

**MAHARASHTRA AUTHORITY FOR ADVANCE RULING**  
**GST Bhavan, Room No.107, 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) Shri. Rajiv Magoo, Additional Commissioner of Central Tax, (Member)

(2) Shri. T. R. Ramnani, Joint Commissioner of State Tax, (Member)

ARN No.	AD271220022657C	
GSTIN Number, if any/ User-id	27AAACK3000H1Z4	
Legal Name of Applicant	M/s. Kasturi & Sons Ltd.	
Registered Address/Address provided while obtaining user id	No 18, Kasturi Building, Jamshedji Tata Road, Mumbai 400020	
Details of application	GST-ARA, Application No. 67 dated 07.01.2021	
Concerned officer	MUM-VAT-E-635, LTU-003	
Nature of activity(s) (proposed/present) in respect of which advance ruling sought		
A	Category	Service Provision
B	Description (in brief)	The Applicant is proposing to let out residential Flats to M/s. Life Insurance corporation of India on Leave and License basis, which is going to be used by the staff of M/s. Life Insurance corporation of India for their residential purpose.
Issue/s on which advance ruling required		<ul style="list-style-type: none"><li>• Applicability of a notification issued under the provisions of this Act.</li></ul>
Question(s) on which advance ruling is required		As reproduced in para 01 of the Proceedings below



NO.GST-ARA- 67/2020-21/B- 72

Mumbai, dt. 31.05.2022

**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 M/s. Kasturi & Sons Ltd. the applicant, seeking an advance ruling in respect of the following question.

*Whether Applicant is eligible for the exemption from payment of GST on the monthly license fee to be received by them on the proposed letting out on Leave and License Basis of their residential building at Flat No. 19, admeasuring 1305 sq. ft. (carpet) area, on the First floor, Flat No.21, admeasuring 1336 sq.ft. on the First Floor, and Terrace T2 Flat admeasuring 1323 sq.ft. on the 6th Floor, of Kasturi Building, situated at Jamshedji Tata Road, Mumbai 400020, to M/s. Life Insurance Corporation of India for residential purpose of*

*their staff, as per Sl. No. 12 of the Notification No.12/2017-CT(Rate), dated 28-6-2017 and corresponding S.No.12 of Notification No.12/2017-ST(Rate) under Maharashtra Goods and Service Tax Act, 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**

2.1 *The Applicant is owner of properties containing 22 Nos. of residential apartments. The Applicant fixes rentals / license fee for residential apartments at Rs.145/- per sq.ft. There is no dispute that Sl. No. 12 of the Notification No. 12/2017-CT (Rate) and ST(Rate) is applicable for renting out / giving license the property to individual owner for their residential use.*

2.2 *The Applicant proposes to let out on Leave and License Basis the said premises to M/s. Life Insurance Corporation of India for residential purpose of their staff members and the Ruling is sought on the applicability of Sl. No.12 of the Notification No. 12/2017-CT (Rate) on the said transaction.*

### **B. STATEMENT CONTAINING APPLICANT'S INTERPRETATION OF LAW AND/OR FACTS**

2.3 *The premises that are going to be let out are residential apartments and they are going to be used for residential purpose and the Applicant charges license fee for residential rate at Rs.145/- per sq.ft.*

2.4 *There is a specific restriction for usage for commercial purpose at Clause 4.1 of the proposed agreement itself. When the premises is given for Leave and License for specific purpose and there is a specific restriction from usage for commercial purpose, just because it was taken by Life Insurance Corporation of India for the residential usage of their staff members, the same cannot be treated as usage for commercial purpose. Serial No.12 of Notification No.12/2017-CT (Rate) and the corresponding Notification under MGST Act, 2017, is very clear wherein it gives exemption to the nature of the property and its usage and not by the status of recipient. In this case the property is residential, and renting is for residential purposes.*

## **03. CONTENTION – AS PER THE CONCERNED OFFICER:**

3.1 *LIC is commercial organisation and hence the staff to whom the flat is let out, can sit late in office and work more. LIC is not natural person and LIC is profit making company. So, in order to increase profit, the facility of accommodation is given to employee, which is a commercial use and not for residential*



use. The monthly license fee received from LIC on the letting out on leave and license basis at flat No. 19, 21 and Terrace T-2 is not from residential use hence the exemption given vide notification Sr. No. 12/ 2017-CT (Rate), dated 28-06-2017 and corresponding Sr. No. 12 of Notification No.12/2017-ST (Rate) under MGST Act, 2017, is not applicable in this case.

#### 04. **HEARING**

- 4.1 Preliminary e-hearing in the matter was held on 12.10.2021. Authorized representative of the Applicant, Shri. T. R. Ramesh, Advocate, was present. Jurisdictional Officer Shri. Dattatraya Fulsundar, Deputy Commissioner, MUM-VAT-E-635, LTU-3 was also present.
- 4.2 The application was admitted and called for final e-hearing on 22.02.2022. The authorised representative of the applicant, Sh. T. R. Ramesh, Advocate, was present. Jurisdictional Officer Shri. Dattatraya Fulsundar, Deputy Commissioner, MUM-VAT-E-635, LTU-3 was also present. Authorized Representative, appeared made oral and written submissions. We heard both the sides.

#### 05. **DISCUSSIONS AND FINDINGS**

- 5.1 We have gone through the facts of the case, documents on record and submissions made by the applicant as well as the jurisdictional officer.
- 5.2 The Applicant, M/s Kasturi & Sons, has submitted that they are the owners of properties containing 22 numbers of residential apartments and proposes to let out on Leave and License basis, the said premises to M/s. Life Insurance Corporation of India (LIC) for residential purpose of their staff members on fixed rentals / license fee. The said residential apartments leased to LIC are going to be used only for residential purpose as per specific restriction for usage for commercial purpose at Clause 4.1 of the proposed agreement and accordingly the subject question is asked by the applicant.
- 5.3 Under GST Laws pure renting or leasing activity is a supply of services. To understand the subject issue we need to first find out under which Service Accounting Code (SAC) does the impugned service fall. The property that is being leased out in the instant case is a residential property belonging to the applicant. The said property is being given on lease to LIC for use as residential staff quarters.
- 5.4 We find the SAC No. 9972 is relevant in the subject case and therefore reproduce the same as under:-  
Heading 9972 : Real Estate Services.  
Group 99721 : Real estate services involving owned or leased property.  
Sub Group 997211 : Rental or leasing services involving own or leased residential property.
- 5.5 In the subject case, the supply of service pertains to the Real Estate Sector and can be called Real Estate Services (9972), where such services i.e rental/leasing services are involving own residential

property (997211) where the owner i.e. the applicant, of the residential property is supplying Real Estate Service involving its own property.

- 5.6 The relevant schedule entry of *Notification No.12/2017-CT (Rate) dated 28.06.2017* involved in present matter is reproduced as under:

Sr. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description Of Services	Rate %	Condition
12	Heading 9963 or Heading 9972	Services by way of renting of residential dwelling for use as residence.	NIL	NIL

- 5.7 As per the said schedule entry the residential dwelling/property must be given on rent for use as a residence. The entry does not mention as to whom the said services to be supplied. The exemption given in Sr. No. 12 mentioned above is qua the supply of service and not qua the recipient of the supply. We therefore agree with the contention of the applicant that, Serial No.12 of Notification No.12/2017-CT (Rate) and the corresponding Notification under MGST Act, 2017, is very clear wherein it gives exemption to the nature of the property and its usage and not by the status of recipient.

Further the applicant has also submitted a letter Ref: WZ/EST/SQ dated 10.11.2021 issued by Assistant Secretary (States), LIC of India, Western Zone, wherein details of allotments made to LIC employees in respect of flats in Kasturi Building, Mumbai taken on lease from the applicant have been provided. It is mentioned in the said allotment letter that *the said allotted employees shall use the premises only for residential purpose and they will stay there till the transfer of location of the employee/resignation/retirement*. It is a fact that the impugned residential properties will be used as residences by the staff of LIC and we therefore hold that, such services will be covered under the above mentioned Sr. No. 12 of Notification No.12/2017-CT (Rate) dated 28.06.2017 as amended. Further, if a residential property was either used or let out for commercial purposes then it would be classified as a service provided and attract GST. Only property let out for residential purposes will be exempt from the GST ambit. The GST applicability is not decided by the nature of the property but by the purpose for which it is used. To reiterate, it is not the nature of the property but the nature of the end use that will determine whether it is a commercial rent or residential rent.

- 5.8 The jurisdictional officer has submitted that *"LIC is commercial organisation and hence the staff to whom the flat is let out can sit late in office and work more. LIC is not natural person and LIC is profit making company. So, in order to increase profit, the facility of quarter given to employee, which is a commercial use and not for residential use. The monthly license fee received from LIC on the letting out on leave and license basis at flat No. 19, 21 and Terrace T-2 is not from residential use hence the*



exemption given vide Sr. No. 12 of Notification No. 12/ 2017-CT (Rate), dated 28-06-2017 and corresponding Sr. No. 12 of Notification No.12/2017-ST (Rate) under MGST Act, 2017, is not applicable in this case.

5.9 The said submissions made by the jurisdictional officer defies all logic. He has not explained as to how allotment of residential quarters make an employee to sit late in office especially when there are fixed office hours. Further, the jurisdictional officer has also not given any proper reasoning to show that by making expenses towards leasing of residential quarters for its staff, LIC is making profits. The said officer has not given any logical and legal reasoning to show that the exemption given vide Sr. No. 12 of Notification No. 12/ 2017-CT (Rate), dated 28-06-2017 and corresponding Sr. No. 12 of Notification No.12/2017-ST (Rate) under MGST Act, 2017, is not applicable in this case. In view of the above the submissions made by the jurisdictional officer are not accepted.

5.10 We also refer to the ruling given by the West Bengal Authority for Advance Ruling, Goods and Services Tax, in the case of M/s Borbheta Estate Pvt Ltd.



5.10 In the said case the applicant had executed agreements for leasing/renting of its four dwelling units (three flats to individuals and one flat to M/s Larsen & Toubro Ltd.). The said Authority observed as under-

4.1. It appears that the dwelling units rented to individuals, as described in the relevant contracts, are meant for residential accommodation. The dwelling unit rented to M/s Larsen & Toubro Ltd is a flat in the housing complex named South City. The South City Apartment Owners' Association certifies that the Applicant owns the flat and it is a residential flat and cannot be used for any other purpose. The said association further confirms that an employee of M/s Larsen & Toubro Ltd is staying at the flat.

4.2. The Applicant's service is classifiable as rental or leasing service involving own/leased residential property (SAC 997211). Applicability of Sl No. 12 of the Exemption Notification depends upon whether the dwelling unit is used as residence. It appears from the documents produced that all the above dwelling units are being used for residence, irrespective of whether they are let out to individuals or a commercial entity.

Held that the Applicant's service of renting/leasing out the dwelling units for residential purpose was, exempt under Sl No. 12 of the Exemption Notification No. 12/2017-CT (Rate) dated 28.06.2017, as amended from time to time and the Applicant, therefore, was not liable to pay tax on supply of such service.

5.10.2 The subject case is very similar to the case of leasing of property for residential use given to M/s Larsen & Toubro by M/s Borbheta Estate Pvt Ltd mentioned above and therefore the ratio of the above mentioned order is applicable in the subject case also.

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)**


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

**Question: -** Whether Applicant is eligible for the exemption from payment of GST on the monthly license fee to be received by them on the proposed letting out on Leave and License Basis of their residential building at Flat No. 19, admeasuring 1305 sq. ft. (carpet) area, on the First floor, Flat No.21, admeasuring 1336 sq.ft. on the First Floor, and Terrace T2 Flat admeasuring 1323 sq.ft. on the 6th Floor, of Kasturi Building, situate at Jamshedji Tata Road, Mumbai 400020, to M/s. Life Insurance Corporation of India for residential purpose of their staff, as per Sl. No. 12 of the Notification No.12/2017-CT(Rate), dated 28-6-2017 and corresponding Sl. No. 12 of Notification No.12/2017-ST(Rate) under Maharashtra Goods and Service Tax Act, 2017.

**Answer:-** Answered in the affirmative.



  
**RAJIV MAGOO**  
(MEMBER)

  
**T. R. RAMNANI**  
(MEMBER)

**Copy to:-**

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

**Note:-**An Appeal against this advance ruling order shall be made before, The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15<sup>th</sup> floor, Air India Building, Nariman Point, Mumbai – 400021. Online facility is available on [gst.gov.in](http://gst.gov.in) for online appeal application against order passed by Advance Ruling Authority.