

MAHARASHTRA AUTHORITY FOR ADVANCE RULING

GST Bhavan, 1st floor, B-Wing, Old Building, Mazgaon, Mumbai – 400010.

(Constituted under Section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

(1) Ms. P Vinitha Sekhar, Addl. Commissioner of Central Tax, (Member)

(2) Mr. A. A. Chahure, Joint Commissioner of State Tax, (Member)

GSTIN Number, if any/ User-id	27AAFC10484G1ZL
Legal Name of Applicant	ISPRAVA Hospitality Private Limited
Registered Address/Address provided while obtaining user id	42A Impression House, 1st Floor G.D. Ambedkar Marg, Wadala (West) Maharashtra, Mumbai 400031
Details of application	GST-ARA Application No. 52 dt. 10.10.2019
Concerned officer	Division- IV, Commissionerate Mumbai East
Nature of activity(s) (proposed/present) in respect of which advance ruling sought	
A. Category	Service Provision
B. Description (in brief)	Company is engaged in supplying service of giving Villa on rent in Tamil Nadu and GCA and envisaging to initiate business in Maharashtra. Company is not clear on the meaning of the term 'Per Unit' as used in the Notification No. 11/2017-Central Tax (Rate) dated 28 June 2017, which is critical factor to determine the GST output liability.
Issue/s on which advance ruling required	(v) Determination of the liability to pay tax on any goods or services or both
Question(s) on which advance ruling is required	As reproduced in para 01 of the Proceedings below.

PROCEEDINGS

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

The present application has been filed under Section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act" respectively] by **ISPRAVA Hospitality Private Limited**, the applicant, seeking an advance ruling in respect of the following question.

1. What is the meaning of "Per Unit" as specified under Chapter, Section or Heading-9963 under entry no. 7 of the Notification No. 11/2017-Central Tax (Rate) dated 28 June 2017?

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

specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, the expression 'GST Act' would mean CGST Act and MGST Act.

2. FACTS AND CONTENTION – AS PER THE APPLICANT

The submissions made by the applicant is as under:-

- 2.1 M/s ISPRAVA Hospitality Pvt. Ltd. (Applicant) is engaged in the activity of giving Luxurious Villa on rent to its clients in Goa and Tamil Nadu and intending to initiate the said business in Maharashtra. Each Villa consists of two to six rooms and is offered to clients on per day basis for entire Villa.
- 2.2 The per day rent of an entire villa will be more than seven thousand five hundred at any given point of time in a year. However, if one may calculate the cost per room per villa then at any given point of time, it would be less than seven thousand five hundred.
- 2.3 Two different clients will not be able to book the same Villa for the same day and time and there will be no option of booking particular rooms of the Villa, interested clients need to book entire villa.
4. As per Notification No. 11/2017-C.T. (Rate) dated 28.06.2017, as amended from time to time, service provided by applicant falls within the ambit of HSN Code 9963 which appears under Entry No. 7 of the said notification.

In the aforesaid notification, supply value of Per Unit of accommodation decides the rate for levy of GST. If the supply value per unit of hotel accommodation is between one thousand and seven thousand five hundred rupees then GST at the rate of 12% [6% (CGST) and 6% (SGST)] is applicable and if the supply value of per unit of accommodation is more than seven thousand five hundred value, then GST at the rate of 18% (9% (CGST) and 9% (SGST)) is applicable.
6. Since rate per unit of hotel accommodation plays vital role on determining the rate applicable, it is pertinent to know the meaning of the term 'Per Unit', since the said term is not defined under the CGST Act, 2017. Applicant would like to understand whether the either entire Villa shall be considered as one unit or each room available in the Villa shall be consider as one unit.
7. Applicant states that judicial forums has interpreted different meaning to the term 'Per Unit' considering the context in which the term is used in the law and understanding the intention of the legislature.



- 7.1 In the case of The Travel & Tourism Association of GOA, Mandovi Hotels Pvt. Ltd., Fomento Resorts And Hotels Ltd, Averina International Resorts Ltd., Versus Union of India, The Commissioner of Income Tax, Panaji GOA (2019 (9) TMI 102], Hon'ble Bombay High Court while pronouncing the case for dispute under Expenditure Tax Act, 1987 held that the term 'any unit of residential accommodation' referred under the said Act, refers to 'hotel room' and per se does not support the construction that 'a unit' must be determined on the basis of 'beds' or 'occupancy'. Further held that any such construction might amount to stretching the expression beyond its natural meaning or even beyond setting in which it is placed.
- 7.2 In case of Kamal Kishor Agarwal Ramnath Bhimsen Charitable Trust [2019 (4) TMI 1451] Hon'ble Advance Ruling Authority of Chhattisgarh, while delivering judgment in relation to activity provided by Hostel run by a Charitable Trust, held that the term 'Per Unit' as provided under the Notification No. 11/2017-Central Tax (Rate) notified under the CGST Act, means 'per bed in the hostel room.'
- 8 Given that in the absence of any meaning of "Per Unit" provided under the CGST Act, and in absence of direct judicial precedent analysing the same, it is not clear whether entire Villa as a Unit or rooms available in respective Villa shall be consider as one Unit for the service proposed to be provided in Maharashtra.

03.

CONTENTION – AS PER THE JURISDICTIONAL OFFICER:

3.1

M/s. Isprava Hospitality India Private Limited (Applicant) are engaged in the activity of giving Luxurious Villa on rent to its clients.

3.2

It is submitted that the rates mentioned under Entry No. 7 of the Notification No. 11/2017 – C.T. (Rate) dated 28.06.2017, are based on declared tariff (includes charges for all amenities provided in the unit of accommodation {given on rent for stay} like furniture, air conditioner, refrigerators or any other amenities, but without excluding any discount offered on the published charges for such unit) of a unit of accommodation in Hotels including five star hotels, Inns, Guest houses, Clubs, Campsites.

3.3

IHIPL has referred judicial precedents available in public domain analysing different interpretation for the term 'Per Unit' under un-identical facts:

3.4

In the judgement quoted by applicant, relevant para quoted in para 3 of part 3 in essence mentions that for want of express 'Statutory' definition of unit, we have to assign this expression its natural meaning keeping in mind the content and perspective. If a keen look is given to the wording of the said notification, the relevant portion reads

“.....‘accommodation’ in hotels including five Star hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes having a declared tariff of a unit of accommodation.....”.

- 3.5 Hence the ‘pattern of renting’ in relation to usage of the property provides for ‘context’ or perspective. So its natural that in a hotel, a room constitutes ‘that unit’ whereas in a hostel, a bed may constitute ‘the unit’, as tariff is also declared accordingly. In the present case applicant themselves have mentioned that, rent is proposed to be offered to clients on per day basis for entire villa which will be more than Seven thousand five hundred at any given point of time in a year, where two different clients will not be able to book the same villa and there will be no option of booking particular room of the villa. Interested clients need to book the entire villa.
- 3.6 Hence from the above it is clear that villa per say is ‘indivisible unit’ in their business parlance, and the declared tariff is for the villa as a whole as there remains no other possibility of booking either room or even two different clients sharing the villa. Hence, the expression “per unit in the present case appears to be entire villa.”

04. HEARING

Preliminary hearing in the matter was held on 12.12.2019. Sh.Kavish Shah, C.A., appeared on behalf of the applicant, and requested for admission of their application. Jurisdictional Officer Smt.Flavy Cardozo, Superintendent, Div-II, Mumbai East also appeared.

The application was admitted and called for final hearing on 11.02.2020. Sh.Kavish Shah, C.A., and Sh. Mayur Nisar, Authorized Representative, appeared for the applicant and made both, oral and written submissions. Jurisdictional Officer Smt. Flavy Cardozo, Superintendent, Div-II, Mumbai East Appeared and made written submissions. We heard both the sides.

05. OBSERVATIONS AND FINDINGS:

- 5.1 We have gone through the facts of the case, documents on record and submissions made by both, the applicant as well as the jurisdictional office.
- 5.2 We find that the applicant is proposing to give out entire Luxurious Villas, consisting of multiple rooms, on rent to various customers in the State of Maharashtra. The question is whether, as per Notification No. 11/2017-Central Tax (Rate) dated 28 June 2017, as

amended, the entire Villa will be treated as 'per unit' or the individual rooms inside the Villas will be treated as 'per unit'.

5.3 We find that the applicant will be charging rent for the entire Villa and not as per room basis. Further, at any given point of time only one customer will be entitled to take the Villa on lease.

5.4 We have no doubt, as per the submissions made by the applicant, that they are treating the entire Villa as one unit and therefore will give the same on rent to only one customer for any particular given date. In other words two different clients will not be able to book the same Villa for the same period i.e. if the particular Villa is booked by one client at a given date then another client will not be able to book the same Villa on the same day.

5.5 We observe that the applicant has no intention to rent out the rooms inside the Villa, individually and therefore there is no question of the individual rooms being treated as 'per unit' as per the above said Notification. The applicant's representative, during the course of the hearing also admitted that, since they will be renting out the entire Villa, then each individual Villa may be treated as 'per unit'.

5.6 Applicant has cited the decision made by the Hon'ble Bombay High Court in the case of The Travel & Tourism Association of GOA, Mandovi Hotels Pvt. Ltd., Fomento Resorts And Hotels Ltd, Averina International Resorts Ltd., Versus Union of India, The Commissioner of Income Tax, Panaji GOA reported as [2019 (9) TMI 102]. We find that in the said case the dispute was under the Expenditure Tax Act, 1987 and in this case hotel rooms were given on rent and not the entire hotels as such. We therefore find that the issue in this case and the subject matter before us are not similar in any way and therefore the said decision of the Hon'ble High Court is not applicable in the instant case.

5.7 The applicant has also cited the order of the Hon'ble Advance Ruling Authority of Chhattisgarh pronounced in the case of Kamal Kishor Agarwal Ramnath Bhimsen Charitable Trust reported as [2019 (4) TMI 1451], where the said trust was renting out individual beds in their hostel room. In the subject case the applicant is renting out the entire Villa and not individual rooms or beds and therefore this decision will also not be applicable in the subject matter before us.

5.8 We agree with the submissions made by the jurisdictional officer, that the 'pattern of renting' in relation to usage of the property provides the 'context' or 'perspective' in determination of unit of accommodation. In a hotel, a room constitutes 'a unit' whereas in a hostel, a bed may constitute 'a unit', as tariff is also declared accordingly. In the present



case the applicant, themselves have mentioned that, rent is proposed to be offered to clients on per day basis for entire villa. The two different clients will not be able to book the same villa and there will be no option of booking particular room of the villa. Interested clients need to book the entire villa. Thus, it is crystal clear that villa per say is 'indivisible unit' in applicant's business parlance, and the declared tariff is only for the villa as a whole. Hence, the expression "per unit" in the present case will be the entire villa.

06. In view of the extensive deliberations as held hereinabove, we pass an order as follows:

ORDER

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

NO.GST-ARA- 52/2019-20/B-

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Mumbai, dt.

17/03/2020

For reasons as discussed in the body of the order, the questions are answered thus –

Question 1. What is the meaning of "Per Unit" as specified under Chapter, Section or Heading- 9963 under entry no. 7 of the Notification No. 11/2017-Central Tax (Rate) dated 28 June 2017?

Answer:- In the applicant's case the entire Villa will be treated as "per unit" as specified under Entry no. 7 of the Notification No. 11/2017-C.T. (Rate) dated 28.06.2017



—sd—
A. A. CHAHURE
(MEMBER)

—sd—
P. VINITHA SEKHAR
(MEMBER)

Copy to:-

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Chief Commissioner of Central Tax, Churchgate, Mumbai
5. Joint Commissioner of State Tax, Mahavikas for Website.

CERTIFIED TRUE COPY


MEMBER
ADVANCE RULING AUTHORITY
MAHARASHTRA STATE, MUMBAI

Note :- An Appeal against this advance ruling order shall be made before The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India Building, Nariman Point, Mumbai – 400021.