M/s Sri DMS Hospitality Private Limited

Authority for Advance Ruling — Karnataka

Advance Ruling No. KAR ADRG 86/2019, Dated: 25th September, 2019 Dated **25.09.2019**

Q Questions Before the Authority

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

F Facts

The applicant took the first and second floors of a building at Bidadi, Ramanagara, from the owner under a rent agreement dated 21 March 2018 at Rs 2,35,000 per month, expressly for accommodation purposes. It then sub-let the same premises to Sodexo Food Solutions India Private Limited under a leave and licence agreement dated 2 April 2018 at Rs 5,25,000 per month, and also provided fixed facilities (furniture, water purifiers, TV with DTH, and similar items) recovered through a monthly EMI of Rs 1,22,893 with 12% interest. Security services were charged at Rs 32,000 per month, and the premises were used to house Sodexo's staff and executives.

H Ruling

Classification of the applicant's service to Sodexo (sub-lease of premises and security)	**Rental or leasing service under SAC 997212, entry 16 of Notification 11/2017-CT (Rate). Security service under SAC 998529, entry 23(ii) of Notification 11/2017-CT (Rate). Both liable to tax at the respective rates (the findings state 18 per cent for rent).**	The security service is at 18 per cent (CGST 9 per cent plus KGST 9 per cent) and is payable under reverse charge where the recipient is registered, per Notification 13/2017-CT (Rate) as amended by Notification 29/2018-CT (Rate) effective 1.1.2019.
Classification of the building owner's service to the applicant	**SAC 997212, liable to tax under entry 16 of Notification 11/2017-CT (Rate) dated 28.06.2017.**	The Authority treated the premises as non-residential, so the owner's supply is a commercial rental supply and not residential renting.

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

Exemption under entry 12 of Notification 12/2017-CT (Rate) for renting of residential dwelling for use as residence	**Not applicable to the present case.**	The Authority found the premises to be non-residential, based on the KIADB allotment and possession certificate, the washroom and toilet count, and the wording of the agreements.
GST on the monthly EMI charged to Sodexo for the facilities provided	**The EMI is an instalment for goods transferred and is a supply of goods under clause 1(c) of Schedule II to the CGST Act.**	The order states that tax is payable at the rate applicable to each good at the time of its delivery to Sodexo. It does not specify individual rates for the goods.

The Authority ruled that the sub-lease to Sodexo is rental or leasing of non-residential property under SAC 997212, and that the security services fall under SAC 998529. It held that the landlord's supply to the applicant is also under SAC 997212, and that the residential-dwelling exemption in entry 12 of Notification 12/2017 does not apply. It further held that the monthly EMI is an instalment for goods transferred under an agreement for future transfer of title, and is therefore a **supply of goods** under clause 1(c) of Schedule II to the CGST Act.

R Reasoning

The Authority read the owner-to-applicant agreement, which describes the premises only by plot number and refers to accommodation without room details, together with the KIADB possession certificate showing an industrial allotment. It then read the applicant-to-Sodexo agreement, which calls the premises a flat and states a residential purpose. Based on the allotment, the number of washrooms and toilets, and the absence of a room count, it concluded that the building was constructed as a hotel or lodge and is non-residential. On that basis it applied the rental service entry (SAC 997212, entry 16) and rejected the residential exemption in entry 12. It treated the EMI arrangement as a deferred-title supply of goods under Schedule II, clause 1(c), of the CGST Act. The order cites the CGST Act and the KGST Act as materially identical, so references to the CGST Act apply equally to the KGST Act.

P Provisions Relied On

- CGST Act, 2017 and KGST Act, 2017, Section 97 (advance ruling application)
- CGST Act, 2017, Schedule II, clause 1(c) (agreement for transfer of title in goods at a future date upon payment of full consid…
- 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)
- Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, entry 12 (renting of residential dwelling for use as residence)
- Notification No. 13/2017-Central Tax (Rate) dated 28.06.2017, as amended by Notification No. 29/2018-Central Tax (Rate) d…

! For the Practitioner

A practitioner dealing with sub-letting of commercial or industrial-allotted premises for corporate staff accommodation can use this order to support classifying the rent under SAC 997212 at 18 per cent, rather than claiming the residential exemption. The ruling binds only the applicant, and it turns heavily on the factual findings about the premises. It does not decide what happens where the premises are genuinely residential, nor does it set the rate for each good in the EMI arrangement.

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_aar_86_2019_25.09.2019_sdhpl.pdf

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