

Hostels/PG's and GST exemption for residential accommodation

CA Roopa Nayak

Background

The hostels/PG's are providing basic living facility. This is an unorganized sector with small players, who are mainly enabling education to out station students and migrant workers from poor and weaker sections of society. Such hostels are providing basic facilities with students/others often sharing rooms for accommodation purposes, wherein some incidentals like food/ laundry may also be there.

In recent times, there has been spate of summons/notices issued to the hostel/PG's demanding GST with interest and penalty. These notices have been issued citing that the hostels/PG's are liable to pay tax at 12%. This along with door to door visits by dept officers, has led to fear and confusion amongst the hostel/PG owners.

At this juncture it would do well to recall that earlier under service tax law[prior to 1.7.2017] and now under GST, wef 1.7.2017, exemption is being given to residential dwelling for use as residence. Also there has been exemption under ST and later under GST to the hotels/hostels/PG's which are charging less than Rs.1000 per day per unit of accommodation. These exemptions are in line with the stated intention of the Government of India which is to enable housing for all especially the poor.

However, vide notifications 3/2022-CT® and 4/2022-CT(R), the exemptions have been removed on the renting of residential dwellings to registered person. In this case, the registered recipient is made liable to pay GST under reverse charge on the residential dwelling rentals wef. 18/7/2022 onwards. Similarly the exemption is no longer available post 18.7.2022 to the hotel accommodation priced up to Rs. 1000/day, which would be taxed at 12%.

In a related development there has been advance ruling of Srisai Luxurious Stay LLP [Ruling No. KAR ADRG 25/2023 dated JULY 13, 2023] in GST, in Karnataka which has held that GST exemption is not available to the renting of hostels as such exemption shall be available only to the renting of dwelling house to a family, and in case of hostel, given to unrelated persons, on per bed basis, where no cooking facility nor any cooking allowed, it is not covered in exemption entry of services of renting of residential dwelling for use as residence at all. The said advance ruling has not discussed the meaning of the term "residential dwelling" and directly concluded PG/hostel as akin to guest house. The exemption entry at sl no12, [analysed further], clearly sets out if the usage would be for use as residence, then entry 12 exempts from GST. Hence this ruling seems infirmed and not in line with intent of exemption entry. Also advance ruling is applicable to assessee who seeks it and to their facts. It has limited persuasive value for others and can be followed only if in line with the provisions of law, which this ruling is not.

In this backdrop, the paperwriter has examined GST exemptions available to this sector under GST, as well as whether GST would be liable on renting of residential accommodation as well as on hostels charging upto Rs.1000 per day per unit post 18.7.2022.

Analysis of Relevant GST Exemptions

Most of the hostel, service apartment, PG service providers take the property on lease from landlords, construct or renovate the property as per the requirements and provide rental services to students, working professionals, etc. The landlords as well as the such service providers were claiming coverage under the exemption entries of sl. no. 12 and/or sl. no. 14 of notification 12/2017-Central Tax (Rate) right from the inception of GST regime.

Sl no.12 of exemption notification 12/2017-CT(R) and changes therein post 18.7.2022

The activity of renting residential units was covered under the exemption list. Entry 12 of exemption notification no. 12/2017-CT (Rate) covers Heading 9963 or Heading 9972 “Services by way of **renting of residential dwelling for use as a residence**”.

On perusal of the above entry 12, it is clear that the services provided by way of renting of **residential dwelling** for residential purpose are covered under the exemption. The words ‘residential dwelling for use as residence’ does not refer to the use made by any particular person but rather to the attributes of the property to which its use was suited as a residential dwelling. The exemption is available to the service and does not specify by whom such units are to be rented in order to avail the exemption. It could be either a company or any individual person.

In other words, the exemption was being given to any person who may engage in renting of residential dwelling used as residence. It is **further not specifically set out in the notification what would be considered as a short stay or long stay**. This exemption benefit was available when landlord rented out to corporates who in turn rent out to students/working professionals/others. The same exemption was also available when renting was done as residence to students by corporate PG/other commercial entities.

However residential dwelling used as residence connotes some permanence in stay and same is explained below.

What is said to be a residential dwelling?

There is no definition of residential dwelling in GST law. When there is no definition in the Act, we could refer to the dictionary meaning. Similarly held in Star Paper Mills case [1989 (43) ELT 178(SC)].

The dictionary meaning of '**residential dwelling**' is as follows:

- a. As per Black's Law Dictionary: 'Residential dwelling means living in a certain place permanently or **for a considerable length of time**'.
- b. As per Merriam Webster dictionary: 'A shelter (as a house) in which people live'.
- c. As per the Oxford dictionary: 'A house or apartment or other places of residence or a place to live in or building or other places to live in'.

Under GST laws in Australia, in Full Federal Court in the case of Marana Holdings Pty Ltd v Commissioner of Taxation [2004] FCAFC 307 (25 November 2004) it was held that using the Macquarie Dictionary (revised 3rd edition), the word 'reside' was found to mean 'to dwell permanently or for a considerable time; have one's abode for a time'. Of the word 'residence', it states: 'the place, especially the house, in which one resides; dwelling place; dwelling; a large house; living or staying in a place of official or other duty'. The Full Federal Court, therefore, found that the terms 'reside' and 'residence' had a connotation of permanent or at least long-term commitment to dwelling in a particular place.

The Full Federal Court also noted that the term 'residential' meant 'a dwelling serving or to be used as a residence in which one resides' and that therefore the word 'residential' had an aspect of permanent or long-term occupation.

From the above, it appears that residential dwelling is said to be used as residence analysing dictionary meanings, if the accommodation is rented for use as residence to live in usually **for a considerable period of time**.

'**Certain/considerable period of stay**' is also not been defined under GST. However, cue could be taken from Section 65(105) (zzzzw) of the Finance Act, 1994 (as prior to 2012), provides the definition of taxable service for services provided by hotels, inns, guest house etc, which generally involves stay for shorter period as compared to permanent or considerable time of stay, provided that the said service is providing accommodation **for a continuous period of less than 3 months**.

From the above, it could be said that less than 3 months can be considered as a period of temporary stay and anything more than that could be said to be for in a nature other than temporary.

Impact of the amendment made in entry 12 wef 18.7.2022:

However, as per recent Notification No.4/2022-CT(R) issued on 13th July 2022, which amended the exemption notification 12/2017-CT(Rate), the following has been brought into the tax net w.e.f. 18.07.2022:

- (a) Renting of residential dwelling for use as residence is exempt [HSN 9963/9972] **except where the residential dwelling is rented to a registered person**. It is taxable at 18%.
- (b) Further, tax is required to be paid under reverse charge by the such registered person.

It is important that the GST exemption would continue to be available when the service provider PG's/hostels rent out to B2C customers such as students/others intending to stay for longer period[exceeding 3 months].

Sl. no. 14 of exemption notification 12/2017-CT(R) and impact of change therein wef 18.7.2022

Similar to the exemption at sl. no. 12 explained above, hotels, guest house, camp site service providers were also eligible for claiming exemption under this entry i.e., sl. no. 14 in case of short stays[less than 3 months] where the charges are up to Rs.1,000/- per unit per day or equivalent.

However, the above exemption also has been omitted w.e.f. 18th July 2022 and services of short stay by hotels, inns, etc. would be taxable at the rate of 12% under sl. no. 7(i) of notification 11/2017-CT(R).

The hostels/PG's were rightly eligible for claiming coverage under both the above exemption entries 12 and 14 till the amendments as above were made.

Important Issue

Whether the hostel, service apartment, hotel, PG service providers would be required to pay GST when the period of stay is for long period post amendments wef 18.7.2022?

Most of the customers of the hostel, PG service providers are unregistered persons. Hence, in paperwriter view, where the service provided by these the hostel, service apartment, hotel, PG service providers is for a longer period i.e., more than 3 months as discussed earlier in the article, then these hostel, PG service providers could still claim coverage under sl. no. 12 of Notification 12/2017-CT(R) in period till 18.7.2022 and thereafter.

Accordingly in case of Government of Kerala v. Mother Superior Adoration Convent, 2021 SCC Online SC 151] held that "Held an **exemption provision should be liberally construed** in accordance with the object sought to be achieved if such provision is **to grant incentive for promoting economic growth** or **otherwise has some beneficial reason behind** it. In this case beneficial reason is to provide accommodation for students/economically weaker sections at lesser cost.

In this regard, we can refer the decision of Karnataka High Court in WP 14891 OF 2020 quashed the advance ruling by the Appellate Authority in the case of Sri Taghar Vasudeva Ambrish [2020-TIOL-46-AAAR-GST] and held that service provided by the petitioner i.e., leasing out residential premises to lessee, as hostel to students and working professionals is exempt under the entry 'Services by way of renting of residential dwelling for use as residence'. This decision is presently pending at SC SLP[Civil] 29980/2022. [Hearing tentatively scheduled 21st Nov 2023].

Who can claim GST exemption:

Therefore, the exemption under sl. no. 12 would still be available if the following aspects are satisfied:

- (a) Customer is not a registered person
- (b) The period of stay of such customer is more than 3 months i.e., longer stay [mention in invoice/receipt issued to tenant that it is residential dwelling for use as long term residential accommodation]
- (c) The premise is used for residence

When the renting of PG/hostel service provider is covered in above exemption and not providing any other taxable supplies of goods/services, but only exempted supplies, then not required to take GST registration. When it is not registered in GST, liability of tax under RCM for renting of residential dwelling to registered person is not applicable.

Conclusion

In a country like India with huge population, it is seen there is shortage of housing for large portion of population. To fill this gap in housing facilities, the hostels are catering to the lower plus middle income group.

The intention of the Government as we understand was/ is not to deny benefit to students as well as to provide accommodation to weaker section. Providing affordable housing for the lower and middle income segments mainly students/migrant workers of low income group is a part of the inclusive growth agenda.

However the demand of GST on the renting of low cost accommodation at 12% and RCM on Landlords rentals at 18%, are adversely impacting the students/low income working persons. It is suggested on priority basis that the beneficial clarification wrt exemption entry in sl no.12 being applicable to hostels/PGs be issued at earliest and that RCM entry in notification 13/2017-CT(R) be omitted on landlord residential rentals in hands of registered recipients.

For further clarifications reach to roopa@hnaindia.com