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# Hostel Facilities for Students/Working Women Eligible for GST Exemption: Madras HC


## Thai Mookambikaa Ladies Hostel Vs Union of India (Madras High Court)

In recent case of Thai Mookambikaa Ladies Hostel (W.P.No.28486 of 2023) Madras High Court held that, the renting out the hostel rooms to the girl students and working women by the petitioners is exclusively for residential purpose. And hence eligible for exemption.

**Fact of the case:-** The petitioners having obtained licence, are running private ladies hostels by providing residential accommodation and food to the college students and working women on monthly basis with reasonable tariffs. The monthly tariff per student or per inmate ranges between Rs.1200/- to 6,500/- per month. The charges/rent/tariff collected by them from the inmates on such accommodation, qualifies for GST exemption and therefore, they are entitled to the exemption from levy of GST tax.

the petitioners moved applications before the Tamil Nadu State Appellate Authority for Advance Ruling. However benefit of exemption is denied by AAR as well as AAAR.

**Court Observations and conclusion:-** Under Section 2(e) of the Tamil Nadu Hostels and Home for Women and Children (Regulation) Act, 2014), the term ‘hostel’ or lodging house’ is defined to mean a building in which accommodation is provided for women or children or both, either with boarding or not. it is evident that the expression ‘residence’

and ‘dwelling’ have more or less the connotation in common parlance and therefore, no different meaning can be assigned to the expression ‘residential dwelling’ and accordingly.

Ruling Authority/2nd respondent herein, has mainly compared the hostel premises on par with hotel premises and the intention of the petitioners in renting out the premises in the name of hostels, is nothing but providing hotel accommodation and it does not qualify as residential dwelling for use as residence.

it is clear that the renting out the hostel rooms to the girl students and working women by the petitioners is exclusively for residential purpose, this Court is of the considered view that the condition prescribed in the Notification in order to claim exemption, viz., ‘residential dwelling for use as residence’ has been fulfilled by the petitioners and thus the said services are covered under Entry Nos.12 and 14 of the **Notification No. 12/2017-Central Tax (Rate) dated June 28, 2017**, the petitioners are entitled to be exempted from levy of GST.

**FULL TEXT OF THE JUDGMENT/ORDER OF MADRAS HIGH COURT**

Since the facts and circumstances are similar and also as common issues are involved in these Writ Petitions, they are taken up together and being disposed of vide this common order.

2. The petitioners herein, having obtained licence, are running private ladies hostels by providing residential accommodation and food to the college students and working women on monthly basis with reasonable tariffs. According to the petitioners, they are carrying on ladies hostels with a philanthropic motive and purpose for providing safe and secure environment for the student girls and working women who hail from far away places and remote villages and who are not in a position to secure independent residential accommodation by paying huge rents and advance in the city. The monthly tariff per student or per inmate ranges between Rs.1200/- to 6,500/- per month.

3. While so, under the Goods and Service Tax regime after the 3/63 introduction of the **Central Goods and Services Tax Act, 2017** (in short, ‘GST Act’) and the Tamil Nadu Goods and Services Tax Act, 2017 (in short, ‘TNGST Act’) and the Integrated Goods and Services Tax Act, 2017 (in short, ‘IGST Act’), the Central Government has issued exemption **Notification No.12/2017-Central Tax (Rate) dated 28.06.2017**, wherein certain categories of exempt services were notified. Consequently, an identical Notification was issued under TNGST Act. Similarly by virtue of powers conferred under Section 6(1) of the IGST Act, exemption **Notification No.9/2017-Integrated Tax Rate dated 28.06.2017** was issued by the Central Government.

4. Under the Exemption Notification above mentioned, Entry No.12 of the

Exemption **Notification No.12/2017-Central Tax (Rate) dated 28.06.201** (similar entry, vide Entry No.13 of Exemption **Notification No.9/2017-Integrated Tax Rate dated 28.06.2017**) reads as follows:

| *S.No.* | *Chapter/Section/Heading/ Group/Service Code (Tariff)* | *Description of Service* | *(%)* | *Condition* |
|---|---|---|---|---|
| 1 | HEADING: 9963 OR HEADING 9972 | Services by way of renting of residential dwelling for use as residence. *Explanation- For the purpose of exemption under this entry shall cover services by way of renting of residential dwelling to a registered person where the registration person is Proprietor of a Proprietorship concern and rents the residential dwelling in his personal capacity for use as his own residence and to such renting is on his own account and not that of the proprietorship concern".* | NIL | NIL |



5. By referring to the above, the petitioners herein would claim that since they are providing the residential accommodation to the girl students and working women, which can be termed as 'residential dwelling' used as residence by the inmates of the hostels and thereby, the charges/rent/tariff collected by them from the inmates on such accommodation, qualifies for GST exemption and therefore, they are entitled to the exemption from levy of GST tax.

6. Accordingly, claiming exemption, the petitioners moved applications before the Tamil Nadu State Appellate Authority for Advance Ruling/2nd respondent herein, under Section 97 of CGST Act in Form GSTARA-01, seeking for a ruling on the following questions:

"(a) Whether the hostel and residential accommodation extended by the the Applicant hostel would be eligible for exemption under Entry 12 of Exemption Notification

No.12/2017-Central Tax (Rate) dated 28.06.2017 and under the identical Notification under the TNGST Act, 2017 and also under Entry 13 of Exemption **Notification No.9/2017-Integrated Tax Rate dated 28.06.2017** as amended?

(b) Whether the Applicant hostel being eligible for exemption under Sl. No. 12 of **Notification No.12/2017-Central Tax (Rate) dated 28.06.2017** as amended would at all be required to take registration under the GST Enactments by virtue of the Exemption Notifications as afore mentioned and also under the provisions of Section 23 of the CGST/TNGST Act 2017?

(c) Whether any specific tariff entry is applicable to hostels under the Tariff Notification, in the event of requirement of registration?

(d) Whether, in the event of the hostel accommodation being an exempt activity, whether the incidental activity of supply of in-house food to the inmates of the hostel would also be exempt being in the nature of a composite exempt supply?

(e) Whether the judgement of the Division Bench of the Hon'ble Karnataka High Court in the case of ***"Taghar Vasudeva Ambrish -vs- Appellate Authority for Advanced Ruling, Karnataka*** reported in

7. On consideration of the claim of the petitioners and the remarks submitted by the petitioners' jurisdictional State Authority in respect of the above questions and the relevant decisions of the various High Courts and the Supreme Court, the Tamil Nadu State Appellate Authority for Advance Ruling/2nd respondent, vide respective impugned proceedings on question wise, has given the following ruling:

"For Question No. 1: The services by way of providing hostel accommodation supplied by the Applicant are not eligible for exemption under Entry 12 of Exemption **Notification No.12/2017-Central Tax (Rate) dated 28.06.2017** and under the identical Notification under the TNGST Act, 2017, and also under Entry 13 of Exemption **Notification No.9/2017-Integrated Tax Rate dated 28.06.2017**, as amended.

For Question No. 2: The Applicant is required to get themselves registered in the state of Tamil Nadu, if their aggregate turnover in a financial year exceeds twenty lakh rupees.

For Question No. 3: The supply of services by way of providing hostel accommodation falls under Tariff heading 9963 and is taxable @ 9% CGST + 9% SGST under Sl. No. 7(vi) of the **Notification No. 11/2017, Central Tax (Rate), dated 28.06.2017**, as amended vide Notification No. 20/2019 – Central Tax (Rate) dated 30.09.2019.

For Question No. 4: The activity of supply of in-house food to the inmates of the hostel amounts to providing services in a composite manner and the hostel accommodation services provided by the Applicant, being the principal supply, which is taxable @18%, is the tax rate for the composite supply provided by them.

For Question No. 5: No ruling is issued, as the question put forth by the applicant does not fall under the scope of Section 97(2) of the GST Act.

8. The learned counsel appearing for the petitioner would submit that in the present case, the hostel services provided by the petitioners would squarely falls under the Entry No.12 of Exemption **Notification No.12/2017-Central Tax (Rate) dated 28.06.2017**. In the matter of ***Taghar Vasudeva Ambrish vs.*** 9/63 ***Appellate Authority for Advance Ruling*** reported in ***MANU/KA/0327/2022,*** the Hon'ble Division Bench of Karnataka High Court has categorically held that the services provided by leasing out the residential premises as hostel to the students and working professionals are exempted in Entry No.13 of Exemption **Notification No.9/2017-Integrated Tax Rate dated 28.06.2017**. In the present case, the same is reflected in Entry No.12 of Exemption **Notification No.12/2017-Central Tax (Rate) dated 28.06.2017**. Therefore, by referring the above judgment, she would submit that renting the premises includes hostels and thus, the exemption provided under Entry No.12 of Exemption **Notification No.12/2017-Central Tax (Rate) dated 28.06.2017** would apply in the present case also. In spite of the same, the 2nd respondent had passed the impugned orders contrary to the law laid down by the Hon'ble Division Bench of Karnataka High Court in the above judgement.

9. As regards the maintainability of the present Writ Petitions since the petitioners without exhausting the appeal remedy available under Section 100 of the TNGST Act, 2017, the learned counsel appearing for the petitioners would submit that mere availability of alternative remedy is not an embargo to entertain the Writ Petitions when there is gross illegality apparent on the face of the impugned orders passed by the 2nd respondent. She would further contend that though technically it would be open to the petitioners to work out alternative remedy before the Appellate Authority, it would be a mere exercise in futility as the appeals would be certainly met with the fate of dismissal as the appellate Authority would not take a contrary view against the Notification. In this regard, the learned counsel for the petitioners would rely on the following judgments:

i) "***Filterco and others versus Commissioner of Sales Tax, M.P. and others"*** reported in MANU/SC/0706/1986;

ii) "Bharatiya Vidya Bhavan's Residential School versus The State of Andhra Pradesh***"*** in W.P.No.7417 of 2006, dated 30.01.2023.

10. She would fairly submit that as against the order passed by the 2nd respondent, alternate remedy by way of an appeal is available, however, availing the appeal remedy would be a mere exercise in futility when a Division Bench of a High Court has already passed an order. Further, the alternate remedy is not an embargo to entertain the present writ petition when there is an illegality and the proceedings are wholly without jurisdiction.

11. Per contra, on the issue of maintainability, the learned Additional Advocate General appearing for the respondents would submit that in the present case, since the alternate remedy under Section 100 of TNGST/CGST Act, is available, the petitioners are supposed to have filed the appeals instead of wrongly exercising the present jurisdiction of this

Court.

12. Further, he would submit that though the Hon'ble Division Bench of the Karnataka High Court had passed an order stating that the hostel services falls under the exempted category from levy of GST, against the said order of the Hon'ble Division Bench, the respondents had preferred a Special Leave Petition before the Hon'ble Apex Court and the same is pending. At the same time, he would fairly submit that though the SLP has been filed, no stay has been granted by the Hon'ble Apex Court against the order of the Hon'ble Division Bench of Karnataka High Court. He would also contend that though no stay has been granted, the 2nd respondent can take his own view since the matter had not attained its finality and *sub judice* before the Hon'ble Supreme Court of India. Therefore, he would submit that the present writ petitions are liable to be dismissed on the ground of maintainability. In support of his contention on the aspect of maintainability, he referred to the following judgements:

*i)*Assistant Commissioner of State Tax and Others, vs. Commercial Steel Ltd.**,** reported in ***2021 SCC OnLine SC 884;***

*ii)* Anmol Industries Ltd., vs. West Bengal Authority for Advance Ruling, Goods and Services Ta***x,*** reported in ***(2023) 153 com 549 (Calcutta);***

*iii)* ***Jotun India Pvt. Ltd., vs. Union of India and others*** reported in ***(2023) 109 GSTR 191 (Bom.);***

*iv)* ***Columbia Sportswear Company vs. Director of Income Tax, Bangalore*** reported in ***(2012) 11 SCC 224;***

Thus, the learned Senior counsel pleaded to dismiss the present writ petitions *in limine*.

13. As far as maintainability is concerned, both the parties have admitted the fact that as against the order passed by the 2nd respondent, a statutory appeal provision is very much available. However, this Court is of the view that the availability of alternate remedy will not take away the right of the petitioner to approach the High Court since filing appeal before the Appellate Authority would only be an empty formality, particularly, when the 2nd respondent failed to follow the orders passed by the Karnataka High Court.

14. In the matter of ***Taghar Vasudeva Ambrish*** case, the Hon'ble Division Bench of Karnataka High Court had held that the 'hostel services' provided by the registered person would fall within the purview of the exempted services under Entry No.13 of Notification No.9 of 2017 and in the present case, the same is reflected in Entry No.12 of **Notification No.12/2017-Central Tax (Rate) dated 28.06.2017**. Therefore, when the law has been settled on this aspect by the Hon'ble Division Bench of the Karnataka High Court, the 2nd respondent while deciding the appeal should have considered the said order, since the said order, which has been passed by the Karnataka High Court, binds the 2nd respondent also. However, without following the same, the impugned orders came to be passed. In this regard, it is relevant to extract paragraph No.11 of the order passed by

the Hon'ble Apex Court in the case of "***Filterco and others versus Commissioner of Sales Tax, M.P. and others"*** reported in ***MANU/SC/0706/1986***, which reads as follows:

*"11. We are of opinion that the High Court should have examined the merits of the case instead of dismissing the Writ Petition in limine in the manner it has done. The order passed by the Commissioner of Sales Tax was clearly binding of the assessing authority under Section 42B(2) and although technically it would have been open to the appellants to urge their contentions before the appellate authority namely, the Appellate Assistant Commissioner, that would be a mere exercise in futility when a superior officer namely, the Commissioner, has already passed a well considered order in the exercise of his statutory jurisdiction under sub- section (1) of Section 42-B of the Act holding that 21 varieties of the compressed Woollen felt manufactured by the appellants are not eligible for exemption under Entry 6 of Schedule I of the Act. Further Section 38(3) of the Act requires that a substantial portion of the tax has to be deposited before an appeal or revision can be filed. In such circumstances we consider that the High Court ought to have considered and pronounced upon the merits of the contentions raised by the parties and the summary dismissal of the Writ Petition was not justified. In such a situation, although we would have, ordinarily, set aside the judgement of the High Court and remitted the case to that Court for fresh disposal, we consider that in the present case it would be in the interests of both sides to have the matter finally decided by this Court at the present stage itself especially since we have had the benefit of elaborate and learned arguments addressed by the counsel appearing on both sides."*

15. A perusal of the above would make it clear that when a higher Authority passes an order, it would bind the lower Authority. Further, it was held that even though it was technically open to prefer an appeal against the Appellate Authority, the same would only be a mere exercise of futility when the Superior Officers had already passed orders in exercise of their statutory jurisdiction. When such being the case, the High Court ought to have considered and pronounced upon the merits of the contentions raised by the parties and the summary dismissal of the writ petition is not justified. For the said reasons, the Hon'ble Apex Court had set aside the order and remitted the case to the concerned Court for fresh disposal.

16. In the present case, following the law laid down by the Hon'ble Apex Court in the ***Filterco*** case (referred supra), this Court is also of the view that even though alternate remedy is available, the same would only be a mere exercise in futility and in such case, the affected party can file a writ petition.

17. Further, in the judgement of ***Tvl. Sakthi Masala (P) Ltd., vs., The Special Commissioner of Commercial Taxes and Others*** reported in ***MANU/TN.9392/2007,*** this Court had held as follows:

*"27. Since the Commissioner of Commercial Taxes is the superior authority to the assessing officer/appellate authority, it would be impracticable for the subordinate officer to take a view contrary to the view expressed by the said commissioner, since the view expressed by him is binding on the subordinate officer. Therefore, in the light of the*

*decisions referred to above, we are of the consider view that the plea of alternative remedy cannot be accepted and it is opened to the aggrieved persons to seek appropriate remedy under Article 226 of the Constitution of India."*

18. Further, in the judgement of ***Tvl. Pizzera Fast Foods Restaurant Madras Pvt. Ltd., vs. Commissioner of Sales Tax*** reported in ***MANU/TN/0206/2005,*** this Court had held as follows:

*"33. In the present case, the Tribunal has referred to a decision of its own Full Bench in O.P.Nos.1334 to 1336 of 2000 dated 25.01.2001. In that case, it was held that the clarification would bind the party which sought for it, but at the same time it would be open to the assessee to canvass the correctness of the clarification before the assessing officer or the appellate authority. In the impugned order of the Tribunal, reference was also made to a decision of a Division Bench of this Court in W.P.No .10709 of 1999 dated 24.6.1999. The Division Bench had held that a clarification issued under Section 28-A was not an adjudication and the clarification could be assailed before the assessing officer and before the appellate authority. In our opinion, the attention of the Full Bench of the Tribunal and the Division Bench of this High Court was not drawn to the various decisions of the Supreme Court referred to above. It has been repeatedly held in those decisions that a clarification or a circular can b e challenged under Article 226. It has been pointed out therein that once a clarification or circular is issued by a superior authority, it would be an exercise in futility to ask the assessee to raise an objection to the circular before an inferior authority, vide the Constitution Bench decision of the Supreme Court in Filterco v. CST (supra). Subsequently, it was also held by the Supreme Court that clarifications or circulars could be challenged before the High Court under Article 226 of the Constitution, since the remedies of appeal or revision would be futile or not efficacious. In view of these decisions of the Supreme Court, the views taken by the Full Bench of the Tribunal and by the Division Bench of this Court do not lay down the correct law."*

19. A perusal of the above judgments of this Court would make it clear that even though alternate remedy is available, still in appropriate cases, where the orders of either the Hon'ble Division Bench of the High Courts or Superior Authority is not followed by the Statutory Authorities, the same can be challenged by way of writ petition. Following the same, this Court is of the considered view that these writ petitions are maintainable.

20. Coming to the merits of the case, Ms .Aparna Nandakumar, learned counsel appearing for the petitioners would vehemently contend that the hostels run by the petitioners would fall within the purview of 'residential dwelling' occurring in Entry 12 of Exemption Notification No.12/2017, dated 28.06.2017 and thereby, they are exempted from levy of GST. Though no specific definition for the term 'residential dwelling' is mentioned in GST enactments or Financial Act, 1994, she would refer to the Taxation of Services an Education Guide, dated 20.6.2012 issued by the Central Board of Indirect Taxes & Customs, wherein, the term 'residential dwelling' has been defined and as "the phrase residential dwelling has not been defined in the Act, it is therefore to be interpreted in normal trade parlance as per which, it is 'any residential accommodation', but does not include hotel, motel, inn, guest house, camp site, house, lodge, house boat or like places

meant for temporary stay'. By referring to this, the learned counsel would contend that the petitioners/ladies hostels are providing residential accommodation to the girl students and working women and thus, they are entitled to the exemption under Entry 12 of Exemption **Notification No.12/2017-Central Tax (Rate) dated 28.06.2017** and as such, they are not liable to be levied with GST.

21. She would further contend that Section 2(e) of the Tamil Nadu Hostels and Home for Women and Children (Regulation) Act, 2014 defined 'hostel' or 'lodging house' to mean a building in which accommodation is provided for women or children or both either with boarding or not, while the term 'residential hotel' is defined in Section 2(14) of the Tamil Nadu Shops & Establishments Act, 1947 to mean 'any premises' in which business is carried on bona fide for the supply of dwelling accommodation and thus, 'hostel accommodation which falls within the purview of the Hostel Regulation Act cannot be equated with that of a 'hotel accommodation'.

22. In this regard, the learned counsel would rely upon the following case laws:

i) Delhi High Court in "***L. Kashyap versus R.P.Puri"*** rendered in Civil Revision Appeal Nos.322. 326, etc., vide order dated 22.09.1976;

ii) United Kingdom House of Lords in ***"Uratemp Ventures Limited versus Collins"*** reported in ***(2001) 3 WLR 806;***

iii) High Court of Bombay in ***"Bandu Ravji Nikam versus Acharyaratna Shikshan Prasark Mandal"*** (W.P.No.4194/1989, dated 12.09.2002);

iv) Karnataka High Court in "***Taghar Vasudeva Ambrish versus Appellate Authority for Advanced Rulings, Karnataka and Others"*** (W.P.No.14981/2020,

23. Therefore, the learned counsel appearing for the petitioners would submit that the Ruling passed by the 2nd respondent vide impugned orders denying the exemption to the petitioners is liable to be set aside and the service providing by the petitioner would squarely fall within the purview of residential dwelling and used for residential for the purpose and thereby, they are exempted from levying GST.

24. Further, he would submit that the petitioners are running ladies hostels by rendering residential accommodation and food services, which would fall within the ambit of definition 'supply' as provided in Section 7 of TNGST/CGST Acts. The petitioners registered under various Acts to run their hostel business and their acts covered under the definition of the term 'business' as per Section 2(7) of the TNGST/CGST Acts.

25. The services provided by the petitioners do not fall under 22/63 'services by way of renting of resendital dwelling for use as residence' since they are letting out a single room to various inmates for various time period for a pecuniary benefit as part of their business and more over, they are not entering any rental agreements with the inmates for transfer of rights of the specified place for a specific period and hence, it does not cover the definition

of 'residence' which is controlled by the Tamil Nadu Rent Regulation Act. The rents received from the renting out or subletting of property is subject to Tax Deduction at Sources, but the petitioners are not deducting any TDS under Section 194 (I) of the Income Tax Act. Hence, the claim of the petitioners that renting of residential dwelling for the use as residence would fall to the ground.

26. He would also submit that since the definition of 'hotel accommodation' was broadly expanded in the notification No. 20/2019 Central Tax (Rate) dated 30.09.2019, wherein all the accommodation services including hostel accommodations services are brought in to the tax net (@ 12% and hence rate of tax for the hostel accommodation services is taxable @ 12% with effect from 30.09.2019 onwards.

27. The term 'residential dwelling' has not been defined either under CGST Act or under **Notification No.12/2017-Central Tax (Rate) dated 28.06.2017**. However, under the erstwhile service tax law, in paragraph 4.13.1 of the 'Taxation of Services: An Education Guide dated 20.06.2012', issued by the CBIC, the expression 'residential dwelling' has been interpreted in terms of the normal trade parlance as per which, it is 'any residential accommodation', but does not include hotel, motel, inn, guest house, camp site, lodge, house boat, or like places meant for temporary stay. Generally, renting of residential dwelling involves letting out any building or part of the building by a lessor to a person or family (related persons) for rent towards the rental premises which form part of a house as kitchen, bedroom, and living room etc., on the whole as residence. Thus, a common understanding of the term "residential dwelling" is one where people reside treating it as a home. Moreover, renting of 'residential dwelling' does not include amenities, like food. housekeeping, or laundry etc., whereas, a hostel is nothing but an establishment which provides living accommodation to specific categories of persons such as girl students and working women.

28. Further, a 'house/ residential dwelling' for occupation contains one or more rooms with one part of the room being used as kitchen and the other/part as living room etc. But, in the instant case, a single house with two or more rooms, where, normally a single family resides, is subdivided, and let out to different persons and rent being collected on per bed basis with bundle of other services against a consideration clearly constitutes a business of supplying accommodation services along with ancillary services. The second respondent has given the entire discussion regarding the phrase occurring in **Notification No.12/2017-Central Tax (Rate) dated 28.06.2017** only with regard to permanent character of residence, which is absent in the case of 'hostel accommodation'. In fact, obtaining License/ Certificates under various provisions of Statutory laws for running Ladies Hostels, are mandatory, whereas these are not mandatory or applicable to a residential building or "residence dwelling for use as residence". Therefore the hostel building cannot be considered as residential dwelling but only can be termed as a non-residential complex.

29. As regards the decision of the High Court of Karnataka in the case of "***Taghar Vasudeva Ambrish Vs. Appellate Authority for Advance Ruling,*** is concerned, it is stated that since the the matter is *sub judice* before the Hon'ble Supreme Court in SLP

(Civil) No.22980 of 2022, the ratio decided therein, cannot be made applicable to the case of the petitioners.

30. That apart, he would submit that hotels are meant for a temporary stay and have lot of facilities and staff, but hostels are used for a longer period and have basic facilities with minimal staff required by the inmates to stay at a reasonable rate. Therefore, hostel services cannot be equated to a hotel accommodation and hotel GST rates cannot be applied to a hostel. Therefore, the 2nd respondent has rightly distinguished 'hostel' *vis-a-vis* 'hotel accommodation' and held that the hostel accommodation services provided by the petitioners being the principal supply, it is liable to be taxed at 18%. With these averments, the 2nd respondent has sought for dismissal of the Writ Petitions.

31. Heard Ms. Aparna Nandakumar, learned counsel appearing for the petitioners and Mr. Haja Nazirudeen, learned Additional Advocate General appearing for the respondents and also perused the materials available on record.

32. Prior to the implementation of the GST, only commercial properties that were let out, were subjected to service tax, even if a residential property was used for commercial purposes. Service tax was charged at a rate of 15% of the rent for commercial properties. However, rental income from residential properties did not attract service tax. This meant that landlords who owned commercial properties and rented them out were required to register for service tax and pay the tax on the rental income received. On the other hand, landlords who owned residential properties and rented them out were not required to register for service tax or pay tax on the rental income they received.

33. On introduction of GST, the tax regime for rental income has undergone a significant change. Under the GST regime, renting both commercial and residential properties is treated as a taxable supply of service. GST is applicable on rental income received by landlords as well as rent paid by tenants.

34. However, the Central Government, on being satisfied that it is necessary in the public interest and on the recommendation of the GST Council, has issued **Notification No.12/2017-Central Tax (Rate) dated 28.06.2017** giving exemption from levying GST on various services described item wise in the Notification. For our purpose, it relates to Entry No.12 under 'Heading 9963 or Heading 9972' by which, an unconditional exemption was provided to renting of a residential dwelling to any person when the same is used for residence. Meaning thereby, GST was payable in the case of renting of a residential dwelling to any person when the same is used for the commercial purpose.

35. Later, vide notification no. 04/2022- Central Tax (Rate) dated 28/63 13th July 2022, said Sl. No. 12 of **Notification No.12/2017-Central Tax (Rate) dated 28.06.2017** was amended. According to the amendment, after the words 'as residence', the words 'except where the residential dwelling is rented to the registered person' has been added. Hence, post issuance of **notification no. 04/2022- Central Tax (Rate) dated 13th July 2022**, Sl. No. 12 as effective from 18th July 2022 will read as under

**– Heading Description of service Rate Condition**

| Heading | Description of service | Rate | Condition |
|---|---|---|---|
| Heading 9963/ Heading 99721 | Services by way of renting of the residential dwelling for the use as a residence except where the residential dwelling is being rented o the registered person | NIL | NIL |

36. Hence, with effect from 18th July 2022, GST applicability on renting of residential dwelling will be as follows:

| Particulars | GST position post 18th July 2022 |
|---|---|
| Renting of residential dwelling for residential purpose to the person registered under GST Renting of residential dwelling for residential purpose to the person not | Taxable from 18th July 2022 [Exempted from 1st July 2017 till 17th July 2022 and Taxable from 18th July 2022] Exempted from 1st July 2017 |
| registered under GST Renting of residential dwelling for commercial purpose to the person registered under GST | Taxable from 1st July 2017 |
| Renting of residential dwelling for commercial purpose to the person not registered under GST | Taxable from 1st July 2017 |

37. On perusal of the above entry 12, it is clear that the services provided by way of renting of residential dwelling for residential purpose are covered under the exemption.

38. In the present case, in order to claim the benefit of the exemption conferred by Entry 12 of Exemption **Notification No.12/2017-Central Tax (Rate) dated 28.06.2017,** the burden is on the petitioners to prove that what they provided to the girl students and working women by way of renting out hostel rooms would qualify the condition, i.e. services by way of renting of residential dwelling for use as residence' and thereby would fall within the purview of Entry No.12 of the Exemption **Notification No.12/2017-Central Tax (Rate) dated 28.06.2017**7. In the subject **Notification No.12/2017-Central Tax (Rate) dated 28.06.2017**, Clause (zz) refers 'renting in relation to immovable property' means allowing, permitting or granting access, entry, occupation, use or any such facility, wholly or partly, in an immovable property, with or without the transfer of possession or control of the said immovable property and includes letting, leasing, licensing or other similar arrangements in respect of immovable property.

39. Further, in the said notification for renting of properties by the hotel, motel, inn, guest house, camp site, lodge, house boat, or like places meant for temporary stay has not been exempted. However in the Entry No.12 of Exemption **Notification No.12/2017-Central Tax (Rate) dated 28.06.2017**, the services provided by way of renting residential dwelling for using the same as residence has been exempted. When the said notification was passed, the Legislature had intentionally not included the hostels so as to bring it into the tax net. However, only in the clarification regarding GST in respect of certain services issued by the Ministry of Finance Department dated 12.02.2018, the following issue was raised:

Is the hostel, provided by the Trust to students, will be covered within the definition of Charitable Activities and thus, exempted as per the Exemption Notification No.12 of 2017, for which they have provided the clarification as follows:

The hostel accommodation services do not fall within the ambit of Charitable Activities as defined in paragraph No.2(r) of the Exemption Notification No.12 of 2017. However the services provided by way of hotel, motel, inn, guest house, camp site, lodge, house boat, by whatever name called, for residential or lodging purposes, having declared tariff of a unit of accommodation below one thousand rupees per day or equivalent are exempted. Thus, accommodation service in hostels, including trust, having declared tariff below one thousand rupees per day is also exempted.

40. By referring the above, the 2nd respondent came to the conclusion that the hostel service will not fall under the exempted category of Entry No.12 of Exemption **Notification No.12/2017-Central Tax (Rate) dated 28.06.2017**. In the Entry No.12 of Exemption **Notification No.12/2017-Central Tax (Rate) dated 28.06.2017**, it has been mentioned about services provided by way of renting of residential dwelling for use as residence. Further, in the Entry No.14 of Exemption Notification No.12 of 2017, there is a specific mention with regard to the service provided by hotel, motel, inn, guest house, camp site, lodge, house boat, for which, they had granted exemption up to certain limit. Subsequently the said exemptions has been withdrawn. Hence, the provision of hostel services to the working women students, etc., will squarely falls within the purview of Entry No.12 of **Notification No.12/2017-Central Tax (Rate) dated 28.06.2017**.

41. Now, let me analyze the meaning of “residential dwelling unit” from the perspective of the working women, students, professionals, etc.

42. As far as the meaning of the “residential dwelling unit” is concerned, this Court feels that it would be apposite to refer the following judgments, wherein the meaning of the “residential dwelling unit” has been discussed and explained by various Courts:

i) Delhi High Court in “***L. Kashyap versus R.P.Puri”*** rendered in Civil Revision Appeal Nos.322. 326, etc., vide order dated 22.09.1976, wherein, in para 25, it has been held as under:

“25. The rule of law deducible from the aforesaid decisions is that the work ‘dwelling

house' is synonymous with residential accommodation as distinct from a house of business, warehouse, office, shop, commercial or business premises. The word 'house' means a building. It would include the out-houses, courtyard, orchard, garden etc. which are part of the same house, but it cannot include a distinct separate house."

ii) United Kingdom House of Lords in ***"Uratemp Ventures Limited versus Collins" (2001) 3 WLR 806,*** wherein, the term 'dwelling house' has been interpreted to mean even a single room as part of a house.

iii) High Court of Bombay in ***"Bandu Ravji Nikam versus Acharyaratna Shikshan Prasark Mandal"*** (W.P.No.4194/1989, dated 12.09.2002). In this case, a suit for eviction of a tenant was contested by the contesting tenant that the landlord was attempting to evict him in order to lease out the premises to a hostel and that hostel accommodation amounted to 'non residential accommodation' which was impermissible under Section 25 of Bombay Rent Control Act. The High Court has held that by the very nature of the use of students hostel, it is only a residential user as hostel, is a house of residence or lodging for students and that just because the hostel owners charge some amount from the students, such accommodation cannot be treated as commercial or non residential.

iv) Karnataka High Court in "Taghar Vasudeva Ambrish versus Appellate Authority for Advanced Rulings, Karnataka and Others***"*** (W.P.No.14981/2020, dated 7.2.2022), wherein, it has been observed as under:

"Thus, it is evident that the expression 'residence and 'dwelling' have more or less the connotation in common parlance and therefore, no different meaning can be assigned to the expression 'residential dwelling' as it cannot be held that the same does not include hostel which used for residential purposes by students or working women".

While observing so, the Karnataka High Court has ultimately held that the service provided by the petitioner therein, i.e. leasing out residential premises as hostel to students and working professionals is covered under Entry 13 of Notification No.9/2017 dated 28.09.2017, namely, services by way of renting of residential dwelling for use as residence issued under the Act and the petitioner is held entitled to benefit of exemption notification.

43. In other words, the exemption was being given to any person who may engage in renting of residential dwelling used as residence. It is further not specifically set out in the notification what would be considered as a short stay or long stay. This exemption benefit was available when landlord rented out to corporates/tenants who in turn rent out to students/working professionals/others. The same exemption was also available when renting was done as residence to the students by corporate PG/other commercial entities.

44. In ***"Bandu Ravji Nikam versus Acharyaratna Shikshan Prasark Mandal"*** reported in ***MANU/MH/1015/2002,*** the Bombay High Court has held as under in para 10:

"10. … Undoubtedly, "hostel" is nothing but a house of residence or lodging for students. Just because the respondent may charge some amount from the students for providing

that facility, may not necessarily mean that it is a commercial or nonresidential user. Further, there is perceptible difference between “hotel or lodging house” and ‘student hostel’, though in both cases accommodation may be provided on monetary consideration. In the latter, the occupant cannot claim to be a “tenant” or a “licensee” nor can he claim protection of the provisions of the Bombay Rent Act. Whereas, in the case of the former, part III of the Act would apply. Besides, it will be useful to notice the observations of this Court in para 20 of the decision in the case of Kishinchand (supra). This court has held that the word “residence” may receive a liberal meaning, for a man’s residence is very often the place where he sleeps at night. This court in the said case adverted to the decision of the Privy Council (AIR 1937 PC 46), wherein it is observed that *“there is no reason for assuming that it contemplates only permanent residence and excludes temporary residence”*. Reference is also made to wherein it is observed that, *“Residence only connotes that a person eats, drinks and sleeps at that place and that it is not necessary that he should own it*“.

This Court then proceeded to hold that the legislature is using words “non-residential purpose” in Section 25 did not intend to prohibit use of a building containing a residential flat for the purposes of construction of Marriage Halls, Charitable Hospitals and “quarters” and garages for Doctors and Nurses. As in the present case, “Students hostel” was also to be used for sleeping, eating, studies etc. temporarily if not permanently day to day, it cannot be described as “non-residential” use within the meaning of Section 25 of the Act. Accordingly, if the suit premises were to be used as students hostel, then surely it would be for the residential purpose of the students of the College run by the respondent trust. In that case also, the respondent trust would be entitled to claim possession of the suit premises for the requirement of the trust. If this be so, there is no force in the argument pressed into service that no decree could be passed as the nature of requirement would be prohibited by Section 25 of the Act.”

45. It is well settled that when the word is not defined in the Act itself, it is permissible to refer to the Dictionaries to find out the general sense in which the word is understood in common parlance.

46. Therefore, it may also be referred to the meaning of the expression ‘residence’ and ‘dwelling’ as defined in Concise Oxford English Dictionary 2013 Edition as well as Blacks Law Dictionary 6th Edition to ascertain its meaning in common parlance and in popular sense which read as under:

**The Concise Oxford Dictionary:**

**Domicile:** 1. the country in which a person has permanent residence.

2. the place at which a company or other body is registered.

**Residence:** 1. the fact of residing somewhere.

2. a person’s home.

3. the official house of a government minister or other official figure.

**Blacks Law Dictionary:**

**Residence:** Place where one actually lives or has his home; a person's dwelling place or place of

**habitation;** an abode; house where one' home is; a dwelling house.

**Dwelling:** The house or other structure in which a person or persons live; a residence; abode; habitation; the apartment or building, or a group of buildings, occupied by a family as a place of residence. Structure used a place of habitation.

47. Further in common parlance, 'residential dwelling' means any building, structure, or part of the building or structure other than offices or factories, that is used or intended to be used as a home, residence, or sleeping place by one person or by two or more persons maintaining a common household, to the exclusion of all others.

48. Under Section 2(e) of the Tamil Nadu Hostels and Home for 39/63 Women and Children (Regulation) Act, 2014), the term 'hostel' or lodging house' is defined to mean a building in which accommodation is provided for women or children or both, either with boarding or not.

49. Thus, it is evident that the expression 'residence' and 'dwelling' have more or less the connotation in common parlance and therefore, no different meaning can be assigned to the expression 'residential dwelling' and accordingly, this Court is of the view that the same does include hostel which is used for residential purposes by students or working women.

50. A perusal of the impugned Rulings passed by the second respondent, this Court finds that the authority has primarily concluded that hostel building cannot be considered as residential dwelling, but a non-residential complex, based on the following observations, viz.,

i) that the petitioners have rented out the premises with the intention of providing hotel accommodation which is more akin to sociable accommodation rather than what is typically considered as residential accommodation;

ii) that a single house with two or more rooms where normally a single family resides, is subdivided and let out to different persons and rent being collected on per bed basis with bundle of other services against a consideration clearly constitutes a business of supplying accommodation services along with ancillary services and thus on this count, the hostel accommodation does not qualify as a residential dwelling and the question of using the same as residence does not arise;

iii) that though the accommodation and residence seems to be synonymous, there is

subtle difference between the two and the hostels are nothing but accommodation which provide temporary lodging to the inmates by converting a residential dwelling into a hotel and providing hotel service, which eventually makes the same dwelling non-residential' and taxable and in the instant case, the residential homes have been converted into a commercial purpose and thereby losing its status as 'residence dwelling';

iv) that in order to run hostel the license from Shop and establishment Act is required and it is not required for residence dwelling for use as residence.. Shops and establishment license are required for commercial establishment. Hence hostels falls under commercial establishment and hence GST should be applicable on hostel charges.

v) that the purpose and objective of the notification is nothing but to avoid taxing on residential properties taken on rent by family or individuals and the benefit of exemption is not extended to the premises which do not qualify as residential dwelling for use as residence;

v) that the 'hostel accommodation' is not equivalent to 'residential accommodation' and hence, the services supplied by the petitioners would not be eligible for exemption under Entry 12 of the Exemption Notification.

51. From the above, it is clear that the Ruling Authority/2nd respondent herein, has mainly compared the hostel premises on par with hotel premises and the intention of the petitioners in renting out the premises in the name of hostels, is nothing but providing hotel accommodation and it does not qualify as residential dwelling for use as residence. The 2nd respondent has not ventured upon to find out whether the accommodation provided by the petitioners by renting out the hostel rooms to the girl students and working women, will fall within the purview of 'residential dwelling for use as residence' and whether the inmates of the hostels are using the premises as residential dwelling or as commercial purpose. In fact, the term 'services by way of renting of residential dwelling for use as residence' contained in the exemption Notification, is very clear that the services provided by way of renting of residential dwelling for residential purpose are covered under the exemption. Therefore, the 2nd respondent ought to have dealt with the matter in regard to the services provided by the petitioners by renting out the hostel rooms to the girl students and working women and whether such services are in the nature of residential or commercial in order to find out whether the petitioners are entitled to the exemption. But unfortunately, the 2nd respondent has dealt with the matter pertaining to the building/premises let out by the petitioners and compared the same with that of the hotels and came to the conclusion that the building/premises rented out by the petitioners are not residential dwelling for use as residence. Therefore, this Court is of the view that the impugned Ruling passed by the 2nd respondent, is not sustainable and the same is liable to be set aside.

52. In the present case, it is not in dispute that the inmates of the respective hostels run by the petitioners are the girl students and the working women who are not registered persons and using the premises as their residence, for which, they are paying fee, which can be termed as rent and it is not the case of the respondents that the inmates are

carrying on any commercial activities in the rented premises or using the same for commercial purpose. That apart, the inmates of the room also using the common kitchen and sharing the foods as their own. Admittedly, GST is not applicable if a residential property is rented out to any persons in their personal capacity and for use as their own residence. In other words, if a residential property is rented out, that too for residential purpose, then the rental income derived from such property does not attract GST. However, if a person rents out any immovable property for doing business purposes, it would attract GST at a rate of 18%. Assuming for a moment that a landlord owns a building consisting of two rooms and a kitchen and attached bathrooms and if he gives it to a family consisting of four members for residential purpose, on a monthly rent of Rs.20,000/- plus 2,000/- towards maintenance and other charges, then no GST will attract. While so, if four girl students or four working women join together and take a house on rent by bearing the rent at Rs.5,500/- each, they are not liable to pay GST.

53. If the same 4 students are staying in a hostel room and paying rent where they are using the room allotted to them as their residential dwelling unit, which includes kitchen, wash room, cots and beds, so as to enable them to prepare food and wash clothes etc., while so, the said staying of those four students in a hostel cannot be excluded from the purview of residential dwelling and bring the same under the ambit of GST. As far as the said four girl students staying in the Hostel is concerned, that hostel room is the dwelling unit for them. Thus, the word “residential dwelling” referred in Entry No.12 of the Exemption Notification No.12 of 2017 would include the hostel facilities provided by the petitioners to the working women, students, professional, etc. For the working women and professionals also, the said hostel room is residential dwelling unit for them.

54. To live, every person must have the residential dwelling. The the hostel rooms are the residential dwelling units for the girl student and working women, etc. The residential dwelling varies from person to person. As far as the homeless people are concerned, the residential dwelling will be wherever they are residing such as public roads, streets or in any other places and except the same, no other places can be provided, unless and otherwise if the Government has accommodated those people in a home, where they are maintaining the same for homeless. Therefore, when for the homeless persons, the residential dwelling will be the places wherever they are residing, where, even they do not have cooking, washing and toilet, etc., facilities by itself it does not mean that their place is not a residential dwelling. For their sake of convenience, they reside in one place and used to get food and do washing and other activities from different places. If they are accommodated in a home provided by the Government for the homeless people, the said premises/hostel will be their residential dwelling and therefore it depends upon the status and the lifestyle of each person, the nature of residential dwelling will vary. Merely because the persons are staying in hostel rooms due to their financial condition, the same will not take away the status of the said hostel room as residential dwelling for the inmates of the room, because after their avocation, they have been staying, sleeping, eating, washing, etc in the hostel rooms alone.

55. As per the 2nd respondent’s perspective, a working woman, who is drawing the salary of around a sum of Rs.15,000/- to Rs.20,000/-and paying hostel rent for around a sum of

Rs.6,000/- will not be exempted from GST, whereas a Manager, who is working in a same office and can afford to pay around a sum of Rs.30,000/- to Rs.50,000/-as rent will be exempted from GST by citing the reason that the hostel accommodation would fall within the purview of GST. However, it is not the intention of the Legislature to tax the poor people. The meaning of "residential dwelling" mentioned in the Entry No.12 of Exemption **Notification No.12/2017-Central Tax (Rate) dated 28.06.2017** would cover both the poor and rich people.

56. Ultimately, the Authorities have to look into the aspect as to whether the particular place is a dwelling unit or not. When such being the case, since the hostellers are staying in the room for months together, it cannot be construed as non-residential unit and certainly it is a residential dwelling as provided in the Entry No.12 of Exemption **Notification No.12/2017-Central Tax (Rate) dated 28.06.2017**. Thus, this Court has no hesitation to hold that the 'hostel services' provided by the petitioners would squarely fall within purview of Entry No.12 of Exemption **Notification No.12/2017-Central Tax (Rate) dated 28.06.2017**. Further, in the present case, no commercial activities can be attributed against the owners of the hostels since they have been providing only 'residential accommodation' to the girl students, working women, etc., who are using the 'hostel premises' as their residence and not for business purpose by using the common kitchen and sharing the food among themselves.

57. Further, in ***Taghar Vasudeva Ambrish*** case (referred supra), the Hon'ble Division Bench of Karnataka High Court had elaborately discussed when a similar issue came up for consideration and thus it would be apposite to extract the relevant portion of the said order as follows:

***EXEMPTION NOTIFICATION:***

*9. We have considered the submissions made on both sides and have perused the record. The Act is an Act to make provision for levy and collection of tax on interstate supply of goods or services or both by the Central Government and for matters connected therewith or incidental thereto. In exercise of powers under the Act, the Central Government has issued exemption notification and has granted exemption from payment of goods and services tax in respect of services mentioned therein. The aforesaid notification includes the service of renting residential dwelling for use as residence. The relevant extract of the notification is extracted below for the facility of reference:*

*In exercise of powers conferred by [sub Section (3) ad sub Section (4) of Section 5, sub-Section (1) of Section 6 and clause (xxv) of Section 20 of the* **Integrated Goods and Services Tax Act, 2017** *(13 of 2017), read with sub-Section (5) of Section 15 and Section 148 of the Central Goods and Services Tax At, 2017 (12 of 2017)], the Central Government, on being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby exempts the inter-State supply of services of description as specified in column (3) of the Table below from so much of the Integrated Tax leviable thereon under Sub-Section (1) of Section 5 of the said Act, as is in excess of the said tax calculated at the rate as specified in the corresponding entry in column (4) of*

*the said Table, unless specified in the corresponding entry in column (5) of the said Table, namely:-*

| *Sl. No.* | *Chapter, Section, Heading, Group or Service Code (Tariff)* | *Description of Services* | *Rate (per cent)* | *Condition* |
|---|---|---|---|---|
| *(1)* | *(2)* | *(3)* | *(4)* | *(5)* |
| *13* | *Heading 9963 or Heading 9972* | *Services by way of renting of residential dwelling for use as residence* | *Nil* | *Nil* |

***LEGAL PRINCIPLES:***

*10. The issue with regard to interpretation of exemption notification is no longer res integra and the Constitution Bench of the Supreme Court in 'DILIP KUMAR AND COMPANY AND OTHERS while dealing with the reference pertaining to interpretation of an exemption notification, has answered the reference in the following terms:*

*66.1 Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.*

*66.2 When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject / assessee and it must be interpreted in favour of the revenue.*

*66.3 The ratio in sun Export case is not correct and all the decisions which took similar view as in sun Export case stand overruled.*

*The aforesaid principles pertaining to interpretation of exemption notification were reiterated by Supreme Court in 'THE STATE OF MAHARASHTRA Vs. SHRI VILE PARLE KELVANI MANDAL & ORS'. 2022 SCC ONLINE SC 18.*

*11. It is well settled rule of Statutory Interpretation of fiscal statues that the words used therein if not defined in the statute have to be interpreted in their popular sense. As per Craies on statute law 6th edition, the popular sense means the sense in which people conversant with the subject matter with which the statute is dealing, would attribute it. (SEE: COMMISSIONER OF CENTRAL EXCISE, MUMBAI VS. FIAP INDIA PVT. LTD. & ANR. (2012) 9 SCC 332 and COMMISSIONER OF CENTRAL EXCISE VS. MADHAN*

*AGRO INDUSTRIES INDIA PRIVATE LIMITED (2018) 15 SCC 733). Thus, the expression 'residential dwelling' has to be understood according to its popular sense.*

***REASONS:***

*12. In the backdrop of aforesaid well settled legal principles, we may advert to the facts of the case in hand. Entry 13 contained in the exemption notification is unambiguous and is clear. It provides for exemption from payment of Integrated Goods and Service Tax in respect of 'services by way of renting of residential dwelling by way of use as residence'. The burden is of course on the petitioner to show that his case comes within the parameters of the exemption notification. The expression 'residential dwelling' has not been defined. It is pertinent to note that under the erstwhile service tax law, the expression 'residential dwelling' was defined in paragraph 4.13.1 of Taxation of Services: An Education Guide dated 20.06.2012 which was issued by Central Board of Indirect taxes and Customs which is reproduced below for the facility of reference:*

*4.13.1 What is a 'residential dwelling'?*

*The phrase 'residential dwelling' has not been defined in the Act. It has therefore to be interpreted in terms of the normal trade parlance as per which it is any residential accommodation, but does not include hotel, motel, inn, guest house, camp – site, lodge, house boat, or like places meant for temporary stay.*

*Thus in the aforesaid education guide issued by Central Board of Indirect Taxes and Customs which contains clarifications, it is provided that in normal trade parlance residential dwelling means any residential accommodation and is different from hotel, motel, inn, guest house etc. which is meant for temporary stay. The aforesaid clarification which is issued by the Board, in the absence of anything to the contrary in the Act, binds the Respondent.*

*13. It is noteworthy that the accommodation which is used for the purposes of the hostel of students and working women is classified in residential category in the Revised Master Plan 2015 of Bangalore City. The Supreme Court in KISHORE CHANDRA SINGH VS BABU GANESH PRASAD BHAGAT AIR 1954 SC 316 has held that expression residence only connotes that a person eats, drinks and sleeps at that place and it is not necessary that he should own it. The aforesaid decision was referred to by Bombay High Court in BANDU RAVJI NIKAM SUPRA. The hostel is used by the students for the purposes of residence. The students use the hostel for sleeping, eating and for the purpose of studies for a period ranging between 3 months to 12 months. In the hostels, the duration of stay is more as compared to hotel in guest house, club etc.*

*14. It is well settled that when the word is not defined in the Act itself, it is permissible to refer to the dictionaries to find out the general sense in which the word is understood in common parlance. (SEE: MOHINDER SINGH VS STATE OF HARYANA AIR 1989 SC 1367 and COMMISSIONER OF CENTRAL EXCISE , DELHI vs. ALLIED AIRCONDITIONING CORPN. (REGD) (2006) 7 SCC 735). Therefore, we may also refer*

*to the meaning of the expression 'residence' and 'dwelling' as defined in Concise Oxford English Dictionary 2013 Edition as well as BLACKS LAW DICTIONARY 6th Edition to ascertain its meaning in common parlance and in popular sense which read as under:*

*The Concise Oxford Dictionary:*

*Domicile: 1. the country in which a person has permanent residence.*

*2. the place at which a company or other body is registered.*

*Residence: 1. the fact of residing somewhere.*

*2. a person's home.*

*3. the official house of a government minister or other official figure.*

*Blacks Law Dictionary:*

*Residence- Place where one actually lives or has his home; a person's dwelling place or place of habitation; an abode; house where one' home is; a dwelling house.*

*Dwelling- The house or other structure in which a person or persons live; a residence; abode; habitation; the apartment or building , or a group of buildings, occupied by a family as a place of residence. Structure used a place of habitation.*

*Thus, it evident that the expression 'residence' and 'dwelling' have more or less the connotation in common parlance and therefore, no different meaning can be assigned to the expression 'residential dwelling' and it cannot be held that the same does not include hostel which used for residential purposes by students or working women.*

*15. The twin questions which need to be answered in order to ascertain whether the service provided by the petitioner is covered under exemption notification are: (i) What is being rented? (ii) The purpose for which the residence is used for. Firstly, the residential dwelling is being rented, as the hostel to the students and working women fall within the purview of residential dwelling as the same is used by the students as well as the working women for the purposes of residence. Secondly, the residential dwelling is being used for the purposes of residence. Thus, the aforesaid questions are required to answered in favour of the petitioner. It is also worth mentioning that the notification does not require the lessee itself use the premises as residence. Therefore, the benefit of exemption notification cannot be denied to the petitioner on the ground that the lessee is not using the premises. Similarly, the finding recorded by AAAR Karnataka that the hostel accommodation is more akin to 'sociable accommodation' is unintelligible and is not relevant for the purposes of determining the eligibility of the petitioner to claim the benefit under the exemption notification.*

*16. So far as the submission that the petitioner is registered as commercial establishment*

*under the Karnataka Shops and Commercial Establishment Act, 1961 or that a trade licence has been issued by BBMP, suffice it to say that it is wholly irrelevant for the purposes of determining the eligibility of the petitioner under the exemption notification.*

*17. In view of the preceding analysis, the order dated 31.08.2020 passed by the AAAR Karnataka is quashed and it is held that the service provided by the petitioner i.e., leasing out residential premises as hostel to students and working professionals is covered under Entry 13 of* **Notification No.9/2017-Integrated Tax Rate dated 28.06.2017** *namely 'Services by way of renting of residential dwelling for use as residence' issued under the Act. The petitioner is held entitled to benefit of exemption notification.*

*In the result, the writ petition is allowed."*

58. In view of the above finding and by following the law laid down in the above judgement by the Hon'ble Karnataka High Court, this Court is of the considered view that the 'hostel services' provided by the petitioners to the girl students and working women will squarely amount to the 'residential dwelling' and accordingly, the same will be squarely covered under the Entry No.12 of Exemption Notification No.12 of 2017.

59. The Hon'ble Supreme Court, in the case of "***Collector of Central Excise v. Parle Exports (P) Ltd., [1989] 1 SCC 345 at p. 35***7 has suggested that in interpreting the scope of any notification, the authority has first to keep in mind the object and purpose of the notification and all parts of it should be read harmoniously in aid of, and not in derogation, of that purpose.

60. In the case of "***Government of Kerala & Anr. v. Mother Superior Adoration Convent"*** (Civil Appeal No. 202 of 2012 and others", decided on March 1, 2021), the Hon'ble Supreme Court upheld the judgment passed by the Hon'ble Kerala High Court allowing the exemption of "An exemption provision should be liberally construed in accordance with the object sought to be achieved if such provision is to grant incentive for promoting economic growth or otherwise has some beneficial reason behind it."

61. Even on adopting the purposive interpretation having regard to the object and intent of the present exemption Notification, this Court finds that the purport and object of the legislation in issuing the present Notification is only to give exemption towards the services which are in residential nature and not towards commercial nature and the premises should be of residential dwelling for use as residence. The purpose of exemption given in the Notification is only to lessen the burden of tax on the dwellers, who are the tenants/occupants of the residential premises taken on rent.

62. In the present case, the imposition of GST on the Hostel accommodation should be viewed from the perspective of the recipient of service and not from the perspective of service provider. However, the 2nd respondent has dealt with the entire issue as if GST is going to be imposed on the revenue of the service provider and he is going to pay the same from and out of his pocket. On the other hand, the imposition of GST is only on the recipient of service and the GST is going to be collected only from the recipient of the

service and not from the service provider. As far as service provider is concerned, he is collecting the GST from the recipient of the service and making deposit with the Central Government.

63. While adverting to the imposition of GST on hostel accommodation, it has to be looked into as to whether the inmates of the hostel rooms, are using the premises as their residential dwelling or commercial purpose since renting of residential unit attracts GST only when it is rented for commercial purpose. So, in order to claim exemption of GST, the nature of the end-use should be 'residential' and it cannot be decided by the nature of the property or the nature of the business of the service provider, but by the purpose for which it is used i.e. 'resident dwelling' which is exempted from GST. Therefore, this Court is of the considered view that the issue of levy of GST on residential accommodation should be viewed from the perspective of recipient of service and not from the perspective of service provider, who offers the premises on rental basis.

64. In the light of the above discussion, it is clear that the renting out the hostel rooms to the girl students and working women by the petitioners is exclusively for residential purpose, this Court is of the considered view that the condition prescribed in the Notification in order to claim exemption, viz., 'residential dwelling for use as residence' has been fulfilled by the petitioners and thus the said services are covered under Entry Nos.12 and 14 of the Notification No. 12/2017-Central Tax (Rate) dated June 28, 2017, the petitioners are entitled to be exempted from levy of GST.

65. As far as the case laws referred to by the learned counsel appearing for the respondents are concerned, the same would not apply to the facts and circumstances of the present case.

66. In the result, all the Writ Petitions are allowed and the impugned orders passed by the 2nd respondent are hereby set aside. No costs. Consequently, all the connected miscellaneous petitions are also closed.

**Date:** 2024-04-01