



**BEFORE THE APPELLATE AUTHORITY FOR ADVANCE RULING  
for the State of Andhra Pradesh (Goods and Service Tax)**

(Office at O/o Chief Commissioner of State Tax, Govt. of A.P., D NO 5-56, Block-B,  
R.K.Spring Valley Apartment, Bunder Road, Edupugallu, Vijayawada,  
Andhra Pradesh – 521151)

**Present:**

**Sri PEEYUSH KUMAR (Member) (State Tax)**

**Sri NARESH PENUMAKA (Member) (Central Tax)**

The 28<sup>th</sup> day of November, 2020

Order /AAAR/AP/09 (GST)/2020

1	Name and address of the appellant	M/s. Lakshmi Tulasi Quality Fuels, Flat No.402, Padmaja Residency, Cooperative Colony, Kadapa-516001
2	GSTIN	37ALMPD5548B1Z7
3	Date of filing of Form GST ARA-02	13.07.2020
4	Hearing ( Virtual)	17.11.2020
5	Authorized Representative	A P R A & Associates LLP
6	Jurisdictional Authority – State	Assistant Commissioner (CT), Kadapa-I Circle, Kadapa Division.

**(Under Section 101 of the Central Goods and Service Tax Act and the Andhra Pradesh Goods and Service Tax Act).**

At the outset, we would like to make it clear that the provisions of both the CGST Act and the APGST 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 provisions under the APGST Act.

The present appeal has been filed under Section 100 of the Central Goods and Services Tax Act, 2017 and the Andhra Pradesh Goods and Services Tax Act, 2017 [hereinafter referred to as “the CGST Act and APGST Act”] by M/s. Lakshmi Tulasi Quality Fuels (herein after referred to as the “Appellant”) against the Advance Ruling No. AAR No.12/AP/GST/2020 dated 05.05.2020 issued by Authority for Advance Ruling, Andhra Pradesh.

**1. Background of the Case:**

1. M/s. Lakshmi Tulasi Quality Fuels, a sole Proprietorship firm of Dumpala Rama Thulasi (herein after referred to as “the Appellant”) is engaged in supply of petroleum oils and lubricants. The Appellant is duly registered vide registration No.37ALMPD5548B1Z7 for payment of Goods and service tax in respect of the above mentioned services.

2. The appellant is also the absolute and sole owner of a building located at Plot No.67, Padmashree Gardens, Vattinagulapally, Rajendra Nagar, R.R. Nagar, Telangana. The said building is constructed on a residential land consisting of stilt, ground floor, first and second floors.
3. The appellant entered into a lease agreement dated 31<sup>st</sup> July 2019 with D-Twelve spaces private Limited (herein after referred to as "Lessee") to lease out the property as mentioned. The Lessee is a company incorporated under the provisions of the Companies Act, 2013 inter alia engaged in the business of running, managing and operating the day to day affairs of residential premises and sub-lease of such residential premises to individuals (including students) for the purpose of accommodation. The appellant is also responsible for providing the leased property along with the fittings and fixtures mentioned.
4. In consideration of the lease of the premises by virtue of Lease Agreement dated 31<sup>st</sup> July 2019, the lessee is required to pay to the appellant a monthly rent of Rs.7,20,000/- (Rupees Seven Lakh and Twenty Thousand only) and all operational costs such as electricity, telecom and water charges as per the actual meter reading or based on the invoice, or the bill issued by the relevant authorities. Moreover, the lessee has the right to sub-lease the aforesaid property during the lease term to any third party with prior intimation to the appellant for the purpose.
5. The property so leased out has been finally used by the lessee for providing accommodation to students for 11 or 12 months, along with other amenities/facilities, like security, internet, food, electricity, etc.
6. In respect of the above stated transaction, the Appellant had filed an application for Advance Ruling before the Authority for Advance Ruling on the following question:  
Whether the applicant is eligible for exemption under Sl.No.13 of Notification No.9/2017 – Integrated Tax (Rate) dated 28.06.2017 in respect of the activity of renting out a residential building to a company for the purpose of long- term residential accommodation?  
The Authority for Advance Ruling Andhra Pradesh in its orders in **AAR No.12/AP/GST/2020 dated 05.05.2020** held:  
a) The classification of service provided by M/s. Lakshmi Tulasi Quality Fuels, is covered under SAC 997212 and hence under entry no.16 of Notification No.8/2017 (Integrated Tax) (Rate), Dated: 28.06.2017, liable to IGST @ 18%.  
b) The entry No.13 of Notification No.9/2017 (Integrated Tax) (Rate) Dated 28.06.2017 – "services by way of renting of residential dwelling for use as residence" is not applicable to the present case on hand.
7. Being aggrieved by the said order pronounced by the Ld. AAR, the Appellant files the present appeal on the basis of the following grounds, which are independent and without prejudice to each other.



## 2. Grounds of Appeal:

**A.** Services rendered by the appellant are covered under entry no.13 of exemption notification as it fulfills all the conditions.

**a) It must be a service of renting:** Paragraph 2(zx) of the Exemption Notification defines the term "Renting of Immovable Property". It is an undisputable fact that services of renting of immovable property have de facto been provided by Appellant to the lessee covered under definition of Section 7 read with Entry No. 2(b) of Second Schedule of CGST Act, 2017;

**b) The property so let out must be a residential dwelling-**

- Residential Dwelling was defined under erstwhile Service Tax law vide Para 4.13.1 of "Taxation of Services: An Education Guide" dated 20<sup>th</sup> June, 2012 published by Tax Research Unit, one of the Wings under CBIC (then CBEC) wherein it has been defined as '*any residential accommodation, but does not include hotel, motel, inn, guest house, camp-site, lodge, house boat, or like places meant for temporary stay*';
- In the present matter –
  - The Leased Property is constructed upon a residential land - Lease Agreement dated 31<sup>st</sup> July, 2019.
  - In the records of Municipality itself, the usage of property so rented out to the Appellant to lessee has been listed as 'residential' (building usage) – Property Tax Assessment Details downloaded from the official website of Municipality as on 22<sup>nd</sup> June 2020 are submitted.
  - The intended purpose for which the Leased Property was constructed and for which the layout plan has been passed is 'residential' in nature - Layout Plan (LP) bearing Approval No. 3/C20/10719/2018 dated 27<sup>th</sup> June, 2018 from Assistant City Planner, Greater Hyderabad Municipal Corporation (GHMC).
  - The General Power of Attorney registered at the Office of Sub-Registrar, Ranga Reddy specifies the Leased Property as Residential Plot - Legal Due diligence Report dated 18<sup>th</sup> June 2019.
  - Furthermore, the Leased Property is a residential building as per the Sanctioned Plan -Legal Due diligence Report dated 18<sup>th</sup> June 2019, and,
  - The property so constructed by the Appellant and let out to Lessee has de-novo been put to use as 'Hostel' as evident from Copy of Provisional Trade License issued by GHMC bearing Tran No. xxxxx dated 20<sup>th</sup> January, 2020. As per the Zoning Regulations, General Town Planning Scheme for Metpalli Municipality, issued by Directorate of Town and Country Planning (DTCP), Government of Andhra Pradesh, Hyderabad, 'Hostels' can only be operated in residential land use zone with prior approval of Competent Authority.
- Thus, based on above documentary evidences, it can be concluded that the property so let out by the Appellant is –
  - situated in residential land use zone;
  - constructed and approved by local municipal authority as a residential property;



- ergo, sufficiently covered under the term 'residential accommodation'.
- The Leased Property was granted to the lessee for the purpose of long stay accommodation only – Lease Agreement dated 31<sup>st</sup> July, 2019;
- It is different from the hotel, motel, inn, guest house, lodge house etc. as –
- Legislators have themselves created a distinction between services provided by hotel, motel, inn, guest house, etc. and hostels by classifying these two services under different SAC, i.e. 996311 and 99632 – Explanatory Notes to the Scheme of Classification of Services;
- Based on the definitions of all these terms it can be seen that these two are totally different in the nature of services provided by them and the usage of these properties;
- Land zoning regulations of Telangana also provides that a hotel, lodging and boarding houses, etc. cannot be operated in residential land zone rather is permitted in the area notified as commercial use zone. Whereas the area in which the property under consideration is situated is classified as residential land use zone and as per the Zoning Regulations, 'hostels' can be operated in such zone after obtaining prior approval from competent authority (which has been duly obtained by the lessee in the present matter);
- Billing pattern of both the services, i.e. per day tariff as compared to monthly rent also substantiate the fact that the nature and duration of stay is different for these two services;
- Also, where hotel, motel, inn, guest house, etc. usually caters to travellers/tourists, impugned hostel is not meant for any traveller/tourist, rather is meant for only such students or working professionals who wish to stay with a permanence; and,
- Furthermore, in the matter of *Bandu Ravji Nikam v. Acharyaratna Deshbhushan*, reported in 2003 (3) Bom CR 210; 2003 (3) MhLj 472, it was held that "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 non-residential 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".

Thus, the property so let out must be well covered under the term 'residential dwelling'.

**c) Such residential dwelling must be given for use as a residence:**

- On perusal of meaning of the terms "Residence" and "For Use" as cited in various dictionaries and judicial pronouncements, it can be understood that 'residence' here means that the person must actually stay at that place and that too for a considerable amount of time depicting permanency and not just casual visits;
- **In Re: Acharya Shree Mahashraman Chaturmas Pravasa Vyavastha Samiti Trust**, reported in **2019 (31) G.S.T.L. 138 (A.A.R. – GST)**: The Applicant provided only temporary stay to devotees and not as a residence; and it was



categorically held that Residence involves a degree of permanence which was not present in this case.

- **Elisabeth Blasi vs. Finanzamt Munchen I**, reported in [2012] 37 STT 291; 26 taxmann.com 312 (ECJ): In general a stay in hotel tends to be rather short than in a rented flat fairly long.
- **BJ Group Ltd. vs. Commissioner of Customs & Excise**, reported in [2013] 37 taxmann.com 457 (UKV – Duties Tribunals): The property under consideration was held to be 'hotel' as the average duration of stay of guests in this case was 2.79 days and majority of guests stayed for less than 28 days.
- In the present matter, the property has been rented out with a specific condition that it can be sub-leased only for long stay accommodation – Clause E of Lease Agreement dated 31<sup>st</sup> July, 2019;
- Furthermore, coming to the actual use of property by the Lessee, the minimum period for which such accommodation is being given by the Lessee to any working professional is for a period of 11 months while maximum duration (before renewal) being 12 months. On an average a working professional resides in the Leased Property for 11.22 months.
- If a person is staying at a place for minimum 11 months, it can be sufficiently called as 'long-term accommodation' or 'permanency' as against the accommodation provided by the hotels, inn, guest house, etc. where people (travellers, tourists, etc.) stay only for a few days maximum.

Thus, services rendered by the Appellant are covered under Entry No. 13 of exemption notification as it fulfils all the conditions.

**B.** Judicial pronouncements laying down some principles for this exemption under consideration (entry no. 13)

**a) In Re: General Manager Ordnance Factory Bhandara, cited in 2019 (26) G.S.T.L. 423 (A.A.R.– GST):** Property was given as residence by employer, i.e. Applicant to its employees and the rent so collected was ascertained as exempt by the Ld. AAR. Impugned renting is also similar where only difference between the two being instead of property being rented out by employer, in the present case, it is being rented out by the Lessee itself whereas rest of the components of renting remains same, i.e. for working professionals and for use as residence.

**b) In Re: Borbheta Estate (P.) Ltd., cited in 2019 (106) taxmann.com 386 (A.A.R. – West Bengal):**

One property was rented out to a commercial entity (M/s L&T Ltd.) for residential purposes, which was held to be exempt as covered under Entry No. 13. In the present matter also, property is being let out by Appellant to the Lessee who in turn using the same for residential purposes.

**c) Observations/findings of Id. AAR are factually and legally incorrect**

**a) Sub-lease agreement was not provided to Ld. AAR rather Resident's Enrolment Form was submitted:** Since Advance ruling was applied by the Appellant (on 31<sup>st</sup> December 2019) in advance before the first sub-lease agreement took place (16<sup>th</sup> March 2020), thus, residents enrolment form was presented for the purposes



of reference, however, sub-lease agreement between Lessee and Mr. Hemanth M G (sub-tenant) dated 16 March 2020 is enclosed as Annexure – K.

**b)** As per the resident's enrolment form, various incidental/hospitality services have been provided to the working professional staying in the Leased Property: In this regard, it is submitted that –

- Entry No. 13 of Exemption Notification nowhere lays down a condition that no incidental / hospitality services must be provided along with service of renting and thus, it must not be construed in such a restricted sense, to alter the true essence of said exemption entry;
- Notwithstanding, upon perusal of sub-lease agreement, it can be seen that a fee inclusive of GST has been charged by the lessee on such additional incidental / hospitality services and thus, such incidental services are anyway chargeable to tax which were not even the subject matter of query in the present matter; and,
- With respect to Ld. AAR's contention that since hospitality services have been provided along with service of renting, the nature of service is changed from that of hostel (residential) to lodging house (non-residential), the same has already been discussed in extenso supra.

**c)** Various clauses of Lease Agreement as detailed in Para 7 of Order dated 05<sup>th</sup> May 2020 have been discussed by Ld. AAR: Regarding this contention of Ld. AAR, it is submitted that –

- a. as per the State's guidelines, the tariff governing water charges in hostels, paying guest (PG) accommodation will be that of commercial irrespective of the nature/land use zone of property in which such connection is applied. These tariffs (residential/commercial) in no way governs/depicts the actual nature of property;
- b. For reference, Delhi Government in the year 2017 vide Order bearing No. F.11/90/2017/Power/3687 dated 21<sup>st</sup> December 2017 extended the provisions of Electricity subsidy to individual lawyers having their chambers inside all the Court Complexes in NCT of Delhi through a Special Subsidy Scheme. Through this Scheme, such Lawyers Chambers shall be charged tariff from erstwhile Non-Domestic tariff category to Domestic tariff category for F.Y. 2017-18 w.e.f. 01<sup>st</sup> October, 2017. It cannot be said that subsequent to this Order, Lawyers chambers inside the Court Complexes are covered under residential zone or will be called as residential property since electricity tariff was subsidized to Domestic category.

**d)** Lessee is engaged in commercial activity of renting of rooms: It is a well settled proposition that if an activity is exempted by way of exemption notification, such activity falls under definition of 'supply' given in Section 7 of CGST Act, where Section 7 of CGST Act, 2017 provides that all such transactions/activities are covered (and ultimately chargeable to GST) which are made in the course or furtherance of business.

Thus, definition of 'Supply' itself covers only such transactions which are made in the course or furtherance of business. If the service of renting of residential dwelling for use as residence is given under Exemption Notification, it must first



be covered under Section 7 read with Section 7(1A) of CGST Act, both of which covers only commercial activity done in the course of business. Thus, legislation itself provides exemption to such an activity which is undertaken in the course of business as a commercial activity.

Had it been the case that such activity is not provided in the course or furtherance of business, it would have been outrightly excluded from the scope of 'supply' and discussions for coverage under exemption entry would have been futile.

### **3. Personal Hearing:**

The proceedings of Hearing were conducted through video conference finally on 17<sup>th</sup> November 2020, after the consideration of a couple of adjournment requests made by the appellant citing various reasons. The authorized representative, CA Anmol Gupta, of A P R A & Associates LLP, attended and reiterated the submissions already made.

### **4. Discussion and Findings:**

**4.1** We have gone through the entire records of the appeal, facts of the case, and also considered the written and oral submissions made at length by the appellant as well, in light of the ruling pronounced by the AAR. The contention of the appellant is that they are eligible for exemption from the payment of GST on the monthly rentals received on lease of the residential building at Telangana to D-Twelve Spaces Private Limited, as per Sl.No.13 of the Notification No.9/2017(IT) Rate Dated 28.06.2017.

**4.2** At the outset, it would be appropriate to examine the transactions involved from the reading of the Appeal. Firstly, there is a supply of service (Leasing) between the appellant (Lessor) and M/s. D-Twelve Spaces Private Limited (Lessee). Secondly, there is a separate and distinct supply of sub-leases / sub-licensing by M/s. D-Twelve Spaces Private Limited to various working professionals, students, etc. What is submitted for advance ruling is whether the supply of service (Leasing) between the Appellant (Lessor) and M/s. D-Twelve Spaces Private Limited (Lessee) is eligible for exemption under Sl. No.13 of Notification No.9/2017-(IT) Rate dated 28.06.2017. The second transaction is not under consideration.

**4.2.1** As per the "Lease Deed" executed by the appellant with M/s. D-twelve Spaces Private Limited, the appellant has let out her building at Plot No.67, Padmashree Gardens, Vattinagulapally, Rajendra Nagar, R.R. Nagar, Telangana on a monthly rental basis of Rs.7,20,000/- that consists of 73 rooms with all amenities like exhaust fans, geysers, lights and fittings, sanitary fittings, etc., provided by the Lessor and the lessee shall pay all operational costs to the lessor based on the invoice or the bill issued by the relevant authorities. As per Clause 13, the Lessee shall have the right to engage with third-party service



providers for all activities required for the purpose including food catering, hospitality, security, cleanliness, event organization, transportation, management and supervision of the Total Property as deemed necessary by the Lessee for the Purpose.

**4.3** To reiterate, the contract of supply of service of leasing of real estate property is between the Appellant and M/s. D-Twelve Spaces Private Limited. There is no dispute that this transaction is a taxable GST supply. However, what is in question is whether this transaction is exempted from GST in terms of Sl. No. 13 of Heading 9963 or Heading 9972 of Notification No. 9/2017-(IT) Rate dated 28-06-2017. The relevant portion of the said Notification is extracted herein below for ready reference:

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

**4.4** The Ld. AAR, Andhra Pradesh, had clearly brought in its Order AAR No.12/AP/GST/2020 dated 05.05.2020 that for the exemption to apply, the following conditions are to be satisfied:

- (i) There must be a service of renting
- (ii) of a residential dwelling
- (iii) for use as residence.

The Appellant has also laid out its appeal on the same lines as stated above. The Lease Deed dated 31.07.2019 stands testimony to the fact that the lessor (The Appellant) and the Lessee (M/s. D-Twelve Spaces) have entered into an agreement to let out and to take the property mentioned above on lease. As per Clause 2(b) of Schedule II to the CGST Act, 2017 "(b) any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly, is a supply of services."

Further, Renting in relation to immovable property is defined at 2(zz) of the Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 as,

(zz) "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;"

As such, there is no doubt that the service rendered by the appellant is that of renting of immovable property.



**4.5** Next issue to be examined is whether the property being let out is a residential dwelling.

**4.5.1** The term 'Residential dwelling' is not defined anywhere in the Act, therefore 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."

It is evident from the above reading, that the property under question is not a home or residence being used by a family in a conventional sense or a group of members maintaining a regular house hold, but used for commercial purposes of accommodating students or working professionals in bulk numbers for a temporary period of stay. The appellant has referred to a series of definitions, and has pointed out the existence of the words "residential" or "residence" in various licenses, agreements, etc., in their grounds of appeal. But the mere existence of the word or words "residential" or "residence" does not change the character of the property under lease.

**4.5.2** In their appeal, the Appellant stated in para A.19 (e) "Also, the Sanctioned Plan dated 26<sup>th</sup> September 2017 for the Leased Premises, clearly demarcates the master Bedroom, Guest Bedroom, Pooja Room, Kitchen and Hall, etc. on each floor of the captioned property. It also depicts that the said Leased property is constructed as Residential property." However, as per para 2.4 of the Lease Deed dated 31.07.2019 it is stated

"2.4 The Lessor(s) hereby confirm that the Leased Premises herein has 73 rooms with along with the 2700 sq.ft terrace area on the Execution Date." (sic). We are at a loss to understand how a Ground plus First and Second Floor building, with the said master Bedroom, Guest Bedroom, pooja room kitchen and hall could result into 73 rooms that was admittedly leased out as per the cited Lease Deed dated 31.07.2019. From the sheer number of rooms involved i.e., 73 rooms, the property is clearly not as per the "Sanctioned Plan" dated 26.09.2017 and is on the lines of a multi-unit accommodation meant for commercial use as a Hostel or otherwise leading to the conclusion that the property is not a residential dwelling as one would understand it in normal parlance. In view of this, we are of the considered view that the Leased Property in question cannot be termed as "residential dwelling".

**4.6** Now we look into the matter whether it is used for purpose of residence only or not.

**4.6.1** For availing the exemption from GST, Sl.No. 13 of the Notification No.9/2017-IT (Rate), requires that the "Services by way of renting of



residential dwelling for use as residence". However, as seen from the Lease Deed dated 31.07.2019, the Lessee (D-Twelve Spaces Private Limited) was engaged in the business of sub-leasing property and had no intention of using the property as residence. The Notification cited, requires that the lessee use the property as "residence" in order to extend the exemption therein. As stated earlier, the Lessee's commercial business of sub-leases / sub-licensing by M/s. D-Twelve Spaces is a separate supply and would be liable to tax accordingly. But for extending the exemption from GST to the appellant, the subsequent Commercial / business activity of the lessee is of no consequence as the Notification requires the recipient of service to use such residential dwelling as residence. The fact that the lessee has taken the property on Lease for pure commercial and business purposes with no intention to use the same as "residence" is borne out by the following clauses of the said Lease Deed:

- (i) Clause 10.3 Municipality Costs and Taxes: ...Lessee alone shall be liable to make the payment of all taxes, cess, assessments, duties and other charges of similar nature **applicable on the business carried by the Lessee** ... the relevant extract is reproduced for ready reference.

10.3. Subject to Clause 10.1 (*Municipality Costs and Taxes*), the Lessee alone shall be liable to make the payment of all taxes, cess, assessments, duties and other charges of similar nature applicable on the business carried by the Lessee on the Total Property.

- (ii) Clause 12 Right to Sub-Lease: ...Lessee shall have the sole and absolute right to charge rent or/and premium from such sub-Leases ... further clause 12.4 covenants ... Lessor shall not have any claim over the rent ... charged by the Lessee under Clause 12.3. This clearly indicates that the Lessee was in to the business of sub-Leases and that they would charge a rent or premium that would be retained wholly by the Lessee. This clearly shows the commercial nature of the transaction and that the property was not to be used as "residence" by the Lessee. The relevant extract is reproduced for ready reference.

12.3. The Lessee shall have the sole and absolute right to charge rent or/and premium from such sub-lessees or/and sub-licensees at such rates as the Lessee desires from time-to-time.

12.4. The Lessor(s) shall not have any claim over the rent or/and premium charged by the Lessee under Clause 12.3 (*Right to Sub-lease*).

- (i) Clause 15 Signage: The Lessee shall have the right to deploy branding strategies on the Total Property ... this further cements the view that the entire property under Lease was to be used only for the commercial object of the Lessee and not for "residence". The relevant extract is reproduced for ready reference.



## 15. SIGNAGE

- 15.1. The Lessee shall have the right to deploy branding strategies on the Total Property and use all entrances, exterior walls, areas and structures on the Total Property, at its own costs and expense, to put up nameplates, hoardings, flyers, boards and any other signage or advertisements ("Signage") for the Purpose.

Therefore, even assuming, though not admitting, that the property could be treated as a residential dwelling, the fact that the Lessee (recipient of service) is not using the same as residence negates the availability of the exemption under Sl. No. 13 of Notification No.9/2017-(IT) Rate.

**4.6.2** It is therefore evident that the property under lease is not a "residential dwelling" and further the said property, even though not "residential dwelling", has not been used as "residence" by the recipient of service of renting viz the Lessee – M/s. D-Twelve Spaces Private Limited but instead actually used for the commercial interest and business of the Lessee, and hence, the exemption under Sl. No. 13 of Notification No/9/2017 IT (Rate) dated 28.06.2017 would not be available to the Appellant.

**4.7** In addition to what was stated above, we also find by the Appellant's own submissions, an evidence of the commercial nature of the transaction and use of the Lease Property with the clear intent to put it to commercial use.

**4.7.1** One of the documents submitted by the appellant is a copy of "**Provisional Trade License**" for the Year 2019-20 issued under Section 521 & 622 of HMC Act, 1995, by Greater Hyderabad Municipal Corporation bearing Tran No XXXXX as Annexure I. While the address of the Property is the same as that mentioned in the Lease Deed, however, the name to whom the Provisional Trade License has been issued is someone else other than the Appellant and the Lessee. Notwithstanding that, this License reveals that the property so constructed by the appellant and let out to lessee has been put to "commercial use" only.

**4.7.2** The commercial nature of the intended use is also supported by the "Legal Due Diligence Report" given by M/s. Lex Chambers and Advocates, which was relied upon by the Appellant in their Appeal. In clause (d) of para VII of the said Report, it is stated as follows:

- d. In light of the aforementioned, a hostel can be operated from the Said Area. However, the permissions, approvals and licenses for running a hostel from the Said Area must be obtained from all concerned authorities/ departments and DSPL must ensure that the assessment/payment of property tax of the Said Area is assessed under commercial head from the date of commencement of the definitive Lease Agreement.

This clearly brings out that the activity proposed / undertaken by M/s. D-Twelve Spaces Private Limited is commercial in nature and **it was advised by the**



**Legal Experts to get the Property tax of the said area assessed under commercial head** from the date of commencement of the definitive Lease Agreement.

**4.8** From the foregoing, we have no doubt in our minds that the Lease Property in question is not a "residential dwelling" and has not been "used as residence" by the recipient (the Lessee). We therefore agree with the Ld. AAR, Andhra Pradesh, that the supply under consideration is classifiable under 'Rental or leasing services involving own or leased non-residential property'. Such "Rental or leasing services involving own or leased non-residential property" is classified under the heading (SAC) 997212 under entry no.16 of Notification No.8/2017 Integrated Tax (Rate), Dt: 28.06.2017, and liable to IGST @ 18%. The exemption under Sl. No.13 of Notification No.9/2017-IT (Rate) is not available to the Appellant.

In view of the foregoing, we pass the following order

#### Order


The order of the Ld. AAR, Andhra Pradesh vide Order AAR No.12/AP/GST/2020 dated 05.05.2020 is hereby upheld.

Sd/- Peeyush Kumar  
Chief Commissioner (State Tax)  
Member

Sd/- Naresh Penumaka  
Chief Commissioner (Central Tax)  
Member

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



  
Deputy Commissioner (ST)  
**DEPUTY COMMISSIONER (ST)**  
O/o. Chief Commissioner of State Tax,  
Government of A.P., Vijayawada

TO

1) M/s. Lakshmi Tulasi Quality Fuels, Flat # 402, Padmaja Residency, Cooperative Colony, Kadapa-516001. **(By Registered Post).**

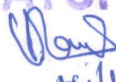
#### Copy to

1. The Assistant Commissioner of State Tax, Kadapa-I Circle, Kadapa Division. **(By Registered Post)**
2. The Superintendent, Central Tax Kadapa Range, CGST Kadapa Division. **(By Registered Post)**

#### Copy submitted to

1. The Chief Commissioner (State Tax), O/o Chief Commissioner of State Tax, Eedupugallu, Vijayawada, (A.P)
- 2 The Chief Commissioner (Central Tax), O/o Chief Commissioner of Central tax & Customs, Visakhapatnam Zone, GST Bhavan, Port area, Visakhapatnam-530035. **(By Registered Post)**

**DESPATCHED**

  
14/12