing member of the society, Mr Sanjay Prakash Sahjwani, has made payment of Rs 17,70,000/- to the society which appellant claims to be voluntary contribution on his own will and volition. On bare perusal of the affidavit submitted by the appellant in respect of an outgoing member by the name Mr. Sanjay Prakash Sahjwani mentions that the amount of Rs 17,70,000/- is being given towards '**Building Betterment Fund**'. It is clearly stated in the affidavit that the said amount is **inclusive of GST**. Further, the appellant has also submitted a copy of the Affidavit of Shri Chandresh Thakker, Treasurer of the Appellants Society, before the MAAR. On bare perusal of the affidavit submitted by the Treasurer, it is

clear that the amount given by the outgoing member Mr. Sanjay Prakash Sahjwani (towards 'Building Betterment Fund') has been transferred by the Appellant Society towards 'Major Repair Fund'. Appellant accounted the said transaction of Rs 17,70,000/- in its books of accounts on 7-3-2020 under the accounting head "Major Repair Fund" and has reported Net amount of Rs 15,00,000, CGST 9% of Rs 1,35,000/- and SGST 9% of Rs 1,35,000/-. Appellant has also received transfer premium of Rs 29,500/- [25,000 Net+2250 CGST+2250 SGST] from the outgoing member Mr Sanjay Sahjwani which Appellant has accounted in its books of account on 7-3-2020.


13. MAAR has observed that considering the Model Bye Laws No. 7 (e) & 38 (e) (ix) of the Cooperative Housing Societies, appellant cannot recover additional amount towards donation or contribution to any other funds or under any other pretext from transferor or transferee by the housing society. Society cannot collect amounts as voluntary donations from Transferor or Transferee in excess of premium i.e. Rs. 25,000/- fixed by the society for transfer of flats. We concur with the views of MAAR that the society cannot at all accept voluntary donations from a Transferor or Transferee in transgression of the Model Bye Laws of Cooperative Housing Societies in Maharashtra.
14. We concur with the observations of MAAR that 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 Mr Sanjay Sahjwani and Shri Chandresh Thakker, Treasurer of the Appellant Society. Accounting entries in the books of accounts also supports the view taken by MAAR.
15. Therefore, we concur with the observations of MAAR that the said contribution by the outgoing member is nothing but Advance amounts paid to the society for services carried out or to be carried out for the members of the Society and is therefore taxable as per the GST Laws.
16. In view of the above discussions and findings, we pass the following order:

Order

17. We confirm and uphold the Advance Ruling bearing No. GST-ARA-30/2020-21/B-71 dated 31.05.2022 pronounced by the MAAR. Therefore, the Appeal filed by the Appellant is, hereby, dismissed.


(RAJEEV KUMAR MITAL)

MEMBER


(Dr. D.K. SRINIVAS)

MEMBER

Copy to the:

1. Appellant;
2. AAR, Maharashtra
3. Pr. Chief Commissioner, CGST and Central Excise, Mumbai Zone.
4. Commissioner of State Tax, Maharashtra.
5. Assistant Commissioner of State Tax (MUM-VAT-D-821), Nodal Division-02.
6. Web Manager, WWW.GSTCOUNCIL.GOV.IN
7. Office copy.