

Maharashtra GST ARA Order in M/s. Maharashtra Jain Education Society Application no. 91 of 2022-23

MAHARASHTRA AUTHORITY FOR ADVANCE RULING

GST Bhavan, Room No.107, 1st floor, B-Wing, Old Building, Mazgaon, Mumbai – 400010.

(Constituted under Section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

(1) Shri. AJAYKUMAR V. BONDE Joint Commissioner of State Tax, (Member)

(2) Ms. PRIYA JADHAV, Joint Commissioner of Central Tax, (Member)

ARN No.	AD271222015313P
GSTIN Number, if any/ User-id	272200001184AR2
Legal Name of Applicant	M/s. Maharashtra Jain Education Society
Registered Address/Address provided while obtaining user id	844, Plot No. 181, Firodia Hostel, BMCC Road, Shivaji Nagar, Pune, Maharashtra, 411004
Details of application	GST-ARA, Application No. 91 Dated 19.12.2022
Concerned officer	Deputy Commissioner of State Tax, PUNE-VAT-E-501
Nature of activity(s) (proposed/present) in respect of which advance ruling sought	
A Category	Service Provision
B Description (in brief)	Whether the hostel accommodation services provided by the Applicant would be eligible for exemption under Serial Number 12 of Notification 12/2017- Central Tax (Rate) dated 28 th June 2017
Issue/s on which advance ruling required	➤ Applicability of a notification issued under the provisions of the Act
Question(s) on which advance ruling is required	Whether the hostel accommodation services provided by the Applicant would be eligible for exemption under Serial Number 12 of Notification 12/2017- Central Tax (Rate) dated 28th June 2017?

NO.GST-ARA- 91 of 2022-23/ 2024-25/ B- 51 Mumbai, dt. 31/07/2024

PROCEEDINGS

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

The present application has been filed under Section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act" respectively] by M/s. Maharashtra Jain Education Society, the applicant, seeking an advance ruling in respect of the following questions.

"Whether the hostel accommodation services provided by the Applicant would be eligible for exemption under Serial Number 12 of Notification 12/2017- Central Tax (Rate) dated 28th June 2017?"

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, the expression 'GST Act' would mean CGST Act and MGST Act.



1. FACTS AND CONTENTION – AS PER THE APPLICANT:

- 1.1 The Applicant, Maharashtra Jain Education Society, (hereinafter referred as 'the Applicant' for brevity) is registered with the Charity Commissioner, Pune Division, Pune, under the registration No F-1993 dated 21st November 1978.
- 1.2 The Applicant is also registered as a Charitable Trust under Section 12AA of the Income Tax Act, 1961 vide the order of registration in Form No 10AC dated 23rd September 2021.
- 1.3 The Applicant is inter-alia engaged in providing accommodation services in the hostels run by the Society. Such services are provided only to the students studying in 11th standard up to the students pursuing graduation, for the academic year from 1st July to 30th April and in the School / College vacation period, from 1st May to 30 June. These services are provided as per the needs of the student either for examination or for undergoing educational courses.
- 1.4 The accommodation is provided in the hostels, which are equipped with bunk beds, steel cupboards, study tables, chairs, clothes drying stands, and fixtures and fitting.
- 1.4 The hostel also consists of a dormitory section, a community hall, modern mess equipment's, and utensils, computers for the students, parking spaces, play area, auditorium, study area with internet connection, solar water heaters and electrical backup to improve the efficiency of solar water heaters during monsoon season.
- 1.5 The students admitted in the Hostel are required to follow the rules and regulations of the Hostel, such as the following:
 - Prescribed application form has to be filled up online;
 - Payment of fees has to be made by DD/Cheque/NEFT;
 - At the time of admission, the students will be interviewed in the presence of the parent's local guardians with all necessary documents, such as mark list, leaving/ transfer certificate, college fees receipt, bank payment details;
 - Medical Certificate should be produced in original;
 - Students are expected to return to their room by 10:30 pm on weekdays and by 12:00 am on Sunday;
 - Only vegetarian food will be served in the mess of the hostel;
 - Timings for the meals will be as follows:
 - Breakfast 7:00 am to 8:30 am;
 - Lunch 10:00 am to 1:00 pm; and
 - Dinner 7:30 pm to 9:30 pm;
 - Students going to their native place /some other places should submit leave applications to the rector before going;
 - All students must adhere to the timings of the mess;
 - Students will stay in the rooms allotted to them and not change the rooms without the permission of the rector;
 - Students should clean their rooms daily along with furniture;
 - Students should keep bathrooms and toilets clean;
 - All Students should carry their Id-cards with them all the time even when they are in hostel premises and should be produced immediately whenever the hostel authority demands;
 - Students should maintain silence / discipline and at the same time should maintain the decorum in the hostel and ensure that they do not disturb other students by their activities;
 - Refund of the hostel fees for the students who do not wish to stay further will be given as per the rules and regulations;
- 1.6 The fees for hostel accommodation services charged from the students is Rs. 1,10,000, for the academic year from 1st July to 30th April. Further, a refundable Security Deposit of Rs. 10,000 is taken from the students of the hostel. A concession in fees is provided to the students in-



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need based on various factors. A sample copy of the receipt of the hostel fees for the academic year from the student is submitted on record.

1.7 The fees for hostel accommodation services charged from the student is Rs. 10,000 per month for the vacation period from 1st May to 30th June as per the needs of the students either for examination or for undergoing educational courses. In this case also, a refundable Security Deposit of Rs.10,000 is taken from the students. A sample copy of the receipt of hostel fees for the vacation period from the student is submitted on record.

1.8 The estimated fees collection for the hotel accommodation during the financial year 2022-23 will be as under:

Sr. No.	Particulars	Amount	Period of Stay
1	Term Fees for the academic year from 294 students @ Rs. 1,10,000	3,23,40,000	1st July, to 30th April 10 Months,
2	Vacation Fees for the vacation period from 50 students @Rs. 10,000 per month for 2 months	10,00,000	1st May, to 30" June - 2 Months (in continuation to academic year).
	Total	3,33,40,000	

1.9 From the above table, it is to be noted that Rs. 3,23,40,000 fees is estimated to be collected for the residential accommodation for the period of stay for 10 months during the FY 2022-23 and Rs. 10,00,000 fees is estimated to be collected for the period of stay for 2 months during the FY 2022-23.

1.10 The Applicant craves leave to submit such further facts at or before the hearing of the application as may be relevant.

2. STATEMENT CONTAINING APPLICANT'S INTERPRETATION OF LAW

Whether the hostel accommodation services provided by the Appellant would be eligible for exemption under Serial Number 12 of Notification 12/2017 - Central Tax (Rate), dated 28th June 2017.

2.1 Conditions for applicability of entry at Serial Number 12 are as under,

2.1.1 The Applicant wishes to invite your attention towards Serial Number 12 of Notification 12/2017 Central Tax (Rate) dated 28th June, 2017 (hereinafter referred to as 'Exemption Notification'), wherein the exemption is provided in respect of the services provided by way of renting of residential dwelling for use as residence. The extract of the same is reproduced hereunder:

Sr. No.	Chapter, Section, Heading, Group or Services Code (Tariff)	Description of Services	Rate (Present)	Condition
12	Heading 9963 or Heading 9972	Services by way of renting of residential dwelling for use as residence.	Nil	Nil

Further, similar exemption entry is there at Serial Number 13 of the Notification 9/2017- Integrated Tax (Rate) dated 28th June 2017.

2.1.3 Based on the above, it is clearly evident that the following conditions are required to be satisfied for a service to be covered under the above entry:

1. The service under question must be a renting service;
2. The property so let out must be a residential dwelling; and
3. Such residential dwelling must be given for use as residence.

2.1.4 Thus, if the hostel accommodation services provided by the Applicant satisfy the conditions mentioned above, such service would get covered under Serial Number 12 of the Exemption Notification and no GST would be leviable on the provision of such services. Basis the grounds below, the Applicant wishes to substantiate how the hostel accommodation services provided are covered under the above-mentioned entry of the Exemption Notification.

2.2 The hostel accommodation services provided by the Applicant is a renting service:

2.2.1 The applicant is mainly providing hostel accommodation services to the students. However, to provide such services, the following services are also jointly being provided to the students:

- Mess/Canteen: The students are provided meals in the mess/canteen;
- Facilities provided in the room: The students are provided bunk beds, steel cupboards, study tables, chairs, clothes drying stands, fixtures and fittings;
- Solar water heaters: The hostel has solar water heaters which ensures hot water facility to the students;
- Other facilities: The hostel consists of a dormitory section, a community hall, modern mess equipments, and utensils, computers for the students, parking spaces, play area, auditorium, study area with internet connection.

2.2.2 The applicant wishes to submit that all the above-mentioned services are provided in order to provide the main service of hostel accommodation. In this regard, reference is given to the definition of the term 'composite supply' provided under clause 30 of Section 2 of the CGST Act, 2017. The same has been reproduced below for your ease of reference:

Section-2(30):- "composite supply" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;

2.2.3 Basis above, it can be understood that the following conditions are required to be fulfilled for any supply to be considered as composite supply:

- a) It should consist of two or more taxable supplies;
- b) Such supplies shall be naturally bundled in the ordinary course of business;
- c) One of such supplies shall be a principal supply.

2.2.4 In light of the above, it is important to understand the meaning of the term 'principal supply' and 'taxable supply'. The same has been reproduced below:

"Section-2(90) "principal supply" means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary"

"Section-2(108)- "taxable supply" means a supply of goods or services or both which is leviable to tax under this Act;"

2.2.5 In addition to the above, reference is drawn to Section 8 of the CGST Act, 2017 that deals with the determination of tax liability on composite supplies. The same has been reproduced below for your ease of reference:

"The tax liability on composite or a mixed supply shall be determined in the following manner, namely (a) composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply"

2.2.6 On a conjoint reading of all the provisions mentioned above, the Applicant wishes to submit the following:

- The supply of hostel accommodation, mess facility, facilities in the room, hot water facility and other facilities provided by the Applicant are leviable to taxes under GST and are thus taxable supplies.



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- For anyone to stay in a hostel, it is important to provide all these supplies along with the accommodation services. All these supplies are thus provided together as a package with the hostel accommodation services in the ordinary course of business.
- Further, a single receipt is provided to the students in relation to all these supplies. These supplies are thus naturally bundled in the ordinary course of business.
- The supply of hostel accommodation is the main supply and the other supplies are provided in order to provide the main supply of hostel accommodation. Thus, hostel accommodation service is the principal supply and the other supplies are merely ancillary to it.
- Thus, the provision of hostel accommodation services along with the other services would qualify as a composite supply.
- Being a composite supply, it would be leviable to tax at the GST rate applicable to the principal supply of hostel accommodation service.

2.2.7 In light of the above, we wish to bring your attention towards the Dictionary meaning of the term 'renting'. The same means 'allowing someone to use something in return for payment'. The Applicant wishes to submit that the hostel accommodation services are provided to the students in lieu of the hostel charges that they pay for staying in the hostel. Such hostel charges are rentals being paid by the students for availing the hostel accommodation services. Thus, the provision of hostel accommodation services may be termed as renting of immovable property. Thus, the first condition required to be satisfied for the applicability of Serial Number 12 of the Exemption Notification is satisfied in the case of the Applicant.

2.3 Hostel facility provided to the students qualifies to be a residential dwelling:

2.3.1 The term 'Residential dwelling' is nowhere defined under the CGST Act, 2017. Reference is drawn to the definition of the term 'residence' and 'dwelling' given in Black Law Dictionary as 'under:

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 as a place of habitation.

2.3.2 Further, as per the Oxford dictionary, the term means 'a house or an apartment or other places of residence or a place to live in or building or other places to live in'. Similarly, as per the Webster dictionary, it means 'a shelter (as a house) in which people live'.

2.3.3 Based on the interpretation of the above definitions, 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'. Thus, it cannot be held that the same does not include hostels which is used for residential purposes by students.

2.3.4 Further, reference is also drawn to the definition of such term provided in Para 4.13.1 of Taxation of Services: An Education Guide dated 20 June 2012 issued by the Central Board of Indirect Taxes ('CBIC') under the Service Tax regime. The relevant extract of the same is reproduced below:

"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."

2.3.5 The above guide provides that a residential dwelling means a residential accommodation, but it does not include temporary stays in hotel, motel, inn, guest house, camp-site, lodge,



house boat or similar places. Thus, it can be inferred that any residential accommodation used for long term stays can be considered as residential dwelling.

- 2.3.6 Basis the above guide, the Applicant wishes to substantiate that the hostel accommodation services provided by the Applicant would qualify as a residential dwelling based on the below submissions:

A. Stay in hostels do not qualify as a temporary stay:

The term 'temporary stay' is not defined anywhere in the CGST Act, 2017 or under the Finance Act, 1994. Reference is thus drawn to the definition of the term 'temporary residence' as per the Law Insider Dictionary. The same has been reproduced below for your ease of reference:

"temporary residence means a place where the person abides, lodges, or resides, including, but not limited to, vacation, business, or personal travel destinations in or out of this state, for a period of 5 or more days in the aggregate during any calendar year and **which is not** the person's permanent address or, for a person whose permanent residence is not in this state, a **place where the person is employed, practices a vocation, or is enrolled as a student for any period of time in this state.**"

Basis above, it can be inferred that a temporary residence does not include a place where the person is enrolled as a student for any period of time. The Applicant wishes to submit that the students stay in the hostels for a period of more than 3 months. Basis the application of the above definition in the present case, such stay of the students cannot be termed as a temporary residence/stay.

B. Stay in hostels is different from stay in hotels, motels, inns, etc:

Stay in hostels cannot be compared to stays in hotels, motels, inns, etc. A person moves to stay in hotels, motels, inns, etc with an intention of staying there temporarily for a few days along with luggage consisting of essentials required for such days. As against, when a student moves to stay in a hostel, the intention is to stay there for long term for pursuing educational courses. Such students move with luggage consisting of essentials required for a long term. Such hostel thus becomes a place of permanent residence or a second home for those students. Considering that there is an element of permanency involved in this case, the hostel facility provided by the Applicant to the students cannot be termed as a temporary stay.

Further, hotels, motels, inns, etc. have tariffs declared for per day basis. However, in case of hostels, there is no concept of declared tariffs. Instead, there are charges for accommodation services that are recovered from the students on a monthly or a package basis.

- 2.3.7 Basis above, it can be concluded that the hostels where the students are accommodated for the academic year or on need basis depending upon their exams or educational courses qualify to be a residential dwelling. Thus, the second condition required to be satisfied for the applicability of Serial Number 12 of the Exemption Notification is satisfied in the case of the Applicant.

- 2.4 The hostel accommodation provided by the Applicant is used by the students for the purpose of residence:

- 2.4.1 The term 'residence' is not defined under the CGST Act, 2017. Thus, the Appellant wishes to refer to the decision given by the Hon'ble Supreme Court in the case of **Jeewanti Pandey Vs Kishan Chandra Pandey (MANU/SC/0312/1981; (1982) 1 SCR 1003)** wherein the Apex Court observed that:

"In ordinary sense 'residence' is more or less of a permanent character. The expression 'resides' means to make an abode for a considerable time; to dwell permanently or for a length of time to have a fixed home or abode. Where there



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is such fixed home or such home at one place, his legal and actual residence is the same and cannot be said to reside at any other place where he had gone on a casual or temporary visit. But if he has not established home, his actual and physical habitation is the place where he actually or personally resides."

2.4.2 Based on the above, it can be inferred that 'residence' is of a permanent nature i.e. when a person resides at a place for a considerable period of time, it is considered as 'residence'. A place where someone casually or temporarily visits cannot be termed as residence.

2.4.3 Drawing inference from the above definition, a considerable period of time could be understood as a place where one intends to stay for a long term and not just temporary. In the case of the Appellant, since the students come to stay in the hostel for undergoing professional or educational courses, thus their period of stay cannot be considered as temporary. Thus, such hostels are used for residence by the students. Accordingly, the third condition required to be satisfied for the applicability of Serial Number 12 of the Exemption Notification is satisfied in the case of the Applicant.

2.4.4 Further, it is held that the Accommodation services provided by the Hostels are exempt under Sr. No 12 of the Notification No 12/2017 Central Tax (Rate) dated 28th June, 2017 (Sr. No 13 of the Notification No 9/2017-Integrated Tax (Rate) dated 28th June 2017) in the following case of Taghar Vasudeva Ambrish Vs. Appellate Authority for the Advance Ruling, Karnataka, Bangalore, reported in 2022-VIL-110-KAR. In this case it is held as under:

- The expression 'residential dwelling' was defined in paragraph 4.13.1 of Taxation of Services: An Education Guide dated 20 June, 2012, issued by CBIC - and clarified 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 said clarification which is issued by the Board, in the absence of anything to the contrary in the Act, binds the Respondent
- 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
- Court relied on Dictionary meaning of expressions 'residence' and 'dwelling' to hold that 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 Similarly, the finding recorded by AAAR 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.
- The order dated 31.08.2020 passed by the AAAR Karnataka is quashed and it is held that the service of leasing out residential premises as hostel to students and working professionals is covered under Entry 13 of IGST Notification No.9/2017 dated 28.09.2017 namely 'Services by way of renting of residential dwelling for use as residence

In view of the above submissions, the Applicant contends that Serial Number 12 of the Exemption Notification is applicable to hostel accommodation Services provided by the Applicant and thus, GST is not applicable on such services.

3. Submission of the jurisdictional officer: -

Officer made submission dated 31-05-2024 and 12-06-2024. He stated that benefits of Exemption notification are not available to the Applicant. Submissions are reproduced and dealt where ever applicable and necessary



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4. HEARING

Preliminary hearing in the matter was held on 09.05.2024. Mr. Nitin Shah, Advocate appeared and requested for admission of the application. Jurisdictional Officer Mr. M.A. Bhagat, Deputy Commissioner of State Tax Also appeared.

The application was admitted and called for final hearing on 26.06.2024. Mr. Nitin Shah, Advocate, Authorized Representative of the applicant, appeared made oral and written submissions. Jurisdictional Officer Mr. M.A. Bhagat, Deputy Commissioner of State Tax Also appeared. We heard both the sides.

5. FINDING OBSERVATIONS AND DISCUSSION:

Uncontroverted material facts necessary to answer the question are as under,

- 5.1 The applicant is providing accommodation services in hostel run by the society and such services are provided only to the students studying in 11th Standard up to Graduation, only.
- 5.2 Duration of stay in hostel is for academic year is for 10 months i.e. from June to March and for vacation period duration of stay is a month or two on monthly basis.
- 5.3 Accommodation services are provided to the students on sharing basis with common amenities fees are charged for 10-month periods at Rs. 1,10,000/- and for vacation period Rs. 10000/- per month. Receipts dated 01-06-2022 and 03-06-2022 are submitted for record.
- 5.4 These fees include meals i.e., breakfast, lunch dinner in mess. Mess facilities are compulsory and not optional.
- 5.5 The hostel has strict regulation about timing discipline behavior expected from student's absence of students from hostel without permission is not allowed.
- 5.6 For bundle of all these services provided by hostel to the students' single receipt is issued and single price is charged and break up of individual supply is not shown separately in receipt. In the backdrop of these facts and relevant provision of GST Act and notification no. 12/2017 Central Tax (Rate) dated 28th June 2017. The applicant has raised question as under: -

"Whether the hostel accommodation services provided by the Applicant would be eligible for exemption under Serial Number 12 of Notification No. 12/2017- Central Tax (Rate) dated 28th June 2017?"

Hereinafter the exemption at Sr No 12 of the Notification No 12/2017-Central Tax (Rate) dated 28th June 2017 are referred as "the said entry" and the Notification as "the Exemption Notification".

Based on the duration of stay the supply of services can be divided in to three broad categories:

1. Duration of stay of 10 months.
2. Duration of stay of one to two months during the vacation periods to new Students.
3. Duration of stay of one to two months during the vacation periods for old students who have already stayed in hostel for duration of 10 months.

Therefore, the question raised by the applicant is trifurcated in to 3 parts depending on the aforesaid duration of stay and its combinations and such 3 reframed questions are answered.

In support of this application the applicant has relied on judgment of two non jurisdictional High Courts namely (i) Hon' High Court of Karnataka, in case of TAGHAR VASUDEVA AMBRISH versus Appellate Authority for Advance Ruling, Karnataka and others in W.P. No. 14891 of 2020 (T-RES) decided on 7th February 2022 and (ii) Hon' High Court of Judicature at Madras



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in case of Thai Mookambikaa Ladies Hostel versus Union of India and others in W.P. No. 28486 of 2023 decided on 22-03-2024.

5.7 Supply of hostel accommodation services to students with mandatory supply of meals and other necessary amenities, for duration of stay of 10 months-

5.7.1 Submission of the Applicant- The facts of this and those facts of the case and questions raised before Hon'ble Madras High court in in Case of Thai Mookambikaa Ladies Hostel (Supra) are similar.

- a. In that case the Petitioner had filed an application for Advance Ruling before the Advance Ruling Authority, Tamil Nadu under provisions of the Tamil Nadu Goods and services Act, 2017. Facts stated in the decision of the Authority in brief are as under,
- "6.3. The facts of the case as stated by the Applicant are that –
- The Applicant are running ladies hostel providing boarding and lodging facilities to students and working women. They are also providing certain ancillary services such as housekeeping, security arrangements, Television, parking facility etc.
 - charges of Rs. 5300/ is being collected per inmate per month for providing all the above facilities including electricity charges; the charges collected are per bed charges and these charges are also dependent on number of persons sharing the room; the invoices to the habitants are raised accordingly.
 - the premises used for providing these services are owned by the Applicant.

6.4. The Applicant claims that the immovable property being used for providing accommodation is a residential dwelling which is used as residence by the inmates and thereby the rent received on such accommodation qualifies for GST exemption."

The Advance Ruling Authority Answered the questions raised before (only relevant to this case are reproduced) it as under,

"Question (1) Whether the hostel and residential accommodation extended by the Applicant hostel would be eligible for exemption under Entry 12 of Exemption Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 dated 28.06.2017 and under the identical Notification under the TNGST Act, 2017 and also under Entry 13 of Exemption Notification No.9/2013- Integrated Tax-Rate dated 28.06.2017 as amended

Answer : The services by way of providing hostel accommodation supplied by the Applicant are not eligible for exemption under Entry 12 of Exemption Notification No. 12/2017-CT (Rate) dated 28.06.2017 and under the identical Notification under the TNGST Act, 2017, and also under Entry 13 of Exemption Notification No. 09/2017-IT(Rate) dated 28.06.2017, as amended.

Question (3) Whether any specific tariff entry is applicable to hostels under the tariff Notification, in the event of requirement of registration?

Answer: The supply of services by way of providing hostel accommodation falls under Tariff heading 9963 and is taxable @ 9% CGST + 9% SGST under Sl. No. 7(vi) of the Notification No. 11/2017, Central Tax (Rate), dated 28.06.2017, as amended vide Notification No. 20/2019 - Central Tax (Rate) dated 30.09.2019.

Question (4) Whether, in the event of the hostel accommodation being an exempt activity, whether the incidental activity of supply of in-house food to the inmates of the hostel would also be exempt being in the nature of a composite exempt supply?



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Answer: The activity of supply of inhouse food to the inmates of the hostel amounts to providing services in a composite manner and the hostel accommodation services provided by the Applicant, being the principal supply, which is taxable @18%, is the tax rate for the composite supply provided by them.

Aggrieved by the decision of the Authority, the applicant filed Writ Petition before the Madras High Court vide Writ Petition No. 28486 of 2023, which is decided by Hon'ble Court on 22-03-2024 as under,

Paragraph No. 57- Sub Paragraph 13 has quoted with approval judgment of the Hon'ble Division Bench Karnataka High Court in case of Taghar Vasudeva Ambrish (Supra) has observed as under:

"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." (Emphasis supplied)

56. Ultimately, the Authorities have to look into the aspect as to whether the particular place is a dwelling unit or not. When such being the case, since the hostellers are staying in the room for months together, it cannot be construed as non-residential unit and certainly it is a residential dwelling as provided in the Entry No.12 of Exemption Notification No.12 of 2017. Thus, this Court has no hesitation to hold that the 'hostel services' provided by the petitioners would squarely fall within purview of Entry No.12 of Exemption Notification No.12 of 2017. Further, in the present case, no commercial activities can be attributed against the owners of the hostels since they have been providing only 'residential accommodation' to the girl students, working women, etc., who are using the 'hostel premises' as their residence and not for business purpose by using the common kitchen and sharing the food among themselves.

After considering relevant provision of law has held that para:

"63. While advertent to the imposition of GST on hostel accommodation, it has to be looked into as to whether the inmates of the hostel rooms, are using the premises as their residential dwelling or commercial purpose since renting of residential unit attracts GST only when it is rented for commercial purpose. So, in order to claim exemption of GST, the nature of the end-use should be 'residential' and it cannot be decided by the nature of the property or the nature of the business of the service provider, but by the purpose for which it is used i.e. 'resident dwelling' which is exempted from GST. Therefore, this Court is of the considered view that the issue of levy of GST on residential accommodation



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should be viewed from the perspective of recipient of service and not from the perspective of service provider, who offers the premises on rental basis. "64. In the light of the above discussion, it is clear that the renting out the hostel rooms to the girl students and working women by the petitioners is exclusively for residential purpose, this Court is of the considered view that the condition prescribed in the Notification in order to claim exemption, viz., 'residential dwelling for use as residence' has been fulfilled by the petitioners and thus the said services are covered under Entry Nos.12 and 14 of the Notification No. 12/2017-Central Tax (Rate) dated June 28, 2017, the petitioners are entitled to be exempted from levy of GST." (Emphasis supplied)

5.7.2 Submission of the Jurisdictional Officer is as under,

The applicant, Maharashtra Jain Education Society Pune is providing hostel facility to students of 11th standard up to degree level. The society is not running any educational Institute. It has 82 rooms housing 298 Students. The rooms are 2seated, 4 seated, 8 seated, 40 seated and hostel is ground +2 story building. The applicant is registered under GST Act having GSTIN 27AAATM1635P2Z8 with effect from 18/06/2023 and filling under Centre Jurisdiction (CBIC), (PUNE), (PUNE-II), (Division III DECCAN, (RANGE-III).

The Students are allotted rooms for a period of 10 months from July to April and for vacation course from May to June. The society is charging Rs. 1,35,000/- per month for each student. After every 10 months the students have to vacate the rooms and rooms are re-allotted, thus the stay in hostel is temporary.

The rooms of the hostel have bed and cupboard. The hostel has library and mess facility. The Maharashtra Jain Education society is a trust and as per Circular No. 32/06/2018-GST dated 12/02/2018 Sr. No. 1- the hostel accommodation services do not fall within the ambit of charitable activities as defined in notification No. 12/2017-CT (Rate).

In advance ruling in case of Student's welfare Association decided on 29/02/2018 the hostel accommodation provided by trusts to students is not exempt.

In view of the above, hostel accommodation services provided by the appellant is not eligible for exemption under Sr. NO. 12 of Notification 12/2017-Central Tax (Rate).

The applicant has sent copy of Hon. High Court of Madras judgment in case of Thai Mookambikaa Ladies Hostel. After going through above documents our observation is as follows: -

- The hostel accommodation provided to students is for ten months. After that rooms are allotted to students undergoing vocational course.
- The rooms are reallocated to students afresh in the next academic year. The accommodation is temporary.
- As per Circular No. 32/06/2018-GST dtd 12/02/2018, Sr. No. 1- the hostel accommodation services do not fall within the ambit of charitable activities as defined in notification No. 12/2017-CT (Rate).

In case of Thai Mookambikaa Ladies Hostel, the petitioner is not a charitable trust. Hence the fact of the case is different.



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5.7.3 Findings, Observations and discussion- on Supply of hostel accommodation services to students with mandatory supply of meals and other necessary amenities, for duration of stay of 10 months this issue-

a. After going through the facts of Thai Mookambikaa Ladies Hostel case and those in case of Hon'ble Karnataka High Court in case of Taghar case and those stated by the applicant, we are of the opinion, that the facts are materially similar and provisions of law are pari materia and the question raised and answered are also same except question of liability to get registered.

b. We have gone through the aforesaid judgments and provisions of law, and are of the opinion that the ratio laid down the judgment that the Hostel accommodation with compulsory supply of meals with hostel amenities as described is composite supply and eligible is in fact is renting of residential dwelling for residential purpose, and eligible for exemption, are correct and applicable to this case. There are Orders of Advance Ruling Authority of Rajasthan in case of M/s Mody Education Foundation, in ADVANCE RULING NO. RAJ/AAR/2022-23/04 dated 19-05-2022, which are based on its earlier Order of Appellate Authority of Advance Ruling, Rajasthan in case of M/s Kalani Infrastructure Private Limited, in APPEAL No Raj/AAAR/ APP- 05/2019-20 decided on 12-05-2020 vide Order No RAJ/ AAAR / 7 / 2019-20 dated 12-05-2020. In these Orders it is decided that such supplies are of Hostel Accommodation with supply of Food are mixed supplies and not eligible to benefits of Entry at Sr No 12 of the Exemption Notification.

c. Now coming the decision of High Courts relied upon by petitioners and its binding precedent on us also needs to be decided.

From the judgment of Hon'ble Bombay High Court in case of Commissioner of Income-Tax vs Thana Electricity Supply Ltd decided on 22 April, 1993 published in [1994]206 ITR727(BOM)- it is very clear that these judgments are not binding on Authorities situated in non-jurisdictional area. Refer para 22 of the judgment-

21. From the foregoing discussion, the following propositions emerge;
(d) The decision of one High Court is neither binding precedent for another High Court nor for courts or Tribunals outside its own territorial jurisdiction. It is well settled that the decision of a High Court will have the force of binding precedent only in the State or territories on which the court has jurisdiction. In other States or outside the territorial jurisdiction of that High Court it may, at best, have only persuasive effect. By no amount of stretching of the doctrine of stare decisis, can judgments of one High Court be given the status of a binding precedent so far as other High Courts or Tribunal within their territorial jurisdiction are concerned. (Emphasis supplied)

d. Next question which needs to be decided that, at what extent the persuasive effect is applicable. This issue is decided by Hon'ble Bombay High Court in case of New Nagpur Copra Industries vs The State of



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Maharashtra and Another decided on 6 April, 1984 (Equivalent citations: [1985]60STC380(BOM) has held as under,

10. There is yet one more aspect to the whole question and it relates to maintaining consistency in law if possible. The Karnataka High Court had interpreted the entry "oil-seed" as found in section 14(6) of the CST Act. That entry and entry No. 6 in the BST Act are in pari materia, and therefore, in effect we are interpreting also the Central legislation. This Court for the sake of uniformity has put upon itself a self-imposed restriction of normally not differing from the view of another High Court on the Central legislation. In *Maneklal Chunilal & Sons Ltd. v. Commissioner of Income-tax (Central), Bombay* [1953] 24 ITR 375, it is observed:

"-----"

Following this decision, in another Division Bench of this Court in the case of *Commissioner of Income-tax v. Chimanlal J. Dalal & Co.* [1965] 57 ITR 285 it is observed:

"This is the practice of this Court, and, as we have already stated, it has been generally followed by this Court, barring certain exceptions like where inadvertently the decision was not brought to its notice or where in the decision of the other Courts some relevant provision of law had been omitted to be considered. The decision of the Gujarat High Court is a very elaborate one, considering all the relevant provisions of law. This is, therefore, not a case in which we should depart from the aforesaid policy of this Court. The answer, therefore, will have to be against the Revenue." (Emphasis supplied)

- e. During the arguments Jurisdictional Officer did not bring to notice any contrary binding decision of either Bombay High Court or Supreme Court on this issue, nor any infirmity in this judgment. We as authority are satisfied that the decision is in depth and well-reasoned and no provision of law or binding judgment of Supreme Court is overlooked by those Courts.

5.7.4 Decision:- Considering the aforesaid decisions, and not having knowledge of any binding judgment of Bombay High Court or Supreme Court, we have no hesitation in following the decision of Hon'ble Madras High court in case of *Thai Mookambikaa Ladies Hostel (Supra)* - in deciding that Supply of hostel accommodation services to students with mandatory supply of meals and other necessary amenities, for duration of stay of 10 months- is covered by the Entry at Sr No 12 of Notification 12/2017- Central tax (Rate) dated 28th June 2017 and exempted from tax.

5.8 Supply of hostel accommodation services to students with mandatory supply of meals and other necessary amenities, for duration of stay of 1 to 2 months during vacation period to new students.



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Duration of stay of only 3 to 12 months are decided to be exempted from tax by the aforesaid judgments. Duration of stay less than 3 months is not decided in those judgments.

5.8.1 Submission of the Applicant- The facts of this and those facts of the case and questions raised before Hon'ble Madras High court in in Case of Thai Mookambikaa Ladies Hostel (Supra) are similar and hence for shorter duration of stay is also covered in exemption notification. It is submitted that as per definition in Law Insider Dictionary stay of 5 days or more can be said to be temporary residence.

5.8.2 Submission of the Jurisdictional Officer- is same as for Duration of 10 months stay.

5.8.3 Findings, observation and discussion - It is noticed that though the issue of stay of short duration is not decided in the above judgments, sufficient guidance is available for deciding the issue in the aforesaid judgement.

a. Hon'ble High Court of Judicature at Madras (supra)- has held Para 57 - sub-para 13 and para 64 as under,

in its judgment in Paragraph No. 57- Sub Paragraph 13 has quoted with approval judgment of the Hon'ble Division Bench Karnataka High Court in case of Taghar Vasudeva Ambrish (Supra) has observed as under: -

"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." (Emphasis supplied)

b. Another guidance is available in the same judgement in paragraph 56 which is as under:

"56. Ultimately, the Authorities have to look into the aspect as to whether the particular place is a dwelling unit or not. When such being the case, since the hostellers are staying in the room for months together, it cannot be construed as non-residential unit and certainly it is a residential dwelling as provided in the Entry No.12 of Exemption Notification No.12 of 2017. -----" (Emphasis supplied)

Use of words "when such being the case since the hostellers are stayed in the room for months together" it cannot be construed as non-residential unit. Hence inference is drawn from this aforesaid observation of the Hon'ble Court that only period for tenure of 3 months and above is to be treated as residential purpose and any period having tenure of 1 of 2 months that is not for months together



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cannot be treated as residence purpose for the entry no 12 of exemption notification 12 such duration can be at the best described as temporary accommodation.

- c. This inference is also supported by judgment Hon'ble Supreme Court in the case of Jeewanti Pandey Vs Kishan Chandra Pandey decided on 20-10-1981 [Citation 1981 SCC (4) 517] wherein the Apex Court observed that:

"In its ordinary sense 'residence' is more or less of a permanent character. The expression 'resides' means to make an abode for a considerable time; to dwell permanently or for a length of time; to have a settled abode for a time. It is the place where a person has a fixed home or abode. In Webster's Dictionary, 'to reside' has been defined as meaning 'to dwell permanently or for any length at time', and words like 'dwelling place' or 'abode' are held to be synonymous. Where there is such fixed home or such abode at one place the person cannot be said to reside at any other place where he had gone on a casual or temporary visit, e.g. for health or business or for a change. If a person lives with his wife and children, in an established home, his legal and actual place of residence is the same. If a person has no established home and is compelled to live in hotels, boarding houses or houses or others, his actual and physical habitation is the place where he actually or personally resides" (Emphasis supplied)

5.8.4 Decision: Considering the guidance from aforesaid judgments, and being exemption notification under taxation Act, we are of considered opinion that Supply of hostel accommodation services to students with mandatory supply of meals and other necessary amenities, for duration of stay of 1 to 2 months during vacation period to new students, is not eligible for benefits of exemption as per Entry at Sr No 3 of notification No 12/ 2017-Central tax (Rate) dated 28 June 2017.

- 5.9 Supply of hostel accommodation services to students with mandatory supply of meals and other necessary amenities, for duration of stay of 1 to 2 months during vacation period to old students who are already staying for the month of 10 months by separate contract and payment –**

5.9.1 Submission of the Applicant- Similar to the above submission that the stay is for continuous duration of 10 months and is extended for further duration of one or two months.

5.9.2 Submission of the Jurisdictional Officer- is same as referred above.

5.9.3 Findings, observation and decision- It is seen that the earlier tenure of residence of 10 months is extended for further period of one month or 2 months by the old student will not change the nature of their earlier stay of 10 months (Residence) to temporary accommodation status hence, such supplies considering the earlier tenure 10 months will also be long term tenure and are considered as residence and eligible for benefits of



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exemption as per Entry at Sr No 3 of notification No 12/ 2017-Central tax (Rate) dated 28 June 2017.

6. In view of the extensive deliberations as held hereinabove, we pass an order as follows:

ORDER

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

For reasons as discussed in the body of the order, the reframed questions based on duration of stay in the hostel are answered thus –

Question 1: Whether the hostel accommodation services provided by the Applicant for duration of stay of 10 months would be eligible for exemption under Serial Number 12 of Notification 12/2017- Central Tax (Rate) dated 28th June 2017?

Answer: - Affirmative

Question 2: Whether the hostel accommodation services provided by the Applicant for duration of stay of one or two months to new students during vacation period would be eligible for exemption under Serial Number 12 of Notification 12/2017- Central Tax (Rate) dated 28th June 2017?

Answer: - Negative.

Question 3: Whether the hostel accommodation services provided by the Applicant for duration of stay of one or two months to old students during vacation period would be eligible for exemption under Serial Number 12 of Notification 12/2017- Central Tax (Rate) dated 28th June 2017?

Answer: - Affirmative.



**AJAYKUMAR V. BONDE
(MEMBER)**

**PRIYA JADHAV
(MEMBER)**

- Copy to:-**
1. The applicant
 2. The concerned Central / State officer.

Copy submitted for information to,

1. The Commissioner of State Tax, Maharashtra State, Mumbai
2. The Pr. Chief Commissioner of Central Tax, Churchgate, Mumbai
3. The Joint commissioner of State Tax, Mahavikas for Website.

Note:-An Appeal against this advance ruling order shall be made before The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India Building, Nariman Point, Mumbai – 400021. Online facility is available on gst.gov.in for online appeal application against order passed by Advance Ruling Authority.

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