

AUTHORITY FOR ADVANCE RULING – CHHATTISGARH
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PROCEEDING OF THE AUTHORITY FOR ADVANCE RULING
U/s. 98 OF THE CHHATTISGARH GOODS AND SERVICES TAX ACT, 2017

Members Present are

Smt. Kalpana Tiwari
Joint Commissioner
O/o Commissioner, State Tax
Chhattisgarh, Raipur

Mr. Rajesh Kumar Singh,
Additional Commissioner,
O/o Principal Commissioner,
CGST & Central Excise,
Raipur

Sub:- Chhattisgarh GST Act, 2017 – Advance Ruling U/s 98 – Regarding the GST rates applicable in case of Hostel on rent to various boarder.

Read:- Application dated 31.12.2018 from Shri Kamal Kishor Agrawal, for Ramnath Bhimsen Charitable Trust, Shri Ramnath Bhimsen Marg, Samta Colony, Raipur, Chhattisgarh, 492001

PROCEEDINGS

[U/s 98 of the Chhattisgarh Goods & Services Tax Act, 2017 (herein- after referred to as CGGST Act, 2017)]

No.STC/AAR/11/2018

Raipur, Dated 02.../03/2019

The applicant M/s Shri Kamal Kishor Agrawal, for Ramnath Bhimsen Charitable Trust, Shri Ramnath Bhimsen Marg, Samta Colony, Raipur Chhattisgarh GSTIN 221800000121ARE has filed the application U/s 97 of the Chhattisgarh Goods & Services Tax Act, 2017 requesting advance ruling as regards :-

1. Whether the activity of providing the hostel on rent to various boarder is exempted? If it is exempted in such case, under which exemption notification the same is exempted.
2. Whether the activity of providing the hostel on rent to various boarder is taxable? If it is taxable, in such case, under which service access code the same is taxable?

2. Facts of the case:-

Shree Ramnath Bhimsen Charitable Trust is running girl's hostel in the name of Shree Ramesh Sewa Sadan and Godavari Sewa Sadan (hereinafter referred to as 'hostel'). The hostel is providing basic facilities which are required



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to stay and to study which include well-furnished residence, round the clock security, homely ambience, nutritious food, ample parking space etc. and in consideration, hostel is charging a nominal lump-sum fee of Rs. 6000/- per month per boarder. In other words hostel is charging a single amount for providing above-mentioned services to the boarders.

The hostel is being run by a charitable trust which is a non-profit entity, accordingly the income tax department has also given the exemption certificate as the hostel is not working for profit. Further, the hostel is carrying its activity in such a way that the occupants are members of hostel and hostel is collecting the charges for the maintenance. Thus, the hostel is working as a non-profit concern as whatever consideration is charged from the occupants, the same are only for meeting the maintenance and administrative expenses for running the hostel.

3. Contention of the Applicant:

1. Sons of Shree Bhimsenji Agrawal floated a trust in the name of Shree Ramnath Bhimsen Charitable Trust under the Indian Trusts Act, 1882 with the prime objective of charitable activities.
2. The Trust has started the girls hostel in the name of Shree Ramesh Sewa Sadan and Godavari Sewa Sadan hereinafter referred to as 'Hostel'. The Hostel is situated at Samta Colony, Raipur, Chhattisgarh.
3. That keeping in view of the facts that the trust is carrying the charitable activities the Income tax Department has given the exemption certificate under section 12A of the Income Tax Act, 1961 as to the Hostel charges from the boarders in order to bear its maintenance and administrative costs. Accordingly the Trust is not supposed to pay any income tax on the receipts of the hostel, as the running of hostel is covered under the charitable activity.
4. Hostel has been established with the prime motto of upliftment of the girls who are residing outside their homes for educational curriculums. For this purpose, the hostel is designed and constructed so as to provide residence / accommodation to the girls who arrive at Raipur to pursue their education. Thus, the hostel is providing basic facilities required for stay to pursue studies, which includes well-furnished residence, round the clock security, homely ambience, nutritious food, ample parking space etc.
5. Further, in case, any boarder want to reside in hostel for few days, in such case, the boarder is allowed to stay, however, the boarder is supposed to pay nominal charges of Rs. 240/- per day.
6. The Word "Hostel" has not been defined either under the Central/State/Integrated/UT Goods and Services Tax Act. Further, the same is also not defined under General Clauses Act, 1897 and therefore,



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the meaning has been extracted from various dictionaries which are as under :-

- i. Oxford Dictionary : "An establishment which provides inexpensive food and lodging for a specific group of people, such as students, workers, or travelers"
- ii. Oxford Learner's Dictionaries : "a building, usually run by a charity, where people who have no home can stay for a short time"
- iii. Cambridge Dictionary : "a large house where people can stay free or cheaply a student hostel"

- Vi Merriam Webster :- An inexpensive lodging facility for usually young travelers that typically has dormitory-style sleeping arrangements and sometimes offers meals and planned activities. Chiefly British a supervised institutional residence or shelter (as for homeless people).

- v. In Collins Dictionary: "A hostel is a large house where people can stay cheaply for a short period of time. Hostels are usually owned by local government authorities or charities".

- Vi In common parlance: A hostel is an establishment which provides inexpensive food and lodging for a specific group of people, such as students, workers, or travelers. The word hostel can also used as a synonyms of cheap hostel, youth hostel, YMCA, YWCA, bed and breakfast, B&B, boarding house, guest house, pension etc. from the above definitions, it can be easily perceived that the hostel is meant for residential or lodging purpose or can also be interpreted as guest house, inn for the purpose of staying with amenities.

- Vii. The Hostel due to implementation of GST was in hesitation about the tax implications to be followed when providing services in the ordinary course of its business.

- 1.1 That as mentioned above hostel is supplying service of renting or rooms to be used as residence along with ancillary facilities which are necessary with the main service. The applicant is getting rental income as consideration for providing such services which is nothing but nominal charges for bearing the maintenance and administrative costs of running a hostel.

- 1.2 Hostel is nothing but giving residential dwelling on rent to be used for the purpose of residence. The word hostel although has not been defined under Central/State/Integrated/UT Goods and service Tax Act, however as per the definition prescribed under Cambridge Dictionary as: " A large house where people can stay free or cheaply: a student hostel". The hostel is established only with a moto of providing residence to girl students that too solely for



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residential purpose against a nominal consideration hence it will be treated as providing the residential dwellings on rent.

- 1.3 That as mentioned above, in our considered view, since the hostel is providing the residence as hostel to girl boarders that too solely for residential purpose and therefore, the same is fully covered under the Entry No. 12 of Notification 12/2017 Central tax (rate) which prescribes that services by way of renting of residential dwelling for use as residence is exempted from GST. Therefore, the hostel is providing the residence to the occupants for which the hostel is charging the fee which is exempted from GST.
- 1.4 That the service which the hostel is providing is covered under the SAC code 9963 or Heading 9972 which is shown as Nil due to above- mentioned exemption notification. Thus it implies that the supply of service by way of renting for residential purpose is not subject to tax and in the instant case, undoubtedly, the Hostel is providing service for renting of residential dwelling for use as residence and thus falls under the supply of service which will be classified under the above-mentioned chapter heading which is subject to nil rate of tax.
- 1.5 That the Government in the interest of public at large, has prescribed a list of goods and services which are exempted from the purview of goods and service tax (GST) and accordingly the Government in order to exempt the specific establishments who are providing the low cost residence has exempted vide entry no. 14 of Notification No. 11/2017-Central Tax (Rate), dated 28th June, 2017. The Notification prescribes Services by a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes, having declared tariff of a unit of accommodation below one thousand rupees per day or equivalent is exempted from GST.
- 1.6 That to qualify the above-mentioned exemption the supplier of service must fall under this :

Services: - The Hostel is an inn which gives rooms on rent to girl students; hence it is duly covered under supply of service. Hotel, inn guest house, club or campsite;

In the present case, the hostel is providing the rooms to boarders and therefore, the question arises, whether the hostel will be covered under the hotel, inn guest house, club or campsite or not. In this regard the term hostel is neither defined in any of GST Acts, nor defined under the general Clause Act and therefore, we are borrowing the definition from Merriam Webster dictionary which defines hostel.



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INN: - AN inexpensive lodging facility for usually young travelers that typically has dormitory-style sleeping arrangements and sometimes offers meals and planned activities. Thus, the learned and widely known dictionary has defined the hostel which specifically includes the inn and accordingly in our considered view, the hostel can also be interpreted as INN.

By whatever name called: - That the Government in his wisdom, while issuing the Exemption Notification has specifically taken the wide coverage so as to include even other related terms/places which is working as lodge/hotel/inn. In other words, the exemption notification is even applicable to other service provider who actually providing the services of giving the space on rent for residence and not falling under the definition/scope of hotel, inn, guest house club or campsite. As the Notification specifies the term 'by whatever name called' which implies that even other related services providers will be exempted even though the same is not known to be hotels, inn etc.

Therefore, in our considered view, exemption is not only to 'Hotel, guest house etc.', but also to 'by whatever name called' such as 'Hostel'. For residential or lodging purposes, the hostel is providing residence to girl students and hence the same is nothing but used for residential and lodging purpose only. Having declared tariff of a unit of accommodation below one thousand rupees per day or equivalent Since, hostel is charging 6000/- per month per child therefore, per day charges will approximately be Rs. 200/- per day. Thus, service provide by Hostel as mentioned will be classified under the above-mentioned chapter heading which is subject to nil rate of tax.

In support to above contention following circular of Govt. of India could be quoted:-

**Circular: 32/06/2018-GST dated 12-Feb-2018, Government of India
Ministry of Finance (Department of Revenue) Central Board of Excise &
Customs, New Delhi**

Services – GST in respect of services as decided in 25th GST Council Meeting –
Clarification :-



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<p>1. Is hostel accommodation provided by Trusts to students covered within the definition of Charitable Activities and thus, exempt under sl. No. 1 of notification No. 12/2017-C.T. (Rate)?</p>	<p>Hostel accommodation service do not fall within the ambit of charitable activities as defined in para 2(r0 of notification No. 12/2017-C.T. (RATE). However, services by a hostel, inn guest house, club or campsite, by whatever name called, for residential or lodging purposes, having declared tariff of a unit of accommodation below one thousand rupees per day or equivalent are exempt. Thus, accommodation service in hostels including by Trusts having declared tariff below one thousand rupees per day is exempt. [Sl. No. 14 of notification No. 12/2017-C.T. (Rate) refers]</p>
<p>2. Food supplied to the patients; Health care services provided by the clinical establishments will include food supplied to the patients; but such food may be prepared by the canteens run by the hospitals or may be outsourced by the Hospitals from outdoor caterers. When outsourced, their should be no ambiguity that the suppliers shall charge tax as applicable and hospital will get no ITC. If hospitals have their own canteens and prepare their own food; then no ITC will be available on inputs including capital goods and in turn if they supply food to the doctors and their staff; such supplies, even when not charged, may be subjected to GST.</p>	<p>Food supplied to the in-patients as advised by the doctor/nutritionists is a part of composite supply of healthcare and not separately taxable. Other supplies of food by a hospital to patients (not admitted) or their attendants or visitors are taxable.</p>

4. Personal Hearing:-

In keeping with the established principles of natural justice, personal hearing in the matter was extended to the authorized representative of the applicant and accordingly, Mr. J.K. Gupta (CA) and Shri Kamal Kishor Agrawal trustee appeared before us for hearing on 14.01.2019 and reiterated their contention. They also furnished a written submission dated 14.01.2019, which has been taken on record. Another hearing in the case was also extended to the applicant on 21-02-2019 when Mr. J.K.Gupta, C.A. and Mr. Kamal Agrawal attended and reiterated their contention.



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They sought advance ruling on whether the hostel which is providing the residence to students is required to charge GST or not? In this regards, they have submitted that they are providing the residence on rent for which they are charging lump sum charges for giving the residence. Further, they are also providing ancillary services such as food, parking with that lump sum amount only and that they are not charging any amount over and above. They have also submitted that since the principal supply is providing residence and therefore, it will be exempted from GST as envisages Notification 12/2017 Central tax.

They have also submitted the brochure of hostel, Notification number 12/2017, Notification number 11 which provides the SAC code and exemption on such SAC code in which the hostel services are falling. Further, they have also submitted the copy of GST composite supply flyers issued by the Government and various judgments which was given by court of law outside India. They also submitted that they will submit a detailed submission within a day. It was thus their contention, that the tax will not be leviable, the same being exempted.

5. The legal position, Analysis and Discussion:-

5.1 The provisions for implementing the CGST Act and CGGST Act, 2017 are similar. Now we sequentially discuss the provisions that are applicable in the present case.

5.2 Nature of the work :-

The applicant Shree Ramnath Bhimsen Charitable Trust is registered under Public Trust Act, 1951 w.e.f. 27-06-1991. The document submitted by the applicant mention that they are running girls hostels in the name of Shree Ramesh Sewa Sadan and Godavari Sewa Sadan (hereinafter referred to as 'hostel'). The hostel is providing basic facilities which are required for stay and to pursue studies which include well-furnished residence, round the clock security, homely ambience, nutritious food, ample parking space etc. and in consideration, hostel is charging a nominal lump-sum fee of Rs. 6000/- per month per person. In other words hostel is charging a single amount for providing above-mentioned services.

5.3 The applicant is running two girls hostels. They are providing 205 bed facility at Shee Ramesh Sewa Sadan which include 12 single bedrooms and 550 beds facility including 37 single bed rooms at Godavari Sewa Sada. All the rooms are air-conditioned. For the above accommodations, monthly charges of Rs. 6000/- per month are paid by the occupants. The following facilities are jointly and exclusively being provided to the occupants of hostel:-

Canteen: - The hostel has well maintained canteen which provides healthy diet and hygienic food.



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Parking Facility:- Students are provided parking facility in the hostel campus which is very safe & spacious.

Hot Water Facility:-The hostel has solar geyser which ensures hot water facility to the students.

Guest Rooms:- There are provision to accommodate the parents of occupants in the three guest rooms.

Temple:- Hostel also comprises of a temple at the ground floor.

Above mentioned facility and accommodation is provided in consideration of Rs. 24000/- charged quarterly from boarders. The receipts of above have been attached hereto. The applicant have applied to declare the above services to be treated as composite supply under section 2(30) of the GST Act. Following provisions of Chhattisgarh GST Act should be discussed before considering the applicant contentions:-

For such supplies CG GST Act specifically provides as under :-

Section-2(30):- "composite supply" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;

Illustration: Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply;

Section-2(90):- "principal supply" means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary

Section-2(78):- "non-taxable supply" means a supply of goods or services or both which is not leviable to tax under this Act or under the Integrated Goods and Services Tax Act;

Section-8 Tax liability on composite and mixed supplies:

The tax liability on composite or a mixed supply shall be determined in the following manner, namely:-

- (b) composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply;
- (c) Under composite supply, two or more taxable supplies and amount of exempt supply cannot be severed or artificially vivisected. In this context, the following provisions of CGGST Act are also squarely applicable here:-



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Section-2(47):- "exempt supply" means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply;

Section-2(74):- "Mixed supply" means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply.

Illustration:- A supply of a package consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drinks and fruit juices when supplied for a single price is a mixed supply. Each of these items can be supplied separately and is not dependent on any other. It shall not be a mixed supply if these items are supplied separately;

Section-2(108):- "taxable supply" means a supply of goods or services or both which is leviable to tax under this Act;

5.4 From the above provisions it is clear that when two or more taxable supplies either of goods or services or both occurs; it may be treated as mixed or composite supply. Section 2(74) clarify the meaning of mixed supply as when two or more supplies occurs against a single price and is different from composite supply, then it is termed as 'mixed supply'. Section 2(30) specifies following determinants to determine composite supply:-

1. *Two or more taxable supplies of goods or services or both, or any combination thereof,*
2. *Supplies are naturally bundled,*
3. *Supplied in conjunction with each other in the ordinary course of business,*
4. *One of which is a principal supply.*

With regard to above, on observation of documents/brochure/submitted by the applicant it is evident that the girls residing in both the hostels are provided with various facilities like food supply from canteen, parking space, coaching, library, entertainment which are all taxable supplies. Apart from above they are also provided with the provision of guest rooms for visiting parents of the occupants. All the facilities are only for the occupants of the hostels. The girls residing there are neither allowed to have food from outside nor are outsiders allowed to have food from hostel canteen. Thus the accommodation facility at hostel is the only principal supply and all the other facilities are inter-related as they are provided exclusively to the occupants of hostel only, without any extra charge. It has categorically been stated by the applicant that no other charges other than above amount is collected from the occupants on account of other allied facilities being provided.

On above lines, the amount/charges received from the occupant girls at Shree Ramesh Sewa Sadan (205 beds comprising 12 single rooms) and Godawari Sewa Sadan (550 beds comprising 37 single rooms) against the facility of accommodation is during the course of business.



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5.5 As per circular No. 32/06/2018-GST, dated 12-02-2018 issued by Ministry of Finance (Department of Revenue), Govt. of India, Hostel accommodation service do not fall within the ambit of charitable activities as defined in para 2(r) of notification No. 12/2017-C.T. (RATE). However, services by a hostel, inn guest house, club or campsite, by whatever name called, for residential or lodging purposes, having declared tariff of a unit of accommodation below one thousand rupees per day or equivalent are exempt. It has further been clarified that accommodation service in hostels including by Trusts having declared tariff below one thousand rupees per day is exempt. [Sl. No. 14 of notification No. 12/2017-C.T. (Rate) refers].

There remains hardly any ambiguity as regards the fact that primarily the occupants approach the Hostel facility providers for having accommodation facility and only once this accommodation facility gets ensured, does the need for other allied facilities arise. Here in the instant case no other charges are being collected from the occupants for the allied services being provided.

Thus it is clear from the above circular that the amount received for providing taxable supplies in hostel under Notification No. 12/2017(Rate) illustrating lodging purposes, having declared tariff of a unit of accommodation below one thousand rupees per day or equivalent are exempt. The lump sum amount received per unit (bed) per day against the accommodation services in hostel is to be treated as exempt supply.

5.6 The applicant has furnished documentary proof during hearing with regard to the hostel charges collected from both the hostels which is rupees 7000/- per month for per bed single room and rupees 6000/- per month per bed for rooms consisting of more than a single bed. As already discussed, no charges other than above are collected from the occupants on account of the allied facilities being provided or on account of other allied supply of services. Thus Rs. 28000/- and Rs. 24000/- respectively are being collected from the occupants of Hostel, quarterly in lump sum. This amount is less than Rs. 1000/- per unit (bed) when computed on a daily basis. Such supply under GST gets categorized under Notification No. 12/2017 dated 28-06-2017 (Rate) (Serial No. 14) tariff heading 9963 services by a hotel, inn, guest house, club or campsite by whatever name called, for residential or lodging purposes having declared tariff of a unit accommodation below one thousand rupees per day or equivalent and accordingly merits treatment as nil rated liability.

In view of the deliberations and discussions as above, we pass the following order:-



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ORDER

(Under section 98 of the Chhattisgarh Goods and Services Tax Act,2017)

No.STC/AAR/11/2018

Raipur, Dated ..02../03../2019

The ruling so sought by the Applicant is accordingly answered as under:-

The activity of providing accommodation services by the applicant in their hostel for which the applicant is collecting an amount below the threshold limit of Rs. 1000/- per day and no other charges are being collected for providing other allied facilities / services therein viz. canteen food, parking space for vehicles, coaching, library, entertainment etc. merits exemption as stipulated under Notification No. 12/2017-State Tax (Rate) No. F-10-43/2017/CT/V(80), Naya Raipur, Dated 28.06.2017 under Serial No. 14, Chapter 9963. This amount received for such supply by the applicant falling under tariff heading 9963 qualifies being treated as nil rate tax exempted supply.

Place: - Raipur

Date:- 02.03.2019

Seal:-



— Sd —
Kalpana Tiwari
(Member)

TRUE COPY
Kalpana
2/3/19
MEMBER
ADVANCE RULING AUTHORITY
CHHATTISGARH, RAIPUR

— Sd —
Rajesh Kumar Singh
(Member)

TRUE COPY
R Singh 2/3/2019
MEMBER
ADVANCE RULING AUTHORITY
CHHATTISGARH, RAIPUR

Copy to:-

1. Applicant,
2. The Commissioner, (CGGST)
3. The Principal Commissioner, (CGST)
4. The jurisdictional officer, Raipur Circle-3.