

Here's all you need to know about the Madras High Court order on GST to be paid by RWAs

RWAs collecting monthly maintenance amount above Rs 7500 per member would be able to save Rs 1350 per member per month, which hitherto was paid towards GST. Consequently, this will bring down the monthly bill of all the members of such RWA, tax experts said

In a major relief to members of resident welfare associations, the Madras High Court has ruled that the goods and services tax (GST) is applicable to monthly maintenance amount exceeding ₹7,500 only and not on the full amount. This means that only contributions to RWAs in excess of Rs.7,500 would now be taxable under GST.

As a result, the RWAs collecting monthly maintenance amount above Rs. 7,500 per member would be able to save Rs 1,350 per member per month, which hitherto was paid towards GST. Consequently, this will bring down the monthly bill of all the members of such RWA, experts said.

The order has emphasised the word 'up to an amount of Rs.7,500 which can only be interpreted to state that any contribution in excess of the same would be liable to tax. Tax experts say that the term 'upto' connotes an upper limit. It is interchangeable with the term 'till' and means that any amount till the ceiling of Rs.7,500 would be exempt for the purposes of GST.

As regards the argument concerning slab rate, a slab is a measure of determining tax liability. The prescription of a slab connotes that income upto that slab would stand outside the purview of tax on exigible to a lower rate of tax and income above that slab would be treated differently.

Harpreet Singh, Partner, Indirect tax, at KPMG in India told Moneycontrol that the ruling should buttress, doubts if any, in the minds of RWAs across India, and thus, only value exceeding Rs 7500 should be taxable to GST. However, it could be safer for RWAs to file writs for seeking the said relief.

"Department and the Authority for Advance Ruling had taken the view that in case of maintenance charges being higher than Rs 7500, GST will be payable on the total amount including Rs 7500. However, the Madras high court in its judgment has rejected that stand and clarified that monthly contribution only in excess of Rs 7500 is taxable and not the entire amount. Residents will now save GST on an amount of Rs 7500," says Sunil Tyagi of Zeus Law.

In housing complexes, a welfare association collects maintenance charges from the residents, generally on the basis of an amount per square foot. The costs of the complexes such as housekeeping, security are incurred from there.

It should be remembered that the decision overturns 2019 circular issued by the Central Board of Indirect Taxes and Customs, which said exemption shall be granted only if the charges are limited to ₹7500 per month and that full amount will be taxed beyond that.

In a notification dated July 22, 2019, the ministry of finance had said that if RWA members contribute less than ₹7500 a month each, the said RWA is exempt from paying GST, irrespective of the annual turnover.

GST Notification 12/2017-CT (Rate) exempts such charges 'upto' an amount of Rs 7500 per member per month from the levy of GST. The GST Authorities interpreted this in a way confirming levy of GST on the entirety of the contribution to an RWA where the contribution exceeded Rs 7500 per member per month.

The Madras High Court has quashed the circular issued by The GST Authorities and held that the term 'upto' connotes an upper limit. It is interchangeable with the term 'till' and means that any amount till the ceiling of Rs 7500 would be exempt for the purposes of GST.

"It also held that in a case where legislature intended that the exemption shall apply only to cases where the amount charged does not exceed a specified pecuniary limit. It states as much that the exemption shall apply only where the gross amount charged for such service does not exceed a said amount in a financial year. Here, nothing as such is stated," explains Vivek Jalan of Tax Connect Advisory Services LLP, a consulting firm.

The question now before the Associations is whether to follow the Judgement of the Madras High Court and stop charging GST or to keep charging GST on the entire amount if the charge per member per month is more than Rs 7500.

In this regard, it is to be noted that Madras High Court's judgment will be binding on the taxpayers of the corresponding state. In case taxpayers in other states want a similar relief it is better to challenge the GST circular in their own jurisdictional high court, he says.

Further, there is every chance that the government may file a petition before the Supreme Court challenging the high court's order. Also, the law may see a retrospective amendment, which has already happened in a similar matter challenging the charge of taxes on the concept of mutuality.

"Hence, until the Supreme Court decides as such, we would advise the taxpayers to tread with caution," he advises.

The high court also quashed an Authority of Advance Rulings (AAR) order of 2019, which said that an exemption was permissible only if the contribution was up to ₹7,500. In case the contribution was more than ₹7,500, then the exemption would not be valid and the full amount would have to be taxed, it said.

Experts said the ruling will benefit members of large RWAs across the country.

Based on the decision of the Madras High Court in Greenwood (Greenwood Owners Association v. UOI), the RWAs are required to pay GST only on the differential amount collected from the member where the charges exceed Rs. 7,500.

As a result, the RWAs collecting monthly maintenance amount above Rs. 7,500 per member would be able to save Rs. 1,350 per member per month, which hitherto was paid towards GST. Consequently, this will bring down the monthly bill of all the members of such RWA, says Ajinkya Gunjan Mishra, Partner at L&L Partners.

Prateek Bansal, Associate Partner, White & Brief Advocates, and Solicitors, says the departmental authorities had interpreted the legal position differently to collect GST on the entire amount if the charges per unit exceeds Rs. 7500, which conclusion essentially denies and sets at naught the statutorily granted GST exemption upto the basic threshold of Rs. 7,500. Now, this judgment and the consequent reduction of GST burden is surely a respite for RWAs and residents across the country (especially in metro cities where the monthly maintenance charges are typically above Rs. 7,500).

"Since this judgment has nationwide significant revenue implications, it would be interesting to see if the government challenges this decision in the higher forum or, accepts the same by issuing a circular clarifying the final legal position to be adopted by field formations in all jurisdictions," he adds.