

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

Advance Ruling No. KAR ADRG 17/2020

Dated :23-03-2020

Present:

1. Dr.M.P.Ravi Prasad
Addl. Commissioner of Commercial Taxes Member (State Tax)
2. Sri.Mashhood Ur RehmanFarooqui,
Joint Commissioner of Central Tax, Member (Central Tax)

1.	Name and address of the applicant	Sri. Taghar Vasudeva Ambrish, #8/2, 36 th Cross, 11 th A Main, 4 th T Block, Jayanagar, Bangalore, Karnataka – 560 041.
2.	GSTIN or User ID	29AHKPA8401C1ZQ
3.	Date of filing of Form GST ARA-01	06.12.2019
4.	Represented by	Sri. Taghar Vasudeva Ambrish
5.	Jurisdictional Authority – Centre	Bengaluru South Commissionerate
6.	Jurisdictional Authority – State	LGSTO-090, Bengaluru
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs.5,000-00 under CGST Act vide CIN No. HDFC19122900051678, dtd.06.12.2019 and Rs 5,000-00 under SGST Act vide CIN No. HDFC19082900414756dtd23.08.2019

**ORDER UNDER SUB-SECTION (4) OF SECTION 98 OF CENTRAL GOODS AND
SERVICES TAX ACT, 2017 AND UNDER SUB-SECTION (4) OF SECTION 98 OF
KARNATAKA GOODS AND SERVICES TAX ACT, 2017**

1. Sri. TagharVasudevaAmbrish,#8/2, 36th Cross, 11th“A” Main, 4th T Block, Jayanagar, Bengaluru,having GSTIN number 29AHKPA8401C1ZQ, have filed an application for Advance Ruling under Section 97 of the CGST Act,2017 read with Rule 104 of CGST Rules, 2017 and Section 97 of the KGST Act, 2017 read with Rule 104 of KGST Rules 2017 & KGST Rules 2017, in FORM GST ARA-01 discharging the fee of Rs.5,000/- each under the CGST Act and the KGST Act.

2. The applicant states that he is a proprietary concern registered under the provisions of the Goods and Services Act, 2017. The applicant states that engaged in

the business of providing affordable residential accommodation to students on a long term basis (starting from 3 to 11 months).

3. The applicant has sought advance ruling in respect of the following questions:

1. *Whether exemption prescribed under entry number 13 of notification no. 9/2017- integrated tax (rate) dated. 28th June, 2017 can be sought and the lessors (here Ambrish Vasudeva and 4 others) need not charge GST while issuing the invoice for the lease service to m/s. DtwelveSpaces Pvt. ltd.*

2. *Whether the lease service falls under the Exemption prescribed and can be described as “Services by way of renting of residential dwelling for use as residence”? as listed in the aforesaid Notification.*

4. The applicant furnishes some facts relevant to the stated activity.

- a. The applicant along with four others collectively has let out a Residential complex to M/s. D. Twelve Spaces Pvt. Ltd which is engaged in the business of providing affordable residential accommodation to students on a long term basis (starting from 3 to 11 months). Along with such accommodation, the Company is also engaged in providing a host of other services such as maintenance, food, Wi-Fi etc. generally called as a Paying Guest Accommodation.
- b. The applicant contends that “renting of immovable property” is covered under Schedule II of CGST Act 2017 which defines it as the supply of services on which the applicable GST rate is 18%.
- c. The applicant further states that Schedule II enlists activities to be treated as supply of goods or as supply of services. Entry 2(b) reads as any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly, is a supply of services.
- d. The applicant further refers to the Notification No. 9/2017-Integrated Tax (Rate) dated 28th June, 2017 in which certain exemptions have been prescribed for specified activities. Entry 13 of such Notification provides that: “Services by way of renting of residential dwelling for use as residence” are exempt from GST.
- e. Further M/s. DTwelve Spaces Pvt. Ltd. has entered into sub lease agreement with students for providing residential accommodations with living amenities, security, entertainment facilities for a long stay for a period varying from 3 months to 11 months. Thereby, DTwelve has concluded that the rental

accommodation services provided by DTwelve to the students will not attract GST. Consequently, there would be no GST obligation on DTwelve in case of lease arrangement with their lessor too (Here Ambrish Vasudeva and 4 others). Therefore, DTwelve is of the opinion that the lessor should not charge GST to DTwelve when issuing the invoice for the lease service.

5. Regarding the relevant facts that have a bearing on the questions raised, the applicant states as under:

- a. Schedule II enlists activities to be treated as supply of services. Entry 2(b) reads as any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly, is a supply of services.
- b. Section 2(17) of the CGST Act 2017 defines "business" as:

"business" includes –

- a. any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for pecuniary benefit;
- b. any activity or transaction in connection with or incidental or ancillary to sub-clause (a);
- c. any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;
- d. supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;
- e. provision by a club, association, society or any such body (for a subscription or nay other consideration) of the facilities or benefits to its members;
- f. admission, for a consideration, of persons to any premises;
- g. services supplied by a person as holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;
- h. services provided by a race club by way of totalizator or a license to bookmaker in such club;
- i. any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities."

- c. The applicant states that Section 7 of the CGST Act defines the scope of supply. The expression "supply" include all forms of supply such as lease, rental made or



agreed to be made for a consideration by a person in the course or furtherance of business. Section 7(1-A) guides in determining whether a supply shall be treated as supply of goods or supply of services as referred to in Schedule II. The applicant states that Schedule II provides that Entry 2(b) reads as any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly, is a supply of services. The applicant states that as they, Ambrish Vasudeva along with four others have let out a residential complex to M/s Dtwelve Spaces Pvt. Ltd. to conduct their business are of the view that GST should be charged for invoices raised towards lease service.

PERSONAL HEARING: / PROCEEDINGS HELD ON 09.01.2020

6. The applicant, Sri. T.V. Ambrish, Proprietor of the above concern appeared for personal hearing proceedings on 09.01.2020 before this authority.

FINDINGS & DISCUSSION

7. We have considered the submissions made by the Applicant in their application for advance ruling as well as the submissions made by Sri. T.V. Ambrish, Proprietor of the above concern appeared for the personal hearing. We have also considered the issues involved, on which advance ruling is sought by the applicant, and relevant facts.

7.1 At the outset, we would like to state that the provisions of both the CGST Act and the KGST 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 KGST Act.

7.2 The copy of the lease deed entered between the lessors, of which the applicant is one of the them and the Dtwelve Spaces Private Limited (hereinafter called as "Company") shows that the lessors (totally five in number) have collectively leased out their premises to the Company by way of a single agreement. Each of the lessor has owns a part of the property and they have pooled up their properties and then leased it to the Company. Further, the agreement is a single agreement and the description of the leased premises also shows that the property consists of "42 room along with the 2400 sq.ft of terrace area" on the execution date. The terms and conditions for the transaction is common and the agreement is for the entire property. Further, para 7.1 of the agreement shows very clearly that the consideration for the contract is settled at Rs.xxx per month. The consideration payable is paid to the bank accounts at a fixed

percentage of that monthly rent. This clearly shows that the contract is for the entire property and the lessors have pooled their individual properties into a single one and then given the same as a single piece, and even the sharing of the rent is only an apportionment of the common income.

7.3 The para 12 of the agreement also proves that the entire property is let out as the lessee has taken the total property from the lessors and has the right to sub-lease to any third party. All the terms and conditions are applicable to the total property and the lessee deals with the total property only.

7.4 In view of the above, it is clear that the applicant is not providing the service in individual capacity to the lessee, but as a part of the group of lessors. The applicant has not provided any details of registration or constitution of the group, whether they have entered into a partnership or association etc. and hence the taxability of the transaction needs to be examined in this background.

8. Regarding the nature of the transaction, it is seen from the agreement that lessors are providing the service of leasing / renting of the immovable property for a consideration. The reasons are as under:

- a. The lessor, of which the applicant is a part, is providing the right to use the immovable property without transfer of the ownership of the immovable property. For this transaction, they are collecting an amount which is the consideration for such transfer of right to use the property. This is in the course or furtherance of business and hence as per Section 7(1) of the CGST Act, 2017, the transaction between the lessor and the Company would constitute a "supply". Further, this would be a supply of service as per section 7(1-A) of the CGST Act, 2017 read with the entry no. 2(b) of the Second Schedule to the CGST Act, 2017, which reads as under:

"(b) any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly, is a supply of services."

- b. Hence the lessor, of which the applicant is a part, is providing services of leasing of a building for business or commerce to the Company. The applicant is not individually providing this service, but as a group of persons they are providing the services, after pooling in their assets. As could be noticed from the agreement, the contract is not between the individuals and the Company, but between the group of individuals and the Company, which needs to be highlighted.

-Since, the applicant is not providing service to the Company, but as a part of the group, for the transaction between the Group and the Company, invoice needs to be issued by the Group to the Company and the transaction between the individuals and the Group are a different transactions, as the individuals are distinct from the Group of Individuals. The exact nature of the group cannot be ascertained and it is not a question and hence it is not answered. It is suffice here only to rule that the question of charging or not charging GST for the transaction between the applicant and the Company does not arise as the applicant himself is not effecting any supply of service to the Company directly.

9. Regarding the first question, the related entry is verified and found that the same reads as under:

“Entry 13. Heading 9963 or Heading 9972 – Services by way of renting of residential dwelling for use as residence”

This is related to “renting of residential dwelling” “for use as residence”. The contract of the applicant group with the Company is verified and found that what is given is an immovable property consisting of only rooms with attache toilets as per the Layout of the leased premises annexed to the Lease agreement and does not fit into the meaning of a dwelling which means a house. They are like hotel rooms and the entire leased premises has 42 rooms, which can by no imagination be termed as a residential dwelling. Even if the same is given for residential purposes, the services provided is not for use as residence by the lessee. Services by a hotel, inn, guest house, clubsite or campsite, by whatever name called, or other commercial places for residential or lodging purposes are covered by different entries in the schedule of this notification or under different notifications and this shows that rooms though given on rent for residential purposes would not amount to residential dwelling and hence the entry is not applicable for the transaction of the lessor with the lessee.

10. Regarding the second question in para 3 above, the same has been discussed in para 9 above and is answered in negative.

11. In view of the foregoing, we rule as follows

RULING

1. The exemption prescribed under entry no.13 of Notification No.9/2017 – Integrated tax (Rate) dated 28th June 2017 cannot be sought and the lessors (as

an entity) have to charge GST while issuing the invoice for the lease services to M/s DTwelve Spaces Pvt. Ltd, provided they are registered under the GST Act.

2. The lease services does not fall under the exemption "Services by way of renting of residential dwelling for use as residence" as listed in entry 13 of Notification No.9/2017 – Integrated tax (Rate) dated 28th June 2017.

(Dr.M.P.RaviPrasad)

MEMBER

Karnataka Advance Ruling Authority

Place : Bengaluru - 560 009

Date : 23.03.2020

(Mashhood ur RehmanFarooqui)

MEMBER

Karnataka Advance Ruling Authority

Bengaluru - 560 009

To,

The Applicant

Copy to :

The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.

The Commissioner of Commercial Taxes, Karnataka, Bengaluru.

The Commissioner of Central Tax, Bangalore South Commissionerate, Bengaluru.

The Asst. Commissioner, LGSTO-090 ,Bengaluru.

Office Folder.

