AUTHORITY FOR ADVANCE RULING, TAMIL NADU
NO.206, 2ND FLOOR, PAPJM BUILDING , NO.1 , GREAMS ROAD,
CHENNAI -600 006.

ORDER UNDER SECTION 98(4) OF CGST ACT, 2017 AND UNDER SECTION 98(4) OF TNGST ACT, 2017.

Members present:

Smt. D. Jayapriya, I.R.S., Additional Commissioner / Member, Office of the Principal Chief Commissioner of GST & Central Excise, Chennai -600 034.	Smt. N.Usha, Joint Commissioner (ST)/ Member, Office of the Authority for Advance Ruling, Tamil Nadu, Chennai-600 006.

Advance Ruling No.61/AAR /2023 Dated:01.09.2023

1. Any appeal against this Advance Ruling order shall lie before the Tamil Nadu State Appellate Authority for Advance Ruling, Chennai as under Sub-Section (1) of Section 100 of CGST Act / TNGST Act 2017, within 30 days from the date on the ruling sought to be appealed is communicated.

2. In terms of Section 103(1) of the Act, Advance Ruling pronounced by the Authority under Chapter XVII of the Act shall be binding only-

(a) on the applicant who had sought it in respect of any matter referred to in sub-section (2) of Section 97 for advance ruling.

(b) on the concerned officer or the jurisdictional officer in respect of the applicant.

3. In terms of Section 103(2) of the Act, this advance ruling shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.

4. Advance Ruling obtained by the applicant by fraud or suppression of material facts or misrepresentation of facts, shall render such ruling to be void ab initio in accordance with Section 104 of the Act.

5. The provisions of both the Central Goods and Service Tax Act and the Tamil Nadu Goods and Service Tax Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Service Tax Act would also mean a reference to the same provisions under the Tamil Nadu Goods and Service Tax Act.

GSTIN Number, if any / User id		Un-Registered
Legal Name of Applicant		M/s. Nivishna Ladies Hostel
Registered Address / Address provided while obtaining user id		No.55 C, Jeeva Street, B.R.Puram, Peelamedu, Coimbatore – 641 004.
Details of Application		Form GST ARA – 01 Application Sl.No.37/2023/ARA, dated 30.03.2023
Concerned Officer		Centre: Coimbatore Commissionerate State: Peelamedu (North) Circle, Coimbatore Division.
Nature of activity(s) (proposed / present) in respect of which advance ruling sought for		
A	Category	Service Provider
B	Description (in brief)	Taxability on Hostel accommodation services provided by the applicant to the students/office goers.
Issue/s on which advance ruling required		i. Classification of services/composite services. ii. Applicability of a notification. iii. Whether applicant is required to be registered under the Act.
Question(s) on which advance ruling is required		(1) Whether the hostel and residential accommodation extended by 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? (2) Whether the Applicant hostel being eligible for exemption under Sl. No. 12 of Notification-12/2017 (CT-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?

	(3) Whether any specific tariff entry is applicable to hostels under the Tariff Notification, in the event of requirement of registration? (4) Whether, in the event of the hostel accommodation being an exempt activity, 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? (5) 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 Manu/KA/0327/2022 is applicable to the facts of the applicant ?

The applicant, M/s Nivishna Ladies Hostel, No.55 C, Jeeva Street, B.R.Puram, Peelamedu, Coimbatore – 641 004 (herein after referred to as 'The Applicant'), is unregistered with GST. The Applicant is running a ladies residential hostel for college students and working people.

2.1. The Applicant has submitted the copy of application in Form GST ARA - 01 and also submitted a copy of challan evidencing payment of application fees of Rs.5,000/- each under sub-rule (1) of Rule 104 of CGST Rules 2017 and SGST Rules 2017.

2.2. The Applicant submitted that they are providing best hostel facilities to college female students and also to working women as most of the students and working people travel far and wide from their remote villages. The total charges collected for boarding and lodging per student or per inmate is Rs. 6500/- per month. They provide single room occupation, or double room sharing or dormitory style of accommodation and rates vary accordingly.

2.3. The Applicant's interpretation of law/facts in respect of the questions raised, they submitted the following that-

- They have licence to run the residential hostel for boarding and lodging under Section 5 of the Tamilnadu Hostels and Home for women and children (Regulation Act 2014) [hereinafter referred to as the "Hostel Regulation Act"].
- Section-2 (e) of the 'Hostels Regulation Act' defines "Hostel" or "Lodging House" to mean 'a building in which accommodation is provided for women or children or both either with boarding or not.' The term 'Home for Women & Children" is defined in section-2 (d) to mean 'an institution, by whatever name called, established or maintained or intended to be established or maintained for the reception, care, protection for welfare of women or children or both'; On the other hand, the term 'residential hotel' is defined in section-2 (14) of the Tamilnadu Shops & Establishments Act, 1947 to mean 'any premises in which business is carried on bonafide for the supply of dwelling accommodation and meals on payment of a sum of money to a traveller or any member of the public or class of the public'; Thus, the 'hostel' accommodation which falls within the purview of the 'Hostels Regulation Act' cannot be equated with that of a 'hotel accommodation which falls within the realm of Tamilnadu Shops & Establishments Act, 1947 by any stretch of imagination.
- Under the erstwhile Service Tax regime, the 'services by way of renting of residential dwelling for use as residence' was included in the negative list under clause (m) of Section-66D of the Finance Act 1994. Similarly, no VAT was leviable for supplying food to inmates, being an incidental activity to the activity of accommodation and relied on the Hon'ble Andhra Pradesh High Court decision in the case of Bharatiya Vidya Bhavan's Residential Public School v. State of Andhra Pradesh.
- Under the Exemption Notifications above mentioned, Entry No. 12 of Exemption Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 [similar entry: Entry 13 of Exemption Notification No.9/2017- Integrated Tax-Rate dated 28.06.2017] reads as follows:

Sl. No.	Chapter/Section/Heading /Group/ Service Code (Tariff)	Description of Service	Rate (%)	Condition

1	HEADING: 9963 or HEADING 9972	Services by way of renting of residential dwelling for use as residence	NIL	NIL

- Thus 'residential accommodation' falls under the unconditionally exempt category. It is submitted that Entry 12 of Exemption Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 (and Entry 13 of Exemption Notification No.9/2017- Integrated Tax-Rate dated 28.06.2017) and also the identical Entry in the identical Exemption Notification under TNGST Act,2017 underwent an amendment in the year 2022 by virtue of Notification 15/2022-Central Tax (Rate) dated 30.12.2022 wherein an Explanation was inserted in Column-3 against Entry 12 which reads as follows:
    - *"Explanation — For the purpose of exemption under this entry 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."*
- Thus, the inserted Explanation qualified only occupants/inmates who are registered persons for the purpose of reverse charge and the position remained the same when inmates were unregistered persons; Thus, in the case of the Applicant herein, the occupants or the inmates of the residential hostel are either students or working women are not registered persons under the GST Enactments. Thus, in such an event, the exemption that is available under Entry 12 of Exemption Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 as also under the TNGST Act, 2017 and also under Entry 13 of Exemption Notification No.9/2017- Integrated Tax-Rate dated 28.06.2017 is applicable on all fours to the Applicant herein, irrespective of the threshold limit.
- The term "residential dwelling" is not defined under the CGST Act,2017/TNGST Act, 2017. Para-4.1 3.1 of the 'Taxation of services an education guide dated 20.06.2012' which was issued by the Central Board of

Indirect Taxes & Customs under the erstwhile Service Tax Regime has defined the term "residential dwelling" 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.';* To understand the term 'dwelling house' they rely on the decision of the House of Lords in appeal in the case of Uratemp Ventures Limited v. Collins (AP),[2001] UKHL 43 dated 11/10/2001.

- They rely on the decision of the Hon'ble Karnataka High Court in the case of Taghar Vasudeva Ambrish -vs- Appellate Authority for Advanced Ruling, Karnataka, wherein the Hon'ble High Court has held the identical question of law in favour of "hostels" and has held that the exemption available in Entry 13 of Exemption Notification No.9/2017- Integrated Tax-Rate dated 28.06.2017 is available to a residential hostel/residential dwelling meant for students or working people.
- The hostels attached to educational institutions are exempt from GST and their hostel which essentially caters to students at very nominal charges in contrast to hostels attached to educational institutions, also has to be exempt from the levy of GST and ought to fall outside the scope of levy.
- They expend the nominal amount collected from the inmates on their food and clean environment with no profit motive.

3.1. The Applicants were offered personal hearing on 26.07.2023, wherein Smt. Aparna Nandakumar, Advocate (Authorised Representative –AR) appeared for the Applicant and reiterated the submissions made in the application. She highlighted the difference between hostel and hotel. She stated that:

- The definition of 'hostel' under Section 2(e) of the Tamil Nadu Hostels and Home for Women and Children (Regulation) Act, 2014 and also definition of 'home for women and children' in Section-2 (d) of the said Act are available. The term 'residential hotel' is defined in Section-2 (14) of the Tamil Nadu Shops & Establishments Act, 1947, and by which hostel cannot be equated to hotel.
- The duration of stay in hotel is short and it is a temporary accommodation whereas the duration of stay in a hostel is for a long term.

- The hostel are run with a motive to provide safe residence to students and working women/men and charges collected are nominal; Food given is the same for all occupants and no choice in menu given.
- The definition of 'landlord' is given under Section 2(c) and definition of 'tenant' is given under Section 2(n) of Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017 [TNRRRLT Act, 2017], from which it can be gathered that the term 'tenant' includes 'sub-tenant' also. Thus, if the Applicant is a tenant, then the hostel inmates are 'sub-tenants' and come within the ambit of 'tenants'.
- Further, Section 3 of TNRRRLT Act, 2017, specifies bar on some categories of institutions wherein this Act is not applicable; Hostels do not come under this 'barred list' and hence TNRRRLT Act is applicable to hostels also; therefore, the agreement between a hostel owner (he be an owner of the premises or a tenant himself) and the hostel inmates is a 'tenancy' as per TNRRRLT Act, 2017.
- The buildings used as hostels are 'residential buildings' as per the Zoning Regulations as stated in Rule 33 of the Tamil Nadu Combined Development and Building Rules, 2019 and are specified in Annexure XVIII, wherein under the Residential Use Zone, Entry No.(vii) is given 'Working women's hostels, old age homes'. The property tax receipts categorize hostels in 'residential' zone only.
- The tenants living in these hostels often give the hostel address as their place of residence for procurement, verification or receiving government, bank or other similar official documents.
- Reliance is made on the following decisions:
  i. The Hon'ble Supreme Court in Para 11 of the judgment 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.
  ii. SC decision in Jagir Kaur Vs Jaswant Singh – Criminal appeal 143/1961 dated 13.02.1963 for the word 'reside'.
  iii. Delhi High Court judgment dated 22.09.1976 in VL Kashyap Vs R P Puri for the word 'dwelling house' or 'residential house'.
  iv. SC judgment dated 25.03.1981 in Indo International Industries Vs Commissioner of Sales Tax for submission that in the absence of a

definition in the Enactment, dictionary meaning/popular meaning can be resorted to.

v. SC judgment dated 13.09.2006 in CCE Vs Air Conditioning Corporation.

vi. In Balakrishna Vs Sakuntala Bai AIR 1942 MAD 666, it was held that the expression 'resides' implied something more than 'stay' and implied some intention to remain at a place and not merely to pay it a casual visit.

vii. Decision of England and Wales High Court dated 24.03.2010 in Dennis Philips and Royna Goddard Vs Martin Francis.

viii. In Para 14 of Taghar Vasudeva Ambrish Vs AAAR, Karnataka and Ors, it is held that 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 it cannot be held that the same does not include hostels which are used for residential purposes by students or working women.

4.1. The Applicant's jurisdictional State Authority had submitted the following remarks in respect of the questions raised by the Applicant:

The request of the applicant is not capable of compliance since:

- The motive of the Applicant is to run the ladies hostel against the CONSIDERATION and they have also admitted that they are receiving some amount for rendering accommodation and food services, which clearly falls under the ambit of definition of SUPPLY as provided in Section 7 of the TNGST /CGST-Act.
- The applicant registered under various acts to run its business. The act of the applicant covers under the definition of the term "Business" as per Section 2(17) of the TNGST /CGST Act which *includes any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;*
- The applicant is a service provider whereas they have referred the case law in respect of TNVAT Act which does not include the services but dealt with only goods.
- Their services does not fall under SERVICES BY WAY OF RENTING OF RESIDENTIAL DWELLING FOR USE AS RESIDENCE since they are letting out *a single room to various inmates for various time period* for a pecuniary benefit.

- In this type of transactions, they are not entering any rental agreement with the inmates for the 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 rent received from the renting out or subletting of property is subject to Tax Deduction at Source. They are not deducting any TDS under section 194 I of the Income Tax Act.
- Hence, the claim of renting of residential dwelling for the use as residence become failure.

4.2. In addition to the above, the State Jurisdictional authority further stated that they are rendering services by way of renting of immovable property with a business motive for pecuniary benefit. These services are classified under Heading 9963 (Accommodation, food and beverage services). The services rendered by the applicant clearly falls under Entry No. 7 (ix) of the Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 viz. Accommodation, food and beverage services other than (i), (ii), (iii), (iv), (v), (vi), (vii) and (viii) above and the rate of tax to the services are the settled one as per rate notification. From the above analysis of the issue in the hands, the following rate of tax is to be levied for the services rendered by the applicant **with effect from 01.07.2017 upto 29.09.2019.**

Sub-Heading	DESCRIPTION	RATE OF TAX
996321	Room or unit accommodation services for students in student residences	18%
996322	Room or unit accommodation services provided by Hostels, Camps, Paying Guest etc	18%
996329	Other room or unit accommodation services n.e.c.	18%

4.3. Lastly, the State Jurisdictional Authority also opined 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 were brought in to the tax net @ 12% and hence rate of tax for the hostel accommodation services may be taxable @ 12% with effect from 30.09.2019 onwards.

4.4. The Joint Commissioner (ST), Intelligence, Coimbatore has informed that no proceeding is pending in respect of the applicant.

5.1. The Applicant's jurisdictional Central Authority has submitted their remarks on the questions raised as under:

- Entry 12 of Exemption Notification No. 12/2017 – Central Tax (Rate) dated 28.06.2017 covering Heading 9963 or Heading 9972 deals with "Service by way of renting of residential dwelling for use as residence".
- The identical Notification under the TNGST Act, 2017 and Entry 13 of Exemption Notification No. 09/2017 – Integrated Tax (Rate) dated 28.06.2017 also cover the heading 9963 or Heading 9972 deals with "Service by way of renting of residential dwelling for use as residence".
- The entries referred above have two essential conditions - 1. Service by way of renting of "residential dwelling" and 2. Use of "residential dwelling" as a place of residence.
- For the applicant's hostel to be eligible for exemption under the above mentioned entries, both the conditions should be satisfied.
- It is opined that with respect to the condition 1, the term "residential dwelling" is one where people reside treating it as a home or abode. Whereas a common understanding of a hostel is an establishment which provides inexpensive accommodation to persons like students, workers etc.
- The applicant's hostel has been constructed with the intention of providing hostel accommodation which is more akin to sociable accommodation rather than what is commonly understood as residential accommodation. Hostel rooms are similar to rooms given by hotel, inn, guest house, club site or campsite, by whatever name called, or other commercial places which attract GST and are covered by different entries in the schedule of different notifications and this shows that rooms though given on rent for residential purposes would not amount to "residential dwelling".
- Moreover, hostels even though given for residential or lodging purposes are commercial places registered as "commercial establishments" for the purposes of electricity, water, trade licence etc. Therefore, the applicant's hostel cannot be termed as "residential dwelling" and has to be treated as a commercial place only.

5.2. The Central Authority further stated that coming to the second condition of the entry in the notification, it needs to be mentioned that it is intended for residential dwellings which are rented out for use as residence. Assuming but not admitting that the applicant's hostel is a residential dwelling, the same has to be rented out for use as residence. Whereas in the facts of this case it is rented out for use as a hostel facility or paying guest accommodation facility. As it is not rented out for use as residence but rented out as a hostel/paying guest accommodation facility, the exemption can't be extended. To put it in a nutshell, the place rented out is neither a residential dwelling nor being rented out for use as residence. Therefore, the applicant is not eligible for the benefit of this entry in the notification.

5.3. It was further stated that since the supply rendered by the applicant is not an exempt supply being not eligible for exemption covered under the entry referred above, the applicant would be required to take registration as per the provisions of Section 22 of the CGST Act, 2017 provided that the aggregate turnover in a financial year exceeds twenty lakh rupees.

5.4. It was opined that in the event of requirement of registration, hostel accommodation service provided by the applicant will fall under Sr. No. 7 (i) under the heading 9963 (Accommodation, food and beverage services) i.e. Supply of 'hotel accommodation' having value of supply of a unit of accommodation less than or equal to seven thousand five hundred rupees per unit per day or equivalent and will attract 12% GST with effect from 18th July, 2022 as per the Principal Notification No. 11/2017 – Central Tax (Rate) dated 28.06.2017 as amended by Notification No. 20/2019 - Central Tax (Rate) dated 30.09.2019 and further amended by Notification No. 03/2022 - Central Tax (Rate) dated 13.07.2022. In the Notification No. 20/2019 - Central Tax (Rate) dated 30.09.2019, 'Hotel Accommodation' means supply, by way of accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes including the supply of time share usage rights by way of accommodation.

5.5. Further, the Central Authority stated that the questions raised in the application are not pending or has not been decided in any proceedings in the case of the applicant as per the Centre's record.

DISCUSSION AND FINDINGS:

6.1. We have considered the submissions made by the applicant in their application for advance ruling and the submissions made by their AR during the

course of personal hearing and additional submissions made thereon with reference to the issues involved and relevant facts.

6.2. Before moving further, we have to determine the admissibility of the application. In terms of Section 97(2) of the CGST/TNGST Act, out of the Questions 1 to 5 on which advance ruling is sought under the Act, Questions 1 to 4 fall within the scope of Section 97(2)(a), (b), & (f) of the CGST/TNGST Act, 2017, and therefore the application is admissible for these Questions only.

6.3. The facts of the case as stated by the Applicant are that -

- they are running ladies hostel providing boarding and lodging facilities to students and working women. They are also providing certain ancillary services such as housekeeping, security arrangements, Television, parking facility etc.
- charges of Rs. 6500/- is being collected per inmate per month for providing all the above facilities including electricity charges; the charges collected are per bed charges and these charges are also dependent on number of persons sharing the room; the invoices to the habitants are raised accordingly.
- the premises used for providing these services are owned by the Applicant.

6.4. The Applicant claims that the immovable property being used for providing accommodation is a residential dwelling which is used as residence by the inmates and thereby the rent received on such accommodation qualifies for GST exemption in terms of Entry No. 12 of Notification 12/2017 – Central Tax (Rate), dated 28.06.2017.

7.1.1. The first question raised by the Applicant is whether the hostel accommodation extended by the Applicant hostel would be eligible for exemption under Entry 12 of Exemption Notification No.12/2017-CT (Rate) dated 28.06.2017 and under the identical Notification under the TNGST Act, 2017, and also under Entry 13 of Exemption Notification No.09/2017-IT (Rate) dated 28.06.2017, as amended.

The relevant Entry is reproduced here under:

Sl. No.	Chapter/Section/Heading /Group or Service Code (Tariff)	Description of Service	Rate (%)	Condition

1	Heading 9963 Or Heading 9972	Services by way of renting of residential dwelling for use as residence	NIL	NIL

7.1.2. Now, the fundamental issue to be discussed is whether the hostel accommodation being provided by the Applicant to students and working women qualify to be a residential dwelling for use as residence as described in the above entry and thus eligible for exemption or not.

7.1.3. In this regard, we observe that the term 'residential dwelling' has not been defined either under CGST Act or under Notification No. 12/2017. 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.

7.1.4. 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) against a rent for using rooms 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 that of an establishment which provides living accommodation to a specific categories of persons such as students & workers. The Applicant has 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.

7.1.5. Further, a house/ residential dwelling for occupation contain 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. Thus, on this count as well, the impugned accommodation thus provided does not qualify as a residential dwelling and thus the question of using the same as residence does not arise.

7.1.6. Regarding the second part of the description of service 'for use as residence' it is observed that, though accommodation and residence seems to be synonymous, there is a subtle difference between the two. An accommodation is a location where someone is accommodated or provided with lodging. The term residence on other hand, in common usage, refers specifically to a place where someone resides permanently or for an extended period of time along with family/dependents; Therefore, we observe that hostels are nothing but accommodations which provide temporary lodging to the inmates, whether students or working people. Similar to converting a residential dwelling into a hotel and providing hotel services, which eventually makes the same dwelling "non-residential" and taxable, in the instant case, the residential homes (for use as a residence) have been converted into a commercial premises ie., hostel accommodation, thereby losing its status as 'residence dwelling' and has become a business premises comparable to a hotel. It is further observed that, there is no relationship of landlord and tenant between the hostel owners and inmates in as much as the inmates of hostels have no obligation to maintain or repair the fixtures and fittings and there is no division of maintenance responsibility between the hostel owners and inmates which is normally followed in the case renting of residential dwelling to a family or a person. Therefore, it is clear that hostels refer to a place where someone is accommodated or provided with lodging or boarding and lodging facilities against a charge or fees for the services rendered.

7.1.7. Further, we find that there are certain regulatory provisions for running hostels and licence/certificates are to be obtained by a person running hostels in the state of Tamil Nadu under the respective enactments and the Applicant also submitted copies of such licences/certificates:

a) The Applicant has Submitted FORM D License issued by the Tahsildar, Coimbatore (North) wherein , as per section 2 of the THE TAMIL NADU PUBLIC BUILDING (LICENSING) ACT, 1965, 'hostel is deemed to be a public building' and as per Section 3, 'No building shall be used as a public building without a license and except in accordance with the terms and conditions specified therein'.

b) Form III licence issued by the District Collector, wherein, as per section 4 of the Tamil Nadu Hostels and Homes for Women and Children (Regulation) Act, 2014, 'No person shall, on and after the commencement of this Act, establish, maintain or conduct any hostel, lodging house or home for women

and children except under, and in accordance with a licence granted under this Act'.

c) The Applicant has also submitted the following License/ Certificates for running Ladies Hostel;

i. Sanitary Certificate issued by the Department of Public Health and Preventive Medicine under the provisions of the Tamilnadu Public Health Act, 1939.

ii. Trade licence issued by the Coimbatore City Municipal Corporation under the provisions of the Coimbatore City Municipal Corporation Act, 1981.

iii. No objection certificate issued by the District Officer, Tamilnadu Fire and Rescue services.

iv. Stability Certificate (Form A) issued by Charted Civil Engineer License issued under Food Safety and Standards Act, 2006, for food services.

We find that the above provisions are not mandatory or applicable to a typically residential building or "residence dwelling for use as residence", whereas it is mandatory for a hostel building. This also shows that hostel building cannot be considered as residential dwelling but a non-residential complex.

7.1.8. From the above, it is evident that the premises rented out by the Applicant cannot be construed as residential dwelling in view of the above facts.

7.1.9. The AR has strongly placed reliance on the decision of the Hon'ble High Court of Karnataka in the case of Taghar Vasudeva Ambrish Vs. Appellate Authority for Advance Ruling, dated 07.02.2022, wherein it was held that hostel is a residential dwelling and since it is used for residence, the assessee is eligible for exemption. However, it is observed that Special Leave Petition (Civil) No. 29980/2022 has been filed against this order before the Hon'ble Supreme Court of India and the case is pending disposal.

7.1.10. The Applicant has claimed that the buildings used as hostels are 'residential buildings' as per the Zoning Regulations as stated in Rule 33 of the Tamil Nadu Combined Development and Building Rules, 2019. But we find that the eligibility to claim exemption is not solely dependent upon the zoning regulations. Even if the hostels are permitted in residential zone, it does not partake the character of the 'residential dwelling'. The land used for the purpose of Zoning Regulations is not determinative factor to decide whether the impugned property is

hostel or residential dwelling for the purposes of tax. Further, the Licenses and Certificates obtained by the Applicant under various enactments in Tamil Nadu, clearly leads to an inference that Hostel Buildings are considered only as commercial or public buildings and not as residential building.

7.1.11. The decision of the Hon'ble Supreme Court, relied upon by the Applicant, in the matter of KISHORE CHANDRA SINGH VSBABU GANESH PRASAD BHAGAT AIR 1954 SC 316 is not applicable to the present issue. The observation of the Hon'ble Supreme Court in the said decision, that "Residence only connotes that a person eats, drinks and sleeps at that place and it is not necessary that he should own it", appear to have been made in the context of the Indian Registration Act, 1908, while dealing with the issue of permanent residency and temporary residency. This is not the issue involved here. Further, this decision is not at all helpful in understanding the phrase "Residential Dwelling for use as residence" as mentioned in the exemption notification.

7.1.12. We find that the judgments cited by the Applicant are not applicable to the present case, as the facts of those cases are entirely different from the present case. A judgment should be understood in the light of facts of the case. Also, decisions of those cases were not in the context of GST laws. Hence the various case laws cited by the Applicant is of no avail.

7.1.13. Further, exemption notification should be interpreted strictly. The Hon'ble Apex Court of India has made this abundantly clear in the case of Commissioner of Customs(Import), Mumbai Vs. Dilip Kumar & Company [2018 (361) E.L.T. 577 (SC)], while answering the question, 'what is the interpretative rule to be applied while interpreting a tax exemption provision/notification when there is ambiguity as to its applicability with reference to the entitlement of the assessee or the rate of tax to be applied?' held that:

> *" 52. To sum up, we answer the reference holding as under:-*
>
> *(1) Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assesse to show that his case comes within the parameters of the exemption clause or exemption notification.*
>
> *(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/assesse and it must be interpreted in favour of revenue"

As per the above settled position of law and under the given circumstances and factual evidences produced, it is clear that the exemption is specific and particular about the housing residence sector and NOT to other places which are not residential that are rented out.

7.1.14. Further, it was observed by The Hon'ble Supreme Court of India in the case of *Rohit Pulp and Paper Mills Ltd.* v. *Collector of Central Excise 1991 taxmann.com 73/1990 (47) ELT 491 (SC), that;*

"in interpreting the scope of any notification, the Court has first to keep in mind the object and purpose of the Notification. All parts of it should be read harmoniously in aid of, and not in derogation of that purpose".

Therefore, in order to implement the notification, it is necessary to keep in mind the purpose and the objective of notification. The relevant portion of Notification No. 12/2017-CT (R), Dated 28-6-2017 is reproduced herewith:

Serial No.	*Chapter, Section, Heading, Group or Service Code (Tariff)*	*Description of Services*	*Rate (per cent)*	*condition*
12	Heading 9963 Or Heading 9972	Services by way of renting of residential dwelling for use as residence	NIL	NIL

7.1.15. From the above, we find that it is clear that the purpose and objective of the notification is nothing but to avoid taxing 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. Further, unless the twin conditions of 'renting of residential dwelling' for 'use as residence,' being inter-twined and inseparable, are not met, the exemption is not available. As per settled position in taxation laws, especially when exemptions or concessions or benefits are to be availed, the interpretation is to be literally and strictly construed and not in liberal terms. In effect, the place rented out is neither a residential dwelling nor being rented out for use as residence.

7.1.16. Further, it is observed that Entry at Sl.No. 14 of Notification No. 12/2017-CT (R), Dated 28-6-2017:

Serial No.	*Chapter, Section, Heading, Group or Service Code (Tariff)*	*Description of Services*	*Rate (per cent)*	*condition*
14	Heading 9963	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	NIL	NIL

was omitted vide Notification No. 4/2022 dated 13.07.2022. Thus, in effect, from 13.07.2022, only services by way of renting of residential dwelling for use as residence are exempted from GST.

7.1.17. Hence, it is clear that hostel accommodation is not equivalent to residential accommodation and hence we hold that the services supplied by the Applicant would not be eligible for exemption under Entry 12 of Exemption Notification No.12/2017-CT(Rate) dated 28.06.2017 and under the identical Notification under the TNGST Act, 2017, and also under Entry 13 of Exemption Notification No.09/2017-IT(Rate) dated 28.06.2017, as amended.

7.2.1. Regarding the second question raised by the Applicant, from the previous discussions, it is clear that the Applicant's service of providing hostel accommodation is not eligible for exemption under Entry 12 of Exemption Notification No. 12/2017-CT(Rate) dated 28.06.2017 as amended, the Applicant is very much be required to take registration under the GST Enactments, as the arrangement between the Applicant and the hostel occupants is liable to be classified as transaction in the course of furtherance of business and hence, as per Section 7(1)(a) of CGST Act, 2017 read with Entry No. 2(b) of the Second Schedule to the CGST Act, the said transaction constitutes "supply".

7.2.2. Thus, the Applicant is a supplier of services and therefore, in terms of Section 22 of the GST Acts, which states that:

"Every supplier of service shall be liable to be registered under this Act in the State or Union territory, other than special category States, from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds twenty lakh rupees."

Therefore, we hold that 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.

7.3.1. Regarding the third question raised by the Applicant, which pertains to the tariff heading and the rate of taxability of the supply of service, relevant entries in 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, is reproduced as under:

Sl. No.	Chapter/Section/Heading/Group or Service Code (Tariff)	Description of Service	Rate (%)	Condition
7	Heading 9963 (Accommodation, food and beverage services)	[(i) Supply of "hotel accommodation" having value of supply of a unit of accommodation less than or equal to seven thousand five hundred rupees per unit per day or equivalent.	6	-
		(ii) Supply of 'restaurant service'.....	2.5	
		(iii) Supply of goods, being food or any other article for human consumption or any drink, by the Indian Railways or Indian Railways Catering and Tourism Corporation Ltd. or their licensees, whether in trains or at platforms	2.5	
		(iv) Supply of 'outdoor	2.5	

		catering.....		
		(v) Composite supply of "outdoor catering" together with renting of premises.....	2.5	
		(vi) Accommodation, food and beverage services other than (i) to (v) above	9	-

It is observed that hotels are meant for a temporary stay (2-5 days) 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, we hold that supply of hostel accommodation services (Tariff heading 9963) is taxable @ 9% CGST + 9% SGST under Sl.No. 7(vi) of the above Notification (Sl.No. 7 (ix) as per original notification).

7.4.1. Regarding the fourth question raised by the Applicant, which is 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. Firstly, the service of providing hostel accommodation is not an exempt activity as discussed in the previous paras. It is seen from the submissions of the Applicant, that along with the provision of accommodation services, they are also providing food and certain other services to the inmates of the hostel for consolidated charges. Now it is pertinent to see the definition of 'Composite Supply' which is given under Section 2(30) of the GST Act":

> *'Composite supply means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply'.*

Therefore, the definition implies that a supply of goods and/or services will be treated as composite supply if it fulfils the following three criteria:

(a) Supply of two or more goods and services together.

(b) Goods or services are naturally bundled, i.e. they are provided together in the normal course of business.

7.4.2. The natural bundle has the characteristic of where one service is the main service and the other services are ancillary services which help in better enjoyment of the main service. Further, there is a single price for the combined services. The principal activity of the Applicant is supply of accommodation Services. While providing such services, the charges are being realised in a consolidated manner for the value of food and other like services rendered. The Applicant has stated that they do not charge separately for the other services provided by them. Thus, the services provided by the Applicant are composite in nature.

7.4.3. As per Section 8 of the CGST Act, 2017, for a Composite supply, the tax rate on the principal supply will be treated as the tax rate on the given composite supply. We hold that since the Applicant provides a number of services in a composite manner, the hostel accommodation services provided by the Applicant, being the principal supply, which is taxable @18%, will be tax rate for the composite supply provided by them.

7.5. Regarding the fifth question raised by the Applicant, no ruling could be issued as the question put forth by the Applicant does not fall under the scope of Section 97(2) of the GST Act.

In view of the above position, we give the following ruling;

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-CT (Rate) dated 28.06.2017 and under the identical Notification under the TNGST Act, 2017, and also under Entry 13 of Exemption Notification No. 09/2017-IT(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.

(N.USHA) 1-9-2023
Member (SGST)

AUTHORITY FOR ADVANCE RULING GOODS AND SERVICE TAX TAMILNADU

(D. JAYAPRIYA) 01/09/2023
Member (CGST)

To

M/s. Nivishna Ladies Hostel,
No.55 C, Jeeva Street, B.R.Puram,
Peelamedu, Coimbatore – 641 004.

Copy submitted to:

1. The Principal Chief Commissioner of CGST & Central Excise, No. 26/1, Uthamar Mahatma Gandhi Road, Nungambakkam, Chennai – 600 034.

2. The Principal Secretary / Commissioner of Commercial Taxes, 2nd Floor, Ezhilagam, Chepauk, Chennai – 600 005.

Copy to:

1. The Principal Chief Commissioner of Central Goods and Service Tax, Coimbatore. No. 6/7, A.T.D. Street, Race Course Road, Coimbatore – 641 018.

2. The Assistant Commissioner (ST), Peelamedu (North) Circle, Coimbatore Division.

3. Master File / spare – 1.