
PROPERTIES LEASED IN THE NATURE OF A HOSTEL EXEMPT FROM GST: KARNATAKA HC

A division bench of the Hon'ble High Court of Karnataka ("HC") by overruling the observations of the Karnataka Appellate Authority for Advance Rulings ("KAAAR") in a recent judgment of *Taghar Vasudeva Amrisha v. AAAR Karnataka & Ors.*¹ has held that residential premises leased for use as hostel premises are covered under the scope of the Notification No. 09/2017² ("Exemption Notification"), and are thereby exempt from the levy of Integrated Goods and Service Tax ("IGST").

Background:

- Taghar Vasudeva Amrisha ("The Petitioner") along with four other joint owners collectively leased out a multi-storied property to M/s DTwelve Spaces Pvt Ltd ("The Lessee") as hostel for providing long term accommodation to students and working professionals with the duration of stay ranging from 3 to 12 months.
- The Petitioner is registered as a commercial establishment under the Karnataka Shops and Commercial Establishment Act, 1961. Furthermore, a trade license has been issued by Bruhat Bengaluru Mahanagara Palike ("BBMP") to the Lessee and the trade name has been described as boarding and lodging to which public are admitted or reposed or let with or without any consumption of food and drink.
- The Central Government ("CG") vide the Exemption Notification issued under Integrated Goods and Service Tax Act, 2017 ("The Act") has exempted the services provided by way of renting of residential dwelling as use as 'residence' from the levy of IGST.
- The Petitioner approached the Karnataka Authority for Advance Ruling ("KAAR") seeking a ruling on the applicability of the Exemption Notification to him, which was denied on the ground that the Lessee itself is not using the accommodation. Furthermore, the KAAAR also denied the applicability of Exemption Notification to the Petitioner on the abovementioned ground and further added that the property rented as a hostel building is akin to sociable accommodation which in common parlance does not fall under the category of a residential accommodation.

¹ TS-39-HC(KAR)-2022-GST

² Notification 09/2017-Integrated Tax (Rate), dt. 28-06-2017

-Aggrieved by the decision of KAAAR, the Petitioner filed a Writ Petition before the HC.

Observations by the HC:

- The Exemption notification needs to be interpreted strictly and the burden of proving the applicability of Exemption Notification is upon the Petitioner.
- The expression “residential dwelling” is not defined anywhere under the Act. If a term is not defined in a fiscal statute, the said term shall be construed in its popular sense.
- In the erstwhile Service Tax regime, the expression was defined as per the education guide issued by the Central Board of Indirect taxes as any residential accommodation excluding the dwellings meant for temporary stay such as hotels, inns etc.,
- Referring to the dictionary meaning of the expression, it was observed that the expression residence only connotes that a person eats, drinks and sleeps at that place and it is not necessary that the dwelling be owned by such person.
- A hostel is used for an extended duration by the students and working professionals for a period ranging from 3 months to 12 months, which would not qualify as a temporary period of stay.
- The Exemption Notification does not require the lessee to use the premises as residence.
- Therefore, the expression residential dwelling would also include a hostel and the benefit of the Exemption Notification should be extended to the Petitioner.
- Furthermore, the fact that the Petitioner is registered as a commercial establishment or a trade licence has been issued to the Lessee has absolutely no bearing to the eligibility of the Petitioner to claim exemption under the Exemption Notification.

VA Comments:

- The above judgment is a welcome move on behalf of the taxpayers.

For any further information/clarification, please feel free to write to:

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