

**THE AUTHORITY ON ADVANCE RULINGS  
IN KARNATAKA  
GOODS AND SERVICE TAX  
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD  
GANDHINAGAR, BENGALURU - 560 009**

**Advance Ruling No. KAR ADRG 102/2019**

**Dated: 30<sup>th</sup> September, 2019**

Present:

1. Sri. Harish Dharnia,  
Addl. Commissioner of Central Tax . . . . Member (Central  
Tax)
2. Dr. Ravi Prasad M.P.  
Joint Commissioner of  
Commercial Taxes . . . . Member (State  
Tax)

1.	Name and address of the applicant	M/s ACHARYA SHREE MAHASHRAMAN CHATURMAS PRAVAS VYAVASTHA SAMITI TRUST, No.645/1, Burgal Mutt Road, V.V.Puram, Bengaluru 560004
2.	GSTIN or User ID	29AAGTA1345L1ZK
3.	Date of filing of Form GST ARA-01	10.05.2019
4.	Represented by	Sri Sanjay Dhariwal, Chartered Accountant
5.	Jurisdictional Authority - Centre	Commissioner of Central Tax, Bangalore South
6.	Jurisdictional Authority - State	LGSTO-100, DGSTO-3, Bengaluru
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of 1. Rs.5,000-00 under CGST Act vide CIN IOBA19052900051030 dated 09.05.2019 2. Rs.5,000-00 under KGST Act vide CIN IOBA19052900051030 dated 09.05.2019

**ORDER UNDER SECTION 98(4) OF THE CENTRAL GOODS AND SERVICE TAX ACT, 2017 AND UNDER SECTION 98(4) OF THE KARNATAKA GOODS AND SERVICES TAX ACT, 2017**

1. M/s Acharya Shree Mahashraman Chaturmas Prava Vyvastha Samiti Trust, (called as the 'Applicant' hereinafter), having GSTIN number 29AAGTA1345L1ZK, has filed an application for Advance Ruling under Section 97 of the CGST Act, 2017 read with Rule 104 of the CGST Rules 2017 and Section 97 of the KGST Act, 2017 read with Rule 104 of the KGST

Acharya Shree MCPVS Trust



Rules, 2017, in FORM GST ARA-01 discharging the fee of Rs.5,000-00 each under the CGST Act and the KGST Act.

2. The Applicant is a Trust and is registered under the Goods and Services Act, 2017. The applicant has sought advance ruling in respect of the following question:

- a) Whether the applicant is liable to pay tax on renting of temporary residential rooms for consideration to the devotees and renting of space for shops and stalls for the purpose of religious programmers where the predominant object is not to do business but for advancement of religion?
- b) Whether the applicant is liable to pay tax on renting of temporary residential rooms as per the following categories, to the devotees to stay for the purpose of religious programmers where charges per room is less than one thousand per day, if answer to the question 1 is yes?
  - (i) Category-I: 2 BHK 430 sq.ft., including facilities such as water, electricity, cot, bed, pillow, bedspread, one AC, and having two rooms, hall, kitchen, rest-room + toilet, with cooking facility and no cleaning services.
  - (ii) Category-II: 1 BHK 300 sq.ft., including facilities such as water, electricity, cot, bed, pillow, bedspread, one AC and having one room, hall, kitchen, rest-room + toilet, with cooking facility and no cleaning services.
  - (iii) Category-III: Single room, 100 sq.ft., including facilities such as water, electricity, cot, bed, pillow, bedspread, common rest rooms and toilets and no cleaning and cooking facility services.
  - (iv) Category-IV: Single room, 150 sq.ft., including facilities such as water, electricity, cot, bed, pillow, bedspread, one AC and having rest room and toilet. No cleaning and cooking facilities.
  - (v) Category-V: Dormitory consisting 12 beds, including facilities such as water, electricity, two AC, bed, pillow, bedspread, common rest rooms and toilets. Charges per bed ranging from Rs.250-00 per day.
- c) Whether applicant is liable to pay tax on renting of space for stalls, where the predominant object is not to do business but for advancement of religion, if answer to the question 1 is yes?



- d) Whether the applicant is liable to pay tax on supply of food and beverages at subsidized rates to the devotees, where the predominant object is not to do business but for advancement of religion?
- e) Whether the applicant is liable to pay tax on providing space for registered person without consideration for supply of food and beverages to the devotees, where consideration is received by registered person directly from devotees?
- f) Whether applicant is liable to pay tax for acting intermediary for booking hotel rooms to the pilgrims from outside?

3. The applicant furnishes some facts relevant to the stated activity:

a. The applicant states that they are a religious charitable trust registered under Section 12 AA of the Income Tax Act, 1961 carrying out religious and charitable activities. The applicant is principally engaged in the field of spreading knowledge and advancement of Jain Dharma, which have listed out as under

- i. To render dedicated service to Jain religion as enshrined in Jain Holy Scriptures with a view to promote the cause of Right Knowledge, Right Faith and Right Perception as understood by Terapanth Section of Jains;
- ii. To get introduced to, and spread and popularize Jain philosophy, culture, History and Literature;
- iii. To actively collaborate in spreading and popularizing the moral and spiritual movements founded and ratified by Acharyas of Terapanth Sect of Jain Religion;
- iv. To conduct and actively collaborate in the spiritual activities relating to Anuvrat Movement, Preksha Meditation System, Science of Living, Jain Lifestyle, Jain Sanskar, Non-violence, etc. which are founded conducted and approved by ACHARYAs of Terapanth Sect;
- v. To arrange and conduct holy Chaturmas of saints of the Swethambar Terapanth Jain Sect of Jain Religion;
- vi. To manage, co-ordinate and co-operate in all possible ways to arrange place of stay, travel and other programmes for Acharyas of Terapanth Sect, and sadhus and Sadhvis initiated in this Sect, Shramans ad Shramanis initiated in Terapanth Sect and Mumukshu ladies and gentlemen and to provide proper arrangement for shravaks and shravikas who come for Seva and Darshan;
- vii. To arrange for the conduct of maryada Mahotsav of the Holy saints of Terapanth Sect of Jain Religion;
- viii. To assist graduate students and Researchers in pursuing their studies in presenting the principles of Jain Religion in scientific manner in the Shree MCPVS Trust



- present day perspective; to kindle their interest in performing the comparative study with other philosophies;
- ix. To work towards giving education of fundamental principles of Jain Religion and the Philosophy of Terapanth Sect in Prakrit, Sanskrit, Ardhamagadhi, Hindi, Kannada and various languages;
  - x. To honour those who work towards development of Jain Religion and especially the principles of Terapanth Sect; to honour persons of Terapanth Sect, who render their services for spreading and popularizing constructive activities like Anuvrat, Preksha meditation, Science of Living, Non-violence, etc.
  - xi. To get directly involved in or to help in collection, publication, editing, translation, purchase and sale of literature, which echoes the thoughts of Terapanth Sect of Jain religion and which establishes high moral, spiritual and social values;
  - xii. To collect and preserve literature, handicraft items, manuscripts, and old historical literature for preserving and enhancing the Jain religion and culture, for conducting comparative study with other religious philosophies and for research work;
  - xiii. To work starting Department of Jainology in Universities;
  - xiv. To organize Preksha meditation and Yoga etc., along with social and educational activities for physical, mental and emotional development of individuals;
  - xv. To organize lectures and meetings for demonstrating the importance of philosophy of non-violence, philosophy of non-absolutism and other spiritual concepts and their relevance in the present day; to extend invitation to and provide proper hospitality to national and international scholars, writers and researchers in these events;
  - xvi. To arrange, assist and to send shraman-shramanis, authorized people and scholars all around the world for spreading and popularizing the constructive activities like principles of Jain religion, especially Terapanth sect like Anuvrat, Preksha Meditation, Science of Living, Non-violence, etc.,
  - xvii. To spread principles of Non-violence, Truth, Non-stealing, Chastity and Non-possessiveness,
  - xviii. To run and operate Gyanshalas to provide spiritual and moral education to those interested in learning;
  - xix. To undertake management of other similar Trusts and Institutions;
  - xx. To undertake, organize and facilitate Shivirs, study courses, conferences, seminars, and lectures relating to different cultural patterns of the world;



- xxi. To do all other acts and things as are conducive or helpful to the advancement and fulfillment of the principles and other objects above mentioned.
- b. The applicant states that he is conducting a religious function from July 2019 to November 2019 at Kumbalagodu Village, Mysore Road, Kengeri Hobli, Bengaluru South Taluk. The main activities that are conducted are Pravachanas, Spiritual Speeches, Dhyana, Meditation, prayer, etc. Public of religions are allowed and no fees will be charged or collected for entry to the public.
- c. The applicant is intending to provide boarding and lodging facility to the devotees who are staying far away from the place of residence, for which the applicant is erecting temporary residential rooms consisting of the following categories and facilities:
- i. Category-I: 2 BHK 430 sq.ft., including facilities such as water, electricity, cot, bed, pillow, bedspread, one AC, and having two rooms, hall, kitchen, rest-room + toilet, with cooking facility and no cleaning services.
  - ii. Category-II: 1 BHK 300 sq.ft., including facilities such as water, electricity, cot, bed, pillow, bedspread, one AC and having one room, hall, kitchen, rest-room + toilet, with cooking facility and no cleaning services.
  - iii. Category-III: Single room, 100 sq.ft., including facilities such as water, electricity, cot, bed, pillow, bedspread, common rest rooms and toilets and no cleaning and cooking facility services.
  - iv. Category-IV: Single room, 150 sq.ft., including facilities such as water, electricity, cot, bed, pillow, bedspread, one AC and having rest room and toilet. No cleaning and cooking facilities.
  - v. Category-V: Dormitory consisting 12 beds, including facilities such as water, electricity, two AC, bed, pillow, bedspread, common rest rooms and toilets. Charges per bed ranging from Rs.250-00 per day.
  - vi. Category-VI: Renting of space for stalls
- d. The applicant is also intending to provide food and beverages to the devotees at subsidized rates. Further the applicant is also intending to provide space without consideration to another registered person who supplies food and beverages to the devotees for consideration, which directly flows from devotees.



4. The applicant, with regard to the first question, states that Section 9 of the Karnataka Goods and Services Tax Act, 2017 and Central Goods and Services Tax Act, 2017, is the main charging section which levies tax on all intra-State supplies of goods or services or both. The word "Supply" is defined under Section 7 of the Act, which reads as follows:

*"7. Scope of Supply -*

*(1) For the purpose of this Act, the expression "supply" includes -*

*(a) All forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;*

*...*

On perusal of the above provisions, the applicant is of the view that any transaction or activity shall be subject to levy of GST only if the following essential elements are present in such activity or transaction;

- (a) There should be contract between the parties;
- (b) The contract should be for the subject matter of goods or services or both;
- (c) There should be consideration passing from one person to another;
- (d) The sale of goods or provision of service should be in the course of furtherance of business.

4.1 The term "business" has been defined under section 2(17) of the Act, which reads as under:

*"Business" includes -*

- (a) Any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not for a pecuniary benefit;*
- (b) Any activity or transaction in connection with or incidental or ancillary to sub-clause (a);*
- (c) Any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;"*

4.2 On combined reading of the above propositions, the applicant states that they are of the view that the activities conducted by the religious trust for the purposes of advancement of religion, does not fall under the definition of business. Therefore the activities and transactions conducted by the religious trust with the predominant object of advancement of religion does not attract tax under the GST law.



4.3 The applicant states that they place reliance on the decision of the Apex Court in the case of Commissioner of Sales Tax v. Sai Publication Fund [2002] 2 SCC 7 (SC) wherein it was held that where the main activity is not business, then any incidental or ancillary transaction, unless established by the revenue department to be an independent business transaction, will also be considered as charitable only and not business. Further, it was also held that, where the main and dominant activity of the assessee trust in that case was to spread message of Sai Baba, then bringing out publications and sale thereof by the assessee trust to its devotees at cost price did not amount to business.

4.4 The principle laid down in the above case, the applicant argues, is squarely applicable to his case, wherein the renting of residential rooms to the devotees for a consideration is not the main object of the Trust. The predominant object is advancement of religion. Renting of residential rooms is only incidental to the main object, i.e. advancement of religion. Therefore the facility provided by the applicant in the form of renting residential rooms for consideration to the devotees and renting of space for shops and stalls does not attract tax under the GST law.

4.5 Further, the applicant also draws attention towards Notification No.12/2017 dated 28.06.2017, wherein Sl.No.1, exempts the services provided by an entity under section 12AA of the Income Tax Act, 1961 by way of charitable activities.

4.6 The expression "charitable activities" has been defined in the notification as under:

*"Charitable activities" means activities relating to:*

(i) *Public Health by way of:*

(A) *Care or counselling of*

(I) *Terminally ill person or persons with severe physical or mental disability;*

(II) *Persons affected with HIV or AIDS;*

(III) *Persons addicted to a dependence -*

*Forming substance such as narcotic drugs or alcohol; or*

(B) *Public awareness of preventive health, family planning or prevention of HIV infection;*

(ii) *Advancement of religion, spirituality or yoga;*

(iii) *...."*



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4.7 The applicant further, relies on the decision of the Hon'ble Apex Court in the case of CIT v. Gujarat Maritime Board [2007] 14 SCC 704 (SC), wherein it was held that, if the primary or predominant object of the trust is charitable, then any other object which might not be charitable but which is incident or ancillary to the dominant object will also be considered as charitable.

4.8 The combined reading of the above notification with the principles laid down by the Hon'ble Apex Court, it is understood by the applicant, means that renting of residential rooms for consideration being incidental and ancillary to the main object of the applicant, i.e. giving pravachanas, spiritual speeches, meditation, Dhyana, prayer, etc., shall definitely fall under advancement of religion. Therefore, the applicant is not liable to pay tax on renting of residential rooms and space for shops and stalls, irrespective of monetary limit prescribed for exemption.

5. Regarding the second question, the applicant submitted that, without prejudice to the submissions made for question no.1, Sl.No.13 of Notification No.12/2017 dated 28.06.2017 exempts services supplied by a person by way of:

- (a) conduct of any religious ceremony
- (b) renting of precincts of a religious place meant for general public, owned or managed by an entity registered as a charitable or religious trust under section 12AA of the Income Tax Act or a trust or an institution registered under sub-clause (v) of clause (23C) of section 10 of the Income Tax Act or body or an authority covered under clause (23BBA) of section 10 of the said Income Tax Act.

Provided that nothing contained in entry (b) of this exemption shall apply to

- (i) Renting of rooms where charges are one thousand rupees or more per day;
- (ii) Renting of premises, community halls, kalyana mandapam or open area, and the like where charges are ten thousand rupees or more per day;
- (iii) Renting of shops or other spaces for business or commerce where charges are ten thousand rupees or more per month.

5.1 The term "religious place" as defined in clause (zy) of the said notification, means "a place which is primarily meant for conduct of prayers or worship pertaining to a meditation, or spirituality".







6.1 The term "religious place" as defined in clause (zy) of the said notification, means a place which is primarily meant for conduct of prayers or worship pertaining to a meditation or spirituality.

6.2 Reading of the above notification shows that renting of precincts of a religious place meant for general public owned by an entity registered under specified sections of the Income Tax Act subject to the consideration charged for such renting not exceeding the prescribed ceiling as given above is exempt from tax.

6.3 In the present case the place where applicant is intending to conduct meditation, spiritual activities and prayers etc., fall under the expression "religious place" as defined under Notification No.12/2017 dated 28.06.2017 and renting of space for shops and stalls in such place at price less than ten thousand rupees per month, fall under Sl.No.13 of Notification No.12/2017 dated 28.06.2017 therefore the activity of renting space for shops where the charges per month is less than rupees ten thousand does not attract tax under GST Law.

7. Regarding question no.4 the applicant submits that section 9 of the KGST Act and CGST Act are the main charging section which levy tax on all intra-State supplies of goods or services or both and in the background of the definition of business in Section 2(17) of the GST Acts, the applicant is of the view that the activities conducted by the religious trust for the purpose of advancement of religion does not fall under the definition of business, therefore the activities and transactions conducted by the religious trust with the predominant object of advancement of religion does not attract tax under the GST Law. Reliance is placed on the judgements of the Hon'ble Apex Court in the cases of Commissioner of Sales Tax v. Sai Publication Fund [2002] 4 SCC 7 (SC) and CIT v. Gujarat Maritime Board [2007] 14 SCC 704 (SC). Hence for the reasons cited in the above relevant paragraphs, the applicant is not liable to tax for the supplies of food and beverages at subsidized rates.

8. Regarding question no.5, the applicant states that one of the requirement for an activity or transaction shall fall under the scope of supply is "consideration". Therefore, if an activity or transaction though falls in any one of the forms of supply, but without consideration does not fall under the scope of supply, thereby does not attract tax under GST. In the present case also, the applicant submits that providing space without consideration to another registered person for supply of food and beverages does not attract tax.



8.1 Further, the applicant submits that there shall not be any liability to pay tax on supply of food and beverages on applicant, for the reason that the applicant is not supplying food and beverages to the devotees but supplied by the registered person and consideration flows directly from devotees to the registered person.

9. With regard to the question no.6, the applicant submits that the applicant will receive an advance for booking hotel rooms on behalf of pilgrims from outside the State. After completion of stay, the applicant will pay the actual amount to the respective hotels. Extra amount if any left out, will be returned to the respective pilgrims.

9.1 The applicant submits further that nothing will be charged having provided intermediary services to the pilgrims. Therefore, the applicant is of the view that having provided such intermediary services without consideration does not attract tax under GST Law.

9.2 In support of the above submissions, the applicant has relied on the following provisions:

(a) Sub-section (13) of Section 2 of the IGST Act, defines the term "intermediary" as *"a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account"*.

(b) Sub-section (5) of section 2 of the CGST Act / KGST Act defines the term "Agent" as *"a person, including a factor, broker, commission agent, arhatia, del-credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another"*.

9.3 Rule 33 of CGST/KGST Rules, 2017 deals with value of supply of services in case of pure agent, which reads as under:

*"Notwithstanding anything contained in the provisions of this Chapter, the expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply, if all the following conditions are satisfied, namely:*

- (i) the supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorisation by such recipient;*
- (ii) the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the*



- invoice issued by the pure agent to the recipient of service;*  
*and*  
*(iii) the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.*

*Explanation.- For the purposes of this rule, the expression "pure agent" means a person who-*

- (a) enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;*  
*(b) neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply;*  
*(c) does not use for his own interest such goods or services so procured; and*  
*(d) receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account."*

9.4 Reading of the above provisions, the applicant states that it is clear that an intermediary is a person who acts on behalf of another person and does not provide service on his own account. Such person does not hold or intends to hold any title to the goods or services. In the case of the applicant also, where the applicant intends to book hotel rooms to the pilgrims outside the State, do not hold any title in such hotel rooms. The applicant acts on behalf of pilgrims. Moreover, the applicant makes the actual payment incurred and if any extra left-out will be refunded to the pilgrims.

9.5 In view of the above submissions, the applicant is of the view that, he neither holds or intends to hold any title nor receive any consideration for acting as intermediary, and therefore the activity of booking hotel rooms for pilgrims does not attract tax under the GST Acts.

10. Sri Sanjay Dhariwal, Chartered Accountant and duly authorized representative of the applicant appeared and reiterated the submissions made supra.

#### 11. FINDINGS & DISCUSSION:

We have considered the submissions made by the applicant in their application for advance ruling as well as the additional submissions made by Sri Sanjay Dhariwal, CA, during the personal hearing. We also

considered the issues involved on which advance ruling is sought by the applicant and relevant facts. At the outset, we would like to state that the provisions of both the CGST Act and the KGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the KGST Act.

11.1 The facts and nature of the transactions before us have been examined and we found that the applicant is a charitable trust registered under Section 12-AA of the Income Tax Act. They are engaged in carrying out religious and charitable activities. It is also pertinent to note that providing accommodation services, renting out properties and booking accommodation, supplying of food and drinks for consideration are not directly related to religious activities.

11.2 Further, the words in entry no.1 of Notification No.12/2017 - Central Tax (Rate) dated 28.06.2017 state that "Services by an entity registered under Section 12AA of the Income Tax Act, 1961 (43 of 1961) by way of charitable activities" is exempt from CGST. This clearly implies these are "supplies" under the context of CGST Act and hence they are exempted from tax.

11.3 The term "charitable activities" is defined in clause (r) of Para 2 of the Notification No.12/2017 - Central tax (Rate) dated 28.06.2017 as under:

"(r) "charitable activities" means activities relating to -

- (i) public health by way of, -
  - (A) care or counselling of
    - (I) terminally ill persons or persons with severe physical or mental disability;
    - (II) persons afflicted with HIV or AIDS;
    - (III) persons addicted to a dependence-forming substances such as narcotics drugs or alcohol; or
  - (B) public awareness of preventive health, family planning or prevention of HIV infection;
- (ii) Advancement of religion, spirituality or yoga;
- (iii) Advancement of educational programmes or skill development relating to, -
  - (A) abandoned, orphaned or homeless children;
  - (B) physically or mentally abused and traumatized persons;
  - (C) prisoners; or
  - (D) persons over the aged of 65 years residing in rural areas;



- (iv) Preservation of environment including watershed, forests and wildlife;"

The above definition, in the context of the applicant, is verified and found that an activity to be covered under the definition of charitable activities must be related to the advancement of religion, spirituality or yoga. The applicant is constructing buildings and giving it on rent, etc. which are not directly related to the advancement of religion, spirituality or yoga and hence the contention of the applicant that these are not in the course or furtherance of business cannot be accepted and held that these are covered within the meaning of "supplies" under section 7(1) of the CGST Act. What is not covered under the term business is the core activities propagating religious or spiritual activity and not the commercial activity of receipt and supply of goods or services or both, undertaken by a charitable trust. Analogy can be drawn to the activity of giving on rent commercial building owned by a charitable trust. Though the main object of the trust is charitable activity which cannot be covered under the term "business", not all activities of the trust can be kept out of the definition of "supplies".

11.3 The reliance placed by the applicant on the judgement of the Hon'ble Supreme Court in the case of Commissioner of Sales Tax v. Sai Publication Fund [2002] 4 SCC 7 (SC) in stating that the transactions are not taxable is misplaced for the following reasons:

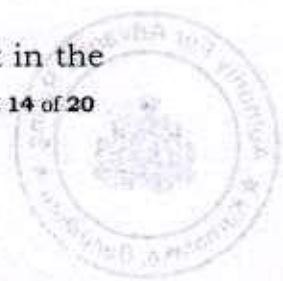
- (a) Sub-section (105) of section 2 of the CGST Act defines the expression "supplier" as under:

*"(105) "supplier" in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting on behalf of such supplier in relation to the goods or services or both supplied;"*

This has no condition that to be termed as a supplier, the person must supply the goods or services.

- (b) Section 7(1) of the CGST Act which provides for the scope of supply is an inclusive definition and hence it does not rule out other activities being termed as "supply"
- (c) The above activities are not excluded from the scope of supply in section 7(2) of the CGST Act.
- (d) Section 22(1) of the CGST Act which is related to the persons liable for registration states as under:

"(1) Every supplier shall be liable to be registered under this Act in the



State . . . . . from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds twenty lakh rupees.”

This clearly emphasizes that if the person (supplier) makes a taxable supply, he shall be liable to get himself registered, if his aggregate turnover exceeds the threshold.

12. Regarding the second question relating to whether the applicant is liable to pay tax on renting of temporary residential rooms as mentioned in five categories to the devotees to stay for the purpose of religious programmes where charges per room is less than Rs.1000-00 per day, the entries in the schedules is verified and found as under:

12.1 As per the Annexure to the Notification No.11/2017 – Central Tax (Rate) dated 28.06.2017, whether the services under question are covered under Heading 9963 or Heading 9972 is the main question. The applicant is obtaining the land on lease and constructing the rooms (though claimed to be temporary basis) and then letting out the accommodation.

12.2 Entry No. 7 of the Notification No.11/2017 – Central Tax (Rate) dated 28.06.2017, reads as under

Sl.No.	Chapter, Section or Heading	Description of Service	Rate (%)	Condition
7	Heading 9963 (Accommodation, food and beverage services)	(i) . . . . .		
		(ii) Accommodation in hotels, inns, guest houses, clubs, campsites and other commercial places, meant for residential or lodging purposes having a declared tariff of a unit of accommodation of one thousand rupees and above but less than two thousand five hundred per unit per day of equivalent	6	-
		(vi) Accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes having declared tariff of a unit of accommodation of two thousand five hundred and	9	-



	above but less than seven thousand five hundred rupees per day or equivalent		
	(viii) Accommodation in hotels, including five star hotels, inns, guest houses, clubs, campsites, or other commercial places meant for residential or lodging purposes having the declared tariff of a unit of accommodation of seven thousand and five hundred rupees and above per unit per day or equivalent	14	-
	(ix) Accommodation, food and beverage services other than (i), (ii), (iii), (iv), (v), (vi), (vii) and (viii) above	9	-

12.2 The plain reading of the entry 7(ii) of the above Notification reveals that the accommodation provided in commercial places meant for residential or lodging purposes having a declared tariff of a unit of accommodation of Rs.1000-00 per day per unit or equivalent would be taxable at 6% under CGST Act. The main clauses to be considered is that the accommodation must be provided in a commercial place and such commercial place must be meant for residential or lodging purposes. There is no doubt that the applicant is a supplier of service within the scope of section 7(1) of the CGST Act and they are providing accommodation services to the pilgrims and charging the persons on a monthly basis or daily basis for residential purposes and hence the activity of the applicant is squarely covered under this entry and hence the rates of taxes applicable on the declared tariff for the unit of accommodation per day are as under:

Declared tariff per unit of accommodation per day	Rate of Tax	Entry in Notification
Rs.1,000-00 to Rs.2,499-00	6%	Entry 7(ii) of Notn No. 11/2017- Central Tax (Rate) dtd 28.06.2019
Rs.2,500-00 to Rs.7,499-00	9%	Entry 7(vi) of Notn No. 11/2017- Central Tax (Rate) dtd 28.06.2019
Rs.7500-00 or more	14%	Entry 7(viii) of Notn No. 11/2017- Central Tax



		(Rate) dtd 28.06.2019
Accommodation services other than the above	9%	Entry 7(ix) of Notn No. 11/2017- Central Tax (Rate) dtd 28.06.2019

12.3 Entry No.14 of Notification No.12/2017 – Central Tax (Rate) dated 28.06.2017 states that “Services by a hotel, inn, guest house, club or campsite by whatever name called, for residential or lodging purposes, having a declared tariff of a unit of accommodation below one thousand rupees or equivalent” is exempted from tax” and these services must be of heading 9963.

12.4 The applicant’s question is related to the services of renting of residential rooms where charges are less than one thousand per day per room and hence para 12.2 is not applicable and only para 12.3 needs to be considered. The Services which are covered under para 12.3 are Services by a Hotel, Inn, Guest House, Club or campsite, for residential or lodging purposes. It is an admitted fact that these accommodation are for residential or lodging purposes and it is pertinent to examine whether the applicant is a Hotel, Inn, Guest House, Club or Campsite.

12.5 The other competing entry is Entry no.12 of Notification No.12/2017 – Central Tax (Rate) dated 28.06.2017 and the same states ‘Services by way of renting of residential dwelling for use as residence’ is exempt from tax.

12.6 In this regard it is seen that there are two types of accommodation, one with the facility of cooking and other without the facility of cooking. The conditions which needs to be satisfied for a contract to be covered under entry no.12 of Notification No.12/2017 – Central Tax (Rate) dated 28.06.2017 are as under”

- (a) it must be a service of renting of residential dwelling
- (b) it must be for use as residence.”

The accommodations provided are for temporary stay and not as a residence, the accommodation services provided are not covered under the said entry. Residence involves a degree of permanence which is not present in the service provided by the applicant.

13. Regarding the third question, whether the applicant is liable to pay tax on the renting of space for stalls, it is said in the affirmative for the reasons stated in para 11.



14. Regarding the fourth question, whether the applicant is liable to pay tax on supply of food and beverages at subsidized rates to the devotees, where the predominant object is not to do business but for the advancement of religion, it is to be noted that the applicant is charging consideration for the supply of services. The entry 7 of the Notification No.11/2017 – Central Tax (Rate) dated 28.06.2017 makes it very clear that the supply of goods being food or any article for human consumption or drink by way of or part of any service or in any manner whatsoever is taxable. Hence the supply of food and beverages at subsidized rates to the devotees is taxable under the GST Act.

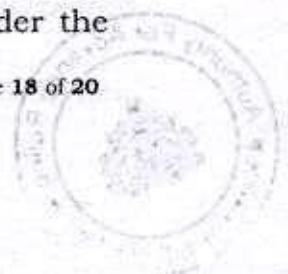
15. Regarding the fifth question, it is seen that the applicant is providing space for registered person without consideration for supply of food and beverages to the devotees and the consideration for the food and beverages supplied by such registered person is received by him directly from the devotees. This would amount to a supply of usage rights of space without consideration and the devotees are consumers. Schedule I to the CGST Act which is related to the “activities to be treated as supply even if made without consideration” does not cover this item as long as the registered person and the applicant are not related persons. In case the two are related persons as per definition of “related persons” as defined in Explanation to section 15 of the CGST Act, 2017, then the providing of space for registered person without consideration would be a supply liable to tax as per the provisions of the CGST Act, 2017.

16. Regarding the sixth question, it is observed that the applicant intends to book hotel rooms to the pilgrims from outside and the supply of service is by the hotel to the pilgrims and the applicant is facilitating the supply of accommodation service to the pilgrims by the hotel.

16.1 The term “intermediary” is defined in clause (13) of section 2 of the Integrated Goods and Services Tax Act, 2017 as under:

*“(13) “intermediary” means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account.”*

16.2 It is not disputed that the applicant arranges the supply of services and facilitates the supply and hence would be squarely covered under the



definition of “intermediary”.

16.3 Regarding the tax liability on the transaction, it is seen that the applicant collects the advance for booking of rooms on behalf of pilgrims from outside the State and acts as an agent of the pilgrims. The applicant holds the money and pays the consideration to the service provider at the end of the stay and in case of any balance, he would refund the same to the pilgrims. The payment is made on behalf of the pilgrim and the applicant does not hold any title to the services so procured and supplied and hence acts as a “pure agent” of the recipient of supply, only if the supplies procured by the applicant from the third party are in addition to the services he supplies on his own account. If he is a “pure agent” he is not liable to pay tax on the said turnover and if he is not supplying any service, then he would be a procuring agent for services and is liable to tax.


17. In view of the foregoing, we rule as follows

### **RULING**


1. The applicant is liable to pay tax in renting of temporary residential rooms for consideration to the devotees and renting of space for shops and stalls.
2. The applicant is liable to pay tax on renting of temporary residential rooms of all categories if the declared tariff of a unit of accommodation is Rs.1000-00 or more per day or equivalent.
3. The applicant is liable to pay tax on renting of space for stalls.
4. The applicant is liable to pay tax on supply of food and beverages at subsidized rates to the devotees
5. The applicant is liable to pay tax on providing space for registered person without consideration for supply of food and beverages to the devotees, only if the applicant and such registered person are covered under the definition of “related persons” as defined in Explanation to Section 15 of the CGST Act, 2017.
6. The applicant is liable to tax for acting as an intermediary for booking of hotel rooms to the pilgrims from outside, if he does not satisfy all the conditions prescribed for a pure agent (i.e the services



must be procured from suppliers of accommodation service in addition to the service he supplies on his own account).

  
30.09.2019

(Harish Dharnia)  
Member



(Dr. Ravi Prasad M.P.)  
Member

Place: Bengaluru,  
Date: 30.09.2019

To  
The Applicant

Copy to:

1. The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.
2. The Commissioner of Commercial Taxes, Karnataka, Bengaluru.
3. Commissioner of Central Tax, Bangalore-South
4. The Asst. Commissioner, LGSTO-100, Bengaluru
5. Office Folder

