

**THE AUTHORITY FOR ADVANCE RULINGS
IN KARNATAKA
GOODS AND SERVICES TAX
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD
GANDHINAGAR, BENGALURU – 560 009**

Advance Ruling No. KAR ADRG 34/2023

Date : 16-11-2023

Present:

1. Dr. M.P. Ravi Prasad

Additional Commissioner of Commercial Taxes Member (State)

2. Sri. Kiran Reddy T

Additional Commissioner of Customs & Indirect Taxes Member (Central)

1.	Name and address of the applicant	Ms. DEEKSHA SANJAY, Proprietrix, M/s Deeksha Sanjay, # 14, 2 nd Cross, Thimmappa Reddy Layout, Bengaluru – 560 076, Karnataka.
2.	GSTIN or User ID	29EDMPS7850B1Z1
3.	Date of filing of Form GST ARA-01	11-08-2023
4.	Represented by	Sri. Sanjay M Dhariwal, C.A., & Authorised Representative
5.	Jurisdictional Authority – Centre	The Principal Commissioner of Central Tax, Bengaluru South Commissionerate.
6.	Jurisdictional Authority – State	ACCT, LGSTO-25, Bengaluru
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs.5,000/- under CGST Act & Rs.5,000/- under KGST Act through debit from Electronic Cash Ledger vide reference No. DC2907230383642 dated 24.07.2023.

**ORDER UNDER SECTION 98(4) OF THE CGST ACT, 2017
& UNDER SECTION 98(4) OF THE KGST ACT, 2017**

Ms. Deeksha Sanjay (herein after referred to as 'Applicant'), Proprietrix, M/s Deeksha Sanjay, #14, 2nd Cross, Thimmappa Reddy Layout, Bengaluru – 560 076, Karnataka, having GSTIN number 29EDMPS7850B1Z1, have filed an application for Advance Ruling, under Section 97 of CGST Act, 2017 read with Rule 104 of CGST Rules, 2017 and Section 97 of KGST Act, 2017 read with Rule 104 of KGST Rules, 2017, in form GST ARA-01 discharging the fee of Rs.5,000/- each under the CGST Act, KGST Act.

Deeksha Sanjay

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2. The applicant submitted that they are a proprietary concern, registered under the GST Act, engaged in the business of renting of residential dwelling, situated at #14, 2nd Cross, Thimmappa Reddy Layout, Bengaluru-560076, being the owner of the said property and pays property tax to the BBMP; the said building is suitable for residential purposes, layout of the property, its structure, design and the plan of the property, sanctioned by the local authorities, is for usage as residential building.

3. In view of the above, the applicant has sought advance ruling in respect of the following questions:

- a. *Whether renting of residential dwelling to the students and working women for residential purpose along with amenities and facilities such as food, furniture, appliance, cleaning, security, pest control etc., on monthly rental basis, is exempt under entry No.12 of Notification No.12/2017-Central Tax (Rate) dated 28.06.2017 or not?*
- b. *If applicant transaction is not exempt, then what is the GST rate?*
- c. *If applicant transaction is taxable, whether applicant can claim ITC on input used for providing taxable service?*

4. **Admissibility of the Application** : The applicant claimed that the questions on which advance rulings have been sought are with regard to "Applicability of a notification issued under the provisions of the CGST Act 2017", "Admissibility of input tax credit of tax paid or deemed to have been paid" and "Determination of the liability to pay tax on any goods or services or both", which are covered under Sections 97(2) (b), (d) and (e) respectively of the CGST Act 2017 and hence the instant application is admissible.

5. **BRIEF FACTS OF THE CASE:** The applicant furnished the following facts relevant to the issue:

5.1 Applicant provides residential dwelling to the students and working women on monthly rental basis; the services involve basic residential facilities required for staying and study which include well-maintained furnished residence, light, water etc.,

5.2 Applicant provides the following three types of renting services on monthly rental basis according to the convenience of the students/women:

- a) Single Occupancy : A unit in residential dwelling which contains single bed in a room for single person, having facilities of electricity, food, furnishing, fan, lighting etc.,
- b) Double Occupancy : A unit in residential dwelling that contains two beds in a room for two persons, having facilities of electricity, food, furnishing, fan, lighting etc., Dual occupancy is a great way to save money, normally this



option is chosen by one or more friends/relatives who are familiar with each in study. If empty units available then from dual occupancy to occupancy can be opted by residents.

c) **Triple Occupancy** : A unit in residential dwelling that contains three beds in a room for three persons, having facilities of electricity, food, furnishing, fan, lightings etc., Student who generally wish to study in a group will choose this option.

5.3 Applicant, while renting the dwelling, collects documents and details such as Name of the resident, College ID, Aadhar Card, Contact Number, address, Parent's details etc.,

5.4 Applicant, being the owner of the property, pays property tax to the BBMP, under the category of residential building, which is suitable for residential purposes, the layout of the property, its structure, design is for usage as a residential unit and also the plan of the property sanctioned by the local authorities is for a residential building.

5.5 The following facilities are made available, as per para 8 of the 'Residential Service Agreement'.

Cot with mattress, table with chair and cupboard with locking facility, one light and one fan per room and attached bathroom

Breakfast, lunch, dinner and evening tea/snacks, laundry, power backup, house keeping, security and RO drinking water.

6. **Applicant's Interpretation of Law** : The applicant furnished their interpretation of law, which is as under:

6.1 The applicant quoting scope of supply in terms of Section 7(1)(a) of the CGST Act 2017 and definitions of Outward Supply, under Section 2(83); services under Section 2(102); Land and Building in terms of Para 2 of Schedule II to Section 7; Recipient, under Section 2(93); Composite Supply, under Section 2(30); Principal Supply, under Section 2(90); Entry No.12 of the Notification No.12/2017-Central Tax (Rate) dated 28.06.2017, by which the services by way of renting of residential dwelling for use as residence, covered under SAC 9963 or 9972 are exempted, both original as well as amended by Notification 04/2022-Central Tax (Rate) dated 13.07.2022 submits that contract for renting of residential dwelling along with facilities is a composite supply of renting service, the Principal Supply is renting of residential dwelling, other facilities are incidental to the renting of dwelling unit, Renting of residential dwelling is classified as supply of service in terms of para 2 of Schedule II to Section 7 of the CGST Act 2017.

6.2 **Applicant's Views** : Applicant submits that, Entry No. 12 of Notification No. 12/2017 Central tax (Rate) dated 28th June 2017, exempts renting of residential



dwelling for use as residence. Applicant submits that following essential elements should exist for claiming exemption under the said entry;

- (a) Building which is rented should be residential;
- (b) Renting of residential dwelling should be for residence use;
- (c) recipient should be other than registered person; and
- (d) Exemption is not applicable if residential dwelling is used for commercial purpose.

Applicant submits that the expressions 'residential', 'dwelling' & 'use as residence' are not defined under GST law. In the absence of such definition, it is an accepted rule that, meaning can be understood generally / commonly understood in layman's language or dictionary meaning

"Residential" means a place designed to live.

As per Cambridge English Dictionary

- A residential road, area, etc. has only private houses, not offices and factories.
- Relating to where you live or having lived of or relating to houses where people live rather than to places where they work.
- A residential area or building where people live
- Relating to homes rather than business

"Dwelling"

As per Cambridge English Dictionary

- A house or place to live in:

As per Merriam Webster dictionary: 'A shelter (as a house) in which people live'.

"Residential Dwelling"

- As per Black's Law Dictionary: 'Residential dwelling means living in a certain place permanently or for a considerable length of time'.
- As per the Oxford dictionary: 'A house or apartment or other places of residence or a place to live in or building or other places to live in'.

"Residence"

- As per Black's Law Dictionary: 'Fixed and Permanent abode or dwelling-place for the time being, as contradistinguished from a mere temporary locality of existence'.
- As per Merriam Webster dictionary: 'The act or fact of living or regularly staying at or in some place for the discharge of a duty or the enjoyment of a benefit'.
- As per the Cambridge dictionary: 'To go to live somewhere'.

"Resident"

As per Oxford English Dictionary



- Residing, dwelling, or having an abode in a place
- A person who resides permanently in a place
- A permanent or settled inhabitant of a town, district etc.,

“Renting”

‘Renting’ has been defined in section 65B of Service Tax Law as “allowing, permitting or granting access, entry, occupation, usage or any such facility, wholly or partly, in an immovable property, with or without the transfer of possession or control of the said immovable property and includes letting, leasing, licensing or other similar arrangements in respect of immovable property.

“Residential Building”

The Education Guide issued by CBEC in 2012 clarified that the said term has 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. Despite such clarification, application of the same in context of hostels was still not clear

Karnataka Municipalities building Bye-Laws 2017

Section 2, Definitions

(21) **‘Building’**- means a Building defined in clause (3) of section 2 of the Act.
Types of Buildings based on use of premises or activity:

‘Residential Building’- includes a building in which sleeping and living accommodation is provided for normal residential purposes, with cooking facilities and includes one or more family dwellings, apartments/flats, and private garages of such buildings;

“Abode”

As per Oxford English Dictionary

- A temporary stay
- Habitual residence, a house or home

“Stay”

As per Oxford English Dictionary

- Be present or dwell in a place for a (specified) period

“Live”

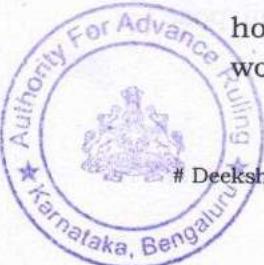
As per Oxford English Dictionary

- Make one’s home; dwell; reside

Applicants Analysis

(a) Renting of Residential Dwelling;

Overall understanding the expression “residential dwelling” would mean a place or part of a house relating to where you live or having lived of or relating to houses where people live other than a place of work, office or factory. In other words a place suitable for living or place for reside.



In support of this Applicant would like to place reliance on Foreign Judgement in the case of **Collins (AP) V. Uratemp Ventures Limited {2012} 24 taxmann.com 134(ECJ)** wherein it was held that "Dwelling means a place where one lives, regarding and treating it as home. It is the place where he lives and to which he returns for sleep and which forms the Centre of his existence. Dwelling may be a house or part of a house and even a single room as a part of a house, may be a dwelling".

'Residential Dwelling'

The GST law is silent about what should be the criteria to qualify the property as a "Residential dwelling". In layman's language it is a place having requisite facilities to live for considerable period of time.

Applicant submits that, there are no standard set of rules prescribed for determining, as to what constitutes a residential dwelling". However, based on meanings and court decisions it can be understood whether the property is residential dwelling or commercial in nature;

- a. Layout of the property, its structure, whether it is designed for usage as a residential unit or a commercial unit.
- b. How is the plan of the property sanctioned by the local authorities.
- c. The intention of the developer / owner of the property.
- d. The purpose for which the dwelling is put to use.
- e. The length of stay intended by the users.

Applying above discussions and analysis to the Applicant's case it is crystal clear that the renting service as per the types discussed above, fall under the expression renting of residential dwelling as mentioned under entry no. 12 of Notification No. 12/2017-Central Tax (Rate) dated 28/06/2017.

6.3 Analysis of Second essential requirements of entry 12 of notification 12/2017 CTR as under;

Applicant submits that, mere renting of residential dwelling is not sufficient for claiming exemption. The latter part of the action i.e., use of such residential dwelling should be for residence.

"for use as residence"

The word "as" means, "as it is" without any change. Therefore, in order to claim exemption under notification no. 12/2017, the recipient of service should use the residential dwelling for residential purpose. The rented dwelling unit is said to be used as it is when the user/resident/tenant enjoys the place for personal living and such residential dwelling is not used for business purpose in any manner.



Further, it is important examine whether the word 'Residence' used in the exemption entry is for shorter period or longer period?

- Cue in this regard can be taken from the erstwhile service tax law wherein, section 65(105) of the Finance Act, 1994 (prior to 2012), provides the definition of taxable service for services provided by hotels, inns, etc., which generally involves stay for shorter period as compared to permanent or considerable time of stay, provides that the said service is providing accommodation for a continuous period of less than 3 months.
- Guidance or benchmarking of 3 months can be taken from the above. Taking cue from above, it can be stated that the intention of the law is to provide exemption in cases where the main intention of taking the premises on lease or rent is for a long-term stay. The same view is also in line with the view taken by Karnataka High Court in the case of Taghar Vasudev Ambrish 2022-TIOL-242- HC-KAR-GST.
- However, the 3 months criteria cannot be a touchstone criterion for all the situations under GST, as there is no such specific mention of 3 months criteria under GST law as against the express provisions under the Service tax laws. Therefore, one needs to factor out various business dynamics, the way contracts are structured, the privity of contract etc. to determine whether the premises is used as a residence or is merely an accommodation service.

6.4 Application to the facts of the case

Applying the above principles to the present case the expression "**for use as residence**" used in exemption entry would mean that the rented residential dwelling is utilized by tenants for residing purposes. One of the pre-condition stipulated in the Resident Agreement is usage of residential dwelling for residence purposes and tenants in this case are students and women who are using the unit for staying only, hence, the other condition required for claiming exemption under Sl. No. 12 of notification 12/2017 is satisfied.

6.5 Analysis of third essential requirements of entry 12 of notification 12/2017 CTR as under;

(c) Recipient should be other than Registered Person;

It is very much evident from the facts of the case that the tenants/users are Students and women who are individuals unregistered under GST Law and they are not required to be registered.

6.6 Analysis of fourth essential requirements of entry 12 of notification 12/2017 CTR as under;



(d) Exemption is not applicable if residential dwelling is used for commercial purpose;

In the above paragraphs it is explicitly made clear that, lessee is not permitted to use the residential dwelling for commercial purpose, hence the final requirement is also met by the Applicant.

6.7 In nutshell it is understood that the exemption covers renting of residential dwelling without intention to reside permanently or not. The exemption entry specifies, services by way of renting of residential dwelling for use as residence except where the residential dwelling is rented to a registered person".

6.8 Applicant submits that for better understanding of the exemption entry it is important to refer entries which are taxable for other renting services, which are re-produced as under;

Entry No.7(i) of Notification No. 11/2017 dated 28.06.2017 Central Tax Rate, specifies renting of a unit of accommodation in hotel.

Comment: Essential element of this entry are

- (a) renting of a unit and not the whole building;
- (b) consideration on per day and per unit basis;
- (c) renting of such unit located in building which is commercial in nature

Though the entry does not mention about purpose. Generally, hotels provide renting of rooms for staying shorter period of time.

Entry No.7(ii), (iv) (viii) of 11/2017 Notification, specifies renting of a unit of accommodation in hotels, inns, guest houses, clubs, campsites of other commercial places meant for residential or lodging purpose.

Comment: Essential elements of this entry are

- (a) renting of a unit and not the whole building;
- (b) consideration on per day & per unit basis;
- (c) renting of such unit located in building which is commercial in nature;
- (d) such renting is for residential or lodging purpose.

6.9 In view of the above discussions, it infers that, the exemption entry should be understood in that sense which people, conversant with the subject matter with which statue is dealing, would attribute to it. In other words, common parlance meaning. On comparison of the entries falling under taxable and exemption notifications related to the renting of building, accommodation services etc, the expression "renting of residential dwelling as appearing under entry no 12 of notification 12/2017 CTR, do not match with the tax rate entries appearing under entry no 7 of notification no. 11/2017 CTR.

Under taxable notification, following words & Expressions are used

- Hotel Accommodation
- Unit of Accommodation
- Per unit

- Per Day
- Renting and premises

6.10 Whereas under exemption notification it is mentioned as "renting of residential Dwelling", therefore, it is understood that, the expression "renting of the residential dwelling" has more weightage than the words or expressions as appearing in entry no. 7 of Notification No. 11/2017-Central Tax Rate.

6.11 In support of the above submissions, Applicant would like to place reliance on Hon'ble Karnataka High Court in case of **Taghar Vasudeva Ambrish v. Appellate Authority for Advance Ruling Karnataka [W.P. No. 14891 of 2020 (T-RES) dated February 07, 2022], (Refer Enclosure - 4)** deciding on the similar issue it was held that, exemption can be claimed for renting / leasing of residential dwelling to the students and working women.

Relying on the Hon'ble Supreme Court decision in the case of **Kishore Chandra Singh v. Babu Ganesh Prasad Bhagat AIR 1954 SC 316, (Refer Enclosure - 5)** Court held that, expression residence only connotes that a person eats, drinks and sleeps at that place and not necessarily that the person should own it. Stated 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 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.

6.12 Applicant wishes to place reliance on Hon'ble Supreme Court decision in the case of **S.P JAIN Vs KRISHNA MOHAN GUPTA & ORS, 1987 AIR 222, 1987 SCR (1) 1986, Dt: 04/12/1986, (Refer Enclosure - 6)** wherein it was observed that *in this connection reference may be made to the meaning of 'dwelling house' in Corpus Juris Secundum Vol, 28 pages 604-605 where dwelling place is mentioned. See also in this connection 'dwelling' or 'dwelling house' where it was mentioned that the term was not free from ambiguity, multiple meanings and many definitions have been given. The meaning must suit the purpose and the idea behind the statute in question in a particular case. For the meaning of 'dwelling house' it may be instructive to refer to the Words and Phrases Legally Defined Second Edition, Volume2 page 127 wherein it has been mentioned, inter alia, that 'dwelling House' meant a building used or constructed or adapted to be used wholly or principally for human habitation and 'dwelling house' included any part of a house where that part was occupied separately as a dwelling house.*

6.13 Hon'ble Income Tax Appellate Tribunal in **PRMOD SAHAI BHATNAGAR HUF Vs ASSISTANT COMMISSIONER OF INCOME TAX, ITA No. 517/JP/2018, Dt: 03/04/2019, (Refer Enclosure - 7)** held that, *The language of Section 54 of the Act is plain and unambiguous and the term used "a residential house" can be understood as "a residential dwelling". Therefore, if more than one smaller units are adjacent to each other and are converted into one house for the purpose of residence, having common passage, common kitchen then even more than one smaller units which are so contiguous and adjacent to each other can be used as one residential house are regarded as a residential house as intended by the legislature*



6.14 Hon'ble Punjab-Haryana High Court in **Firm Ganga Ram Kishore Chand vs Firm Jai Ram Bhagat Ram** AIR 1957 P H 293, (Refer Enclosure - 8) Dt: 03.04.1957 at para 17 & 18 held that, 17 Section 35 of the Punjab Relief of Indebtedness Act, 1934 which amended Section 60(1) of the Code of Civil Procedure appears to be to leave every debtor in possession of one residential house for his habitation though the Act was a measure which was designed in the main to relieve agricultural indebtedness in the Punjab on the lines of similar steps taken by Provincial Legislatures in other parts of India. The word "residential" and other cognate expressions such as, "reside", "residing", "resident", "residence" "residences" and "occupy" occurring in several statutes have variously shaded but elastic meaning. A person is ordinarily said to "reside" where he lives with his family. The word "residence" connotes two elements, (1) actual or physical habitation and (2) the intention to remain there permanently that is, for an unlimited time. In its ordinary sense the word "reside" carries with it the idea of permanence, that is for any length of lime, as well as, continuity. The word "residence" denotes a dwelling house where a person lives in a settled abode.

18. In another sense, residential , house is a dwelling house as distinct from a house of business, warehouse, office, shop etc. Residential house is a building, used as a place of. abode, in which, people reside or dwell in contradistinction to one which is used for commercial or business purposes

6.15 Hon'ble Delhi High Court in **Indian Cable Company Limited vs Prem Chandra Sharma** 39 (1989) DLT 87, 1989 (17) DRJ 53, 1989 RLR 495, Dt: 05/05/1989, (Refer Enclosure - 9) at para 21 held that, In India, the Act applies to residential premises let out to a company also. Although, the word "residence", in its strict sense, by itself, is inappropriate with regard to a company yet, for purposes of the Act, there is nothing inappropriate in a company entering into a lease in respect of premises let **for use as a residence**. Indeed, the appellant company did take the demised premises for residential purposes only, and it is fighting the present appeal to protect the possession of these very premises. In the context of Clause (h), the use of the phrase 'a residence' does not appear to us to be a cogent reason for holding that this clause does not apply to a company

6.16 Applicant is of the view that the principles laid down by Courts (supra) makes it clear that for claiming exemption it is sufficient that renting (i) part of residential house, (ii) for physical habituation, (iii) need not be permanent, (iv) for considerable length of time, (v) for individuals and (vi) for use other than commercial purpose, applies to the Applicant's transaction, therefore Applicant is not liable to pay GST.

6.17 Applying the above principles to the present case the expressions or words "residential dwelling" and "for use as residence" used in exemption entry would mean renting a unit of residential building which is not commercial building and such renting is not mere staying purpose but intended to live either permanently or long period of time by the recipient. Therefore, the activity of renting of residential dwelling to the students and working women by the Applicant is very much covered

under Sl. No.12 of the Notification No. 12/2017 Dated 28th June 2017 as amended vide notification 04/2022 dated 13th July 2022.

6.18 The Hon'ble High Court of Karnataka in the case of ***Taghar Vasudev Ambarish Vs The Appellate Authority for Advance Ruling, Karnataka*** in W.P.No.14891 of 2020 (T-Res) held that such private hostels are covered under the category of residential dwellings and as such covered under exemption vide entry number 12 of the Notification No.12/2017-Central Tax (Rate) dated 28.06.2017.

PERSONAL HEARING PROCEEDINGS HELD ON 06.09.2023

7. Sri. Sanjay M Dhariwal, Chartered Accountant & Authorised Representative of the applicant appeared for personal hearing proceedings and reiterated the facts narrated in their application.

FINDINGS & DISCUSSION

8. At the outset we would like to make it clear that the provisions of CGST Act, 2017 and the KGST Act, 2017 are in pari-materia and have the same provisions in like matters and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the KGST Act.

9. We have considered the submissions made by the applicant in their application for advance ruling. We also considered the issues involved on which advance ruling is sought by the applicant and relevant facts along with the arguments made by the applicant & the submissions made by their learned representative during the time of hearing.

10. The applicant is engaged in the business of renting of an immovable property, claiming the same as a residential dwelling basis the said building is suitable for residential purposes and also layout of the property, its structure, design and the plan of the property, sanctioned by the local authorities, is for usage as residential building; pays property tax to the BBMP, being the owner of the said property; provides three types of renting services of units having capacities of single occupancy, double occupancy and triple occupancy, on monthly rental basis with the following facilities.

- Cot with mattress, table with chair and cupboard with locking facility, one light and one fan per room and attached bathroom
- Breakfast, lunch, dinner and evening tea/snacks, laundry, power backup, house keeping, security and RO drinking water.

11. The applicant submitted that they charge the inhabitants monthly rent in accordance with the type of occupancy as given below, along with Annual Maintenance Charges of Rs.4,000/- per annum per person for double and triple

sharing and Rs.6,000/- per annum per person for single occupancy and also refundable security deposit of Rs.13,000/- per person.

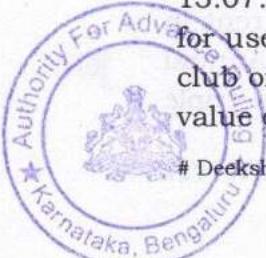
- a) Rs.19,000/- for single occupancy per person
- b) Rs.13,000/- for double occupancy per person
- c) Rs.9,000/- for triple occupancy per person

12. In view of the above the applicant sought for advance rulings in respect of the questions mentioned at para 3 supra. We proceed to consider one question at a time. The first question is ***Whether renting of residential dwelling to the students and working women for residential purpose along with amenities and facilities such as food, furniture, appliance, cleaning, security, pest control etc., on monthly rental basis, is exempt under entry No.12 of Notification No.12/2017-Central Tax (Rate) dated 28.06.2017 or not?***

13. In this regard relevant entries of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 are reproduced here under:

Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent.)	Condition
(1)	(2)	(3)	(4)	(5)
12	Heading 9963 or Heading 9972	<p>Services by way of renting of residential dwelling for use as residence [except where the residential dwelling is rented to a registered person].</p> <p>[Explanation. - For the purpose of exemption under this entry, this entry shall cover services by way of renting of residential dwelling to a registered person where, -</p> <p>(i) the registered person is proprietor of a proprietorship concern and rents the residential dwelling in his personal capacity for use as his own residence; and</p> <p>Heading 9963 or Heading 9972 (ii) such renting is on his own account and not that of the proprietorship concern.]</p>	NIL	NIL
14	Heading 9963	Services by a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes, having declared tariff of a unit of accommodation below one thousand rupees per day or equivalent.	NIL	NIL

Entry at Sl.No.14 was omitted vide Notification No.4/2022 dated 13.07.2022. Thus in effect only services by way of renting of residential dwelling for use as residence are exempted from GST. Services by a hotel, inn, guest house, club or campsite by whatever name called, for residential or lodging purposes when value of supply is below One thousand rupees are liable to GST w.e.f. 18.07.2022.



14. The applicant, at para 3 of column 15 of the application (annexure-II to the application), admitting that they provide renting services of units i.e. portion of a room with beds for single/double/triple occupancy in a residential dwelling, along with certain facilities to the inhabitants, claims that the immovable property being used for providing accommodation is a residential dwelling and is used as residence by the inhabitants and thereby the rent received on such accommodation qualifies for GST exemption in terms of entry number 12 of Notification 12/2017-Central Tax (Rate) dated 28.06.2017. In view of the said claim, the core issue before us to decide is whether the accommodation being provided by the applicant to the inhabitants qualify to be a residential dwelling, for use as residence and thus qualifies for GST exemption or not.

15. We observe that the term 'residential dwelling' is neither defined in the Notification nor in the CGST Act 2017/rules made there under. However the Education guide on Taxation of services, issued by the CBIC under erstwhile Service Tax Law, at para 4.13.1 while answering the question "What is a 'residential dwelling'?" directed to interpret the term 'residential dwelling' in terms of the normal trade parlance, as per which it is **a residential accommodation**, but does not include hotel, motel, inn, guest house, camp-site, lodge, house boat, or like places meant for temporary stay. Therefore it could be inferred from the above that residential dwelling is a residential accommodation meant for permanent stay and does not include guest house, lodge or like places. A residential accommodation to qualify for permanency of stay would typically have at least one room for exclusive use, a kitchen or facility to cook, essentials like electricity, water provided through metered/sub-metered connections or charged on actual usage, among others. From the sample copies of Residential Service Agreement entered with the inhabitants the terms "Rent" and "Unit" have been defined by the applicant as under:

Rent – *Monthly charges payable for the unit of residential accommodation, including maintenance fees for the premises, reimbursement of electricity and other common area charges and any other fees charged to the resident.*

Unit – *means a portion of room at the campus allocated by the RM(Resident Manager) strictly for residential use and occupation by the resident, and includes any new area in the room allocated subsequently.*

Offer of accommodation – *means a statement offering the resident accommodation in form of a habitable unit in the concerned campus of service provider issued to the resident.*

16. From the above it is evident that the resident/inhabitants are offered a unit i.e a portion of a room with a cot on monthly rental basis. Further monthly rent also is charged and collected for the unit only but not for the residential dwelling. Thus the impugned accommodation being provided does not qualify to be a residential dwelling. Further it is seen that units are shared by one or more unrelated inhabitants. Applicant charges all the inhabitants of a room individually

and not for a room as a whole. It is apparent from the above that the accommodation provided to each of the inhabitant is not a residential dwelling but a cot / a unit in the room; un-related people share the said room and invoices are raised per bed on monthly basis are not characteristic of a residential dwelling.

17. Further, it is also an admitted fact that the accommodation being provided by the applicant, out of the immovable property claimed as residential dwelling, does not have individual kitchen facility to each of the inhabitant and also cooking of food by inhabitants is not allowed, which are an essential characteristic for any permanent stay. On this count as well, the impugned accommodation being provided does not qualify to be a residential dwelling and thus the question of using the same as residence does not arise.

18. The Residential Service Agreement (RSA) entered by the applicant with the inhabitants reveals the following information, in addition to others:

- a) The resident/inhabitant agrees to avail the services offered by the service provider (applicant) **at the unit** within the premises. (para-1)
- b) The minimum term of the RSA is 10 months (para-4)
- c) GST shall be payable over and above the accommodation service charges (consideration for the service) and Annual Maintenance Charges inclusive of GST if applicable (para-5)
- d) The end use of the premises is for long term **shared residential accommodation**. The resident/inhabitant shall occupy a designated unit and use the designated space along with the furniture and fixtures present in the premises. Resident shall not make any structural or physical changes to the unit or the premises under any circumstances. (para-7)
- e) Following facilities are made available to residents during their residential period- Cot with mattress, table with chair and cupboard with locking facility, one light and one fan per room and attached bathroom; Breakfast, lunch, dinner and evening tea/snacks, laundry, power backup, housekeeping, security and RO drinking water(Para-8)
- f) Resident shall pay a monthly rent for an unit (para-10)
- g) **Residents are not allowed to cook** in their unit and any attempt to light a fire or heat anything in their unit is a fire hazard and may lead to immediate cancellation of the RSA.(para-12)
- h) Residents are required to return to the premises within 11 pm or such other time and may be informed to the residents from time to time by the RM. The premises will be locked in night, if any resident needs to be present outside of the premises, they may do so after obtaining prior consent of their parent, if applicable, and/or duly informing the RM.(Para 17)

This is a shared accommodation and the resident is expected to share the unit with co-residents. It is the Residents individual responsibility to



maintain his/her possessions securely in his/her Unit and the service provider or any of its officials, functionaries or staff including the RM shall not be held responsible under any circumstances for any loss or damage caused in this regard.(Para 20)

j) The use of electric heaters, electric rods and other similar appliances are not entertained. Residents should take prior permission before using any appliances and pay appropriate cost. No resident is allowed to engage private help in the form of housemaids or keep pet animals in the premises. (para-21)

19. All the above terms and conditions of the RSA reveal that the impugned accommodation being provided by the applicant are akin to provision of unit of accommodation in a paid guest house or a hostel and does not qualify to be a residential dwelling. Also the facilities such as food, furniture, appliance, cleaning, security, pest control etc., being provided by the applicant to the resident are not optional and the resident cannot choose the service provider. These facilities are mandatorily provided by the applicant and included in the monthly charges. Also the essentials like electricity and water are not charged based on usage, but a fixed amount is charged. Thus the service provided by applicant are unit accommodation for residence and not renting of residential dwelling.

20. The applicant have put forth their argument relying on the judgment of the Hon'ble High Court of Karnataka in the case of *Taghar Vasudeva Ambarish* (WP No.14891 of 2020(T-Res) dated 7-2-2022). It is pertinent to mention here that the said Judgment has been appealed against before the Hon'ble Supreme Court of India, under the Special Leave Petition (Civil) No.29980/2022. Further the issue dealt/covered in the WP No.14891/2020 by the Hon'ble High Court of Karnataka was about the renting of the residential premises to a lessee company whereas in the instant case the issue is renting of the partitions/units of immovable property by arranging cots with common bathroom. Thus the issues are different and hence the Hon'ble High Court of Karnataka's judgment is not squarely applicable to the instant case.

21. In view of the above, we find that the services being provided by the applicant do not qualify for exemption under Sl No. 12 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, as amended.

22. Now we proceed to consider the second question i.e. ***If applicant transaction is not exempt, then what is the GST rate?***

The applicant sought advance ruling with regard to the rate of GST on the services being provided by them if their services are not exempted. It is essential to classify the impugned services to arrive at the applicable GST rate. In this regard we invite reference to The Explanatory notes for the said Scheme of Classification of Services so as to arrive at the classification of the impugned service. The relevant SAC is appended as under:

99631 - Accommodation services

This group includes accommodation services provided for the purposes of leisure or business or others.

996311 - Room or unit accommodation services

This service code includes accommodation services consisting of rooms or units, with or without kitchens & with or without daily housekeeping services, provided by Hotels, INN, Guest houses, Clubs & other similar establishments on a single or multi occupancy basis, for purposes of leisure or business or others.

In the instant case the applicant is providing accommodation services consisting of rooms or units, without kitchens & with daily housekeeping services on a single or multi occupancy basis and thus merits classification under SAC 996311. Further the applicant is an establishment that provides the services that are akin to the services provided by Hotels, INN, Guest houses, Clubs & other similar establishments. The rent being charged per person per unit per day is less than rupees seven thousand five hundred and thus the impugned services, covered under SAC 9963, attract GST @ 12%, in terms of entry number 7(i) of Notification No.11/2017-Central Tax (Rate) dated 28.06.2017, as amended.

23. Now we proceed to consider the third question i.e. ***If applicant transaction is taxable, whether applicant can claim ITC on input used for providing taxable service?***

The applicant sought advance ruling as to whether they are entitled to claim ITC on input used for providing their taxable services. In this regard it is pertinent to mention here that the entry number 7(i) of the Notification No.11/2017 supra does not specify any condition with regard to availment of ITC and thus the applicant can claim ITC subject to fulfilment of the conditions stipulated under Sections 16 & 17 of the CGST Act 2017 and the rules made thereunder.

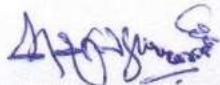
24. In view of the foregoing, we pass the following

RULING

- a) *Renting of residential dwelling to the students and working women for residential purpose along with amenities and facilities such as food, furniture, appliance, cleaning, security, pest control etc., on monthly rental basis, as provided by applicant is not exempted under entry No.12 of Notification No.12/2017-Central Tax (Rate) dated 28.06.2017.*
- b) *The impugned services of the applicant are covered under SAC 9963 and thus attract GST @ 12%, in terms of entry number 7(i) of Notification No.11/2017-Central Tax (Rate) dated 28.06.2017, as amended.*



c) The applicant can claim ITC on inputs used for providing the impugned taxable services subject to fulfilment of the conditions stipulated under Sections 16 & 17 of the CGST Act 2017 and the rules made thereunder.



(Dr. M.P. Ravi Prasad)
Member

Karnataka Advance Ruling Authority
Place: Bengaluru
Bengaluru - 560 009

Date : 16-11-2023



(Kiran Reddy T)
Member

MEMBER
Karnataka Advance Ruling Authority
Bengaluru - 560 009

To,

The Applicant

Copy to:

1. The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.
2. The Commissioner of Commercial Taxes, Karnataka, Bengaluru.
3. The Principal Commissioner of Central Tax, Bengaluru South Commissionerate, Bengaluru.
4. The Asst. Commissioner, LGSTO-25, Bengaluru-47, Karnataka.
5. Office Folder



Deeksha Sanjay