



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 7TH DAY OF FEBRUARY 2022

PRESENT

THE HON'BLE MR. JUSTICE ALOK ARADHE

AND

THE HON'BLE MR. JUSTICE M.I. ARUN

W.P. No.14891 OF 2020 (T-RES)

BETWEEN:

TAGHAR VASUDEVA AMBRISH

... PETITIONER

(BY MR. ARVIND DATAR, SR. COUNSEL FOR
MRS. NAYANA TARA B.G. ADV., &
MR. RAHUL UNNIKRISHNAN, ADV.,)

AND:

1. APPELLATE AUTHORITY FOR ADVANCE RULING
KARNATAKA
6TH FLOOR
VINIJA THERIGE KARYALAYA
KALIDASA ROAD
GANDHINAGAR
BENGALURU 560009.
2. COMMISSIONER OF CENTRAL TAX
BANGALORE SOUTH
1, CK JAFFER SHARIEF ROAD
VASANTH NAGAR, BENGALURU 560001.
3. ASSISTANT COMMISSIONER OF COMMERCIAL TAXES LGSTO-90, MM
TRUST BUILDING
CHAMARAJPET, BENGALURU 560018.

... RESPONDENTS

(BY MR. HEMA KUMAR, AGA FOR R1 & R3
MR. JEEVAN J. NEERALGI, SPL. COUNSEL FOR R2)

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THIS W.P. IS FILED UNDER ARTICLE 226 & 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE ORDER DTD.31.8.2020 PASSED BY R-2 AND PRODUCED AT ANNEXURE-Q. DIRECT R-2 AND 3 TO APPLY SL NO.13 OF NOTIFICATION NO.9/2017 INTEGRATED TAX (RATE) DTD.28.7.2017 TO THE PETITIONER AND CLASSIFY THE SERVICE PROVIDED BY HIM AS SERVICES BY WAY OF RENTING OF RESIDENTIAL DWELLING FOR USE AS RESIDENCE WHICH ATTRACTS NIL RATE OF TAX. GRANT AN INTERIM ORDER TO STAY THE OPERATION OF THE ORDER DTD.31.8.2020 PASSED BY R-1 AT ANNEXURE-Q AND DIRECT THE R-2 AND 3 NOT TO TAKE ANY COERCIVE ACTION PURSUANT TO THE IMPUGNED ORDER DTD.31.8.2020 PASSED BY R-1 ANNEXURE-Q.

THIS W.P. HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 03.02.2022, COMING ON FOR PRONOUNCEMENT OF ORDERS THIS DAY, **ALOK ARADHE J.**, MADE THE FOLLOWING:

ORDER

In this writ petition, the solitary question which arises for consideration is whether the service provided by petitioner i.e., leasing of residential premises as hostel to students and working professionals is covered under Entry 13 of Notification No.9/2017 dated 28.09.2017 namely 'Services by way of renting of residential dwelling for use as residence' issued under Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as 'the Act' for short).

FACTUAL BACKGROUND

2. The factual background in which the aforesaid question arises for consideration need mention. The petitioner is co-owner of a residential property situate in Bengaluru. The property is a residential property having 42 rooms in all spread out between a stilt floor, ground floor and four floors along with terrace and common areas. The petitioner along with other co-owners have executed a lease deed in favour of the lessee namely M/s.D Twelve Spaces Private Limited (hereinafter referred to as 'the lessee') on 21.06.2019. The lessee has leased out the residential property as Hostel for providing long term accommodation to students and working professionals with the duration of stay ranging from 3 months to 12 months.

3. The Central Government has issued notification No.9/2017 - Integrated Tax (Rate) dated 28.06.2017 (hereinafter referred to as 'exemption notification') and has granted exemption from payment of goods

and services in respect of services mentioned therein which includes renting services which are provided with respect to residential dwelling for use as residence.

4. The petitioner with a view to seek clarification with regard to his eligibility to seek exemption on the rent received by him from the lessee by letting the property, filed an Advance Ruling application in prescribed form under Section 97 of the Act before the Authority for Advance Ruling, Karnataka (hereinafter referred to as 'AAR Karnataka'). The AAR Karnataka vide Advance Ruling dated 23.03.2020 *inter alia* held that services viz., renting of residential dwelling for use as a residence do not fall under Entry 13 of the Exemption Notification. It was further held that lessee itself is not using the accommodation. Thus, it was held that the petitioner has to charge Goods and Services Tax (hereinafter referred to as 'GST') while issuing invoice to the lessee provided it is registered under the Act. Accordingly, it was held that benefit of exemption notification is not available to the petitioner.

5. The petitioner thereupon filed an appeal under Section 100 of the Act before the Appellate Authority for Advance Ruling, Karnataka (AAAR Karnataka). However, the AAAR Karnataka by an order dated 31.08.2020 *inter alia* held that property rented out by the petitioner is a hostel building which is more akin to sociable accommodation rather than what is commonly

understood as residential accommodation. Therefore, the property rented out by the petitioner cannot be termed as residential dwelling. It was further held that benefit of exemption notification is available only if the residential dwelling is used as a residence by the person who has taken the same on rent / lease. In the result, the appeal preferred by the petitioner was dismissed. In the aforesaid factual background, this writ petition has been filed.

SUBMISSIONS OF PETITIONER:

6. Learned Senior counsel for the petitioner submitted that the expression 'residential dwelling' has not been defined anywhere in the Act. Therefore, its normal trade parlance meaning has to be taken into account. It is submitted that residential accommodation which is used for long term stay has to be construed as residential dwelling. It is further submitted that zoning regulations of Bengaluru clearly provide that hostels are allowed to operate in residential category plots. It is contended that students use the Hostel for residential purposes. Therefore, the hostels have to be treated as residential accommodation. It is urged that principle of purposive interpretation has to be applied while interpreting an exemption notification and the regard must be had to its purpose and object.

7. It is also urged that in the exemption notification, no condition has been laid down that tenant alone must occupy the building and

therefore, no additional condition can be read into the exemption notification. It is argued that the activity carried out by the petitioner is not a business activity and the premises are used for residential purposes. It is contended that there is a perceptible difference between hotel or lodging house and student hostel. In support of aforesaid submissions, reliance has been placed on the decision of the Supreme Court in '**STATE OF KERALA Vs. MOTHER SUPERIOR ADORATION CONVENT' (2021) 5 SCC 602** as well as decision of High Court of Bombay in '**BANDU RAVJI NIKAM Vs. ACHARYARATNA DESHBHUSHAN SHIKSHAN PRASARA MANDAL' (2003) 3 MhJ 470**. Learned Senior counsel also referred to decision of Authority for Advance Rulings, West Bengal in '**BORBHETA ESTATE (P) LTD., IN RE (2019) 106 TAXMANN.COM 386 (AAR - WEST BENGAL)**).

SUBMISSIONS OF RESPONDENTS:

8. On the other hand, learned counsel for the respondents submitted that lessee runs a business of leasing out of premises. It is further submitted that the expression used in the exemption notification is 'the residential dwelling' which cannot be construed as 'residence'. It is submitted that the expression 'residential dwelling' means an abode or habitat which has an element of permanency. Attention of this Court has also been invited to trade licence issued by Bruhat Bengaluru Mahanagara Palike (hereinafter referred to as 'the BBMP' for short) to the lessee and it is

pointed out that the trade name has been described as boarding and lodging to which public are admitted or repose or let with or without consumption any food or drink. Learned counsel for the revenue has also relied on the registration certificate of the lessee, to contend that lessee is registered as commercial establishment under the Karnataka Shops and Commercial Establishment Act, 1961. While referring to the terms of the lease deed, it is contended that petitioner is engaged in the commercial activity. It is also urged that exemption notification has to be strictly construed and any ambiguity in the exemption notification has to be construed in favour of revenue. In support of aforesaid submissions, reliance has been placed on the Constitution Bench decision of the Supreme Court in '**COMMISSIONER OF CUSTOMS (IMPORT), MUMBAI Vs. DILIP KUMAR AND COMPANY AND OTHERS**' (2018) 9 SCC 1.

EXEMPTION NOTIFICATION:

9. We have considered the submissions made on both sides and have perused the record. The Act is an Act to make provision for levy and collection of tax on inter-state supply of goods or services or both by the Central Government and for matters connected therewith or incidental thereto. In exercise of powers under the Act, the Central Government has issued exemption notification and has granted exemption from payment of goods and services tax in respect of services mentioned therein. The

aforesaid notification includes the service of renting residential dwelling for use as residence. The relevant extract of the notification is extracted below for the facility of reference:

In exercise of powers conferred by [sub Section (3) ad sub Section (4) of Section 5, sub-Section (1) of Section 6 and clause (xxv) of Section 20 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), read with sub-Section (5) of Section 15 and Section 148 of the Central Goods and Services Tax At, 2017 (12 of 2017)], the Central Government, on being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby exempts the inter-State supply of services of description as specified in column (3) of the Table below from so much of the Integrated Tax leviable thereon under Sub-Section (1) of Section 5 of the said Act, as is in excess of the said tax calculated at the rate as specified in the corresponding entry in column (4) of the said Table, unless specified in the corresponding entry in column (5) of the said Table, namely:-

<i>Sl. No.</i>	<i>Chapter, Section, Heading, Group or Service Code (Tariff)</i>	<i>Description of Services</i>	<i>Rate (per cent)</i>	<i>Condition</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>	<i>(5)</i>
13	Heading 9963 or Heading 9972	Services by way of renting of residential dwelling for use as residence	Nil	Nil

LEGAL PRINCIPLES:

10. The issue with regard to interpretation of exemption notification is

no longer res integra and the Constitution Bench of the Supreme Court in **'DILIP KUMAR AND COMPANY AND OTHERS** while dealing with the reference pertaining to interpretation of an exemption notification, has answered the reference in the following terms:

66.1 Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.

66.2 When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject / assessee and it must be interpreted in favour of the revenue.

66.3 The ratio in sun Export case is not correct and all the decisions which took similar view as in sun Export case stand overruled.

The aforesaid principles pertaining to interpretation of exemption notification were reiterated by Supreme Court in **'THE STATE OF MAHARASHTRA Vs. SHRI VILE PARLE KELVANI MANDAL & ORS'**. **2022 SCC ONLINE SC 18.**

11. It is well settled rule of Statutory Interpretation of fiscal statutes that the words used therein if not defined in the statute have to be interpreted in their popular sense. As per Craies on statute law 6th edition, the popular sense means the sense in which people conversant with the

subject matter with which the statute is dealing, would attribute it. (***SEE: COMMISSIONER OF CENTRAL EXCISE, MUMBAI VS. FIAP INDIA PVT. LTD. & ANR. (2012) 9 SCC 332*** and ***COMMISSIONER OF CENTRAL EXCISE VS. MADHAN AGRO INDUSTRIES INDIA PRIVATE LIMITED (2018) 15 SCC 733***). Thus, the expression 'residential dwelling' has to be understood according to its popular sense.

REASONS:

12. In the backdrop of aforesaid well settled legal principles, we may advert to the facts of the case in hand. Entry 13 contained in the exemption notification is unambiguous and is clear. It provides for exemption from payment of Integrated Goods and Service Tax in respect of 'services by way of renting of residential dwelling by way of use as residence'. The burden is of course on the petitioner to show that his case comes within the parameters of the exemption notification. The expression 'residential dwelling' has not been defined. It is pertinent to note that under the erstwhile service tax law, the expression 'residential dwelling' was defined in paragraph 4.13.1 of Taxation of Services: An Education Guide dated 20.06.2012 which was issued by Central Board of Indirect taxes and Customs which is reproduced below for the facility of reference:

4.13.1 What is a 'residential dwelling'?

The phrase 'residential dwelling' has not been defined in the Act. It has therefore to be interpreted in terms of the normal trade parlance as per which

it is any residential accommodation, but does not include hotel, motel, inn, guest house, camp - site, lodge, house boat, or like places meant for temporary stay.

Thus in the aforesaid education guide issued by Central Board of Indirect Taxes and Customs which contains clarifications, it is provided that in normal trade parlance residential dwelling means any residential accommodation and is different from hotel, motel, inn, guest house etc. which is meant for temporary stay. The aforesaid clarification which is issued by the Board, in the absence of anything to the contrary in the Act, binds the Respondent.

13. It is noteworthy that the accommodation which is used for the purposes of the hostel of students and working women is classified in residential category in the Revised Master Plan 2015 of Bangalore City. The Supreme Court in ***KISHORE CHANDRA SINGH VS BABU GANESH PRASAD BHAGAT AIR 1954 SC 316*** has held that expression residence only connotes that a person eats, drinks and sleeps at that place and it is not necessary that he should own it. The aforesaid decision was referred to by Bombay High Court in ***BANDU RAVJI NIKAM SUPRA***. The hostel is used by the students for the purposes of residence. The students use the hostel for sleeping, eating and for the purpose of studies for a period ranging between 3 months to 12 months. In the hostels, the duration of stay is more as compared to hotel in guest house, club etc.

14. It is well settled that when the word is not defined in the Act itself, it is permissible to refer to the dictionaries to find out the general sense in

which the word is understood in common parlance. (**SEE: MOHINDER SINGH VS STATE OF HARYANA AIR 1989 SC 1367** and **COMMISSIONER OF CENTRAL EXCISE , DELHI vs. ALLIED AIR-CONDITIONING CORPN. (REGD) (2006) 7 SCC 735**). Therefore, we may also refer to the meaning of the expression 'residence' and 'dwelling' as defined in **Concise Oxford English Dictionary 2013 Edition** as well as **BLACKS LAW DICTIONARY 6th Edition** to ascertain its meaning in common parlance and in popular sense which read as under:

The Concise Oxford Dictionary:

Domicile: 1. the country in which a person has permanent residence.
2. the place at which a company or other body is registered.

Residence: 1. the fact of residing somewhere.
2. a person's home.
3. the official house of a government minister or other official figure.

Blacks Law Dictionary:

Residence- Place where one actually lives or has his home; a person's dwelling place or place of habitation; an abode; house where one's home is; a dwelling house.

Dwelling- The house or other structure in which a person or persons live; a residence; abode; habitation; the apartment or building , or a group of buildings, occupied by a family as a place of residence. Structure used a place of habitation.

Thus, it is evident that the expression 'residence' and 'dwelling' have more or less the connotation in common parlance and therefore, no different

meaning can be assigned to the expression 'residential dwelling' and it cannot be held that the same does not include hostel which used for residential purposes by students or working women.

15. The twin questions which need to be answered in order to ascertain whether the service provided by the petitioner is covered under exemption notification are: (i) What is being rented? (ii) The purpose for which the residence is used for. Firstly, the residential dwelling is being rented, as the hostel to the students and working women fall within the purview of residential dwelling as the same is used by the students as well as the working women for the purposes of residence. Secondly, the residential dwelling is being used for the purposes of residence. Thus, the aforesaid questions are required to answered in favour of the petitioner. It is also worth mentioning that the notification does not require the lessee itself use the premises as residence. Therefore, the benefit of exemption notification cannot be denied to the petitioner on the ground that the lessee is not using the premises. Similarly, the finding recorded by AAAR Karnataka that the hostel accommodation is more akin to 'sociable accommodation' is unintelligible and is not relevant for the purposes of determining the eligibility of the petitioner to claim the benefit under the exemption notification.

16. So far as the submission that the petitioner is registered as commercial establishment under the Karnataka Shops and Commercial Establishment Act, 1961 or that a trade licence has been issued by BBMP, suffice it to say that it is wholly irrelevant for the purposes of determining the eligibility of the petitioner under the exemption notification.

17. In view of the preceding analysis, the order dated 31.08.2020 passed by the AAAR Karnataka is quashed and it is held that the service provided by the petitioner i.e., leasing out residential premises as hostel to students and working professionals is covered under Entry 13 of Notification No.9/2017 dated 28.09.2017 namely 'Services by way of renting of residential dwelling for use as residence' issued under the Act. The petitioner is held entitled to benefit of exemption notification.

In the result, the writ petition is allowed.

**Sd/-
JUDGE**

**Sd/-
JUDGE**