

Whether PG/Hostel Rent paid by inhabitants qualify for GST exemption, since they are used as residential dwelling? Exemption entry No. 12 of Notification No.9/2017 dated 28th September 2017. HELD PG/Hostel Rent paid by inhabitants do not qualify for GST exemption under SI No. 12 of Notification No. 12/2017-Central Tax (Rate) as the services provided by applicant are not akin to renting of residential dwelling for use as residence. (2) Whether the charges collected towards allied additional services provided by the LLP would be considered as a bundled service along with the service of providing of Hostel/Paying guest? HELD The allied additional services provided by the LLP are not naturally bundled services with the applicant's Hostel/Paying guest accommodation service. (3) Whether GST on reverse charge will be applicable on the rental to be paid to the landowners? HELD GST on reverse charge will be applicable on the rental to be paid to the landowners by the applicant as the services of the applicant are leviable to GST and thus the applicant has to obtain GST registration.

Advance Ruling No. KAR ADRG 25/2023, Dated 13th July, 2023

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

Present:

1. Dr. M.P.Ravi Prasad

Additional Commissioner of Commercial Taxes Member (State)

2. Sri. Kiran Reddy T

Additional Commissioner of Customs & Indirect TaxesMember (Central)

1.	Name and address of the applicant	M/s. SRISAI LUXURIOUS STAY LLP, #19, Block A, CIL Layout, Sanjay Nagar, Bengaluru - 560 094.
2.	GSTIN or User ID	292300000597ARI
3.	Date of filing of Form GST ARA-01	29-03-2023
4.	Represented by	Sri. B H Ramanatha Pai, C A & Authorised Representative
5.	Jurisdictional Authority -Centre	-Not Applicable-
6.	Jurisdictional Authority -State	-Not Applicable-
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. DC2901230380271 dated 22.01.2023.

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

M/s. Srisai Luxurious Stay LLP (herein after referred to as 'Applicant'), #19, Block A, CIL Layout, Sanjay Nagar, Bengaluru - 560 094, an unregistered person, have filed an application for Advance Ruling, vide user id 292300000597ARI, 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.

2. The applicant is a Limited Liability Partnership (LLP) firm under the provisions of the LLP Act 2008, having registered office at #160, 5th Main, 4th Cross, NGEF Layout, Sanjay Nagar, Bengaluru-560094 and also having PAN number AEAFS6168R. They stated that they are into the business of developing, running, subletting and managing paying guest accommodation, service apartments, flats aimed to suit all types of customers by whatever name called.

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

a. Whether PG/Hostel Rent paid by inhabitants qualify for GST exemption, since they are used as residential dwelling?

Exemption entry No. 12 of Notification No.9/2017 dated 28th September 2017.

b. Whether the charges collected towards allied additional services provided by the LLP would be considered as a bundled service along with the service of providing of Hostel/Paying guest?

c. Whether GST on reverse charge will be applicable on the rental to be paid to the landowners?~

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" and "Determination of the liability to pay tax on any goods or services or both", which are covered under Sections 97(2) (b) and (e) respectively of the CGST Act 2017 and hence the instant application is admissible.

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

5.1 The applicant stated that the LLP has been employed with the main objective to carry on, within India, the business of developing, running, maintaining, operating, setting up, owning, dealing in buying, selling, renting, subletting and managing paying guest accommodations, service apartments, flats aimed to suit all types of customers by whatever name called.

5.2 The applicant LLP has specifically focused on provision of Boarding and Lodging facilities to the inhabitants and also ancillary services to the inhabitants which are as under:-^

a. Meals which includes Breakfast, Lunch and Dinner.

b. Fully furnished rooms

c. Round the clock security guards at the premises

d. House Keeping facilities.

f. Washing Machine facilities Television in each room

g. Internet facilities (WIFI available)

h. Vehicle parking facilities.~

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

6.1 Notification No.4/2022-Central Tax (Rate) dated 13.07.2022 has been issued for removal of entry number 14 of Notification No. 12/2017-Central Tax (Rate), which was relevant to the exemption of GST on the accommodation services, of charges up to Rs. 1,000/- per day, provided by hotels, clubs, campsites etc. and this removal comes into existence with effect from 18.07.2022.

6.2 Post this notification, the tax rate of 12% has been levied on renting of accommodation for hotel/inn/guesthouse etc. But the Honble 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 13.04.2023

7. Sri. Ramanatha Pai, 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 stated that they are into the business of managing Paying Guest Accommodation, in addition to the other businesses, to suit all type of customers by whatever name called. They also stated that they are specifically focused on provision of Boarding and Lodging facilities for inhabitants and also provide the following ancillary services to the inhabitants.

a. Meals which includes Breakfast, Lunch and Dinner.

- b. Fully furnished rooms
- c. Round the clock security guards at the premises
- d. House Keeping facilities.
- e. Washing Machine facilities
- f. Television in each room
- g. Internet facilities (WIFI available) h. Vehicle parking facilities.~

11. The applicant submitted that all the facilities mentioned above are included in the tariffs that are charged to the customers and the monthly tariff ranges from Rs.6,900/- to Rs. 12,500/-. They further emphasized that the tariff range is based on the following factors.-^

- a) Size of the room taken by the inhabitant
- b) Number of people sharing the room
- c) Invoices per bed are raised on monthly basis depending on the occupation of the inhabitants.~

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 PG/Hostel Rent paid by inhabitants qualify for GST exemption, since they are used as residential dwelling? Exemption entry No. 12 of Notification No.9/2017 dated 28th September 2017.

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	Services by way of renting of residential dwelling for use as residence [except where the residential dwelling is rented to a registered person]. [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, - (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 Heading 9963 or Heading 9972 (ii) such renting is on his own account and not that of the proprietorship concern.]	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 2 of column 15 of the application, admitting that they provide Boarding and Lodging facilities to the inhabitants of the hostel, claims that the immovable property being used for providing accommodation is a residential dwelling & 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. In the instant case, the applicant in his own admission claims to be providing PG/hostel services which inter alia refer to 'paying guest accommodation/hostel' services and are akin to guest house and lodging services and therefore can't be termed as 'residential dwelling'.

16. Further, the applicant claims to be taking a residential dwelling on rent and creates partitions and arranges cots which are then given on rent to inhabitants. Such partitioned rooms are shared by one or more un-related inhabitants. Applicant charges the inhabitants as per the number of people sharing the room. From the above it is apparent that the accommodation provided to the inhabitant is not a residential dwelling but a room; un-related people share the said room and invoices are raised per bed on monthly basis are not characteristic of a residential dwelling. It thus appears that the applicant is not providing service of renting of residential dwelling.

17. Further, it is also an admitted fact that the accommodation being provided by the applicant, out of the immovable property taken on rent and 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 is 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. We also find that the applicant in his own case (in the earlier application filed for advance ruling - Ruling No. KAR/ADRG 20/2020 dated 31-03-2020) admitted that the services being provided by them are covered under the services of a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes and thereby claimed exemption from GST in terms of entry No. 14 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2022. The applicant, though provides the same services, now contends that their services are covered under "services by way of renting of residential dwelling for use as residence" as the said entry No 14 has been removed from the Notification No. 12/2017 supra. In view of the above, it is evident that the applicant contends in a way which is completely contradictory to their own admission, apparently to circumvent the tax liability.

19. 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 under dispute in the WP No. 14981/2020, before 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 immovable property taken on rent by the applicant and the same is partitioned and rented such partitions by arranging cots with common bathroom. Thus the issues are different and hence the Hon hie High Court of Karnataka's judgment is not squarely applicable to the instant case.

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

21. Now we proceed to consider the second question i.e. Whether the charges collected, towards allied additional services provided by the LLP would be considered as a bundled service along with the service of providing of Hostel / Paying guest.

The Applicant submitted that they also provide the allied additional services to the inhabitants and thus sought for advance ruling as to whether the said additional services to be considered as bundled services along with the service of hostel/paying guest. The applicant did not provide the details of additional services, but provided the following list of ancillary services. They perhaps are referring these services only as allied additional services.~^

a. Meals which includes Breakfast, Lunch and Dinner.

b. Fully furnished rooms

c. Round the clock security guards at the premises

d. House Keeping facilities.

e. Washing Machine facilities

f. Television in each room

g. Internet facilities (WIFI available)

h. Vehicle parking facilities.~

22. The applicant intends to know whether the aforesaid services are naturally bundled with their main supply of

hostel/paying guest service or not. Natural bundle has the characteristics where one of the services is the main service and the other services combined with such service are incidental or ancillary services which helps in better enjoyment of the main service. There are several other factors to determine if various services are naturally bundled or not- like if there is a single price for all the combined services or the combined services are advertised as a single package or the combined services cannot be separated. Important point to consider is that the different elements are integral to one overall package/service i.e. if one or more service is removed then the nature of the package would be affected.

23. The applicant has not furnished any information as to whether these facilities/services are integral part of main supply of hostel/paying guest accommodation or not. Nevertheless it is evident from the nature of the additional services that they are optional and all inhabitants may not opt for the said services. An inhabitant without a vehicle does not require vehicle parking facility; some of the inhabitants may not opt for food i.e. breakfast etc., washing machine facility, television etc. Thus these are the optional facilities / separate services and hence can't be naturally bundled services as an inhabitant can still stay at the hostel without utilizing these facilities. Therefore these facilities do not affect the main supply i.e. the main supply would not be affected even if one or more of these services are not provided and thus these facilities/services are not naturally bundled with the main supply of hostel/paying guest accommodation and are separate services which need to be taxed separately.

24. Now we proceed to consider the third question i.e. Whether GST on reverse charge will be applicable on the rental to be paid to the landowners?

The applicant's reference to "landowners" in the question appears to be with regard to the owners of the building which is claimed as residential dwelling. In this regard we invite reference to the Notification No. 13/2017-Central Tax(Rate) dated 28.06.2017, as amended. A new entry no. 5AA in RCM Notification No. 13/2017 - CT(R) has been inserted vide Notification No.05/2022 - CT(R) w.e.f. 18/07/2022 to provide GST on rent on residential property under reverse charge, which is as under:

Sl.No.	Category of supply of services	Supplier of service	Recipient
(1)	(2)	(3)	(4)
5AA	Service by way of renting of residential dwelling to a registered person	Any person	Any registered person

Tenant, who is a registered person, is liable to pay GST on rent on Residential property as per RCM Notification No. 13/2017 - CT(R) as amended vide Notification No.05/2022 - CT(R).

The tax liability on the applicant's services of hostel/paying guest accommodation has been ruled at para 17 above and thus the applicant has to obtain GST registration and discharge the GST liability. Thus the applicant becomes a registered person and the RCM notification, as amended, is applicable to the applicant and hence they have to discharge the GST liability @ 18% under RCM, as discussed above.

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

RULING

- a) PG/Hostel Rent paid by inhabitants do not qualify for GST exemption under SI No. 12 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, as the services provided by applicant are not akin to renting of residential dwelling for use as residence.
- b) The allied additional services provided by the LLP are not naturally bundled services with the applicant's Hostel/Paying guest accommodation service.
- c) GST on reverse charge will be applicable on the rental to be paid to the landowners by the applicant as the services of the applicant are leviable to GST and thus the applicant has to obtain GST registration.

(Dr. M.P.Ravi Prasad)

Member

Place: Bengaluru

Date: 13-07-2023

(Kiran Reddy T)

Member