

**KARNATAKA APPELLATE AUTHORITY FOR ADVANCE RULING
6TH FLOOR, VANIJA THERIGE KARYALAYA, KALIDASA ROAD,
GANDHINAGAR, BANGALORE – 560009**

**(Constituted under section 99 of the Karnataka Goods and Services Tax Act, 2017 vide
Government of Karnataka Order No FD 47 CSL 2017, Bangalore, Dated:25-04-2018)**

BEFORE THE BENCH OF

SHRI. D.P.NAGENDRA KUMAR, MEMBER

SHRI. M.S.SRIKAR, MEMBER

ORDER NO.KAR/AAAR-01/2020-21

DATE: 31.08.2020

Sl. No	Name and address of the appellant	Sri. TagharVasudevaAmbrish, #8/2, 36th Cross, 11th”A” Main, 4th T Block, Jayanagar, Bengaluru
1	GSTIN or User ID	29AHKPA8401C1ZQ
2	Advance Ruling Order against which appeal is filed	KAR/ADRG 17/2020 Dated: 23rdMarch 2020
3	Date of filing appeal	26-05-2020
4	Represented by	Shri. Atul Gupta CA & Authorised representative
5	Jurisdictional Authority- Centre	Commissioner of Central Tax, Bangalore South Commissionerate. (Range- DSD3)
6	Jurisdictional Authority- State	LGSTO 090, Bangalore
7	Whether payment of fees for filing appeal is discharged. If yes, the amount and challan details	Yes. Challan CPIN No 20052900096822 dt 20.05.2020 for Rs 20,000/-

PROCEEDINGS

(Under Section 101 of the CGST Act, 2017 and the KGST Act, 2017)

1. At the outset we would like to make it clear that the provisions of CGST, Act 2017 and SGST, Act 2017 are in *pari materia* and have the same provisions in like matter 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.



TAGHARVASUDEVAAMBRISH

2. The present appeal has been filed under section 100 of the Central Goods and Service Tax Act 2017 and Karnataka Goods and Service Tax Act 2017 (herein after referred to as CGST Act, 2017 and SGST Act, 2017) by Sri. Taghar VasudevaAmbrish, No 8/2, 36th Cross, 11th"A" Main, 4th T Block, Jayanagar, Bengaluru(herein after referred to as Appellant) against the advance Ruling No. KAR/ADRG 17/2020 dated: 23rdMarch 2020.

Brief Facts of the case:

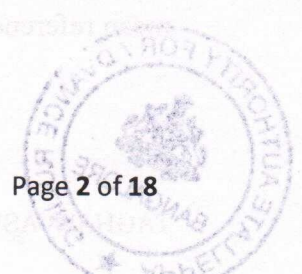
1. Taghar Vasudeva Amrish (*herein after referred to as "the Appellant"*) along with four others namely, Mrs. M. C. Nagarathna, Mr. T. V. Ambarish, Mr. T. V. Nagaraj & Mr. T.V. Anjan (*"joint owners"*) have collectively leased out a multi-storied property constructed at site bearing no. 14, formed in converted Survey No. 68 (Old Survey No. 67), situated at 'Agugodi village, Begur Hobli, South Taluk, Bangalore' to M/s DTwelve Spaces Pvt. Ltd. (*"the lessee"*).

2. The property which has been leased out by the Lessors comprises of a stilt floor (having two rooms) plus ground and four floors with each floor having 8 rooms. The Appellant is the sole and absolute owner of the stilt and ground floor in the building. The first, second, third and fourth floor of the said building is owned solely and absolutely by Mrs. M. C. Nagarathna, Mr. T. V. Ambarish, Mr. T. V. Nagaraj & Mr. T.V. Anjan respectively.

3. The Appellant along with the other four owners have jointly entered into a Lease Deed Agreement with the Lessee on 21st June 2019 in terms of which the above said multi-storied property is leased out for a period of 9 years to the lessee for a consideration of Rs 5,40,000/- per month. The monthly rent is paid to the respective accounts of the lessors in an agreed percentage. The Lessee has obtained the said property on lease for the purpose of sub-leases/sub-licences such residential premises to individuals (including students) for the purpose of long-stay accommodation.

4. The Appellant approached the Authority for Advance Ruling (AAR) seeking a ruling on 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. DTwelve Spaces 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?"

5. The AAR vide its order dated 23rd March 2020 gave the following 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."

6. Aggrieved by the said ruling, the appellant has filed this appeal on the following grounds.

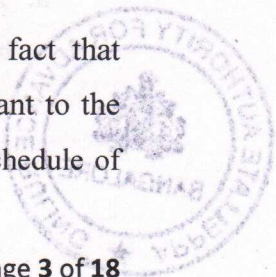
6.1 The observations of Ld. Authority of Advance Ruling, Karnataka vide Order dated 23 March 2020 to arrive at a conclusion that services of Appellant are not covered under exemption entry are as follows:

- That the property so let out by Appellant does not fit into the meaning of residential dwelling and they are like hotel rooms;
- That even if it is considered that the property is let out for residential purposes, the services provided by Lessee is not for use as residence; and,
- Service of Lessee and ultimate use of property is similar to that of hotel, inn, guest house, club site, etc. which is covered under different entry

6.2. They submitted that the following are the *sine qua non* in order to claim exemption under GST by virtue of Entry no. 13 of Notification No. 09/2017 - Integrated Tax (Rate) dated 28 June 2017 -

- a. It must be a service of renting;
- b. The property so let out must be a residential dwelling; and,
- c. Such residential dwelling must be given for use as a residence.

6.3. Regarding the first condition, they submitted that it is an undisputable fact that services of renting of immovable property have *de facto* been provided by Appellant to the Lessee covered under definition of Section 7 read with Entry No. 2(b) of Second Schedule of



CGST Act, 2017 (*"the Act"*), as also recorded by Ld. AAR, Karnataka in Para 8(a) of Order dated 23 March 2020.

6.4. Regarding the other two conditions for claiming exemption, the Appellant submits the property let out by Appellant to the Lessee is 'residential' in nature and must be covered under the term 'Residential dwelling'; that definition of 'residential dwelling' has not been given under GST law. However, under erstwhile Service tax law, 'residential dwelling' was defined in Para 4.13.1 of Taxation of Services: An Education Guide dated 20 June 2012 (*"Education Guide"*) which was issued by CBIC containing clarification on many aspects. Relevant extract is re-produced as below –

"4.13.1 What is a 'residential dwelling'?"

The phrase 'residential dwelling' has not been defined in the Act. It has therefore to be interpreted in terms of the normal trade parlance as per which it is any residential accommodation, but does not include hotel, motel, inn, guest house, camp-site, lodge, house boat, or like places meant for temporary stay."

6.5. It is provided in Education Guide that in normal trade parlance, 'residential dwelling' means any residential accommodation and is different from hotel, motel, inn, guest house, etc. which are meant for temporary stays. It can be deduced from this meaning that any residential accommodation which is used for long term stays can be referred to as 'residential dwelling' for the purposes of Service tax and GST. They submitted that a **'residential dwelling' in the context of Service tax and GST is a place where people live or stay for a considerable period of time and is different from accommodation provided by hotels, inn, guest house, etc.**

6.6. They further submitted that the property under consideration which is let out by Appellant to the Lessee is 'residential' in nature and can be sufficiently covered under the definition of 'residential dwelling' used in exemption entry. To buttress this submission, they put forth the following points–

- a. The intended purpose for which the building was constructed, and the layout plan has been passed is 'residential' in nature. Reference is made to **Layout Plan (LP) bearing no. Ad.com/SUT/1412/14-15 dated 27 May 2015** approved by the Assistant Director of Town Planning (South), Bruhat Bangalore Mahanagara Palike wherein **plot use as**



well as land use zone has been categorically mentioned as 'Residential' multiple times in the plan. Even in the table containing 'Total FAR Built Up Area Statement' the entire FAR belongs to residential area.

b. Further, the Khatha Extract bearing no. BMP/REV/2019-20/KE/1529971 dated 03 January 2020 shows the property as 'residential' in the books/records of Bruhat Bangalore Mahanagara Palike (BBMP).

c. Further, in the Lease Deed dated 21 June 2019, the property which has been rented out to the Lessee is repeatedly been referred to as a residential property.

6.7. The Appellant further submitted that in order to be covered under the definition of 'residential dwelling', another condition to be satisfied is that it must not fall into the meaning of hotel, motel, inn, guest house, camp-site, lodge, house boat, or like places which are meant for temporary stay. Applying the rule of *noscitur a sociis* 'like places' used in definition of 'residential dwelling', it can be said that this term is used for accommodation services, like hotel, motel, etc. only. Thus, they contended that if their property does not fall in any of the above, it shall also not fall within the meaning of 'like places'.

6.8. They submitted that the Lessee to whom residential accommodation has been leased out by Appellant has, *de - novo*, used it for running private hostel/paying guest accommodation, which is evident from the Trade License/permission sought from BBMP. Accordingly, it can be concluded without any iota of doubt that the Lessee is using such property for running Paying Guest Accommodation for ladies.

6.9. They also relied on the Explanatory Notes to the Scheme of Classification of Services released by CBIC wherein, a clear demarcation has been given between services provided by hotel, inn, guest house, etc. for short term accommodation and that provided by hostels or paying guests for long term accommodation. They submitted that, it can be seen that services of accommodation provided by hotel, inn, guest house or similar establishments for short term stay have been kept in SAC 996311 whereas services provided by paying guest accommodation for longer stays including semi - permanent residence are covered under SAC 99632. They submitted that when legislators have themselves created a demarcation between services provided by hotels, inn, guest house or like and those provided by paying guests/hostels, findings of Ld.

AR, Karnataka in Order dated 23 March 2020 that the services provided by the Lessee is in nature of that provided by hotels, motels, inn, guest house or like, is bad in law.

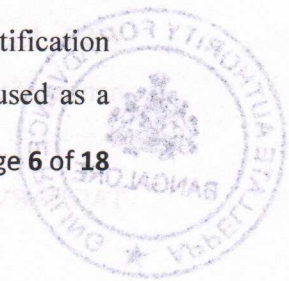


6.10. They also submitted that the type of billing is totally different for both the accommodation services; that all hotel/motel/guest house/inn, etc. providing commercial short – term accommodation, charges its customers on per day basis and the tariff is also declared accordingly whereas the paying guest accommodation or private student hostels providing long term stay, charge monthly rent. The fact that hotels charge on daily basis illustrates the nature of stay as temporary counted on daily basis whereas where the rent is charged lumpsum on monthly basis by paying guest accommodation, it depicts that there is a permanency among residents and intention is not just casual visits for a short period. This billing mechanism itself shows that there is a vast difference between the nature of accommodation provided by the two. Therefore, **property rented out by Appellant must be appropriately covered under the term ‘Residential Dwelling’ used in Entry No. 13 of Notification No. 9/2017 – Integrated Tax (Rate) dated 28 June 2017** since:

- a. The same is a residential property in the records of BBMP which was constructed and approved as a residential building.
- b. The same is covered under ‘residential accommodation’ since it has been rented out by the Appellant for providing accommodation by the Lessee; and,
- c. It is different from the hotel, motel, inn, guest house, etc. as –
 - i. Legislators have themselves created a distinction between services provided by hotel, motel, inn, guest house, etc. and hostels/paying guest by classifying these two services under different SAC, i.e. 996311 and 99632 – Explanatory Notes to the Scheme of Classification of Services;
 - ii. Based on the definitions of all these terms, it can be seen that these two are totally different in the nature of services provided by them.
 - iii. Land zoning regulations of Bangalore also provides that a hotel cannot be operated in residential land zone whereas service apartments covering paying guest accommodation can be run therein; and,
 - iv. Billing pattern of both the services, i.e. per day tariff as compared to monthly rent also substantiate the fact that the nature and duration of stay is different for these two services.



6.11. Regarding the third condition to qualify under exemption Entry No. 13 of Notification No. 09/2017 – Integrated Tax (Rate) dated 28 June 2017, i.e. such property must be used as a



residence; the ultimate usage of the property rented out by Appellant in the hands of Lessee must be seen. They relied on the definition of residence as given by the Hon'ble Supreme Court of India in the matter of **Bhagwan Dass and Ors. v. Kamal Abrol and Ors.**, cited in **MANU/SC/0391/2005** wherein it was held as follows:

"12. From the aforesaid analysis it is apparent that the word 'residence' is generally understood as referring to a person in connection with the place where he lives, and may be defined as one who resides in a place or one who dwells in a place for a considerable period of time as distinguished from one who merely works in a certain locality or comes casually for a visit and the place of work or the place of casual visit are different from the place of 'residence'. There are two classifications of the meaning of the word 'residence'. First is in the form of permanent and temporary residence and the second classification is based on de facto and de jure residence....."

10. The court has further said in paragraph 13 that it is plain in the context of clause(ii) of Section 19 of the Act, that the word 'resides' meant actual place of residence and not a legal or constructive residence. It clearly does not indicate the place of origin. The words residence is flexible and has many shades of meaning but it must take its colour and content from the context in which it appears and it cannot be read in isolation. By this decision another dimension was added to the concept of residence in the form of concept of de facto residence and the concept of de jure residence. The Supreme Court in this case has clearly distinguished between the concept of actual residence or de facto residence and legal residence or de jure residence. The actual residence means the place where the person is residing actually at a given point of time. On the other hand concept of de jure residence or the legal residence means the place at which the person is residing in law. The latter form of residence may or may not be the actual residence or the place where the person actually stays or reside. A person holding property or land in a particular place or city or having some ancestral roots to the city may be a resident of that particular place in the legal sense, but his actual residence will be the place where he is presently residing and coupled with the fact of animus manendi or an intention to stay for a considerable period. The concept of de facto and de jure residence can



also be understood by the following example. If a person suppose has the residency certificate of a place say 'A', but actually for his living he stays at the place 'B'. Thende jure he can be said to be the resident of place 'A' but de facto he is the resident of the place 'B'."

Further, they also relied on the Hon'ble Supreme Court decision in another matter of **Jeewanti Pandey v. Kishan Chandra Pandey**, reported in MANU/SC/0312/1981; (1982) 1 SCR 1003 wherein the Apex Court observed that: "In ordinary sense 'residence' is more or less of a permanent character. The expression 'resides' means to make an abode for a considerable time; to dwell permanently or for a length of time to have a fixed home or abode. Where there is such fixed home or such home at one place, his legal and actual residence is the same and cannot be said to reside at any other place where he had gone on a casual or temporary visit. But if he has not established home, his actual and physical habitation is the place where he actually or personally resides."

6.12. In view of above meaning of 'residence' as laid down by the Supreme Court, they contended that it can be concluded that –

- Residence generally means where person resides for a considerable period of time;
- It is an act or fact of abiding or dwelling in a place for some time;
- It means a place where a person permanently resides and not a place where he casually visits or go for short visits;
- There are two classifications of residence, i.e. 'permanent or temporary' and 'de jure or de facto', meaning of which has to be defined based on the statute and context in which it is used and it cannot be read in isolation; and,
- De facto residence refers to the place where a person actually resides whereas de jure residence refers to a place which is legal residence of that person. De jure residence may not be the actual place of residence of such person and may exists only on records. Actual residence will be determined as a place where person usually lives.



Accordingly, to sum up, they submitted that **what is important is the person must actually stay at that place and that too for a considerable amount of time depicting permanency and not just casual visits.** They submitted that applying these inferences to the matter in hand, it is an

undisputed fact that the paying guest accommodation run by the Lessee is used for dwelling/staying by individuals (majorly students). Those individuals actually reside in the property rented out to by the Appellant to Lessee. As per the Hon'ble Apex Court's observation in Bhagwan Dass (*supra*), this place can be called as *de facto* residence of students residing therein. They contended that on going through exemption Entry No. 13 of Notification No. 09/2017 – Integrated Tax (Rate) dated 28 June 2019 read with Education Guide, **it can be concluded that legislative intent has been to grant exemption to long term stays having some permanency.**

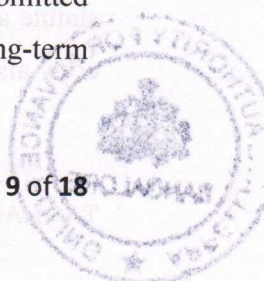
6.13. They further contended that the European Court of Justice in the matter of **Elisabeth Blasi v. Finanzamt Munchen I**, reported in [2012] 37 STT 291; 26 taxmann.com 312 (ECJ) while laying down that the difference between accommodation provided by hotels and letting of dwellings is that of duration of stay, noted that –

“Where accommodation in the hotel sector (as a taxable transaction) is distinguished from the letting of dwelling accommodation (as an exempted transaction) on the basis of its duration, that constitutes an appropriate criterion of distinction, since one of the ways in which hotel accommodation specifically differs from the letting of dwelling accommodation is the duration of the stay. In general a stay in hotel tends to be rather short than in a rented flat fairly long.”



Further, the Court in the matter of **Lakeside Resort Enter v. Board of Supervisors of Palmyra Township (20.07.2006 - 3rd Circuit)**, reported in MANU/FETC/0026/2006 concluded that a drug – and – alcohol – treatment center met the definition of “dwelling”.

6.14. In view of the above, the Appellant submitted that the Lease Deed dated 21 June 2019 categorically specifies that the property rented out to Lessee can be used for sub-leasing to individuals (including students) for **long - stay accommodation**. Further, Registration Certificate of Establishment as obtained by the Lessee from Government of Karnataka bearing Registration No. 14/147/CE/0034/2020, also depicts that nature of business of the Lessee is that of Long Stay Accommodation. To substantiate that the minimum period for which accommodation is being given by Lessee to any student/individual is for 3 months, the student's data residing in such property, from the very beginning, was submitted by the Appellant. Accordingly, they submitted that if a person is staying at a place minimum 03 months, it can be sufficiently called as long-term



accommodation or permanency as against the accommodation provided by the hotels, inn, guest house, etc. where people (travellers, tourists, etc.) stay only for few days maximum.

6.15. The Appellant also relied on the Agreement between the Lessee and the student dated 01 July 2019, wherein it can be seen that the property has been repeatedly mentioned as residential premises and the student has been mentioned as resident thereof. The purpose of entering into such agreement is to sub-lease a unit in the property of Appellant. Further, the term of agreement for which student can stay is 11 months and the monthly occupancy rent is Rs. 10,944/-. They submitted that the Agreement dated 01 July 2019 is just like any other rent agreement entered with families for providing accommodation to stay on rent. If a person (say Mr. A) leases out his own residential house to a family (say Mr. B) to live therein, it would undisputedly be covered under the exemption clause as the ultimate legislative intent of bringing this entry is to cover such cases only. However, as per the contention of Ld. AAR, Karnataka, if the same type of leasing service is given in parts to various students, the same has been kept on different footing. It is submitted that both the transactions are similar in nature except that the property is let out by an individual to one family in the former case whereas here the property is let out in parts by a Company (engaged in such business) to various students. The purpose and intent of letting out property is same in both the scenarios, i.e. for long term residential accommodation. They therefore submitted that the benefit of exemption must be extended upon the activity under consideration and Order dated 23 March 2020 must be set aside as it was passed without proper consideration of actual facts involved in this case.

6.16. The Appellant also contended that the impugned Order of Ld. AAR, Karnataka has been passed on 23 March 2020 which is 123 days more than the time limit prescribed in Section 98 ibid. Therefore, the order so passed by Ld. AAR, Karnataka dated 23 March 2020 is bad in law. They submitted that in the impugned Order the date of filing of application by Appellant has been mentioned as 06 December 2019. However, they submitted that they had filed the application for advance ruling on 23rd August 2019 online and since no order was passed or personal hearing was granted to the Appellant till December 2019, the Appellant approached the office of Ld. AAR, Karnataka, wherein they were requested to manually file a hard copy of the Application also. Accordingly, Appellant, immediately on 06 December 2019, submitted a manual copy of entire set of Application for which an acknowledgment was again given in the form of stamp. They submitted that if they had already filed an online application as per the provisions contained in statute and there is no provision or internal order of the Authority directing them to file a manual copy also, the date of filing the online application should be reckoned as the actual date of filing



the application. Otherwise, the entire mechanism of filing an application online on common portal would be otiose as it is not serving any practical purpose, if date of filing or receipt of application has to be taken as date on which manual application is filed. Accordingly, they argued that the date of filing of application shall be taken as 23 August 2019 instead of 06 December 2019 and therefore, since the order has not been passed within the time limit prescribed under statute, the order must be set aside as having no legal sanctity. They further submitted that, even if date of filing of application is considered as the date on which manual documents are filed by the Appellant, i.e. 06 December 2019, as considered by Ld. AAR, Karnataka, order has been passed beyond prescribed time limit of 90 days. They placed reliance on the following judicial pronouncements in this regard: **Khandelwal Extractions Ltd. v. State of U.P.**, cited in **2019 (20) G.S.T.L. 727 (All.)**, and **Siddhi Vinayaka Enterprises Pvt. Ltd. v. Commissioner, S.T., Raipur**, cited in **2016 (43) S.T.R. 474 (Tri. – Del.)**. Accordingly, they submitted that the Impugned order dated 23 March 2020 must be set aside as the same is *de hors* the time limit provided in Section 98(6) of CGST Act, 2017.

6.17. The Appellant also made a plea that the ruling given by the Authority becomes void since the Authority has itself held that the Appellant is not affecting any supply of service. They referred to Para 8(b) of the impugned order dated 23 March 2020 which is re-produced verbatim as under –

“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 Company, but between the group of individuals and the Company, which needs to be highlighted.

Since the applicant is not providing services 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 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."

(Emphasis Supplied)

They submitted that the Authority noted that the transaction of renting out of property is between 5 individuals who are joint owners of such property, and the Lessee and accordingly, ruled that the applicant is not providing any service in individual capacity to the Lessee directly. However, even after noting that no service has been affected by Appellant (then Applicant), Authority proceeded to pronounce a ruling holding the transaction of Applicant to be taxable. They submitted that the finding of the Authority is contradictory in itself where on one hand, it is ruled that Appellant is not effecting any supply and on other hand, such supply was held as taxable under GST.

6.18. In view of the above submissions, they prayed that the order of the lower Authority may be set aside as null and *void ab initio* since it has already been held by the Authority that Appellant is not effecting any supply of service to Lessee directly.



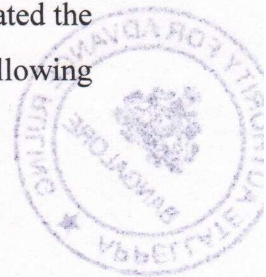
PERSONAL HEARING

The appellant was called for a virtual hearing on 31st August 2020 which was conducted on the Webex platform following the guidelines issued by the CBIC vide Instruction F.No 390/Misc/3/2019-JC dated 21st August 2020. The Appellant was represented by Shri. Atul Gupta, Chartered Accountant.

7.1. The authorised representative gave a brief about the facts of the case and reiterated the submissions made in the grounds of appeal. In addition, they submitted the following documents which have been relied upon in the grounds of appeal:

- a. Document containing Zoning Regulations of Bangalore city
- b. Relevant extracts of the Education Guide; and,
- c. Case laws relied upon in Grounds of Appeal

7.2. In his submissions, the authorised representative drew attention to the Trade Licence obtained by M/s D Twelve Spaces wherein a licence has been procured for running a paying



guest accommodation for girls. Further, he also placed on record the approved plan of the property to highlight that the same is a residential property.

7.3. As regards whether a property can be considered as a residence or not, the authorised representative relied on the Supreme Court judgement in Baghwan Das case wherein the court had laid down that the aspect of 'residence' can be determined based on the duration of stay in the premises. He also submitted that such a stand was even adopted in European law and relied on the European Court judgment in the Elizabeth Blasi case.

7.4. Reiterating the submissions made in the grounds of appeal, the authorised representative pleaded that the order of the lower Authority may be set aside in view of the above submissions.

DISCUSSIONS AND FINDINGS

8. 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 issue to be decided in this appeal is whether the activity of leasing of property by the Appellant jointly with four others is exempted from GST by virtue of the exemption in entry No 13 of Notification No 09/2017-IT (R) dated 28.06.2017.

9. The Appellant has placed before us the following documents for consideration:

a) Copy of the Lease Deed dated 21st June 2019

b) Copy of the Layout Plan bearing No Ad.com/SUT/1412/14-15 dt 27.05.2015 Issued by the Assistant Director of Town Planning (South), BBMP

c) Katha Extract bearing No BMP/REV/2019-20/KE/1529971 dated 3.01.2020.

d) Legal due diligence report dated 14.06.2019

10. On going through the above documents, it is observed that a multi storied building having a stilt plus ground and four floors has been constructed on site No 14 admeasuring 2400 sq ft by Shri. T.A Vasudev who was the absolute owner of the said site. Shri. T.A Vasudev was permitted by BBMP vide Sanctioned Plan dated 27.05.2015 bearing Layout

Plan bearing No Ad.com/SUT/1412/14-15 to construct a hostel building. Later, by a registered partition deed dated 04.08.2016, the ownership of the building was partitioned among five individuals viz. Shri. T.A Vasudev, Smt M.C Nagarathna, Shri. T.V Ambrish, Shri. T.V Nagaraj and Shri. T.V. Nagaraj, with each individual being the absolute owner of a specified floor of the building. In 2019, the five individuals who are owners of a specified floor of the building (individually referred to as Lessor 1, Lessor 2, Lessor 3, Lessor 4 and Lessor 5) 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. In consideration for the lease, the lessee has agreed to pay a monthly rent of an agreed upon amount and the lessee undertakes to deposit an agreed percentage of the monthly rent in the bank account of each individual lessor.

11. With the above facts, let us examine the applicability of entry Sl.No 13 of Notification No 09/2017 IT (Rate) dated 28.06.2017. The relevant entry reads as under:



	Chapter, Section, Heading, Group or Service Code	Description of services	Rate (percent)	Condition
(1)	(2)	(3)	(4)	(5)
13	Heading 9963 or 9972	Services by way of renting of residential dwelling for use as residence	Nil	Nil

Heading 9963 pertains to Accommodation, Food and beverage Services and Heading 9972 refers to Real Estate Services. The explanatory notes to the scheme of classification of services describes the service code 997211 as "Rental or leasing services involving own or leased residential property". This service code includes rental or leasing services concerning residential properties by owners or lease holders houses, flats, apartment buildings, multiple-use buildings that are primarily residential, residential mobile home sites. This service code does not include accommodation services provided by operating hotels, motels, rooming houses, school dormitories, camp sites and other lodging places, cf.99631.

12. In the instant case, the Lease Deed dated 21st June 2019 evidences that a property has been rented/leased to M/s DTwelve Spaces Pvt Lt by the Lessors (the Appellant being one of the lessors) who are also the owners of the said property. The Appellant claims that the property which has been leased to the lessee is a residential property and has put forth evidences in the nature of sanctioned building plan and Katha extract to substantiate the same. They have also relied on several judicial pronouncements to emphasise that a “residential dwelling” is a place where people live or stay for a considerable period of time. We take note of the fact that the Notification No 09/2017 IT (R) as well as the GST law does not define the term “residential dwelling”. However, we refer to the CBIC Education Guide dated 20TH June 2012 which gives clarifications in the context of Service Tax laws wherein it is mentioned that in the absence of a definition of the term “residential dwelling”, one has to interpret the same in terms of normal trade parlances as per which it is any residential accommodation, but does not include hotel, motel, inn, guest house, camp-site, lodge, house boat or like places meant for temporary stay. In the case before us, we find from the records submitted by the Appellant that, the impugned property was constructed as Hostel building. The project description in the sanctioned plan submitted to us indicates that the plan is for the construction of a hostel building. Can a hostel building be called as a residential dwelling? A common understanding of a hostel is that of an establishment which provides inexpensive accommodation to specific categories of persons such as students, workers, travellers. On the other hand, a common understanding of the term “residential dwelling” is one where people reside treating it as a home. We find that the Appellant 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. Therefore, we conclude that the impugned property cannot be termed as “residential dwelling”. Once the impugned property is not a residential dwelling, the exemption under Sl.No 13 of Notification No 09/2017 IT (Rate) dt 28.06.2017 will not apply to the renting/leasing of such property.

13. The Appellant has argued at great length that the lessee has taken the impugned property on lease for purpose of running a paying guest accommodation for students. They have submitted documents to evidence that the students reside in the accommodation for durations between 3 months and 12 months. They argued that since there is a certain degree of permanency in the students stay at the property, it can be said that the property is used for purposes of residence. The exemption given vide entry Sl.No 13 of Notf No 09/2012 IT (R) is



to residential dwellings which are rented out for use as residence. Assuming but not admitting that the impugned property is a “residential dwelling”, the same has to be used as a residence by the lessee. In this case we find that the lessee (M/s DTwelve Spaces Pvt Ltd) is using the impugned property for conducting his business of running a paying guest accommodation. The exemption is available only if the residential dwelling is used as a residence by the person who has taken the same on rent/lease. The term “for use as residence” as appearing in Sl.No 13 of Notification No 09/2017 IT (R) implies that the recipient of service should use the dwelling as residence. In other words, the service of renting of residential dwelling to a recipient who uses the same as residence, is exempted from GST. In the instant case, we find that the lessee M/s DTwelve Spaces Pvt Ltd, who is the recipient of the service of renting provided by the Appellant, is not using the leased property for use as residence but is using the same for operating his business of providing paying guest accommodation to students. On this ground too we find that the Appellant is not eligible for the benefit of exemption as per Sl.No 13 of Notf no 09/2017 IT (R) dt 28.06.2017.

14. The Appellant has also contended that the ruling pronounced by the Authority after the mandated period of 90 days is unsustainable in law. They submitted that the online filing of the application on 23rd August 2019 should be taken as the date of filing the application and not the date when they submitted the manual application for advance ruling. They claim that having filed an online application, there was no order directing them to file a manual copy of the application and hence the date of online filing must be considered as the date of application. In this connection, we hold that as per Rules 104 and 106 of the CGST Rules, 2017, the application for obtaining an advance ruling and filing an appeal against an advance ruling shall be made by the applicant on the common portal. However, due to the unavailability of the requisite forms on the common portal, a new Rule 107A has been inserted vide notification No. 55/2017-Central Tax, dated 15.11.2017, which states that in respect of any process or procedure prescribed in Chapter XII, any reference to electronic filing of an application, intimation, reply, declaration, statement or electronic issuance of a notice, order or certificate on the common portal shall, in respect of that process or procedure, include the manual filing of the said application, intimation, reply, declaration, statement or issuance of the said notice, order or certificate in such Forms as appended to the CGST Rules. Further Circular No 25/25/2017 GST dated 21.12.2017 clarified that an application for obtaining an advance ruling under sub-section (1) of section 97 of the CGST Act and the rules made there under, shall be made in quadruplicate, in FORM GST ARA-01. Although



the application shall be filed manually till the advance ruling module is made available on the common portal, the fee is required to be deposited online in terms of section 49 of the CGST Act. In view of the above, we do not find any merit in the argument of the Appellant that the date of application should be the date of online submission. The lower Authority is correct in adopting the manual filing date as the date of application.

15. As regards the time period within which the lower Authority is required to pass the order, Section 98(6) of the CGST Act stipulates that the Authority shall pronounce its advance ruling in writing within ninety days from the date of receipt of application. In this case, the application was filed manually on 6th December 2019 and the ruling should have been pronounced on or before 5th March 2020. No doubt the ruling given by the Authority has been passed after the time period stipulated under the statute. However, that does not render the ruling null and void or unsustainable. An order which is passed without jurisdiction can be held to be null and void and unsustainable. However, an order suffering from illegality or irregularity of procedure cannot be termed in executable. The remedy of a person aggrieved by such an order is to have it set aside in a duly constituted legal proceeding or by a superior court failing which he must obey the order. An order passed by a court of competent jurisdiction cannot be denuded of its efficacy by any collateral attack or in incidental proceedings. In this case, the Authority was well within its jurisdiction to pass a ruling on the subject matter. Not adhering to the time limit in passing an order can be termed as an irregularity in procedure which can be set right in appeal proceedings.

16. The Appellant has also raised a plea that the lower Authority has concluded that the Appellant is not effecting any supply of services but has gone on to pronounce a ruling that the transaction of the Appellant (then applicant) is taxable. They specifically refer to Para 8(b) of the impugned order. We have gone through Para 8 of the impugned order. The lower Authority in the said para has discussed the nature of the transaction as being between the group of individuals as lessors (of which the Appellant is a part) and the lessee Company. In this connection, it is held by the lower Authority that the supply of service is between the group of individuals and the lessee. We find that the Appellant has no locus standi in his individual capacity but is a part of the group of individuals who have leased the impugned property to the lessee Company. The Appellant has also made the application for advance ruling in his capacity as being a part of the group of individuals who have leased the impugned property. The question on which the ruling is sought for is also whether the



exemption under Sl.No 13 of Notf No 09/2017 IT (R) dt 28.06.2017 is applicable to the lessors (the Appellant and 4 others) as renting of residential dwelling for use as residence. We however expunge the following observation made by the lower Authority in Para 8(b) of the impugned order as it is beyond the ambit of the question on which the ruling has been sought:

"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."

Para 8(b) of the impugned order is modified accordingly.

17. In view of the above discussion, we pass the following order

ORDER

We uphold the Advance Ruling No KAR/ADRG 17/2020 dated 23-03-2020 and dismiss the appeal filed by Sri. TagharVasudevaAmbrish, #8/2, 36th Cross, 11th "A" Main, 4th T Block, Jayanagar, Bengaluru, on all counts.

(D.P.NAGENDRAKUMAR)

Member

Karnataka Appellate Authority
for Advance Ruling

To, **Member**
Appellate Authority for Advance Ruling
The Appellant

(M.S. SRIKAR)

Member

Karnataka Appellate Authority
for Advance Ruling

Member
Appellate Authority for Advance Ruling

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