

**THE AUTHORITY ON ADVANCE RULINGS
IN KARNATAKA
GOODS AND SERVICES TAX
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD
GANDHINAGAR, BENGALURU - 560 009
Advance Ruling No. KAR ADRG 86/2019
Dated : 25th September, 2019**

Present:

1. Sri. Harish Dharnia,
Additional 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 SRI DMS HOSPITALITY PRIVATE LIMITED, No 4, Bidadi Main Road, Opposite Sri Rama Temple, Bidadi, Ramanagar, Rural, Karnataka, India-562109.
2.	GSTIN or User ID	29AAZCS4895D1ZE
3.	Date of filing of Form GST ARA-01	09-11-2018
4.	Represented by	Sri Koushal Chartered Accountant
5.	Jurisdictional Authority - Centre	Pr Commissioner of Central Tax, Bangalore-West
6.	Jurisdictional Authority - State	LGSTO-155 Ramangaram
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs.5,000/- under SGST Act vide CIN IBKL 18082900380760 dated 28-08-2018 and Rs 5,000/- under CGST Act vide CIN number 18112900043226 dated 09-11-2018.

ORDER UNDER SUB-SECTION (4) OF SECTION 98 OF CENTRAL GOODS AND SERVICES TAX ACT, 2017 AND UNDER SUB-SECTION (4) OF SECTION 98 OF KARNATAKA GOODS AND SERVICES TAX ACT, 2017

1. M/s Sri DMS Hospitality Private Limited, No 4, Bidadi Main Road, Opposite Sri Rama Temple, Bidadi, Ramanagaram Taluk and District, having GSTIN number 29AAZCS4895D1ZE, has filed an application for Advance Ruling under Section 97 of the CGST Act, 2017 and Section 97 of the KGST Act, 2017, in FORM GST ARA-01 discharging the fee of Rs.5,000/- each under the CGST Act and the KGST Act.

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

1. *Classification of service provided by Sri DMS Hospitality Private Limited to Sodexo Food Solutions India Private Limited?*
 2. *Classification of service provided by the Building owner to Sri DMS Hospitality Private Limited?*
 3. *Applicability of GST Notification No. 12/2017-Central tax (Rate) dated 28th June 2017, "Services by way of renting of residential dwelling for use as residence" is exempt from GST?*
 4. *Applicability of GST on EMI per month charged from Sodexo Food Solutions India Private Limited and security services provided by Sodexo Food Solutions India Private Limited?*
3. The applicant company furnishes some facts relevant to the stated activity:
- a. The applicant company states that the company is facility providing services such as supply of services, accommodation services provided by inns, guest house or place for lodging purposes and Rental or leasing services involving own or leased residential property.
 - b. The applicant company has entered into agreement with landlord Dr Banraji B.H on 21-03-2018 for getting the 106 ft X 58 ft at 1st and 2nd Floor of the building at Plot Number 66-E, Phase II, Sector-II, KIADB, Shanamangala Village limit, Bidadi Industrial area, Bidadi, Ramanagara Taluk to the extent of 1023.00 Square meters on monthly rent of 2,35,000/- per month to the extent of 3 years exclusively used the schedule premises for accommodation purpose.
 - c. Further the applicant company has entered in to leave and licensee agreement with Sodexo Food Solutions India Private Limited dated 02-04-2018 for providing the sub lease (sub let) of scheduled premises of the aforesaid address at 106 ft X 58 ft at 1st and 2nd Floor to the extent of 5,25,000/-per month on monthly license fee (rent) and also provided facilities as per requirement of Sodexo Food Solutions India Private Limited Staff and Executives for residential accommodation
 - d. The requirement of Sodexo Food Solutions India Private Limited provided by the applicant is as under.
 - (i) Washrooms and toilets are common infrastructure required in the every building, (ii) bunkers with lockers, partitions, (iii) water purifier with RO, (iv) Dining tables and chairs, (v) Security service for 24 hours, Maintenance work, (vi) television set with DTH connection, (vii) Water sump, (viii) OHT (2,000 Litres*3), for 31 rooms at 1st and 2nd floor of the building premises to Residential Accommodation of Sodexo Food Solutions India Private Limited staff and executives. Hence the

applicant has raising invoice to the Sodexo Food Solutions India Private Limited as under.

The applicant company charges Rs 5,25,000/- for services of Rent with water and Maintenance and also raises invoice for INR 1,22,893/- towards EMI per month for the additional facilities provided.

- e. Wherein landlord Dr Banraji B.H has given the scheduled premises for the purpose of accommodation only. But the applicant company by providing the facilities narrated as above to Sodexo Food Solutions India Private Limited has utilized the said building premises for residential use of the executive and staff of Sodexo Food Solutions India Private Limited.
- f. Based on the above aspects the applicant contends that GST on accommodation services by Inns, guest house, lodging houses are liable to GST and exemption is provided only in case of renting of residential dwelling for use as residence, hence as per Notification No. 12/2017- Central Tax (Rate) dated 28th June 2017 as "Services by way of renting of residential dwelling for use as residence" is exempt from GST.

6. Sri Koushal Chartered Accountant, appeared on behalf of the applicant before the Authority for Advance Ruling on 31-12-2018.

6.1 The DAR argued that only premises used for accommodation services by Inns, guest houses, lodging houses are liable to GST and exemption is to be allowed in the case of renting of residential dwelling for use as residence. Hence as per Notification No.12/2017-Central Tax (Rate) dated 28.06.2017, "Services by way of renting of residential dwelling for use as residence" is exempt from GST.

6.2 The Applicant submits that applicability of GST on EMI per month charged from Sodexo Food Solutions India Private Limited for providing security services is also exempt from payment of taxes because the same has been used for residential dwelling purpose.

7. 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 Koushal, Chartered Accountant, during the personal hearing. We also considered the issues involved on which advance ruling is sought by the applicant and relevant facts.

7.1 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.

7.3 The applicant has presented two sets of agreements.

(a) The first document is a 'rent agreement' between the applicant and Dr Banraji B.H, on 21-03-2018 wherein the property owner has let out a certain premises for accommodation purpose for monthly rent of Rs 2,35,000/-. In this agreement the details of the premises are given only in the form of the plot number, the area of the plot and its surrounding plots. The agreement does not give details like the number of rooms, washrooms etc.. Generally an agreement for a residential unit will have details like the number of rooms etc. The agreement has very cautiously avoided mention of all these details. The schedule of the property in the form of possession certificate of the above said premises, KIADB/AE/PC/648/2014-15 dated 27-08-2014 issued by the Karnataka Industrial Development Board, Bangalore, is on record. This indicates that the said premises is of industrial nature and its original purpose at the time of allotment was not for residential purposes. The agreement, in para 1, reads as '.....referred to as SCHEDULE PREMISES for ACCOMMODATION purpose only,.....'. The agreement has astutely avoided the use of the term 'residential accommodation'.

(b) The second document is an agreement between the applicant and Sodexo Food Solutions India Pvt Ltd. Some critical points observed in the agreement, which have a bearing on the questions raised in the application are as follows:

(i) The applicant holds themselves out as the owner of the premises whereas they are actually not.

(ii) the applicant has drafted the agreement to project the premises as a 'flat' when they mention 'Whereas the Licensor is the owner of the Flat at Plot No. 66E....'. We take note of the fact that the owner of the property had not mentioned the nature of the property as a flat in the first

agreement. However the applicant goes ahead to pose as the owner and also project the nature of the property as a flat.

(iii) In this agreement its clearly mentioned that the property shall be used for residential purposes while in the first agreement with the original landlord the purpose was camouflaged under the term 'accommodation'.

(iv) Another important point that we observe in this agreement is that the number of rooms has not been mentioned while the numbers of washrooms and toilets is shown as 31 each. It appears that the number of rooms is also 31. The applicant has not indicated the number of rooms and has stated that there are a number of flats. The number of flats are not indicated anywhere, neither in the agreement nor in the application. We take note of the fact that if the number of washrooms and toilets could be indicated in the agreement then the number of rooms should have invariably been mentioned as the rooms are the basic unit of residential accommodation and the most important factor on deciding the amount of living space available when a premise is hired on rent.

7.4 Reading the two agreements together and also taking note of the various observations as above and also the fact that the premises was allotted by the KIDB, it appears that the premises is a non-residential property. Considering the number of washrooms and toilets mentioned in the agreement it appears that the building was constructed as a hotel or a lodge.

7.5 The supply of services, in the facts and circumstances of the case, are classifiable as 'Rental or leasing services involving own or leased non-residential property' under Service Code (Tariff) 997212. It is taxable in the hands of the landlord and is liable for GST at the rate of 18 percent.

7.6 Further the applicant company has subleased the premises to M/s Sodexo Food Solutions India Private Limited based on leave and license agreement dated 02-04-2018 for a rent of Rs.5,25,000.00 per month. The supply of services is considered as rental or leasing services involving own or leased non-residential property and is liable for GST at the rate of 18 percent of HSN 997212.

7.5 The applicant is also providing additional facilities like Dining



Tables/ Chairs, Partitions, Water purifiers, Bunk beds with lockers, TV with DTH Connection and the entire investment made is recovered with 12% interest per annum at the rate of Rs.1,22,893/- per month. This amounts to supply of goods as per entry no.1(c) of Schedule II to the Central Goods and Services Tax Act which reads “any transfer of title in goods under an agreement which stipulates that property in goods shall pass at a future date upon payment of the full consideration as agreed, is a supply of goods”. Accordingly it is liable to tax at the rate applicable to each of the goods at the time the delivery of the goods is given to Sodexo Food Solutions India Pvt. Ltd.

7.6 The applicant is also providing security services and charging Rs.32,000/- per month. This supply is liable to tax as applicable under SAC 998529 and is liable to tax at 18% (CGST @ 9% + KGST @ 9%) under entry 23(ii) of Notification No.11/2017- Central Tax (Rate) dated 28.06.2017 and is payable under Reverse Charge Mechanism by the recipient of service, if he is registered, as per Notification No.13/2017- Central Tax (Rate) dated 28.06.2017 as amended by Notification No.29/2018- Central Tax (Rate) dated 31.12.2018 (effective from 1.1.2019).

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

R U L I N G

1. The Classification of service provided by Sri DMS Hospitality Private Limited to Sodexo Food Solutions India Private Limited is covered under SAC 997212 and hence under entry no. 16 of Notification No.11/2017 – Central Tax (Rate) dated 28.06.2017 and the security services provided is covered under SAC 998529 and hence under entry 23(ii) of Notification No.11/2017- Central Tax (Rate) dated 28.06.2017 and are hence liable to tax at respective rates.
2. The Classification of service provided by the building owner to M/s Sri DMS Hospitality Private Limited is covered under SAC 997212 and hence liable to tax under entry no. 16 of Notification No.11/2017 – Central Tax (Rate) dated 28.06.2017.
3. The entry no.12 of Notification No.12/2017- Central Tax (Rate) dated 28.06.2017 – “services by way of renting of residential dwelling for use as residence” is not applicable to the present case on hand
4. The EMI charged on the goods supplied is an instalment for the

goods transferred and is a supply of goods under clause 1(c) of Schedule II to the CGST Act and hence is liable to tax at the rate applicable to each of the goods supplied at the time of delivery of such goods.


25.09.2019

(Harish Dharnia)
Member



(Dr. Ravi Prasad.M.P.)
Member



Place: Bengaluru,

Date: 25.09.2019

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. Pr Commissioner of Central Tax, Bangalore-West
4. The Asst. Commissioner, LGSTO-155 Ramangaram
5. Offie Folder