

Correct Approach of the Madras HC on RWA maintenance issue.

Apropos to the article "A critical approach to Madras High Court single bench decision on GST on maintenance charges by Residents Welfare Association"¹, what the author seems to have missed is what the Hon'ble Supreme Court has said in Govind Saran Ganga Saran Vs Commissioner of Sales Tax², way back in 1985 which continue to hold field even today.

The first is the character of the imposition known by its nature which prescribes the taxable event attracting the levy, the second is a clear indication of the person on whom the levy is imposed and who is obliged to pay the tax, the third is the rate at which the tax is imposed, and the fourth is the measure or value to which the rate will be applied for computing the tax liability.

If those components are not clearly and definitely ascertainable, it is difficult to say that the levy exists in point of law. Any uncertainty or vagueness in the legislative schema defining any of those components of the levy will be fatal to its validity.

While there can be no quarrel on the principles of taxation enunciated by the author, the grievance is lack of certainty in the matter. Immediately after introduction of GST, the Government has issued various Flyers, to clarify the law to common man and this is what they said about this exemption in the Flyer issued by the CBIC.

Further, the question would then arise that if the monthly bill is say Rs. 6,000/- (and the same is on account of services for common use of its members), will GST be applicable on Rs. 6,000/- or Rs.1, 000/-. In such cases, exemption is available up to an amount of Rs.5, 000/ and GST would be applicable on the amount in excess of Rs.5, 000/-

The turn around came on 22.07.2019 through circular 109/28/2019. To quote,

The exemption from GST on maintenance charges charged by a RWA from residents is available only if such charges do not exceed Rs. 7500/- per month per member. In case the charges exceed Rs. 7500/- per month per member, the entire amount is taxable. For example, if the maintenance charges are Rs. 9000/- per month per member, GST @ 18% shall be payable on the entire amount of Rs. 9000/- and not on [Rs. 9000 - Rs. 7500] = Rs. 1500/- .

¹ <https://www.livelaw.in/columns/authority-for-advanced-ruling-aar-goods-and-service-tax-gst-madras-high-court-residential-welfare-associations-rwas-188099>

² MANU/SC/0317/1985

Especially in indirect taxes, if such contrary instructions are issued, how on earth the Residential Welfare Association can go back to their members (many of them might have moved out, sold out, etc) and collect additional taxes and interest?

Further, if the intention of the Government was that of what the author espoused, nothing prevented the Government to make the language clear, like in the following case.

Services by an artist by way of a performance in folk or classical art forms of-

(a) music, or

(b) dance, or

(c) theatre,

if the consideration charged for such performance is not more than one lakh and fifty thousand rupees:

Nobody can plead in the above case that even if an artist charges Rs.2,00,000 per performance, exemption would be claimed for the first Rs.1,50,000 and tax would be paid on Rs.50,000.

In none of the examples given by the author the language of exemption was capable of entertaining any doubts as expressed by the author.

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<https://www.livelaw.in/columns/gst-principles-of-taxation-cbic-residential-welfare-association-188284>