STUDENTS' WELFARE ASSOCIATION

Authority for Advance Ruling — Maharashtra

NO.GST-ARA-55/2018-19/B-170, Mumbai, dated 29/12/2018 (printed as 29… Dated **29.12.2018**

Q Questions Before the Authority

- Whether hostel accommodation provided by Trusts to students is covered within the definition of Charitable Activities and thus exempt under Sl. No. 1 of Notification No. 12/2017-CT (Rate)?
- Whether the supply of residential or lodging services at Rs. 22,250/- per annum is covered by Sl. No. 14 of Notification No. 12/2017-CT (Rate)?
- Whether different treatment would be required for use of hostel rooms given for residential purposes but ultimately used by the hirer for commercial use?
- Whether the notification would apply if the accommodation is later given for commercial purposes and whether the activity would still enjoy the exemption?
- Whether large donations received by the Trust would be treated as service and taxed accordingly, and whether only sponsored donations are covered by the mega exemption notification?

F Facts

The applicant is a charitable trust registered under section 12AA of the Income-tax Act, 1961, which runs four hostels in Pune with a capacity of 750 students, drawn mainly from poor rural families. For a consolidated annual fee of Rs. 22,250/- it provides lodging and boarding together with compulsory personality development training, with no option to take only one component. The shortfall between expenses and fees is met from public donations.

H Ruling

Q1(a): Whether hostel accommodation by Trusts to students is a charitable activity exempt under Sl. No. 1 of Notification 12/2017-CT (Rate)	**Answered in the negative. Not exempt under Sl. No. 1.**	Hostel accommodation does not fall within the charitable activities defined in para 2(r), following Circular No. 32/06/2018-GST dated 12.02.2018.
Q1(b): Whether residential or lodging supply at Rs. 22,250/- per annum is covered by Sl. No. 14 of Notification 12/2017-CT (Rate)	**Answered in the affirmative. Covered by Sl. No. 14 (exempt).**	Exemption depends on a declared tariff of a unit of accommodation below Rs. 1,000 per day or equivalent, and the supply must be for residential or lodging purposes.
Q2: Whether different treatment is required for hostel rooms given for residential use but ultimately hired for commercial use	**Answered in the negative. No different treatment.**	Sl. No. 14 is use-based, so its scope is limited to accommodation used for residential or lodging purposes.

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

Q3: Whether the notification would apply if accommodation is later given for commercial purposes	**Not answered.**	Not answered in view of the answers to Q1 and Q2.
Q4: Whether large donations are taxable as service, and whether only sponsored donations are covered by the mega exemption	**Not answered.**	Not answered because the applicant had not submitted details of the terms of the donations. The order observed that donations received without any instruction are not taxable, but donations giving identifiable benefits such as advertising or publicity are consideration for a supply.

Hostel accommodation provided by the Trust is not a charitable activity under Sl. No. 1 of Notification 12/2017-CT (Rate), but the residential or lodging supply at the declared tariff below Rs. 1,000 per day is exempt under Sl. No. 14. The Authority treated the use of the accommodation, not the identity of the user, as the test for Sl. No. 14, so commercial hire of rooms was held not to alter the treatment. It did not answer the question on future commercial use, and it did not answer the donations question because the applicant had not supplied the terms of the donations.

R Reasoning

The Authority held that the Trust's hostel accommodation is not a charitable activity under para 2(r) and Sl. No. 1, relying on Circular No. 32/06/2018-GST dated 12.02.2018. It treated the package as a naturally bundled supply under section 66F(3)(a) of the Finance Act, 1994, whose essential character is residential accommodation. It then held that Sl. No. 14 of Notification 12/2017-CT (Rate) applies because the declared tariff is below Rs. 1,000 per day and the description of the exemption is use-based. On donations, it applied the consideration definition in section 2(31) and the GST Flyers dated 01.01.2018, holding that donations with no identifiable return benefit are not consideration.

P Provisions Relied On

- Notification No. 12/2017-CT (Rate), Sl. No. 1 (Chapter 99, services by a section 12AA entity by way of charitable activities)
- Notification No. 12/2017-CT (Rate), para 2(r) (definition of charitable activities)
- Notification No. 12/2017-CT (Rate), Sl. No. 14 (Heading 9963, residential or lodging services below Rs. 1,000 per day)
- Circular No. 32/06/2018-GST dated 12.02.2018 (F. No. 354/17/2018-TRU)
- Section 2(31) of the CGST/MGST Act (definition of consideration)
- Section 66F(3)(a) of the Finance Act, 1994 (naturally bundled services)
- Notification No. 25/2012-ST, Sl. No. 18 (mentioned in the observations)
- GST Flyers dated 01/01/2018, Sr. 39 (income from donations)

! For the Practitioner

A practitioner advising a student hostel run by a charitable trust can rely on this order for the point that the Sl. No. 14 exemption, not the charitable-activity exemption, is the route for hostel accommodation, provided the tariff is below Rs. 1,000 per day. It also supports treating donations with no return benefit as outside the scope of supply. It does not decide the future commercial-use question or the donations question, since both were left unanswered for want of facts.

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 -> ara_order_55_2018_maharashtra_swa.pdf

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