

2024 (85) G.S.T.L. 377 (A.A.R. - GST - Raj.)

BEFORE THE AUTHORITY FOR ADVANCE RULING UNDER GST, RAJASTHAN

S/Shri Umesh Kumar Garg, Member (Central Tax) and Mahesh Kumar Gowla, Member (State Tax)

IN RE : DEEPAK JAIN

Advance Ruling No. RAJ/AAR/2023-24/14, dated 29-11-2023

Renting of property for commercial use - Real estate services - Heading 9972 - Classification - Applicant is an owner of property for which he has entered into lease agreement with Back Office IT Solutions Private Limited (lessee) which is engaged in business of providing comprehensive, independent fund accounting, reporting, and analytics solutions to fund administrators providing administration services to hedge fund industry - Lessee is required to pay monthly rent of ` 99,125 - *HELD* : Residential dwelling means living in a certain place permanently or for a considerable length of time - Said property has been leased/rented for commercial use and thus cannot be covered under definition of residential dwelling and therefore said supply of service i.e. renting property for commercial use is covered under Heading 9972 12 and taxable at rate of 18% - Section 9 of Central Goods and Services Tax Act, 2017 - Section 9 of Rajasthan Goods and Services Tax Act, 2017. *[para F]*

Ruling in favour of department

CASES CITED

Aluri Krishna Prasad — (2023) 2 Centax 333 (App. A.A.R. - GST - A.P.) — *Referred..* [Paras B, F]

Collins (AP) v. Uratemp Ventures Ltd. — [2021] 24 taxmann.com 134 (ECJ) — *Referred..* [Para B]

Lakshmi Tulasi Quality Fuels — 2020 (39) G.S.T.L. 289 (A.A.R. - GST - A.P.) — *Referred* [Paras B, F]

NOTIFICATIONS CITED

Notification No. 13/2017-C.T. (Rate), 28-6-2017..... [Para B]

Notification No. 4/2022-C.T. (Rate), dated 13-7-2022..... [Para B]

Notification No. 5/2022-C.T. (Rate), dated 13-7-2022..... [Paras B, C, F]

REPRESENTED BY : Shri Deepak Jain, C.A., for the Assessee.

[Order]. - At the outset, we would like to make it clear that the provisions of both the CGST Act and the RGST Act are the same except for certain provisions. Therefore, unless a mention is

specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the RGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act/RGST Act would be mentioned as being under the “GST Act”.

The issue raised by M/s. DEEPAK JAIN (hereinafter referred to as “applicant”) is an unregistered applicant engaged in providing Professional service of Chartered Accountant and currently Senior Partner in B.D. Jain & Co. Chartered Accountants. Applicant is owner [along with family members Shri Padam Chand Jain, Smt. Manju Devi Jain and Smt. Samta Jain hereinafter collectively referred to as “Lessor(s)”] of property situated J-10, Lal Kothi, Sahakar Marg, Jaipur, Rajasthan-302018 (hereinafter referred to as the Demised Premises) is fit to pronounce advance ruling as it falls under the ambit of the Section 97(2)(a), (b) & (e) given as under :

- (a) Classification of any goods or services or both;
- (b) applicability of a notification issued under the provisions of this Act;
- (e) determination of the liability to pay tax on any goods or services or both;

A. Submission of the applicant : (in brief)

(A) Deepak Jain (hereinafter referred to as the “Applicant”) is engaged in providing Professional service of Chartered Accountant and currently Senior Partner in B.D. Jain & Co. Chartered Accountants. Applicant is currently unregistered under GST Act, 2017. Applicant is owner [along with family members Shri Padam Chand Jain, Smt. Manju Devi Jain and Smt. Samta Jain hereinafter collectively referred to as “Lessor(s)”] of property situated J-10, Lal Kothi, Sahakar Marg, Jaipur, Rajasthan-302018 (hereinafter referred to as the Demised Premises). The applicant has entered into lease agreement dated 18-1-2022 with Back Office IT Solutions Private Limited, a company incorporated in India within the meaning of Companies Act, 1956 and an existing company under the Companies Act, 2013 with company identification Number (CIN) U72200RJ2000PTC016780 having its registered office at F-220-225, EPIP IT Park, Sitapura, Jaipur - 302022 (hereinafter referred to as the “Lessee” which expression shall unless repugnant to the context or meaning thereof, mean to include its successors and permitted assigns) which is *inter alia* engaged in the business of providing comprehensive, independent fund accounting, reporting, and analytics solutions to fund administrators providing administration services to hedge fund industry.

The Lessors are the absolute owners of the premises. The Lessor(s) and the Lessee have agreed to lease the Demised Premises on terms and conditions as specified attached Agreement. As per terms of the Lease agreement, in consideration of grant of lease to use and possess the aforesaid property, the lessee is required to pay to the applicant a monthly rent of Rs. 99,125/- (Total of Rs. 3,96,500/- to the Lessors).

Further, as per the terms of the lease agreement, the lessee has the right to sub-lease the aforesaid property during the lease term to any third party with prior intimation to the applicant for the purpose of business of lessee.

(B) Land use of property is residential. Lease deed issued by Jaipur development Authority (JDA), Jaipur in the respect of the Demised premises is Residential.

(C) As per Lease Agreement the Demised Premises shall be used solely for commercial purposes by the Lessee i.e. for establishing the branch/office of the Lessee. Construction of property is done for use as commercial purposes only.

(D) Lessee is registered in GST Act and having GSTIN : 08AABCB5008K1ZT.

(E) Electricity connection Category of Lessee is "medium industry". Copy of latest electricity bill attached.

(F) The Lessor has, at their own cost, provided the Demised Premises to the Lessee with the necessary installations, erections, fixtures and set ups including but not limited to lifts, internal partitions, walls, electrical, sanitary and other fixtures and fittings, counters, vaults, lockers, cabinets, doors, gates, air-conditioners, provision of drinking water equipment's, false ceiling (grid type), flooring in the Demised Premises.

(G) DESCRIPTION OF THE DEMISED PREMISES :-

Address : J-10, J BLOCK, LAL KOTHI SCHEME, SAHAKAR MARG, JAIPUR, RAJASTHAN -302015

(1) *Complete Basement* : 1600 SQFT with cafeteria furnishing

(2) *First Floor* : 1100 SQFT (Super Built up Area) 30 Workstations

(3) *Second Floor* : 2600 SQFT (Super Built up Area) 70 Workstations

(4) *Third Floor* : 2600 SQFT (Super Built up Area) 70 Workstations

(5) *Ground Floor* : Parking as per agreed proportion

(6) Tank for Water Storage

(H) RENT INCLUSIVE INSTALLATIONS AND SERVICES

INSTALLATIONS AND SERVICES IN THE SCOPE OF THE LESSOR

(1) Workstations with Network wiring & Electrical Power points as per approved Layout & Design by Lessee

(2) Lift

(3) Chairs as per approved Design by Lessee

(4) AC/VRV

(5) Lights as per approved make and Lux level approved by Lessee

(6) False Ceiling-Grid Type

(7) Blinds on Glazing Sides

(8) Exhaust in Pantry & Washrooms

- (9) Flooring
- (10) Fire Alarm & Smoke Detections Setup
- (11) Electrical Panel and Transformer for required capacity as per floor
- (12) Water Connection & Storage Tank
- (13) Washrooms-Separate for Male & Female on each floor
- (14) Meeting Rooms-2 on each Floor
- (15) Parking will be lent out in proportion of each floor, till no other user, it can be completely used by Lessee.

Cafeteria Furnishing :

- (1) Tables & Chairs for Seating as per maximum setup available at basement.
- (2) Air-conditioning & Lighting
- (3) Washbasin Area and drinking water inlet/Outlet with Sump pump

B. Interpretation and understanding of applicant on question rose (in Brief)

The applicant submitted his interpretation which is as under :-

(A) Renting of an immovable property is considered a supply of service under GST Act, 2017. Upto 17th July, 2022, renting of residential dwelling for use as residence was exempted whereas services by way of renting for commercial use (SAC Code-9972 12) was taxable @ 18%. However, the taxability of renting of residential property under GST has changed from 18th of July, 2022. The decision to bring the renting of residential dwellings under the tax net was taken in the 47th GST Council Meeting held on 28th to 29th June, 2022 by partially removing the exemption and including the same under RCM services when provided to a registered person. Two notification were issued in this regard one is Notification No. 4/2022-Central Tax (Rate), dated the 13th July, 2022 and second is Notification No. 5/2022-Central Tax (Rate), dated the 13th July, 2022.

Commercial property is still taxable as forward charge mechanism.

Taxability on Renting of residential dwellings :

	Be for e 18- 7- 20 22	From 18-7- 2022
E	Se	Services by

	Exemption for Renting of Residential Dwellings	Reverse Charge Mechanism by way of renting of residential dwelling for use as a Residence	way of renting of residential dwelling for use as a residence except where the residential dwelling is rented to a registered person.
--	--	---	---

(B) Inclusion in list of services under Reverse Charge Mechanism : - Following new Entry for Reverse Charge Tax by Notification No. 5/2022-Central Tax (Rate), dated 13-7-2022 inserted with effect from 18th July, 2022 in Notification No. 13/2017-Central Tax (Rate), dated the 28th June, 2017 :-

	(2)		(3)	(4)
	Sl. No.	Category of Supply of Service	Supplier	Recipient

			ser vic	p i e n t o f S e r v i c e
	'5AA	Service by way of renting of residential dwelling to a registered person.	An y per so n	A n y r e g i s t e r e d p e r s o n

(C) The term 'residential dwelling' is not defined in Central Goods and Services Tax Act, 2017. So, the dictionary meaning of the same is referred to, which is as follows :

As per Black's Law Dictionary : 'Residential dwelling means living in a certain place permanently or for a considerable length of time'

As per Merriam Webster dictionary : 'A shelter (as a house) in which people live'

As per the Oxford dictionary : 'A house or apartment or other places of residence or a place to live in or building or other places to live in'.

(D) C.B.I. & C. Education Guide dated 20-6-2012 provides clarification in the context of service tax laws, wherein it is mentioned that in the absence of a definition of the terms 'residential dwelling' one has to interpret the same in terms of normal trade parlance. Any residential accommodation is a house or home, but does not include hotel, motel, inn, guest house, camp site, lodge, house boat or like places meant for temporary stay.

(E) The applicant has relied on advance ruling passed by Appellate Authority for Advance Ruling, Andhra Pradesh in the case of *Aluri Krishna Prasad* dated 19-12-2022 [(2023) 2 Centax 333 (App. A.A.R. - GST - A.P.) = [2023] 146 taxmann.com 565/97 GST 216 (AAAR - Andhra Pradesh)]. Relevant Extract is reproduced below :-

"The premises in question was not built as a residential dwelling nor to be used for residence by the tenant of the building (lessee) but only to be used for furtherance of business of the lessee i.e., running hostel accommodation for students, executives etc."

"In the instant case there is no evidence to show that either the building was a residential dwelling or it is going to be put to use as residence for himself by the lessee as discussed in detail above."

(F) Further, the applicant has relied on advance ruling passed by Authority for Advance Ruling, Andhra Pradesh in the case of *Lakshmi Tulasi Quality Fuels* dated 5-5-2020 [2020 (39) G.S.T.L. 289 (A.A.R. - GST - A.P.) = [2020] 117 taxmann.com 942/[2020] 81 GST 135 (AAR - Andhra Pradesh)]. Relevant Extract is reproduced below :-

"Therefore, it is clear that the lessor has rented out her dwelling for commercial activity, and supply of such services, in the facts and circumstances of the case, are classifiable as "Rental or leasing services involving own or leased non-residential property" under Service Code (Tariff) 997212. It is taxable in the hands of the lessor and is liable for IGST at the rate of 18 per cent."

(G) Further, the applicant has relied in case of *Collins (AP) v. Uratemp Ventures Limited* [2012] 24 taxmann.com 134 (ECJ) held that Dwelling means a place where one lives, regarding and treating it as home. It is the place where he lives and to which he returns for sleep and which forms the Centre of his existence. Dwelling may be a house or part of a house and even a single room as a part of a house, may be a dwelling. However, the use a person makes of it when living there depends on his mode of life. Such a place does not cease to be "dwelling" merely because one takes all or some of one's meals out; or brings take away food in to the exclusion of home cooking; or at times prepares some food for consumption on heating devices.

From the above interpretation of the Court, it can be concluded that, any premises which can be used as residence for stay, can be termed as residential dwelling and which may be for long term.

(H) From the above, one can gauge that the structure of dwelling (i.e., the way it is designed - the layout of the dwelling) and the intent of its use are of paramount importance to determine whether or not the premises is a residential dwelling. In case of renting of commercial premises, there is no exemption under GST and irrespective of the tenant's status i.e., registered or

unregistered, the said transaction is taxable in the hands of landlord under forward charge. However, if one concludes the property to be a commercial premises, then the taxability is under forward charge in the hands of the lessor.

(I) Applicant's view is that the Demised Premises is not residential dwelling and tax is to be paid by the Applicant under forward charge. Recipient is not required to pay Reverse Charge Tax and Reverse Charge Tax is not applicable in present case whether supplier is GST registered or not.

C. Questions on which the advance ruling is sought :-

(1) Whether the Demised premises will be covered in definition of residential dwelling for the purpose of Notification No. 5/2022-Central Tax (Rate), dated 13-7-2022?

(2) Out of following which are factors important to include in definition of residential dwelling?

(1) Land use of property by local authorities; or

(2) Layout of the property, its structure, whether it is designed for usage as a residential unit or a commercial unit; or

(3) The purpose for which the dwelling is put to use; or

(4) How is the plan of the property sanctioned by the local authorities; or

(5) The intention of the developer/owner of the property; or

(6) The length of stay intended by the users; or

(7) Electricity Bill; and

(8) Municipal Tax .

D. Personal hearing

In the matter personal hearing was granted to the applicant on 3-2-2023 and 14-9-2023. Sh. Deepak Jain, C.A & Shree Padamchand Jain, Authorized Representatives appeared for personal hearing. They reiterated the submission already made in written submission. He requested for early disposal of the application.

E. Comments of the jurisdictional officer

Applicant is unregistered with the department so no comments has been sought from field formations.

F. Findings, analysis & conclusion :

At the outset we would like to make it clear that the provisions of CGST Act and RGST Act are in *pari materia* and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore unless a mention is particularly made to such dissimilar

provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the RGST Act.

We have carefully examined the statement of facts, supporting documents filed by the Applicant along with application, oral and written submissions made at the time of Personal Hearing. We have also considered the issues involved on which Advance Ruling is sought by the applicant and relevant facts. We would like to discuss the submission made by applicant and will take up the above questions for discussion one by one.

(2) The questions Law raised by the Applicant are of as under -

3. Whether the Demised premises will be covered in definition of residential dwelling for the purpose of Notification No. 5/2022-Central Tax (Rate), dated 13-7-2022?

4. Out of following which are factors important to include in definition of residential dwelling?

9. Land use of property by local authorities; or

10. Layout of the property, its structure, whether it is designed for usage as a residential unit or a commercial unit; or

11. The purpose for which the dwelling is put to use; or

12. How is the plan of the property sanctioned by the local authorities; or

13. The intention of the developer/owner of the property; or

14. The length of stay intended by the users; or

15. Electricity Bill; and

16. Municipal Tax

We hold that the definition of Residential dwelling is not mentioned in GST Law. However as per Black's Law Dictionary : 'Residential dwelling means living in a certain place permanently or for a considerable length of time'

As per Merriam Webster dictionary : 'A shelter (as a house) in which people live'

As per the Oxford dictionary : 'A house or apartment or other places of residence or a place to live in or building or other places to live in'.

So the main thing to be decided is to find out the use of property rented out by the Applicant and accordingly the taxability of GST shall be determined.

Point 4(a) of the Lease Agreement entered between the Applicant (Lessor) and Lessee i.e. M/s. Back Office IT Solutions Pvt. Ltd. (a company incorporated in India within the meaning of Companies Act, 1956), stipulates that the demised premises shall be used solely for commercial purpose by the lessee i.e. for establishing the branch/office.

Also on perusal of Electricity Bill issued in the name of lessee i.e.

Back Office IT Solutions Pvt. Ltd. At J-10, J Block, Lal Kothi Scheme, Sahkar Marg, Jaipur for the month of March, 2023, it is evident that the electric connection has been issued for commercial purpose.

In view of the above, we have reached to the conclusion that the property in question has been leased/rented for commercial use. So even if the use of said property has not been changed by JDA but since the so called residential dwellings does not remain as such as it being used for commercial purpose. The said supply of service i.e. renting for commercial use is covered under 9972 12 and taxable @ 18% and the Applicant i.e. lessor is supposed to pay GST as mentioned above on forward charge basis. The lessee is not required to pay GST under RCM basis in term of Notification No. 5/2022-Central Tax (Rate), dated 13-7-2022 effective from 18-7-2022 as mentioned below -

(1)	(2)	(3)	(4)
5 A A	Service by way of renting of residential dwelling to a registered person.	Any person	Any registered person.”;

The AAR (Andhra Pradesh) in the case of *M/s. Aluri Krishna Prasad* dated 19-12-2022 have held that the premises in question was not built as a residential dwelling nor to be used for residence by the tenant of the building (lessee) but only to be used for furtherance of business of the lessee i.e. running hostel accommodation for students, executives etc.

The AAR (Andhra Pradesh) in the case of *M/s. Lakshmi Tulasi Quality Fuels* dated 5-5-2020 have held that the lessor has rented out their dwelling for commercial activity and supply of such services in the facts and circumstances of the case are classifiable as “Renting or leasing services involving own or leased non-residential property” under Service Code (Tariff) 9972 12. It is taxable in the hands of the lessor and is liable for IGST at the rate of 18 percent.

In view of the foregoing, we rule as follows :-

RULING

Q.1 Whether the Demised premises will covered in definition of residential dwelling for the purpose of Notification No. 5/2022-Central Tax (Rate), dated 13-7-2022?

Ans-1. No the demised premises will not be covered in the definition of residential dwelling in term of Notification No. 5/2022-Central Tax (Rate), dated 13-7-2022 as it being used for commercial use.

Q.2 Out of following which are factors important to include in definition of residential dwelling?

Ans-2. The important factors to be included in the definition of Residential Dwelling is the purpose for which the dwelling is put to use and the length of stay intended by the users.