

## Leasing of residential premises as hostel is eligible for exemption under GST – Karnataka HC

2 March 2022



## Summary

The Karnataka High Court (HC) has held that exemption on residential dwelling under the Goods and Services Tax (GST) will be applicable even if the lessee does not use the premises. The HC stated that it is nowhere mentioned in the notification that a lessee needs to occupy the residence itself to avail the exemption. The HC observed that the hostel falls within the purview of residential dwelling, as the same is used for the purpose of residence. Hence, the HC ruled that the petitioner is entitled to avail the benefit under the exemption notification. Thus, leasing of residential premises as hostel to students and working professionals will not attract GST.

## Facts of the case

- The petitioner<sup>1</sup> is a co-owner of a residential property who, along with other co-owners, had executed a lease deed.
- The lessee<sup>2</sup> further leased out the residential property as hostel to provide long-term accommodation to students and working professionals.
- The petitioner placed reliance on exemption notification<sup>3</sup> which included renting of residential dwelling for use as residence.
- The petitioner contended that the students use hostel for residential purposes for long term stay and, thus, it has to be treated as residential accommodation.
- The petitioner's application before the Karnataka Authority for Advance Ruling (AAR) and Karnataka Appellate Authority for Advance Ruling (AAAR) was dismissed stating that property rented out by the petitioner cannot be termed as residential dwelling. Further, 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, the petitioner has preferred present writ<sup>4</sup> before the Karnataka High Court.

## Karnataka HC observations and ruling<sup>5</sup>:

- **Meaning of residential dwelling:** The term 'residential dwelling' has not been defined under the GST Act, whereas, under the erstwhile laws<sup>6</sup>, residential dwelling was defined to mean any residential accommodation and is different from hotel, motel, etc., which is meant for temporary stay. It has been held by the Supreme Court<sup>7</sup> that residence means a place where a person eats, drinks and sleeps and he/she may or may not own it. In hostels, the duration of stay is more as compared to hotels, guest houses, clubs, etc.
- **Meaning as per dictionaries:** Since the word is not defined in the Act, it is permissible to refer to the dictionary to find out the general sense. Upon referring the meaning of the word 'residence' and 'dwelling' in famous dictionaries<sup>8</sup>, it is evident that both

<sup>1</sup> Taghar Vasudeva Ambrish

<sup>2</sup> D Twelve Spaces Private Limited

<sup>3</sup> Notification No.9/2017 -Integrated Tax (Rate) dated 28.06.2017

<sup>4</sup> W.P. No.14891 of 2020 (T-RES)

<sup>5</sup> Order dated 7 February 2022

<sup>6</sup> Education guide issued by Central Board of Indirect Taxes and Customs

<sup>7</sup> Kishore Chandra Singh Vs Babu Ganesh Prasad Bhagat AIR 1954 SC 316

<sup>8</sup> Concise Oxford English Dictionary 2013 Edition as well as Blacks Law Dictionary 6th Edition

these have more or less the same meaning in common parlance. It does not mean that residential dwelling excludes hostels used by students and working women for residential purposes.

- **Eligible for availing benefit under exemption notification:** The hostel rented to students and working professionals for the purposes of residence falls under the purview of residential dwelling. The exemption does not require the lessee itself to use the premises as residence. Therefore, benefit of exemption notification cannot be denied on the ground that lessee is not using the premises. The finding of Karnataka AAR that the hostel accommodation is more akin to 'sociable accommodation' is unintelligible, irrelevant and liable to be set aside. Therefore, the petitioner is entitled to avail benefit of exemption from GST.

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<sup>9</sup> 2005 (5) TMI 682 - Supreme Court  
<sup>10</sup>1981 (10) TMI 188 - Supreme Court

### Our comments

The Apex Court, in case of Bhagwan Dass,<sup>9</sup> had held that the aspect of residence can be determined based on the duration of the stay in the premises.

Similar judgment was also pronounced by the Apex court in case of Jeewanti Pandey v. Kishan Chandra Pandey,<sup>10</sup> wherein it was held that residence is more or less of a permanent character and it means a place where a person permanently resides and not a place where he casually visits.

Even the West Bengal AAR, in case of Borbheta Estate Pvt. Ltd.,<sup>11</sup> had held that since the dwelling units were being used for residence, irrespective of whether they are let out to individuals or a commercial entity, the service of renting/leasing out the dwelling units for residential purpose is exempt.

In line with the above, in the present case, the HC has held that a hostel falls within the purview of residential dwelling and is being used for the purposes of residence.

<sup>11</sup> Case Number 21 of 2019 Order No. 13/WBAAR/2019-20

Earlier, under the service tax regime<sup>12</sup>, till 30 June 2012, services provided by hotels, inns etc., were taxable, subject to the duration of accommodation having less than three months. In case, accommodation period was continuously more than three months, then it was specifically excluded from the definition of taxable service.

GST exemption on leasing of residential premise as hostel is an important and approachable decision which may bring required relief and set precedents in similar pending matters.

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<sup>12</sup>Section 65(105) (zzzzw) of the Finance Act 1994, effective up to 30th June, 2012

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