

**Whether amount received for leasing residential hostel rooms is exempt under SI.No.14 (Heading 9963) of Notification No.12/2017- Central Tax (Rate) dated 28.06.2017 as amended upto 25.01.2018? HELD BY AAR Answered in Negative UPHOLD BY AAAR (2) Whether amount received for leasing residential hostel rooms is exempt under SI.No.12 (Heading 9963) of Notification No.12/2017- Central Tax (Rate) dated 28.06.2017 as amended upto 25.01.2018? HELD BY AAR Answered in Negative UPHOLD BY AAAR**

**APPELLATE AUTHORITY ADVANCE RULING Order /AAAR/AP/06(GST)/2022, Dated 19th day of December, 2022**

**BEFORE THE APPELLATE AUTHORITY FOR ADVANCE RULING**

**for the State of Andhra Pradesh (Goods and Service Tax)**

(Office at O/o Chief Commissioner of State Tax, Govt, of A.P., D.No. 12-468-4,  
adjacent to NH-16, Service Road, Kunchanapalli, Guntur District, AP-522501)

**Present:**

Sri Sanjay Pant (Member) (Central Tax)

Sri M.Girija Shankar (Member) (State Tax)

1	Name and address of the appellant	M/s. Aluri Krishna Prasad, Flat 403, SujahBhawan Apt, JD Nagar, Patamata, Vijayawada, Andhra Pradesh-520010
2	GSTIN	37ALPPA0203K1ZE
3	Date of filing of Form GST ARA-02	04.04.2022
4	Personal Hearing	04.11.2022
5	Authorized Representative	Smt Siri Reddy
6	Jurisdictional Authority Centre	Superintendent of CGST Benz Circle Range, Vijayawada Division.

**(Under Section 101 of the Central Goods and Service Tax Act and the Andhra Pradesh Goods and Service Tax Act).**

At the outset, we would like to make it clear that the provisions of both the CGST Act and the APGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the APGST Act.

The present appeal has been filed under Section 100 of the Central Goods and Services Tax Act, 2017 and the Andhra Pradesh Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and APGST Act"] by M/s.Aluri Krishna Prasad (herein after referred to as the "Appellant") against the Advance Ruling No. AAR No. 18/AP/GST/2020 dated 15.06.2020 issued by Authority for Advance Ruling, Andhra Pradesh.

**1. Background of the Case:**

The appellant, -M/s.Aluri Krishna Prasad, in the present appeal filed against the ruling given by the Hon'ble Advance Ruling Authority, Andhra Pradesh holding that rental amounts collected by the appellant from the lessee who had used the said buildings for providing accommodation to students is liable to GST though the said buildings were used for residence, denying exemption provided under Notification No.12/2017-CT (Rate) dt.:20.06.2017 as amended against the settled legal position.

The appellant owns certain residential buildings at Vijayawada and he leased them to certain educational institutions/ societies for the purpose of accommodation of their students. Copies of the lease agreements were

submitted. As per the agreements entered with clients, the appellant receives monthly rental amounts from the lessees. The buildings given on rent are constructed with small rooms to suit for accommodation of students.

The building which the appellant had given on rent are used only for hostel accommodation by the students for the purposes of residence and the amount collected by the lessees from the students is less than Rs. 1000/- per month.

Notification no. 12/2017-CT (Rate) dt:20.06.017 as amended exempts services by way of renting of residential dwelling for use as residence by any person from GST. Relevant entry of the notification is as follows:

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

Since the accommodation provided in the residential building given on lease by the appellant fulfills the above conditions and accordingly exempted, the appellant filed an application dt: 12.09.2019 before the Hon'ble Advance Ruling Authority, Vijayawada praying for a ruling on whether:-^

(i) The amount received for leasing residential hostel rooms is exempt under si. No.14 (Heading 9963) of Notification no 12/2017-Central Tax (Rate) dt:28.06.2017 as amended?

(ii) The amount received for leasing residential hostel rooms is exempt under si. No.12 (Heading 9963) of Notification no 12/2017-Central Tax (Rate) dt:28.06.2017 as amended?~

The Hon'ble ARA gave its ruling vide order dt: 15.06.2020 gave a ruling that the appellant is not eligible for exemption from GST for the following reasons:-^

a) The agreement between the appellant and the lessee is on built up area basis and not on the basis of unit cost of accommodation and hence, it cannot be treated as given for residential dwelling.

b) The appellant is not extending accommodation to the students but to the lessee to whom the building is given on rent is providing accommodation to the students.~

Aggrieved by the order of the lower authority for advance ruling, the appellant filed this appeal on the following grounds.

## 2. Grounds of Appeal:

The lower authority erred in giving a finding that since the building is given on rent to the educational institutions/ society on the basis of area and not on the basis of the amount per month etc. he cannot claim the benefit of exemption from GST under the said notification. The lower authority failed to appreciate the fact that the purpose for which the building is given on rent is for dwelling as residence and it is immaterial how the amount is collected and from whom.

This issue has been dealt with in many cases few of which were cited in the application filed by the appellant before the lower authority, but which were not considered. The Hon'ble High Court in its recent decision dt:07.02.2022 in the case of TagharVasudevaAmbrish Appellate Authority for Advance Ruling dealt with GST exemption granted vide Notification NO.09/2017-IGST (Rate) dt:28.06.2017 and held that hostel is a residential dwelling and since it is used for residence, the assessee is eligible for the exemption notification. The relevant part of the decision is extracted below for ready reference:

15 ... Firstly, the residential dwelling is being rented, as the hostel to the students and working women fall within the purview of residential dwelling as the same is used by the students as well as the working women for the purpose of residence.

Secondly, the residential dwelling is used for the purpose of residence. Thus, the aforesaid questions are required to be answered in favour of the petitioner..."

In the said case of TagharVasudevaAmbrish also, the owner of the building had given leased out the building to a company by name M/s D Twelve Spaces Pvt Ltd who in turn provides accommodation to students and working professionals. The Revenue had taken the same view that is taken in the case of the present appellant that since the lessees himself is not using the accommodation, GST exemption cannot be claimed. The Hon'ble

High Court, however, did not agree with this contention and allowed the exemption holding that the notification does not require that the lessee itself uses the premises as residence.

The Hon'ble High Court had also analyzed the definitions of the terms 'residence' 'dwelling' etc., and also the rules of interpretation of a notification and held that a general expression of these terms shall be used to extend the benefit of the said notification. The meaning of the expression 'residence' and 'dwelling' as defined in Concise Oxford English Dictionary 2013 Edition as well as Blacks' Law Dictionary are given below to ascertain its meaning in common parlance and in popular sense:

The Concise Oxford Dictionary:

Domicile:-^

1. The Country in which a person has permanent residence.
2. The place at which a company or other body is registered.~

Residence:-^

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

Blacks Law Dictionary:-^

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

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

The Hon'ble Court had also discussed the Supreme Court decision in the case of Kishore Chandra Singh Vs. Babu Ganesh Prasad Bhagat AIR 1954 SC 316 where in it was 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 BanduRavjiNikamVsAcharyaratnaDeshbushanShikshanPrasarkMandal (2002 (9) TMI 897 - Bombay High Court)~

Hon'ble Tribunal in the case of Sneh Girls Hotel Vs CCGST, Pune (2021 (11) TMI 837 - Cestat Mumbai) held the following:-^

"4.4 By referring to the above dictionaries we can conclude with certainty that the phrase "hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes," used at si.No. 18 in the Notification No.25/2012- ST dt:20.06.2012, is wide enough to bring in its ambit the word "Hotel" as commonly understood. In view of this we do not see any reason for denying the benefit of the exemption under this entry".~

Reliance is also placed in the case of the Hon'ble Tribunal decision in the case of Major Kalshi Classes Pvt. Ltd Vs CCE, Allahabad (2020 (2) TMI 759- Cestat Allahabad)

It is pertinent to submit that the wordings in the Notification and the negative list are same and further the Hon'ble Court relied on the clarification issued by the Board during service tax regime as held in the case of Torrent Power Ltd Vs Union of India (2019 (1) TMI 1092- Gujarat High Court). Therefore, the Court's order is squarely applicable to the facts of the case.

The issue had been dealt with many orders and Advance Ruling Authorities and the Rulings passed by them are cited in the application by the appellant but none of them was discussed by the lower authority in the impugned order. The appellant cites the following decisions in this regard:-^

a) Advance Ruling Kolkata's order dt.27.06.2019 in the case of Borbeta Estate Pvt Ltd.

b) Advance Ruling Maharashtra's order dt.29.12.2018 in the case of Student's Welfare Association Pune.

c) Advance Ruling Chattisgarh's order dt.02.03.2019 in the case Shri Ramanath Bhimsen Charitable Trust.~

### **3 . Virtual Hearing:**

The Proceedings of Personal Hearing were conducted through on 04.11.2022. The authorized representative Smt Siri Reddy, attended and reiterated the submissions already made.

### **4 Discussion and Findings:**

We have gone through the records of the case and considered the submissions made by the Appellant in their grounds of appeal as well as at the time of personal hearing. The issues to be decided in this appeal are as follows:

4.1. Whether amount received for leasing residential hostel rooms is exempt under SI.No.14 (Heading 9963) of Notification No.12/2017- Central Tax (Rate)dated 28.06.2017 as amended upto 25.01.2018?

4.2. Whether amount received for leasing residential hostel rooms is exempt under SI.No.12 (Heading 9963) of Notification No.12/2017- Central Tax (Rate)dated 28.06.2017 as amended upto 25.01.2018? \*

The Advance Ruling Authority of Andhra Pradesh vide order dt: 15.06.2020 gave a ruling that the appellant is not eligible for exemption from GST under the above said notifications. The Appellant filed this appeal contending that the lower authority failed to appreciate the fact that the purpose for which the building is given on rent is important rather than how the amount is collected and from whom it is collected.

2. SI. No 12 of Heading 9963 or Heading 9972 describes "Services by way of renting of residential dwelling for use as residence" as Nil rated.

Now let us examine the applicability of the exemption at SI.No.12 (Heading 9963) of Notification No.12/2017- Central Tax (Rate) dated 28.06.2017 as amended upto 25.01.2018.

In the case on hand, the Appellant has given the property on 'LEASE BASIS" and the same is mentioned at Para (C) of the Lease Deed executed between Sri.Aluri Krishna Prasad and M/s. Nspira Management Services. Para (C) of the Lease Deed executed between Sri.Aluri Krishna Prasad and M/s. Nspira Management Services is reproduced hereunder:

C. The Lessor at the request of the Lessee, has agreed to give 84,2515q.ft (approx) of built-up area, more particularly described in the Schedule hereunder written (hereinafter referred to as "the said premises"), for a monthly rent of Rs.9,99,746/- for the built-up area of the said premises. The Lessor has agreed to allow the Lessee to use and occupy the said premises on lease basis for the purpose of running its students hostel as per the applicable norms and as per the terms and conditions hereinafter contained.

In the instant case the Entry under this heading specifically mentions that "Residential Dwelling" for use as residence is exempted from tax. Residential Dwelling in the context of exemption Notification is indicative of the intention to make the premises as the abode or habitat to live as a normal living person with all amenities of cooking, etc., and not merely to reside in connection with employment or education.

On examination of the plan submitted by the Appellant, the property was constructed as hostel building. The Commissioner, Andhra Pradesh Capital Region Development Authority vide Rc.No.C8-2275/2014, dt: 10.03.2015 has given approval for construction of G+4 Building for Hostel in the site of Sri Aluri Krishna Prasad. The approval was given for construction of hostel building. The project description in the sanctioned plan indicates that the plan is for construction of hostel building and not for Residential Dwelling.

According to the documents submitted by the appellant it is found that M/s Aluri Krishna Prasad has leased the hostel building to M/s Nspira Management Services, the lessee and further M/s Nspira Management Services has sublet the hostel building to M/s Narayana Educational Society. M/s. Nspira Management Services, the lessee, for the purpose of his business only would lease it to M/s Narayana Educational Society who again in the course of furtherance of his business has taken the premises on further lease., In the chain, the lessor, the lessee and the sub-lessee, all are business entities. The premises in question was not built as a residential dwelling nor to be used for residence by the tenant of the building (lessee)but only to be used for furtherance of business of the lessee i.e., running hostel accommodation for students, executives etc.

CBIC Education Guide dt. 20.06.2012 provides clarification in the context of service tax laws, wherein it is mentioned that in the absence of a definition of the terms 'residential dwelling' one has to interpret the same in terms of normal trade parlance. Any residential accommodation is a house or home, but does not include hotel, motel, inn, guest house, camp site, lodge, house boat or like places meant for temporary stay.

A common understanding of a hostel is that of an establishment which provides inexpensive accommodation to specific categories of persons such as students, workers, travelers. On the other hand, a common understanding of the term "residential dwelling" is one where people reside treating it as a home. Therefore, it is found that the petitioner has constructed the building with the intention of providing hostel accommodation which is more akin to sociable accommodation rather than what is commonly understood as residential accommodation. The benefit of exemption notification is available only if the residential dwelling is used as a residence by the person who has taken the same on rent / lease.

Therefore, in order to claim exemption, the category of building should be a Residential Dwelling. However, the category of building as mentioned in the lease deed is that of a "students' hostel". The term residential dwelling has also been discussed in the Advance Ruling dt: 15.06.2020 by the Advance Ruling Authority of Andhra Pradesh. In no way a 'students' hostel' can be equated to a 'residential dwelling' and it is therefore not eligible for exemption under Sl.No.12 (Heading 9963) of Notification No.12/2017- Central Tax (Rate) dated 28.06.2017 as amended upto 25.01.2018.

The appellant claimed exemption based on Thagar Vasudeva AmbrishVs Appellate Authority for Advance Ruling (Hon'ble High Court of Karnataka) judgment. In the case of Thagar Vasudeva AmbrishVs Appellate Authority for Advance Ruling (Hon'ble High Court of Karnataka) judgment, wherein the 5 individuals (Sri T.A. Vasudev, Smt M.C. Nagarathna, Sri T.V. Ambrish, Sri T.V. Nagaraj and Sri T.V. Nagaraj owners of the building have jointly executed a lease deed with M/s DTweleve Spaces Pvt., Ltd., (referred to as lessee) whereby the Lessors have agreed to lease their portion of the building to the Lessee for the purpose of sub-lease /sub-licence to individuals (including students) for long-term accommodation.

The facts in the above said case are different from the instant case. The appellant right from the construction of the building has categorized it as Hostel Building. Further, para 11.8 of the Lease Deed executed between Sri.Aluri Krishna Prasad and M/s. Nspira Management Services is reproduced hereunder:-^

"11.8 That the lessee undertakes that it shall not assign, transfer, lease, mortgage, sublet or grant leave and lease or transfer or part with or share for premises or any part thereof in any manner whatsoever."~

Further, the exemption given in the said heading under Notification. 12/2017 -CT(R) as amended, is conditional based upon end use. This is indicated by the usage of words in Sl. No. 12 of the said notification in the description of services column "services by way of renting of residential dwelling for use as residence." The primary condition is that the property in question which is rented should be in first place 'a residential dwelling'. In this case, it is a fact from the records (declarations to Municipal Corporation, Plan Permit, Electricity connection, etc.,) that the building rented out by the appellant is NOT a residential dwelling at all, but a hostel building which is commercial in nature even while it was constructed and as seen from the lease document also.

Further the residential dwelling should be used as residence by the tenant. In the instant case, NSPIRA MANAGEMENT SERVICES PRIVATE LIMITED is the tenant as per the lease agreement.

As per para (B) of the lease agreement, the second party that is Nspira Management Services Private Limited is a company registered under the Companies Registration Act 1956 with its registered office at Madhapur Hyderabad and registered with the Ministry of Corporate Affairs to carry on the business of assistance with management of educational institutions and providing educational allied management services to its customers spread in various states. Nspira Management Services Private Limited approached the appellant to take a part of the said premises on leasehold basis for the purpose of starting its student hostel for a period of 7.11 years out of which initial 2.11 years is lock-in period.

From the above said facts of the lease agreement, it is clear that the tenant, Nspira Management Services Private Limited is a commercial entity providing management services and in the course of its business activity has taken the said premises on lease. The company has not used the said premises as its residence but has sublet it to M/s Narayana Educational Society for furtherance of business.

Further, to corroborate the argument that the premises in question, Hostel in the instant case, is definitely different from a place of residence, enquiries were made and the following are observed.

The lessee M/s. Nspira Management Services Private Limited has sub-leased the said premises to M/s. Narayana Educational Society to accommodate their students. Further, the said Narayana Educational Society are running / maintaining a 'MESS' to cater to the needs of their 'inmates' in a building adjacent to the said hostel building. Thus, it is clear that, the sub-lessee i.e. M/s. Narayana Educational Society is providing a 'bundled service' i.e. a bundle of 'Renting of accommodation' and 'supplying food and beverages service' to their 'inmates I students / clients'. In 'Guest House / Hotel / Inn etc.' the same services are provided. This is the basic difference between a 'place of Residence' and a 'Hotel / Guest House / Inn etc.'. The Place of residence, in common understanding is premises rented out / leased out to a person, where that person resides, cooks

food, consumes it and 'LIVES'. Generally 'No provision for supply of Food' is existing with reference to a 'Place of Residence'. Therefore, in the instant case, the premises is put into use which is more akin to a 'Hotel / Guest House / Inn etc.' and definitely different from a 'Place of Residence' in common understanding.

The exemption on "services by way of renting of residential dwelling for use as residence" envisaged under the said notification is conditional and restricted only the recipient of the services and NOT beyond. In other words, supply is the fulcrum of GST, the transaction of supply (with regard to appellant) ends with the recipient of services only, in so far as the GST is concerned. Now, from the lease document, it is clearly known that the lessee is not going to use the rented property as 'residence' by himself but only going to sub-lease or rent out to others like students of educational institutions, etc., for their use.

In the field of taxation, the legislature enjoys greater latitude in classification. [ State of Madhya Pradesh Vs Rakesh Kohli & Anr [( 2012 (6) SCC 312], The Constitution bench of Hon'ble Supreme Court in the case of Commissioner of Customs (Import), Mumbai v. Dilip Kumar & Company [ 2018 (361) E.L.T. 577 (S.C.)], while answering the question, 'what is the interpretative rule to be applied while interpreting a tax exemption provision/notification when there is an ambiguity as to its applicability with reference to the entitlement of the assessee or the rate of tax to be applied?' held that

"52. To sum up, we answer the reference holding as under:-^

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

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

As per the above settled position of law and under the given circumstances and factual evidences produced, it is clear that the exemption is specific and particular about the housing residence sector and NOT commercial spaces which are rented out.

Further, attention is drawn to the judgment passed by The Hon'ble Supreme Court of India in the case of M/s. Rohit Pulp and Paper Mills Ltd. Vs. Collector of Central Excise [1990 (47) ELT - 491 (SC)], as reproduced herewith:

" in interpreting the scope of any notification, the Court has first to keep in mind the object and purpose of the Notification. All parts of it should be read harmoniously in aid of, and not in derogation of that purpose ".

Therefore, in order to implement the notification, it is necessary to keep in mind the purpose and the objective of notification. The relevant portion of Notification No.12/2017 CT (R) Dated 28.06.2017 is reproduced herewith:

Serial No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (Per. Cent)	condition
12	Heading 9963 Or Heading 9972	Services by way of renting of residential dwelling for use as residence	NIL	NIL

From the above, it is clear that the purpose and objective of the notification is nothing but to avoid taxing residential properties taken on rent by family or individuals and NOT by commercial entities.

The objective of the government was amply re-iterated by Notification No. 04/2022-CT(R) dated 13.07.2022, which made amendments to Notification No. 12/2017- CT(R) Dated 28.06.2017. Relevant portion is reproduced herewith:

(b) against serial number 12, in column (3), after the words "as residence", the following words "except where the residential dwelling is rented to registered person" shall be inserted.

After this amendment the relevant 'Description of Services' is

" Services by way of renting of residential dwelling for use as residence except where the residential dwelling is rented to registered person ",

Following the Hon'ble Supreme Court of India in the above cited judgment, It is clear that, the appellant is not eligible for the benefit of exemption provided vide Notification No.12/2017 CT(R) Dated 28.06.2017.

Further, unless the twin conditions of 'renting of residential dwelling' for 'use as residence,' being inter-twined and inseparable, are not met, the exemption is not available. As per settled law, in taxation laws, especially when exemptions or concessions or benefits are to be availed, the interpretation is to be literally and strictly construed and not in liberal terms.

If there is a conditional exemption in GST based on end-use, the end-use has to be determined with respect to facts and for the recipient of the services only from the supplier directly and it is not for the department to see how the services are finally put to use by the recipient in turn and so on. In the instant case there is no evidence to show that either the building was a residential dwelling or it is going to be put to use as residence for himself by the lessee as discussed in detail above. The lower authority has considered all the facts and details of the case and examined them in the light of the relevant provisions of the APGST Act and Rules 2017 along with relevant notifications while deciding the case. In the light of the above discussions, we are unable to interfere with the AAR's order and therefore, pass the following ruling.

### **ORDER**

We confirm and uphold the ruling given by the Advance Ruling Authority of Andhra Pradesh in this case.

Sd/-

Sanjay Pant

Chief Commissioner (Central Tax)

Member

Sd/-

M. Girija Shankar

Chief Commissioner (State Tax)

Member