

## **Co-operative society not eligible to claim ITC on receipt of works contract services**

The AAAR, Maharashtra in the matter of *M/s. Mahavir Nagar Shiv Shrushti Co-op Housing Society Ltd. [Order No. MAH/AAAR/AM-RM/10/2022-23 dated September 30, 2022]* has upheld the order passed by the AAR, Maharashtra, holding that a co-operative housing society cannot claim Input Tax Credit (“ITC”) of the Goods and Service Tax (“GST”) paid to its appointed contractor for repairs, renovation and rehabilitation work carried out in the society.

### **Facts:**

M/s. Mahavir Nagar Shiv Shrushti Co-op Housing Society Ltd. (“**the Appellant**”) is a registered co-operative housing society. The objectives of the Appellant are to manage, maintain and administer the property of the society. The Appellant raises funds by collecting charges from the members of the society which includes property taxes, water charges, common electricity charges, repair and maintenance funds, etc. The said charges are collected by the Appellant on monthly or quarterly basis by issuing invoices. The Appellant is not involved in any other work other than what is mentioned in its byelaws. The Appellant has further appointed one M/s. Unique Rehab Pvt. Ltd. for carrying out major repairs renovations and rehabilitation works for which it is charging GST.

The Appellant has filed this appeal against the order of the AAR, Maharashtra [**Advance Ruling No.GST-ARA-19/2021-22/B-94 dated November 10, 2021**], wherein, it was held that the Appellant is not eligible to claim ITC on the input and inputs services for repairs, renovation and rehabilitation work, as the Appellant is not providing any works contract services to its members.

The Appellant contended that, it is providing works contract services, i.e. receiving services from a contractor and providing them unaltered to its members and charging GST at the

standard rate of 18%, it is entitled to claim ITC for the tax paid on the works contract services received from the contractor.

**Issue:**

Whether the Appellant is eligible to claim ITC on the ground that it is providing works contract services to its members?

**Held:**

The AAAR, Maharashtra in **Order No. MAH/AAAR/AM-RM/10/2022-23** held as under:

- Noted that, the services provided by the Appellant will be covered under the heading 9995 enumerated in Sl. No. 33 of the **Notification No. 11/2017 – Central Tax (Rate) dated June 30, 2017 (“the Services Rate Notification”)** having the description ‘services of membership organization’.
- Further noted that, the Appellant is not providing works contract services as it does not undertake any activities other than what is mentioned in its bye-laws.
- Observed that, the Appellant is not claiming that it is providing security services, cleaning services, repair or maintenance services etc., and it is not recovering the cost of such services provided to its members under different heads specified for such service. Further, the Appellant was trying to take the stand that it is providing works contract services solely to claim ITC which were otherwise not available to it due to the restrictions imposed by Section 17(5)(c) of the Central Goods and Service Tax Act, 2017 (**“the CGST Act”**) wherein, it is stated that ITC would be available on tax paid on works contract service only if they are used as input services for further works contract services.
- Stated that, the Appellant itself is not works contract service provider, nor it is in the business of providing works contract services.

- Opined that, the Appellant is not a works contract service provider and the works contract service received by it from the appointed contractor is for the common benefit of its members.
- Upheld the order passed by the AAR, Maharashtra.
- Held that, the Appellant is not eligible to claim ITC on the tax paid to the appointed contractor for the works contract services received as it cannot be said to be providing works contract service due to the limitations under Section 17(5)(c) of the CGST Act.

**Relevant Provisions:**

**Sl. No. 33 of the Services Rate Notification:**

<i>“Sl. No.</i>	<i>Chapter, Section or Heading</i>	<i>Description of Service</i>	<i>Rate (per cent.)</i>	<i>Condition</i>
33	Heading 9995	Services of membership organisations.	9”	

**Section 17(5)(c) of the CGST Act**

*“17. Apportionment of credit and blocked credits.*

*(5) Notwithstanding anything contained in sub-section (1) of section 16 and subsection (1) of section 18, input tax credit shall not be available in respect of the following, namely:-*

...

*(c) works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;”*

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