

# Hostel services amounts to renting of residential dwelling

## *Thai Mookambikaa Ladies Hostel v. UOI*<sup>1</sup>

The Hon'ble Madras High Court ('the Court') in a recent ruling has set aside the order of Tamil Nadu State Authority for Advance Ruling ('the Respondent') and held that hostel services for residential accommodation qualify as renting of residential dwelling and hence, exempt from GST.

### Facts of the case:

- Thai Mookambikka Ladies Hostel ('the Petitioner') is engaged into the business of running private hostels (providing residential accommodation and food facility) to the college students and working women on monthly basis with reasonable tariffs.
- Relying upon entry 12 of Notification No. 12/2017-Central Tax (Rate) dated June 28, 2017 ('Exemption Notification') which exempts services by way of renting of residential dwelling for use as residence, the Petitioner filed an application before the Respondent seeking a ruling on taxability of its hostel services.
- The Petitioner also placed reliance on the decision of Hon'ble Division Bench of Karnataka High Court in the case of *Taghar Vasudeva Ambrish v. Appellant Authority for Advance Ruling, Karnataka*<sup>2</sup>, which held that leasing out residential premises as

hostel to students and working professionals is exempt from GST under the entry of 'Services by way of renting of residential dwelling for use as residence'.

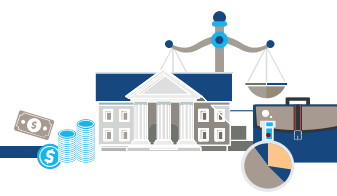
- Towards the said application filed, the Respondent passed an order stating that the hostel building cannot be considered as residential dwelling and therefore such services do not fall under the purview of entry 12 of the Exemption Notification. Aggrieved by the same, the Petitioner preferred the present petition.

### Petitioners' contention:

- The phrase residential dwelling has not been defined under the GST Law and therefore in normal trade parlance it means 'any residential accommodation' but does not include hotel, inn, guest house, or like places meant for temporary stay.
- Karnataka High Court in *Taghar Vasudeva Ambrish* (supra) held that expression 'residence' and 'dwelling' have similar connotation in common parlance and therefore meaning assigned to the expression 'residential dwelling' can be used for hostel used for residential purposes.

<sup>1</sup> 2024-VIL-261-MAD

<sup>2</sup> 2022-VIL-110-KAR



### Revenue's contention:

- Petitioner is letting out a single room to various inmates for various time period for a pecuniary benefit as part of their business. Moreover, they are not entering any rental agreements with the inmates for transfer of rights of the specified place for a specific period and hence, it does not cover the definition of 'residence' which is controlled by the Tamil Nadu Rent Regulation Act.
- Normally, renting of residential dwelling does not include amenities like food, housekeeping, or laundry whereas hostel is nothing but an establishment providing accommodation services along with ancillary services against a consideration.
- Also, the ruling of Karnataka High Court in the case of Taghar Vasudeva Ambrish (supra) cannot be relied upon in the instant case, as the same is sub judice before the Hon'ble Supreme court.

### Discussion and findings:

- The Respondent concluding that the hostel services does not qualify for residential dwelling for use as residence has failed to consider the actual use of the said premises by the inmates of the hostels i.e. residential or commercial use.
- To determine the taxability, is it relevant to determine the purpose or the end use. Since renting of residential unit attracts GST only when it is rented for commercial purposes, exemption can be claimed if the nature of end use is residential, and the same cannot be decided by the nature of property.
- Thus, levy of GST on residential accommodation should be viewed from the perspective of recipient of service and not from the perspective of service provider. Since the end use of hostel rooms is residential in nature, it squarely gets covered under the exemption notification.
- Apart from entry 12 of the Exemption Notification which refers to the services provided by way of renting of residential dwelling for use as residence,

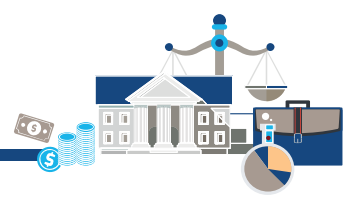
there is specific Entry 14 which provides for services by hotel, motel, inn, guest house etc for which exemption to a certain limit was earlier granted but was later withdrawn. Thus, the legislature had intentionally not included hostels so as to bring it into the tax net.

- The Court signified that the purpose of the exemption notification is to lessen burden of tax on dwellers who are occupants of residential premises, held that the Petitioner has fulfilled the condition of 'residential dwelling for use as residence and hence renting of hostel rooms are exempt from GST.

### Dhruva Comments:

The ruling focusses on the end usage of the residential property to determine the taxability of hostel services. It also creates a strong distinction between a hotel *vis-à-vis* the hostel services and carves out that the imposition of GST on the hostel accommodation should be viewed from the perspective of the recipient of service, and not the service provider.

That said, the final verdict on the taxability of hostel services shall be given by Supreme Court whereby the challenge to the Karnataka High Court order in Taghar Vasudeva Ambrish (supra) is admitted and pending for decision.





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