Sri. Taghar Vasudeva Ambrish

Authority for Advance Ruling — Karnataka

Advance Ruling No. KAR ADRG 17/2020 Dated: 23-03-2020 Dated **23.03.2020**

Q Questions Before the Authority

- Whether the exemption prescribed under entry 13 of Notification No. 9/2017-Integrated Tax (Rate) dated 28 June 2017 can be sought, and whether the lessors (Ambrish Vasudeva and 4 others) need not charge GST while issuing the invoice for the lease service to M/s DTwelve Spaces Pvt. Ltd.
- Whether the lease service falls under the exemption and can be described as 'Services by way of renting of residential dwelling for use as residence' as listed in the said Notification.

F Facts

The applicant and four others jointly let out a residential complex of 42 rooms with 2,400 sq ft of terrace area to M/s DTwelve Spaces Pvt. Ltd. under a single lease agreement, with the rent payable as a monthly amount and the lessee having a right to sub-lease. DTwelve provides affordable long-term paying guest accommodation to students for periods of 3 to 11 months, with amenities such as food, Wi-Fi and maintenance. DTwelve contended that its sub-lease income to students is not taxable and that its lessors therefore should not charge it GST.

H Ruling

Whether the entry 13 exemption can be sought and the lessors need not charge GST on the lease invoice to DTwelve	**Exemption cannot be sought; GST must be charged**	Applies to the lessors as an entity, provided they are registered under the GST Act. The order declines to determine the exact nature of the group of lessors.
Whether the lease service falls under 'renting of residential dwelling for use as residence' (entry 13)	**No**	The leased premises are rooms with attached toilets, akin to hotel rooms, and not a residential dwelling. Lodging by hotels, inns, guest houses and similar places is covered by other entries or notifications.

The authority ruled that the lessors, as an entity, **have to charge GST** on invoices for the lease services to DTwelve, provided they are registered under the GST Act. It further held that the lease service **does not fall under** the exemption for renting of residential dwelling for use as residence in entry 13. The second question was answered in the negative.

R Reasoning

The authority held that the five lessors pooled their properties and leased them under a single agreement, so the contract is between the group and DTwelve and not between the applicant individually and DTwelve. The lease of a building for business is a supply of services under section 7(1) and section 7(1-A) of the CGST Act read with entry 2(b) of Schedule II. Entry 13 of Notification 9/2017-IT (Rate) covers renting of a residential dwelling, which the authority read as a house. The leased premises, consisting of 42 rooms with attached toilets, were held to be

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

like hotel rooms and not a dwelling, and rooms given for residential purposes on a commercial basis are covered by separate entries. The order also records that the question of GST on the applicant's own transaction does not arise because the applicant did not supply directly to DTwelve.

P Provisions Relied On

- Section 97 of the CGST Act, 2017 and corresponding Section 97 of the KGST Act, 2017
- Section 98(4) of the CGST Act, 2017 and KGST Act, 2017
- Section 7(1) of the CGST Act, 2017
- Section 7(1-A) of the CGST Act, 2017
- Schedule II, entry 2(b) of the CGST Act, 2017
- Notification No. 9/2017-Integrated Tax (Rate) dated 28 June 2017, entry 13 (Heading 9963 or Heading 9972)
- Section 2(17) of the CGST Act, 2017 (definition of business), as quoted in the applicant's submissions

! For the Practitioner

This ruling is useful for lessors of hostel or paying-guest style buildings and for operators who take such premises on lease. It settles that a lease of room-based student accommodation to a company is not within the residential dwelling exemption in entry 13 and attracts GST. It does not decide the rate of GST, the status or registration of the lessor group, or the taxability of DTwelve's sub-leases to individual students, as the order addresses only the head lease to the company.

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_17_2020_taghar.pdf

Prepared 20-11-2026.

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