



GST EXEMPTION ON RESIDENTIAL PROPERTY USED AS HOSTEL

A Division Bench of the Hon'ble High Court of Karnataka, in its recent [judgement](#) in WP No. 14891/2020 held that building owners of residential property can claim exemption under GST if the property is used as a hostel.

BRIEF FACTS

- Petitioner entered into a lease agreement with a co-living space service providing company for providing hostel facility to students and working professionals
- To know whether he was eligible to claim exemption under GST, the Petitioner made a Section 97 Application before the Authority for Advance Ruling, Karnataka (“**the AAR**”).
- The AAR held that residential property rented out cannot fall under Entry 13 of the exemption notification and that the Petitioner has to charge GST while issuing an invoice to the lessee.
- The Appellate Authority upheld the Order of the AAR. This came to be challenged before the Hon'ble High Court.

CONTENTIONS OF THE PARTIES

The Petitioner – owner of Property

- Mr Arvind Datar, Senior Advocate, appearing for the Petitioners submitted that ‘residential dwelling’ has not been defined anywhere and that the normal trade parlance has to be taken into consideration.
- Hostels that provide long term accommodation facilities would therefore come under residential dwelling. This is further to the fact that the Zonal Regulations of Karnataka allow hostels to function from residential areas.

The Respondent- GST Authorities

- Residential Dwelling is to be considered as residence. There has to be an element of permanency. Trade name of the Petitioner's lessee pointed out to boarding and lodging facilities. Also, the facility is registered as a commercial activity under the Karnataka Shops and Establishments Act, 1961. Therefore, such exemption cannot be claimed by the Petitioner.

DECISION

- Firstly, the residential dwelling is being rented, as the hostel to the students and working individuals fall within the purview of residential dwelling as the same is used by the students as well as the working individuals for the purposes of residence. Secondly, the residential dwelling is being used for the purposes of residence. Thus, the aforesaid questions are required to be 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.

SANCTUM LAW COMMENT

The judgement of the Hon'ble High Court of Karnataka is a relief to the building owners of Bengaluru who have let out their property to companies providing hostel facilities in the long term for students and working professionals. These services can now be clearly differentiated from normal boarding and lodging services that are provided to tourists and short business visit purposes.

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