



**BEFORE THE AUTHORITY FOR ADVANCE RULING - ANDHRA PRADESH  
Goods and Service Tax**

D. No. 5-56, Block-B, R.K. Spring Valley Apartments, Eedupugallu, Vijayawada-521151

**Present**

1. Sri. D. Ramesh, Additional Commissioner of State Tax (Member)
2. Sri. M. Sreekanth, Joint Commissioner of Central Tax (Member)

**AAR No.18/AP/GST/2020 dated:15.06.2020**

1	Name and address of the applicant	M/s Aluri Krishna Prasad, Flat 403, Sujah Bhavan Apt, JD Nagar, Patamata, Vijayawada-520010 Andhra Pradesh.
2	GSTIN	37ALPPA0203K1ZE
3	Date of filing of Form GST ARA-01	12.09.2019
4	Date of Personal Hearing	11.11.2019
5	Represented by	Sri Y. Sreenivasa Reddy
6	Jurisdictional Authority – Centre	Superintendent, CGST, Benz Circle Range, Vijayawada Division.
7	Clause(s) of section 97(2) of CGST/SGST Act, 2017 under which the question(s) raised	b) applicability of a notification issued under the provisions of this Act; and e) determination of the liability to pay tax on any goods or services or both;

**ORDER**

**(Under sub-section (4) of Section 98 of Central Goods and Services Tax Act, 2017 and sub-section (4) of Section 98 of Andhra Pradesh Goods and Services Tax Act, 2017)**

1. The present application has been filed u/s 97 of the Central Goods & Services Tax Act, 2017 and AP Goods & Services Tax Act, 2017 (hereinafter referred to CGST Act and APGST Act respectively) by M/s Aluri Krishna Prasad.,(hereinafter referred to as applicant), registered under the Goods & Services Tax.

2. The provisions of the CGST Act and APGST Act are identical, except for certain provisions. Therefore, unless a specific mention of the dissimilar provision is made, a reference to the CGST Act would also mean a reference to



the same provision under the APGST Act. Further, henceforth, for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST or AP GST Act would be mentioned as being under the GST Act.

### 3. Brief Facts of the case:

M/s Aluri Krishna Prasad is a property owner having multiple properties leased to various tenants and registered as a service provider under GST regulations since its introduction in 2017, and prior to that under the erstwhile Service Tax rules.

During 2015-16, the applicant constructed a five-story residential hostel building in Poranki village, Penamaluru Mandal, Krishna district in R.S. No.189/2B in an area of two acres. The five-storied building consists of 170 hostel rooms having 34 rooms in each floor. Each room size is 17 feet wide x 22 feet depth measuring about 375 sq.ft each and contains an individual toilet and a bathroom with in each room along with a wash basin and accommodates five persons with provision to store their belongings in their individual shelves. All these 170 small hostel rooms are designed and built exclusively for housing purpose only and cannot be used for any other purpose. The applicant obtained the building construction permit from the relevant authority APCRDA vide RC No 2275/2014 dt.10.3.2015 as a Residential Hostel building. The premises possess its own sewerage treatment plant as stipulated in its building permit to process the effluents released by the hostel residents expected to be about one thousand in population. A small temple is also provided for the convenience of the resident students. This portion of the building is labeled as West Block in the building permit. The West block consisting of 170 rooms is leased en bloc to M/s. Nspira Management Services Private Ltd to house resident students. The final occupancy certificate was issued by APCRDA vide file no. CRDA-12021(37)/68/2016-Asst Plng Off-Devc-APCRDA dt. 30-05-2017.

The applicant submits that the following transactions fall under:

- a) Services by way of renting of residential dwelling for use as residence,
- b) Services by a hostel, guest house, club or campsite, 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, and
- c) Renting or leasing of immovable property for non-residential purpose.

The applicant strongly believes that he is not liable to pay Goods and Services Tax on leasing or renting of these hostel rooms of West Block which are essentially 170 individual dwelling units which are let out en bloc exclusively for residential purpose to a commercial entity, and services by way of renting of dwelling units for residence is exempted under Sl No. 12 of Exemption Notification No. 12/2017-CT (Rate) dated 28.06.2017 as amended from time to time (hereinafter called as the Exemption Notification).





The applicant further believes that he is also not liable to pay tax on leasing or renting of the hostel rooms, as the room rent per day comes to mere Rs.196/- per day on the prevailing monthly rental amount of Rs.9,99,746/- received from M/s. Nspira Management Services Private Ltd for the 170 rooms leased by them is exempted under Sl No. 14 of Exemption Notification No. 12/2017-CT (Rate) dated 28/06/2017 as amended from time to time (hereinafter called as the Exemption Notification) where services by a hotel, inn, guest house, club or campsite, 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.

#### 4. Questions raised before the authority:

1. Whether amount received for leasing residential hostel rooms is exempt under Sl.No.14 (Heading 9963) of Notification No.12/2017- Central Tax (Rate) dated 28.06.2017 as amended upto 25.01.2018?
2. Whether amount received for leasing residential hostel rooms is exempt under Sl.No.12 (Heading 9963) of Notification No.12/2017- Central Tax (Rate) dated 28.06.2017 as amended upto 25.01.2018?

On Verification of basic information of the applicant, it is observed that the applicant falls under Central jurisdiction, i.e. Superintendent, Benz circle Range, Vijayawada CGST Division. Accordingly, the application has been forwarded to the jurisdictional officers and a copy marked to the State tax authorities to offer their remarks as per the Sec. 98(1) of CGST /APGST Act 2017.

In response, remarks are received from the jurisdictional officers concerned stating that no proceedings are lying pending or passed relating to the applicant on the issue, for which the Advance Ruling sought by the applicant.

#### 5. Applicant's Interpretation of Law and Facts:

The Central/State/Integrated/UT Good and Services Tax did not define the word "Hostel". Same is the case with the General Clauses Act, 1897. However, Circular No. 354/17/2018-TRU dt.12.2.2018 clarifies about hostel accommodation and equates it with accommodation of hotels, inns, guest house etc. It further clarifies that accommodation service in hostels having declared tariff below one thousand rupees per day is exempt under Sl. No. 14 of notification No. 12/2017-CT (Rate). Circular No. 32/06/2018-GST dt. 12.2.2018 also confirms the same clarification.

The applicant does not provide any additional services like food, housekeeping, and laundry to the inmates of the hostel. Hence the question of mixed supply or composite supply does not arise. Renting of hostel rooms is the only single service activity the applicant engages in this transaction under review. The applicant receives a monthly lump sum amount of Rs.9,99,746/- from the tenant M/s. Nspira Management Services Private Ltd for providing taxable service of hostel accommodation under notification No. 12/2017 (Rate) illustrating as lodging





purpose, having a declared tariff of a unit of accommodation below rupees one thousand per day or equivalent which needs to be treated as an exempt supply. The monthly amount received from the tenant when proportioned among 170 rooms on a 30-day basis comes to mere Rs.196/-per day per room which is below the stipulated threshold limit of Rs. 1000/- per day per unit of accommodation.

The applicant refers to Ruling pronounced by Maharashtra Authority for Advance Ruling in the case of M/s. Students' Welfare Association, Pune vide its order dt.29.12.2018, which ruled that rents from hostels rooms computed on per day basis is exempted under Sl. No. 14 of notification No. 12/2017-CT (Rate) when it falls under Rupees One thousand per day or equivalent per unit of accommodation. From the scrutiny of the Exemption notification, the Authority held the description of the service is use based, meaning that if the accommodation is used for residential or lodging purpose, then it is immaterial who the user is.

The applicant further made a reference to Chhattisgarh Authority for Advance Ruling in the case of M/s. Shri Ramnath Bhimsen Charitable Trust vide its order dt.02.03.2019, which considered the rent from hostel rooms computed on per day basis is exempted under Sl. No. 14 of notification No. 12/2017-CT (Rate) when it falls under the threshold of Rupees One thousand per day or equivalent. In fact, the Chhattisgarh Authority considered each bed in the hostel room as a single unit of accommodation to arrive at the daily equivalent amount. When taken this as a metric, the daily charge per bed in the applicant's room with five beds comes to just Rs.39/-. Hence the applicant is eligible for claiming exemption under Sl. No. 14 of notification No. 12/2017-CT (Rate) as concurred by the Authority for Advance Ruling of Maharashtra as well as that of Chhattisgarh.

The applicant also seeks exemption under Sl No. 12 of the Exemption Notification. Applicability of Sl No. 12 of the Exemption Notification depends upon whether the dwelling unit is used as residence, irrespective of whether they are let out to individuals or a commercial entity. The rooms leased to the tenant M/s. Nspira Management Services Pvt. Ltd can only be used as a residential accommodation with provision of bathroom and toilet in each unit. These rooms cannot be used for no other purpose except housing. The building construction permit, final occupation certificate substantiates the applicant's statement.

The applicant also made reference to an Advance ruling issued for M/s. Borbheta Estate Pvt Ltd, Kolkata, by the West Bengal Authority for Advance Ruling vide its order no. 13A/VBAAR/2019-20 dated 27.6.2019, which considered that when dwelling units are used for residence, irrespective of whether they are let out to individuals or to a commercial entity, are exempt under Sl No.12 of the Exemption Notification. Hence the applicant is eligible for claiming exemption under Sl. No. 12 of notification No.12/2017-CT (Rate) even though the scheduled property is let out to a commercial entity as en bloc to use as dwelling units.





## 6. Record of Personal Hearing:

Sri K. Sreenivasa Reddy, the authorized representative of the applicant appeared for Personal Hearing on 11.11.2019 and reiterated the same.

The applicant presented the following submissions at the time of Personal Hearing.

## 7. Discussion and Findings:

We have examined the issues raised in the application. The taxability, classification of the services, applicable rate of tax, eligibility of exemption etc., for the goods and services supplied or to be supplied, as governed under the provisions of respective GST Acts are examined.

With reference to the information on record, and as per the Lease Deed submitted by the applicant between himself (the Lessor) and the Lessee i.e, M/S Nspira Management Services Private Limited, it is evident that the Lessor has agreed to give 84,251 Sq ft (approx.) of built up area, for a monthly rent of Rs.9,99,746 for the built up area of the said premises.

Moreover, the clause 6 of the lease deed reads that,

“Both parties have agreed to treat a sum of Rs.1,00,54,582, which is transferred by M/S Narayana Educational Society vide **Supplementary Lease Deed** dated nil as an interest free refundable security deposit in respect of the schedule of property deposited by the Lessee herein and the receipt of the same has been acknowledged by the Lessor.”

In view of the above facts on record, we come to an understanding that the rental agreement made between the Lessor and the Lessee is in terms of built up area only and not on the basis of the unit cost of the accommodation, as put forth by the applicant in the application. In addition to it, the Clause 6 as mentioned above reveals that there is a third party by name, M/S Narayana Educational Society involved in the agreement through supplementary Lease deed.

The applicant is a registered service provider engaged in the activities of renting and leasing of multiple properties to various tenants. Similarly, the Lessee is a company incorporated to carry on the business of assistance with management of educational institutions and providing educational allied management services to its respective customers including Narayana Group of Schools spread in the states of Andhra Pradesh, Telangana etc., and other parts of India.

The applicant proclaims himself as a service provider extending the hostel accommodation services to the students, a claim which is far from reality. It is the Lessee, that extends the Hostel accommodation services to M/S Narayana Educational Society, which in turn uses it to accommodate its students for the academic year or so.





Initially, we take up the first claim of the applicant i.e, Whether the amount received for leasing residential hostel rooms is exempt under Sl.No.14 (Heading 9963) of Notification No.12/2017- Central Tax (Rate) dated 28.06.2017 as amended upto 25.01.2018?

Sl. No. 14 of Heading 9963 describes "Services by a hotel, inn, guest house, club or campsite, 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" as nil rated'

In this regard, the applicant, who is the service provider, does not satisfy the above conditionalities. He is neither registered under Hotel, Inn, Guest House, Club or Campsite, by whatever name it is called, nor providing services to the students under the style and name of his registered trade name with a declared tariff of a unit of accommodation below one thousand rupees per day or equivalent to avail the exemption under the notification. The service recipient, i.e., the Lessee in this regard, further sublets the property to the Narayana Educational Society, which in return uses the facility to accommodate their students.

Now we examine, the second issue ,whether amount received for leasing residential hostel rooms is exempt under Sl.No.12 (Heading 9963) of Notification No.12/2017- Central Tax (Rate) dated 28.06.2017 as amended upto 25.01.2018?

Sl No 12 of Heading 9963 or Heading 9972 describes "Services by way of renting of residential dwelling for use as residence" as Nil rated.

The applicant is rather renting his immovable property consisting of 170 hostel rooms with attached bathrooms to the lessee for the purpose of commercial activity, who in turn sub leases it to Narayana Educational Society for the purpose of accommodating students. Now we examine whether the property is a residential dwelling and it is also used for purpose of residence only. Residential dwelling is not defined anywhere in the Act. Hence, if we go by common parlance and general understanding of the term,

A **Residential dwelling unit** means a building or structure or part of a building or structure that is used for a home or residence by one or more persons who maintain a household. It also means a mobile home regardless of ownership of the land.

In the instant case, it is evident from the above reading, that the property under question is not a home or residence being used by a family or group of a members maintaining a regular house hold, but used for commercial purposes of accommodating students in bulk numbers. A temporary stay of the students will not merely qualify the purpose "for use as residence" and hence it is not qualified to be listed under heading 9963 or 9972.





Therefore, activity under question is non residential property rented out 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 percent.

### RULING

(Under Section 98 of Central Goods and Services Tax Act, 2017 and the Andhra Pradesh Goods and Services Tax Act, 2017)

SNo	QUESTION	ANSWER
1	Whether amount received for leasing residential hostel rooms is exempt under Sl.No.14 (Heading 9963) of Notification No.12/2017- Central Tax (Rate) dated 28.06.2017 as amended upto 25.01.2018?	Negative
2	Whether amount received for leasing residential hostel rooms is exempt under Sl.No.12 (Heading 9963) of Notification No.12/2017- Central Tax (Rate) dated 28.06.2017 as amended up to 25.01.2018?	Negative

Sd/- D. RAMESH  
MEMBER

Sd/-M.SREEKANTH  
MEMBER

//t.c.f.b.o//

  
Assistant Commissioner (ST)  
Assistant Commissioner (State Tax)  
O/o. Chief Commissioner of State Tax,  
Andhra Pradesh, Vijayawada.

TO

1. M/s Krishna Prasad Venkat Aluri, Flat 403, Sujah Bhavan Apt, JD Nagar, Patamata, Vijayawada-520010 (A.P) **(By Registered Post)**

Copy to

1. The Assistant Commissioner of State Tax, Patamata Circle, Vijayawada-II Division. **(By Registered Post)**
2. The Superintendent, Central Tax, CGST Benz Circle Range, Vijayawada Division. **(By Registered Post)**

