

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

GSTIN Number, if any/ User-id		27AANFG4895L1ZJ
Legal Name of Applicant		M/s. GHODAWAT EDUSERVE LLP
Registered Address/Address provided while obtaining user id		GAT NO.584 KOLHAPUR SANGLI HIGHWAY ATIGRE Maharashtra KOLHAPUR 416101
Details of application		GST-ARA, Application No. 72 Dated 29.11.2019
Concerned officer		Division-II Kolhapur New, Range Range-II Jaysingpur, Commissionerate Kolhapur
Nature of activity(s) (proposed/present) in respect of which advance ruling sought		
A	Category	Service Provision
B	Description (in brief)	<p>Applicant provides commercial training and coaching service to students appearing for 11th & 12th standards desirous of appearing for IIT, etc specifically in science stream.</p> <p>It is providing hostel facility to the students on demand basis and charging them additionally. The service of hostel is optional and not coming in the form package.</p> <p>The hostel provides basic residential facilities which are required to stay & to study which include well-maintained furnished residence, Light, water, etc. and in consideration, hostel is charging a nominal lump-sum fee of Rs.34,000/- per year per student; which comes to Rs. 95/- (Approximately) per day. Other details are also covered under statement facts which is enclosed herewith under supporting document section.</p>
Issue/s on which advance ruling required		(ii) Applicability of a notification issued under the provisions of this Act
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 is 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. GHODAWAT EDUSERVE LLP**, the applicant, seeking an advance ruling in respect of the following questions.

1. *Whether the activity of providing the hostel on the rent to various students by applicant is exempt (where hostel fees charged per student per day is much less than Rs. 1000/-)?*
2. *If is it exempt it shall be claimed as exempted under Serial Number 12 or Serial Number 14 of Notification No. 12/2017- Central Tax (Rate) (as amended time to time) dated 28/06/2017 ?*

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. 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 are as under:-

- 2.1. *M/s Ghodawat Eduserve LLP, the applicant situated at Gat No.584, Kolhapur Sangli Highway, Atigre, Kolhapur is registered under the CGST Act, 2017 having GSTIN 27AANFG4895LZJ and provides commercial training and coaching service for students appearing for 11th and 12th standards who are desirous of appearing for IIT, etc., specifically in science stream.*
- 2.2 *Applicant is also providing hostel facility to the students on demand basis and charging them additionally. The service of hostel is optional and not coming in the form of package. The hostel provides basic residential facilities, required to stay and study which include well-maintained furnished residence, Light, water, etc. and in consideration, hostel is charges a nominal lump-sum fee of Rs. 34,000/- per year per student i.e. Rs. 95/- (Approx.) per day. The hostel is also available for the students learning in the schools nearby.*
- 2.3. *Under GST, exemptions for services are notified vide Notification No. 12/2017- Central Tax (Rate) dated 28/06/2017, as amended time to time. In the said notification in Serial*



Number 12 exemption is provided for "Services by way of renting of residential dwelling for use as residence".

2.4 However 'Residential Dwelling' is not defined in the Act and in exemption notification as well. Therefore, the meaning of expression 'residential dwelling' has to be understood in terms of the normal trade parlance. It means any residential accommodation, but does not include hotel, motel, inn, guest house, campsite, lodge, house boat, or like places meant for temporary stay.

2.5 In a Foreign Judgment, namely, in *Collins (AP) V. Uratemp Ventures Limited* [2012] 24 *taxmann.com* 134 (ECJ), it was held that -

'Dwelling' means a place where one lives, regarding and treating it as home. It is the place where he lives and to which he returns for sleep and which forms the Centre of his existence. Dwelling may be a house or part of a house and even a single room as a part of a house, may be a dwelling. However, the use a person makes of it when living there depends on his mode of life. Such a place does not cease to be a 'dwelling' merely because one takes all or some of one's meals out; or brings take-away food in to the exclusion of home cooking; or at times prepares some food for consumption on heating devices.

For example, rooms in colleges at the universities in which unmarried fellows live are dwelling house even if the fellows do not prepare their own meals or cook in their rooms. Such rooms may lack cooking facilities and, even, running water and the fellows eat in hall or bring meals from college kitchens, but, such rooms continue to be dwelling house. A bed-sitting room which a tenant occupies as his home may be a dwelling. A room can be regarded as "home" and, consequently, a dwelling house even if there is no bed therein, as the person may sleep in an armchair, or in blankets on the floor.

2.6 From the above interpretation of the court, it can be concluded that, any premises, which can be used as residence for stay, can be termed as residential dwelling and which may be for long term. A hostel is clearly fitting into the parameters of Residential Dwelling. In addition to this, the hostels are normally for longer stay say - a year.

2.7 The exemption given in Sr.No. 12, is similar to relaxation available in service tax regime as well. The exemption was introduced by the Government under GST, as it is, even without altering single word in the entry. The only difference is that, the relaxation from



Service Tax was given to the "services by way of renting of residential dwelling for used as residence" by including it into the negative list i.e. Clause (m) of Section 66D of Finance Act, 1994; whereas the said service is exempted under GST by issuing the notification under section 11 of CGST / SGST Act 2017.

2.8 Hence it can be concluded that the nature of residential accommodation expected under Sr. No.12 is long term accommodation other than the stay in lodging, hotels, etc. which are mainly meant for temporary or short term accommodation. Therefore, stay in hostel is covered by Sr.12 of Notification No. 12/2017 – C.T.(Rate) mentioned above and hence not liable for GST.

2.9 Under Sr. No.14 exemption of the same notification, exemption is available for Services by a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes, having value of supply of a unit of accommodation below one thousand rupees per day or equivalent. This exemption was also available under Service Tax regime as – "Services by hotel, inn, guest house, club, campsite by whatever name called, for residential or lodging purposes, having declared tariff of a unit of accommodation below rupees one thousand per day or equivalent".

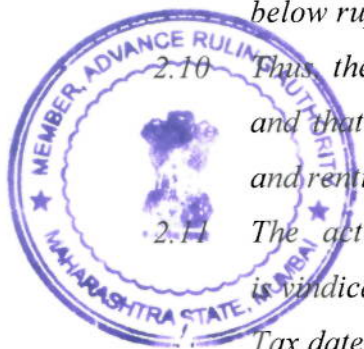
2.10 Thus, there is no difference in the exemption / relaxation given under Finance Act 1994 and that of exemption granted under GST, with respect to short term accommodation and renting of immovable property.

2.11 The activity of the applicant falls under renting for residential purpose which is vindicated by the express clarification issued by CBEC in Education Guide on Service Tax dated 20/06/2012 at para 4.13.3.v which is reproduced below:

Q. Furnished flats given on rent for such renting as residential dwelling for the temporary stay (a few days)

Clarification: such renting as residential dwelling for the temporary stay (a few days) **bonafide use of a person** or his family for a reasonable period shall be residential use; but if the same is given for a short stay for different persons over a period of time the same would be liable to tax (emphasis supplied)

2.12 Hence from the combined reading of the above exemptions / relaxation and various references under Finance Act 1994 it seems Serial Number 12 of Notification No.



12/2017- Central Tax (Rate) is applicable for the renting of immovable property in the instant case.

Statement containing the Applicant's interpretation of law and /or facts

2.13 From the above it seems Serial Number 12 of Notification No. 12/2017- Central Tax (Rate) is applicable for the renting of immovable property in the instant case. Therefore the activity by way of providing hostel facility is eligible for exemption under entry No.12 of Notification No. 12/2017- Central Tax (Rate) which is produced as below

SI No	Chapter, Section or Heading	Description of Service	Rate %	Condition
12	Heading 9963 or Heading 9972	Services by way of renting of residential dwelling for use as residence.	NIL	NIL

2.14 In the Advance Rulings referred above, reliance has been placed on clarification issued by the CBEC vide Circular No.32/06/2018 GST dated 12.02.2018.

2.15 In the above said clarification, CBEC has considered both hostel and hotel are one and the same and accordingly concluded that the exemption under Sr. No.14 of Notification No. 12/2017-C.T. (Rate) dated 28.06.2017 is also available to hostels.

APPLICANT SUBMISSION DATED 19.08.2021:-

2.16 The term 'residential dwelling' is not defined in CGST Act, 2017. So, the dictionary meaning of the same is referred to. As per the Oxford dictionary: 'A house or an apartment or other places of residence or a place to live in or building or other places to live in'. As per Webster dictionary: 'A shelter (as a house) in which people live'. As per Black's Law Dictionary: 'Residential dwelling means living in a certain place permanently or for a considerable length of time'

2.17 The term 'residence' is also not defined in CGST Act, 2017 which talks about "usual place of residence" under clause 113 of Section 2, which says : in case of an individual, the place where he ordinarily resides. Further, as per the Oxford dictionary: residence is 'The state of living in a particular place'. As per Webster dictionary: residence means:

The act or fact of living or regularly staying at or in some place for the discharge of a duty or the enjoyment of a benefit.

2.18 *On analyzing the exemption entry in line with the above various meanings, it appears that residential dwelling could be said to be used as a residence if the accommodation is rented for use as a living space and for a substantial period of time or not an inconsiderable period of time. Also it does not cover hotel, motel, inn, guest house, campsite, lodge, House-boat or like places meant for temporary stay.*

2.19 *Applicant feels that if the residential structure is used for the purpose of staying or living then the aforesaid exemption could be applicable. In the subject application, the Hostel room which is usually allotted on sharing basis to 3 students is for a period of academic year which is usually more than 3 months and hence, satisfies by and large the criteria of substantial or ample period of time. Also the rooms in hostel are let out to the students for residential purpose only and in normal course of action in all of the cases it is actually used by students for residence only. So in our case the requirements of this exemption entry are fully satisfied.*

2.20 *Rather the other conflicting Entry i.e. Entry No 14 (discussed below separately) of the said Notification may cover residual cases of Residential Dwellings (in addition to short term accommodations such as Hotels, inn, Guest Houses etc.) such as let out for a short period of time such as Home Stay etc. or house given on rent as a hotel or a lodge if the declared tariff of a room is less than Rs.1000/- further declared tariff is replaced with the value of supply w.e.f. 27.07.2018 as per Notification No.14/2018-C.Tax (Rate) dated 26.07.2018.*

2.21 *Exemption under Sr. No.14 is available for services provided by a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purpose, having value of supply of a unit of accommodation below Rs.1000/- per day or equivalent. This exemption was also available under erstwhile Service Tax vide Sr. No.18 of Not. No.25/2012-S.T. dated 20.06.2012.*

2.22 *Now with reference to certain judicial pronouncements we would like to further assess this applicability in support of our say as follows:*



1. GST AAR West Bengal in the case of Borbheta Estate Pvt Ltd.(13/WBAAR/2019-20)

The applicant was renting dwelling units for residential purpose and one unit was allotted to M/s Larsen & Turbo Ltd. The dwelling unit rented to M/s Larsen & Turbo was a flat in the housing complex named South City. It was held that, the Applicant's service was classifiable as rental or leasing service involving own/leased residential property. "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". Whereas in a contradictory pronouncement of AAR Karnataka, which was further affirmed by AAAR Karnataka, in case of Sri. Taghar Vasudeva Ambrish the letting out of premises to lessee to be further sub leased out for the purpose of residential use was not considered as eligibility under the said notification and considered to be a commercial use by the lessee. In the subject case the supply of services is directly used for residence purpose by the students and not for sub leasing or any other purpose and hence qualifies for exemption the Entry Number 12.

2. GST AAR Chattisgarh in case of Kamal Kishor Agarwal Ramnath Bhimsen Charitable Trust (STC/AAR/11/2018 dated 2nd March, 2019)

It was held that the activity of providing accommodation service by the applicant in their hostel for which the applicant was collecting an amount below the threshold limit of Rs.1000/- per day, it merits exemption as stipulated under Not.No.12/2017-C.T. (Rate) – dated 28.06.2017 under Sr. No.14 Chapter 9963 – qualifies Nil rate of tax exempted supply)

3. GST AAR Maharashtra in case of Students Welfare Association (GST-ARA-55/2018-19/B-170 dated 9th Dec., 2018)

AAR responded affirmatively to following question raised by Applicant: -

Q. Whether the supply of residential or lodging services @Rs.22, 250/- per annum covered by Sr. No.14 of Not. No.12/2017-C.T. (Rate)".

- 2.23 CBEC has considered both hostel and hotel are one and the same and accordingly concluded that the exemption under Sr. No.14 of Notification No.12/2017-C.T. (Rate) dated 28.06.2017 is also available to hostels CBEC vide Circular No.32/06/2018-GST dated 12th February, 2018.

2.24 Considering the discussions herein above, the applicant observes that there is no difference in the exemption/relaxation given under Finance Act, 1994 vis-à-vis exemption granted under GST Notification with respect to service by way of renting of residential dwelling used for residence and short terms accommodation. Also as discussed at length above, both the conditions to get covered under the Entry Number 12 viz. Residential Dwelling & Used for residential purpose are getting satisfied in subject case.

2.25 Further the general view of CBEC and few of the AAR pronouncements to treat the exemption under Entry Number 14 of Hotels, Inns, Guest houses applicable to Hostel sounds little absurd as there is basic difference in the arrangements of stay in a hostel/ hotel such as followings:

1. Hostels are hired out for inmates for longer periods of stay comparable to use as residence whereas Hotels/ Guest Houses are usually for shorter duration of few days.
2. Another distinction between Hostel & Hotels/ Inns/ Guest Houses may be the former is prominent in nature of permanence whereas the latter lacks an element of relative permanence.
3. The daily Rent based Tax rates/ exemption prescribed under GST is amply indicative of the nature of levy linked to day rents and one can easily infer from the above that the tariff does not envisage reducing monthly/ Yearly rentals to daily rates artificially for rate comparison to fix taxability of such service charged on monthly/ yearly basis that too for residential purpose
4. Another indication is that in the cases of Hostels, as the stay may be for the year etc., the inmates staying there can afford to even furnish their address of stay to the local/ Civic/Transport/Bank authorities for obtaining certificates/ opening of bank account/Cell phone Sim cards etc, which is not the case for Hotels/ Lodging etc.

2.26 So, conclusively categorizing Hostel & Hotels/ Inns/ Guest Houses etc. in the same bucket of exemption would be little absurd when categorically there is a specific exemption provided for the purpose of residential use for a relatively longer duration of stay.

The principle of Strict Interpretation applies only to general exemption notifications. There are other exemption notifications, with a beneficent objective in mind. Such exemptions would require to be interpreted differently, and in a liberal manner by the



Revenue since the purpose / intention behind such exemptions is not to exempt from the levy of tax on any legal basis, but to incentivize the subject/assessee as a policy measure. In a welcome relief, the Hon'ble Supreme Court in its latest ruling in **Mother Superior Adoration Convent [2021 SCC Online SC 151]** at paragraphs 23, 24, and 25 has addressed this plight of the assessee and made a distinction between interpretation of an exemption of general nature vis-à-vis exemption having a beneficial purpose.

The short question that arose for consideration before the Hon'ble Supreme Court in Mother Superior was whether residential accommodation for nuns and students' hostels attached to educational institutions are eligible for the exemption from building tax under Section 3(1)(b) of Kerala Building Tax Act, 1975 or not. Section 3(1)(b) of the Kerala Building Tax Act, 1975 granted exemption from building tax to buildings that are used principally for religious, charitable or educational purposes or as factories or workshops.

Revenue relied on strict interpretation to the exemption notification which favours them in case of a doubt / ambiguity referring to the earlier Supreme Court decisions (**Wood Paper Ltd case[(1990) 4 SCC 256]**, **Star Industries case[(2016) 2 SCC 362]**) and **Larger bench decision in Dilip Kumar and Co.[2018 (361) ELT 577 (SC)]**

Whereas, Assessee countered with distinction between interpretation of a beneficial exemption notification vis-à-vis general exemption notification, which provides for a liberal and purposive interpretation to achieve the beneficial purpose behind such exemption.

- 2.27 Hence to sum up we are of the opinion that the Entry No 12 of NN 12/2017 dated 28/06/2017 "**Services by way of renting of residential dwelling for use as residence**" amended from time to time is applicable in the present case of the applicant as it satisfied all the prerequisite based on the facts of the case.

03. CONTENTION – AS PER THE CONCERNED OFFICER:

OFFICER's SUBMISSION DATED 20.08.2021:-

- 3.1 The taxpayer is providing hostel facility to the students on demand basis and charging them Rs.34, 000/- per annum in addition to their coaching fees. The hostels are exclusively meant for temporary residence for students during the time period of training

and coaching only. The tax payer is also providing hostel facility to the students who are not their own institutional students.

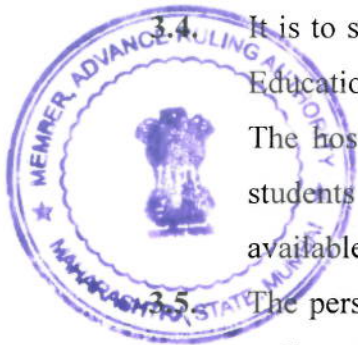
3.2. The term “Residential Dwelling” is not defined anywhere in the law. However, in normal case “Residential Dwelling” means a house given on rent to a person or a family, consisting of Kitchen, Bathroom, Toilet, Rooms and other amenities required for day-to-day living purpose under agreement. Similarly, Hostel is also not defined anywhere in the law, but, hostel and hostel rooms means a building owned by a private or Educational Institution built in a such way that one room may be acquired by one or two students who are attached to the educational institute. These rooms do not have amenities and no families of students are allowed to live in the rooms. A hostel room has amenities like a bed, table, cupboard, chair etc.

3.3. The tax payer is claiming that the said services are exempted under Sr.No.12 of the Notification No.12/2017-Central Tax (Rate) dated 28.06.2017. The tax payer is drawing comparison between hostel facility provided to students and renting of residential dwelling for use as residence which is exempted under said notification.

3.4. It is to submit that the hostel facility is attached to/is part and parcel of the Commercial Educational Institute run by the tax payer for which the GST Registration is obtained. The hostel facility though optional as stated by the tax payer is available only to the students who have enrolled in the Institute and not a general residential facility made available to general public as in case of renting of residential premises.

3.5. The persons occupying the hostel accommodation are primarily students of the institute and not the tenants as in case of rent agreements. Privileges and rights of tenants are not available to students. In hostel rooms, only students can stay and not their families as in case of residential dwelling. Once a person ceases to be the student, he has to vacate the hostel room and cannot renew his stay even on payment. So, the exemption available to renting of residential premises for residence cannot be made available to Hostel Accommodation and the Hostel Service provided by the taxpayer is taxable under the provisions of Central GST Act, 2017.

3.6. The Appellate Authority of Advance Ruling (AAAR) in its judgment reported in 2019(24) GSTL 496(AAR-GST) and 2019(24) GSTL 109 (AAR-GST) has decided similar case, where the party was trying to classify the hostel room in the activities of



charitable trust, and held that supply of hostel services for a nominal lump-sum amount of Rs.6,000/- to Rs.7,000/- per month along with ancillary services such as food and parking without any additional costs is not covered under the definition of charitable activities in terms of para2(r) of the Notification No.12/2017-Central Tax (Rate) as per CBIC Circular No.32/06/2018-GST dated 12.02.2018. These case laws are squarely applicable in the present case as the applicant is also trying to define the hostel room as residential dwelling. Therefore, the benefit of Notification No.12/2017-Central Tax (Rate) dated 28.06.2017 is not available to the tax payer M/s.Ghodawat Eduservice LLP.

04 HEARING

- 4.1 Preliminary hearing in the matter was held on 22.01.2019. Sh. Gangadhar Haldikar, CA, Shri. Ramkrushna Lingsur, CA and Shri. Shyamsundar Ramati, Advocate appeared, and requested for admission of the application. The Jurisdictional Officer was absent.
- 4.2 The application was admitted and hence the applicant was called for final e-hearing on 20.08.2021. The Authorized representatives of the applicant, Shri. Girish Kulkarni, CA was present. The Jurisdictional officers Shri. Prakash Patil, Smt. Narekar, Shri. Mahesh Nalkar, Superintendents Division-2, Kolhapur were present. The Authorized representatives made oral and written submissions in this matter. We have heard both the sides.

05. OBSERVATIONS AND FINDINGS:

- 5.1 We have perused the records on file and gone through the facts of the case and submissions made by both, the applicant as well as the department. The subject matter is related to interpretation of the Notification entry and the whether the subject activity carried out is exempt or not.
- 5.2 Applicant is providing commercial training and coaching service to students appearing for 11th and 12th standards desirous of appearing for IIT, etc. Applicant provides hostel facility to such students on demand basis and charges them additionally. The service of hostel is optional and is not in the form of a package.
- 5.3 The hostel provides residential facilities which include, well-maintained furnished residence, Light, water, etc. and in consideration, the hostel is charging a nominal lump-

sum fee of Rs. 34,000/- per year per student, which comes to Rs.95/ (Approximately) per day. The hostel is also available for the students of the nearby schools.

5.4 Applicant has submitted that the exemption is available for their services under Sr. No. 12 of Notification No. 12/2017- C.T.(Rate) dated 28.06.2017, as amended from time to time, wherein, exemption is provided for "Services by way of renting of residential dwelling for use as residence". The term, 'Residential Dwelling' is neither defined in the Act nor defined in the exemption notification. Therefore, the meaning of expression 'residential dwelling' has to be understood in terms of the normal trade parlance. In normal trade parlance, 'residential dwelling' means, any residential accommodation, but does not include hotel, motel, inn, guest house, campsite, lodge, house boat, or like places meant for temporary stay.

5.5 Further, as per the applicant, Exemption is available under Sr. No. 14 of Notification No. 12/2017- C.T. (Rate) dated 28/06/2017 (hereinafter referred to, as the said notification) as amended, for Services by a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes, having value of supply of a unit of accommodation **below one thousand rupees per day or equivalent.**

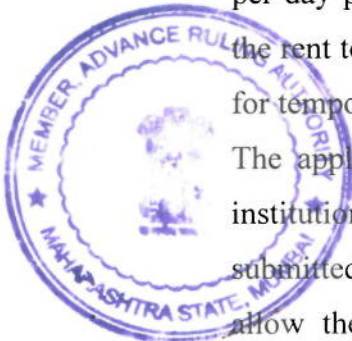
5.6 It is, therefore, necessary to examine the relevant entries at the Sr.No. 12 and Sr No. 14 of the said Notification dated 28.6.2017 to understand as to how the said entries will be applicable to the impugned activity undertaken by the applicant. The relevant parts of the said Notification are reproduced as under:-

Sr. No .	Chapter, Section, Heading, Group of Service code (Tariff)	Description of Services	Rate %	Condition
1	Chapter 99			
12	Heading 9963 or Heading 9972	Services by way of renting of residential dwelling for use as residence.	Nil	Nil
14	Heading 9963	Services by a hotel, inn, guest house, club or campsite, <u>by whatever name called</u> , for residential or lodging purposes, having declared tariff of a unit of accommodation below one thousand rupees per day or equivalent.	Nil	Nil

5.7 As per the applicant, hostel accommodation provided to the students is covered within the meaning of 'residential dwelling' and is exempted under Sl. No. 12 of the said notification. We find that the Entry at Sr. No. 12 is related to services by way of renting of 'residential dwelling for use as residence'. It is observed that the term "residential dwelling" is not defined under the GST Act. But in common parlance it is to be called as '*A house or an apartment or other places of residence or a place to live in or building or other places to live in*'.

The jurisdictional officer has contented that, "*Residential Dwelling*" means a house given on rent to a person or a family, consisting of Kitchen, Bathroom, Toilet, Rooms and other amenities required for day-to-day living purpose under agreement. Similarly, Hostel is also not defined anywhere in the law, but, hostel and hostel rooms means a building owned by a private or Educational Institution built in a such way that one room may be acquired by one or two students who are attached to the educational institute.

5.8 We find from the submissions that, the applicant is providing hostel facility to the students on demand basis and charging them Rs. 34,000/- per annum (Rs. 95/-(approx.) per day per room), in addition to coaching fees. The activity of providing the hostel on the rent to various students is covered under 'services'. The hostels are exclusively meant for temporary residence for students during the time period of training and coaching only. The applicant is also providing hostel facility to the students who are not their own institutional students i.e. to the students of the schools nearby. The Applicant has submitted that kitchen facility is not provided in the allotted room and the students cannot allow their parents/guests to stay along with them. The students are staying on a temporary basis and they have not made any type of kitchen in their rooms. Food facility is provided from the mess, to the students by the applicant. No permission is granted by the applicant to allow any guests to stay along with the students. Considering the scenario and the facts of the case, we don't find that the criteria for residential dwelling under the common parlance test are satisfied. In the case of residential dwelling, generally there is no restriction regarding the stay of the family members or guest or individuals. They can prepare their own food in their own kitchen in the rooms/flats taken on rent, the food is not provided by the owner of the premises. Further, in such cases of residential dwelling



there is no embargo in respect of visits and stay by friends, relatives, etc. The period of stay in residential dwelling is specified in the agreement.

5.9 In the present case, the Hostel room which is usually allotted on sharing basis to 3 students is for a period which is usually more than 3 months. The rooms in hostel are let out to the students for residential and study purpose only, that too during the training and coaching periods. These are the basic differences between a residential dwelling and a Hostel. Hence, applicant's contention that the subject activity is covered under entry No.12 of the said notification is not acceptable. Therefore, the subject activity of the applicant is not covered under 'Residential Dwelling' and hence, the relevant entry Sr. No. 12 of the said notification is not applicable in present case.

5.10 The applicant has relied on a few decisions/case laws as mentioned in their application. The facts in said cited case laws referred to, by the applicant are different than the facts of the present case. However, a similar issue has been decided by the Maharashtra Advance Ruling authority in the case of M/s. Student Welfare Association, Pune in which it was held that provision of residential facility in hostel on rental basis to the students is exempted under Entry Sr. No. 14 of Notification No. 12/2017 mentioned above, if the amounts recovered from the student below Rs.1000/- per student per day. In the subject case as per the submissions made, the amounts recovered from the students per day is less than Rs. 1000/-.

5.11 To decide the present issue, we also make reference to the clarification issued by the Tax Research Unit vide Circular No. 32/06/2018-GST dated 12th February 2018, the relevant part of which is reproduced as under:-

Sr. No.	Issue Clarification	Clarification
1.	Is hostel accommodation provided by Trusts to students covered within the definition of Charitable Activities and thus, exempt under Sl. No. 1 of notification No. 12/2017-CT (Rate).	Hostel accommodation services do not fall within the ambit of charitable activities as defined in para 2(r) of notification No. 12/2017-CT (Rate). However, 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 are exempt. Thus, accommodation service in hostels including by Trusts having declared tariff below one thousand rupees per day is exempt. [Sl. No. 14 of notification No. 12/2017-CT(Rate) refers]

- 5.12 In view of the above mentioned clarification, we are of the opinion that, the hostel accommodation provided by applicant to students is not covered by exemption Notification Entry No.12 of Notification No. 12/2017-CT (Rate).
- 5.13 Further, we may refer to entry Sr. No. 14 of the said Notification No. 12/2017 to ascertain the treatment in respect of use of hostel rooms given for residential purposes. The relevant portion of Sr. No. 14 of Notification No. 12/2017 is as under:-

Sr. No.	Chapter, Section, Heading, Group or Service Code (Tariff) Description	Description of	Rate (per cent.)	Services Condition
(1)	(2)	(3)	(4)	(5)
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

- 5.14 From the scrutiny of above exemption entry no. 14, we find that the description of service is user based, meaning that, if the accommodation is used for residential or lodging purpose then it is immaterial who the user is. The said entry mentions "Services by a hotel, inn, guest house, club or campsite, by **whatever name called**, for residential or lodging purposes". The word 'hostel' not being specifically mentioned implies that the same would be covered under the term '**Whatever name called**'. The services provided by such hostel, for residential and lodging purposes would be covered by the scope of notification entry where the declared tariff of a unit of an accommodation is below one thousand rupees per day. Therefore, the scope of the entry is restricted to use of the accommodation unit for residential and lodging purpose only.

5.15 The contention of Jurisdictional Officer, stating that the subject activity is taxable is not acceptable. The applicant is providing hostel on the rent to various students where fees charged per student per day per room is much less than Rs. 1000/- per day per person. Therefore, considering the provisions of notification Entry No. 14, and clarification given by CBIC in circular No. 32/06/2018-GST dated 12th February 2018, it is held that, the applicant's activity is satisfying the conditions of Entry Sr.no. 14 of said Notification and hence would be exempt from taxes.

5.16 It is pertinent to mention at this juncture that, the applicant in both the oral and written submissions has stated that the hostel stay for the students is optional. Further, the applicant has also mentioned that the stay in hostel being optional to the students, the hostel fees are not included in the training/coaching fees collected from the students. In fact the hostel fees are not a part of any package concerning commercial training and coaching services rendered by the applicant. The decision is being made in this order taking into consideration the said submissions made by the applicant.

06. In view of the above discussions, 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- 72/2019-20/- /B-51

Mumbai, dt. 27.08.2021

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

Question 1. Whether the activity of providing the hostel on the rent to various students by applicant is exempt (where hostel fees charged per student per day is much less than Rs. 1000/-)?

Answer: - Answered in the affirmative.

Question 2. If is it exempt it shall be claimed as exempted under Serial Number 12 or Serial Number 14 of Notification No. 12/2017- Central Tax (Rate) (as amended time to time) dated 28/06/2017

Answer:- The present activity of the applicant is exempted under Serial Number 14 of Notification No. 12/2017- C.T. (Rate) dated 28/06/2017 as amended from time to time.



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. Joint Commissioner of State Tax, Mahavikas for Website.

Note:-An Appeal against this advance ruling order may be made before, The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India Building, Nariman Point, Mumbai – 400021. Online facility is available on gst.gov.in for filing online appeal against the present order.