

## **The Verdict Under Scrutiny: The Saga of Madras High Court Decision for GST on Hostels**



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The Madras High Court's recent ruling exempting hostels from Goods and Services Tax (GST) in the case of Thai Mookambikaa ladies hostel has stirred controversy, prompting scrutiny and debate amongst the industry members. The decision, hailed by some as a win for affordable lodging, has left others skeptical, awaiting further clarity.

Amidst a legal clash over the interpretation of GST exemption clauses, hostel operators, primarily catering to female students and working women, found themselves at odds with the Tamil Nadu Authority for Advance Ruling (TN AAR). While the High Court's ruling favored hostel operators, questions linger regarding the definitions of 'residential dwelling' and the distinctions between hostels and hotels.

With the Supreme Court's potential intervention pending and the initiation of Special Leave Petitions (SLPs) looming, the fate of hostel operators and the broader hospitality sector hangs in the balance, underscoring the complexity of tax jurisprudence in the hospitality industry.

### **❑ Facts**

**The motive:** In a bustling city, the Thai Mookambikaa Ladies Hostel emerges as a haven (a place that offers

safety, shelter, or favorable opportunities) for college students and working women, offering comfortable accommodations and hearty meals amidst their academic and professional pursuits.

**Tariffs and Inclusivity:** The hostel welcomes residents with open arms, offering very reasonable monthly rates ranging from Rs. 1200/- to Rs. 6,500/-, ensuring affordability for individuals from various budget backgrounds & even including the individuals having high aims in their life but due to some financial constraints they have been unable to pursue.

**Cloud of Uncertainty:** Despite the harmony within the hostel, uncertainty looms as the management finds themselves entangled in a legal saga, seeking clarity on the applicability of Goods and Services Tax (GST) exemption on accommodation charges.

**Petition for Clarity:** Believing in the noble nature of their enterprise, the hostel's management approaches the Tamil Nadu State Appellate Authority for Advance Ruling, fervently arguing for GST exemption, emphasizing the essential services they provide to students and working women.

**Denied Exemption:** Despite passionate pleas, the Authority for Advance Ruling (AAR) and the Appellate Authority for Advance Ruling (AAAR) deny the exemption, citing intricate clauses within GST laws and deeming the petitioner ineligible.

**Financial Ramifications:** The denial of GST exemption places a significant burden on the hostel, adding extra taxes to accommodation charges and impacting operational costs and pricing structures, posing challenges for future endeavors.

**A reminder of Complexity:** The Thai Mookambikaa Ladies Hostel case serves as a poignant reminder of the complexities faced by small businesses in navigating tax

laws, highlighting the resilience of the hostel amidst adversity.

### □ **The Petitioner's Arguments**

The petitioner, operating a residential hostel for boarding and lodging under Section 5 of the Tamil Nadu Hostels and Home for Women and Children (Regulation Act) of 2014, contends that the accommodation provided falls within the purview of a "hostel" as defined by the Hostel Regulation Act.

This definition distinctly separates hostels from hotels, as hostels primarily cater to long-term accommodation for students and working individuals, whereas hotels provide temporary lodging. Moreover, the petitioner emphasizes that the hostel operates with a motive to offer safe residence at nominal charges, ensuring a clean environment without profit motives.

Furthermore, the petitioner highlights the legal distinction between a hostel and a hotel, drawing attention to the definitions provided by relevant legislation. While a hostel falls under residential regulations, a hotel is governed by commercial regulations.

The reference has been specifically made to Section 2(e) of the Tamil Nadu Hostels and Home for Women and Children (Regulation) Act, 2014), the term hostel or lodging house in common parlance is defined to mean a building in which accommodation is provided for women or children or both, either with boarding or not & hence it can be concluded that residential dwelling includes hostels.

Also, referring to Para 4.13.1 of the Service Tax Education guide issued by CBIC, the expression 'residential dwelling' has to be understood in terms of the normal trade parlance as any residential accommodation but does not include hotel, motel, inn, guest house, campsite, lodge, house boat, or like places meant for **temporary stay**.

Generally, renting a residential dwelling involves letting out any building or part of the building by a lessor to a person for rent towards the rental premises which form part of a house as kitchen, bedroom, living room, etc., overall, as a residence. Thus, an

ordinary understanding of the term "residential dwelling" is one where people live treating it as a home.

The petitioner also underscores the significance of the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act of 2017, asserting that the relationship between the hostel owner and the inmates constitutes a form of tenancy, with the inmates regarded as sub-tenants.

The petitioner relies on a series of legal precedents and case law to support their arguments:

- I. **Kishore Chandra Singh Vs Babu Ganesh Prasad Bhagat (AIR 1954 SC 316):** The Supreme Court established that "residence" encompasses activities such as eating, drinking, and sleeping, irrespective of ownership.
- II. **Jagir Kaur Vs Jaswant Singh (Criminal appeal 143/1961):** The Supreme Court's decision clarified the meaning of "reside."
- III. **VL Kashyap Vs R P Puri (Delhi High Court, 22.09.1976):** The Delhi High Court's judgment elucidated the concept of a "dwelling house" or "residential house."
- IV. **Indo International Industries Vs Commissioner of Sales Tax (SC, 25.03.1981):** The Supreme Court affirmed that in the absence of a statutory definition, a dictionary or popular meanings can be applied.
- V. **CCE Vs Air Conditioning Corporation (SC, 13.09.2006):** This case underscored the importance of interpreting legal terms by their ordinary meaning.
- VI. **Balakrishna Vs Sakuntala Bai (AIR 1942 MAD 666):** The Madras High Court's ruling established that "reside" implies an intention to remain at a place, not merely a temporary visit.
- VII. **Dennis Philips and Royna Goddard Vs Martin Francis (England and Wales High Court, 24.03.2010):** This decision reinforced the common understanding of the terms "residence" and "dwelling."
- VIII. Additionally, the petitioner cites the decision of the Hon'ble Karnataka High Court in the case of **Taghar Vasudeva Ambrish vs. Appellate Authority for Advanced Ruling,**

**Karnataka**, which upheld the exemption available to residential hostels under relevant tax notifications.

- IX. As per the **Black Laws Dictionary**, Residence is a place where one lives or has his home. Dwelling means the house or other structure in which a person or persons live, the structure used as a place of habitation.

The petitioner argues that the hostel's operations align with the legal definition of residential dwelling and therefore warrant exemption from GST, supported by both legislative provisions and judicial precedents.

#### ❑ **The Respondent's Contention**

The revenue department argues that the applicant mainly aims to operate a ladies' hostel for profit. They acknowledge that the applicant charges fees for accommodation and food services, which fall within the definition of "supply" under Section 7 of the TNGST/CGST Act.

The applicant is duly registered under various acts to conduct its business activities. According to Section 2(17) of the TNGST/CGST Act, their activities qualify as "business," encompassing various endeavors pursued for pecuniary gain.

Contrary to the applicant's stance, the revenue department asserts that their services don't align with "services by way of renting of residential dwelling for use as a residence." Instead, they argue that the applicant merely rents out individual rooms to different occupants for varying durations, without formal rental agreements. Thus, their operations fall outside the scope of the Tamil Nadu Rent Regulation Act.

Moreover, the revenue department notes that the applicant fails to adhere to tax deduction at source (TDS) regulations under section 194 I of the Income Tax Act concerning rental income. Consequently, the claim of providing residential dwelling rentals for residence use is deemed invalid.

Furthermore, the state jurisdictional authority contends that the applicant's services constitute renting of immovable property with a business motive for financial gain. They classify these services under Heading 9963 (Accommodation, food, and beverage services)

and specifically under Entry No. 7 (ix) of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017. This entails that the applicable tax rate for the applicant's services is as per the aforementioned notification.

In summary, the revenue department maintains that the applicant's activities constitute taxable services falling under the category of accommodation, food, and beverage services, as per relevant tax notifications.

The respondent argues that when it comes to interpreting exemption notifications, there's already a clear legal precedent set by the Supreme Court. According to the Supreme Court's decision in the case of '**DILIP KUMAR AND COMPANY AND OTHERS,**' exemption notifications should be interpreted very strictly. This means that it's the responsibility of the taxpayer (the assessee) to prove that they qualify for the exemption mentioned in the notification.

In situations where there's any uncertainty or ambiguity in the exemption notification, which is already subject to strict interpretation, the benefit of the doubt can't be claimed by the taxpayer. Instead, it should be interpreted in favor of the revenue authority. This means that if there's any doubt about whether the taxpayer qualifies for the exemption, the interpretation should lean towards supporting the revenue authority's position. The burden to prove that they are eligible for exemption should be at the petitioner's end and they have to explain how they are eligible for the exemption, which they failed in the current case.

So, in this case, the respondent contends that the exemption notification should be read and applied very strictly, and any uncertainty should be resolved in favor of the revenue authority, rather than the taxpayer.

❑ **The SLP creates more Uncertainty.**

In the case of Taghar Vasudeva Ambrish vs. Appellate Authority for Advance Ruling, as delineated in MANU/KA/0327/2022, the esteemed Division Bench of the Karnataka High Court has decisively pronounced that the provision of services involving the leasing out of residential premises as hostels to students and

working professionals falls within the ambit of exemption outlined in Entry No. 13 of Exemption Notification No. 9 of 2017. This ruling, marked by the Karnataka High Court, delineates that hostel services are indeed exempted from the imposition of GST.

It's noteworthy that after the issuance of this order by the esteemed Division Bench, the respondents have taken recourse to a Special Leave Petition (SLP) before the esteemed Apex Court. However, as it stands, no stay has been granted by the Hon'ble Apex Court against the aforementioned order of the Karnataka High Court. It's pertinent to note that despite the absence of a stay, the 2nd respondent asserts their prerogative to form an independent perspective on the matter. This stance is underpinned by the fact that the issue remains unsettled and sub judice before the esteemed Supreme Court of India, awaiting its final adjudication.

Thus, while the legal proceedings continue before the apex judicial authority, it's imperative to acknowledge the absence of a definitive resolution and to exercise prudence in interpreting and implementing the legal implications of the subject matter.

Additionally, with effect from 18<sup>th</sup> July 2022, vide Notification No. 04/2022 – Central Tax(Rate), an additional burden on the registered persons has been imposed under the reverse charge mechanism wherein they are availing the services of renting residential dwelling other than for use in personal capacity or on his own account.

### ❑ **Conclusion**

In the swirling legal discourse surrounding the Madras High Court's recent ruling on GST exemption for hostels, divergent perspectives have emerged, highlighting the intricacies of tax jurisprudence in the hospitality sector. The high court has observed in the current case and gone beyond the normal understanding of the term residential dwelling and interpreted from the view of considering the following factors –

- a. Non-Commercial Purpose
- b. Similar to House or Home (Including Kitchen, Washroom, Beds, etc.)

- c. Comparison with the situation of Homeless persons
- d. Renting of Home v/s Renting of Hostel Room
- e. What is rented and the purpose behind renting?

On one hand, the petitioner fervently argues for exemption from GST, citing legislative provisions and judicial precedents that align with their interpretation of residential dwelling. Conversely, the Revenue Department contends that strict interpretation of exemption notifications places the burden of proof on the taxpayer, urging caution in extending the benefit of the doubt.

Amidst this legal conundrum, the reference to the Karnataka High Court's decisive pronouncement in Taghar Vasudeva Ambrish vs. Appellate Authority for Advance Ruling underscores the nuanced nature of the issue at hand. As the matter remains sub judice before the esteemed Supreme Court of India, with the Special Leave Petition pending, it is imperative to exercise prudence in interpretation and implementation.

In navigating this legal landscape, a diplomatic approach is warranted, recognizing the complexities involved and the need for clarity in tax laws. The absence of a definitive resolution underscores the importance of awaiting the final adjudication while acknowledging the diverse perspectives. Ultimately, the pursuit of justice and equitable application of tax laws must guide our deliberations as we await the apex judicial authority's verdict.

**Views expressed are strictly personal and cannot be considered as a legal opinion in case of any query. For feedback or queries email us [yash@hnaindia.com](mailto:yash@hnaindia.com).**