

GST on Cooperative Housing Societies is Unconstitutional

A housing society is not an industry, the **Bombay high court** has **ruled**. Justice Suresh Gupte, in an **order**, quashed a **labour court's order** asking a housing society in **Mumbai** to reinstate a **watchman** whose services were terminated.

Since a housing society is not an industry as ruled by Bombay High Court the levy of 18% GST on members who are required to contribute 7500 or more per month towards common expenses is wrong.

Therefore Section 2(17) of the CGST Act:

“business includes– (e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to members” is unconstitutional.

Article 14 of constitution guarantees Right to Equality. The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Let us now examine how Section 2(17)(e) of CGST Act 2017 does not provide equality before law:

1. Members staying in same housing society are discriminated on the basis of monthly contribution towards common expenses.
2. Members of housing societies whose annual turnover is 20 Lakhs or less are fully exempted from 18% GST even if their monthly contribution is more than 7500 per month towards common expenses.
3. Rich persons staying in stand alone multi storied buildings are also fully exempted from 18% GST on the expenses incurred on maintenance, security, housekeeping etc. even when such expenses are more than 7500 per month.
4. Rich persons staying in lavish Bungalows are also exempted from 18% GST.
5. Bombay High Court order of June 2018 has clearly said that housing society is not an industry.
6. Supreme Court has ruled in a number of cases that Housing Societies are run on concept of Mutuality by members themselves on voluntary basis.
7. Cooperative Housing Societies were exempted from Service Tax. Service tax is now included in GST therefore housing societies should be totally exempted from GST.

