M/s SRI DMS HOSPITALITY PRIVATE LIMITED

Appellate Authority for Advance Ruling — Karnataka

Order No. KAR/AAAR-14-H/2019-20 Dated **23.02.2020**

Q Questions Before the Authority

- Classification of service provided by Sri DMS Hospitality Private Limited to Sodexo Food Solutions India Private Limited?
- Classification of service provided by the building owner to Sri DMS Hospitality Private Limited?
- Applicability of GST Notification No. 12/2017-Central Tax (Rate) dated 28 June 2017, 'Services by way of renting of residential dwelling for use as residence', i.e. whether the service is exempt from GST?
- Applicability of GST on the EMI per month charged from Sodexo Food Solutions India Private Limited, and on the security services provided to Sodexo Food Solutions India Private Limited?

F Facts

The appellant took a two-floor building of about 1,023 sq. m at Plot 66-E, KIADB Bidadi Industrial Area, from its owner Dr Banraji B.H at a monthly rent of Rs 2,35,000 for three years, for use as accommodation. It then sub-leased 31 rooms across the first and second floors to Sodexo Food Solutions India Pvt Ltd at Rs 5,25,000 per month for housing its staff, along with washroom, storage, water, dining, security, DTH and other amenities billed separately at Rs 1,22,893 per month. The appellant argued that the arrangement was exempt residential letting under entry 12 of Notification 12/2017-CT(R).

H Ruling

Classification of service by Sri DMS Hospitality Pvt Ltd to Sodexo Food Solutions	**SAC 997212; taxable at 18 per cent under entry 16 of Notification 11/2017-CT(R) (as upheld from the AAR ruling)**	The order holds the building is non-residential, so the sub-letting is renting of non-residential property and is **not** within the residential exemption.
Classification of service by building owner to Sri DMS Hospitality Pvt Ltd	**SAC 997212; taxable at 18 per cent under entry 16 of Notification 11/2017-CT(R) (as upheld from the AAR ruling)**	The owner's letting is treated as non-residential because the land was allotted by KIADB for industrial use and the agreement does not describe a dwelling.
Whether entry 12 of Notification 12/2017-CT(R) (renting of residential dwelling for use as residence) applies	**Does not apply to the present case**	The exemption fails because the premises are non-residential. The staff's residential use of the premises is held irrelevant to the nature of the supply.

Prepared as a reading aid. Where this summary and the original order differ, the order governs.

GST on EMI charged to Sodexo and on security services provided to Sodexo	**EMI amenities: supply of goods under clause 1(c) of Schedule II, taxable at the rate applicable to each good at delivery. Security services: SAC 998529 at 18 per cent (CGST 9 per cent and KGST 9 per cent) under entry 23(ii) of Notification 11/2017-CT(R)**	The order does not separately quantify the rate for each good; it leaves that to the rate applicable at the time of delivery.

The Appellate Authority upheld the Advance Ruling dated 25-09-2019 and dismissed the appeal on all counts. It held that the owner-to-appellant and appellant-to-Sodexo transactions concern a non-residential building, so they are not renting of residential dwelling for use as residence and are taxable at 18 per cent. It also held that the EMI-billed amenities are a supply of goods and the security services are taxable at 18 per cent.

R Reasoning

The Appellate Authority condoned the 60-day delay suo motu under the proviso to Section 100(2) of the CGST Act, then decided the merits. It looked at the agreements and found that the owner's agreement does not describe a dwelling, and that KIADB allots industrial land only for industrial use, so the building cannot be residential. It treated the appellant's sub-letting as a sub-lease of a non-residential premises, so the nature of the supply by the appellant governs and the residential use by Sodexo's staff does not change it. For the amenities, it applied clause 1(c) of Schedule II (deemed supply of goods on a transfer of title with deferred payment), and it taxed security services under SAC 998529 and entry 23(ii).

P Provisions Relied On

- Section 100 of the CGST Act, 2017 and KGST Act, 2017 (appeal to Appellate Authority)
- Section 100(2) and its proviso, CGST Act (30-day limit and extension for sufficient cause)
- Section 101 of the CGST Act and KGST Act (Appellate Authority proceedings)
- Notification No. 12/2017-Central Tax (Rate) dated 28-06-2017, entry 12 (renting of residential dwelling for use as residence)
- Notification No. 11/2017-Central Tax (Rate) dated 28-06-2017, entry 16 (SAC 997212)
- Notification No. 11/2017-Central Tax (Rate) dated 28-06-2017, entry 23(ii) (SAC 998529)
- Schedule II, paragraph 1(c), CGST Act (transfer of title in goods under an agreement with deferred property passage)
- SAC 997212 and SAC 998529

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! For the Practitioner

This order is useful for a head-lessor or sub-lessor who lets a commercial or industrial building to a corporate for staff housing and wants the residential exemption. It shows that the exemption turns on the character of the premises as a dwelling, and that the sub-letting inherits the non-residential character of the head lease. The order does not decide the position for a genuinely residential building let to an individual, and it does not settle the rate for each good in the amenity bundle. Its operative part merely upholds the AAR, so the reasoning on the agreements should be read in full.

Source

Summary prepared from the published order, which is a scanned document. It is a reading aid and not the authority: where the two differ, the order governs. Verify every provision against the original before relying on it.

Original order: www.gstcouncil.gov.in -> kar aaar 14-h 2019-20 sridmshospitalitypvtltd.pdf

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