

**GIB/KN/Vaishnavi Splendour/21.01.2020/AAAR-27**

**Appellate Advance Ruling Category :** Exemption

**State :** Karnataka

**Order No.:** GIB/KN/Vaishnavi Splendour/21.01.2020/AAAR-27

**Name of Entry :**

Vaishnavi Splendour Homeowners Welfare Association

**Date :** 21-01-2020

**Breif Issue :**

**Facts & Issue of the Ruling**

The present appeal has been filed under section 100 of the Central Goods and Service Tax Act 2017 and Karnataka Goods and Service Tax Act 2017 by M/s. Vaishnavi Splendour Homeowners Welfare Association against the advance Ruling No. KAR/ADRG 47/2019 Dated: 17 Sept 2019. The appellant is an association of apartment owners in the condominium known as "Vaishnavi Splendour". The association has 88 members and each of them contribute towards the maintenance of common areas/facilities, lightings in the common areas, water, etc. The contributions of each member work out to more than Rs.7500 per month. The appellant filed an application for Advance Ruling under section 98 of the CGST Act, 2017 and KGST Act,2017 on the following question:-

Whether the applicant is liable to pay CGST and SGST on the amount of contribution received from its members?

If yes, whether it can avail the benefit of Notification No 12/2017 CT(R) dt 28.06.2017 (Sl.No 77) read with Notification No 02/2018 dt 25.01.2018 which provide for exempting from tax, the value of supply upto an amount of Rs 7500/-per month per member?

If the answer to (ii) is 'yes', whether it is required to restrict its claim of input tax credit?

Whether the applicant is liable to pay CGST/SGST on amounts which it collects from its members for setting up a corpus fund?

The Karnataka Authority for Advance Ruling gave a ruling on the above questions. Aggrieved by the ruling of the Authority on the issues at (i) and (ii) above, the appellant has filed an appeal before the Appellate Authority for Advance Ruling. The Ruling passed by the Advance Ruling Authority can be found on [GIB/KN/Vaishnavi Splendour/17.09.2019/AAR-258](#)

**Decision of Advance Ruling Authority :**

**Decision**

The Appellate Authority upheld the order NO.KAR ADRG 47/2019 dated 17/09/2019 passed by the

Advance Ruling Authority and appeal filed by the appellant M/s. Vaishnavi Splendour Homeowners Welfare Association, stood dismissed on all accounts.

The contention of the Appellant was that contributions upto an amount of Rs 7500/- per member per month are exempted from GST by virtue of the above entry and for contributions above Rs 7500/- per member per month, the difference amount alone is liable to tax. This is not a correct interpretation of the Notification. The exemption as per the entry 77 of the Notf No 12/2017 CT (R) is available only when a member's contribution per month is upto an amount of Rs 7500/-. A member who contributes an amount which is more than Rs 7500/-, will not be eligible for the exemption under entry No 77 and the entire contribution amount will be liable to be taxed. Hon'ble Supreme Court of India, Constitution Bench of Five Judges in the case of Commissioner of Customs (Import) Mumbai Vs. M/s Dilip Kumar and Company and Ors (Civil Appeal No. 3327 OF 2007) has held that the benefit of ambiguity in exemption notification cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue/state. Exemption notifications are subject to strict interpretation.

The Appellate Authority found that the Advance Ruling Authority had correctly interpreted this exemption Notification. The Circular No. 109/28/2019-GST dated 22.07.2019 issued by the CBIC only clarifies this position. The Appellant has argued that this Circular will apply only prospectively since it is oppressive in nature. This argument does not hold water since the said Circular does not introduce any new levy by its clarifications. The position regarding the exemption from GST was always applicable only when the individual member's contribution per month was within Rs 7500/-. The Circular dated 22.07.2019 only clarified this position and did not bring in any new levy. Hence the question of applying the Circular prospectively does not arise.

The Appellant has also contended that the ruling pronounced by the Authority after the mandated period of 90 days is unsustainable in law. The appellate authority in this regard held that no doubt the ruling given by the Authority has been passed after the time period stipulated under the statute. However, that does not render the ruling null and void or unsustainable. An order which is passed without jurisdiction can be held to be null and void and unsustainable.