

**SUMMARY OF IMPORTANT JUDICIAL PRONOUNCEMENTS
FROM THE CHAMBERS OF ADVOCATE ANKIT KANODIA**
REFERENCE NO- SKKA/109/2022

BASIC INFORMATION

IN THE MATTER OF	TAGHAR VASUDEVA AMBRISH
NAME OF Authority	IN THE HIGH COURT OF KARNATAKA
Petition/Appeal No.	W.P. No. 14891 of 2020
Link to	TS-39-HC(KAR)-2022-GST
Date of Order	15-02-2022
Relevant Section/Rule	Exemption from GST on renting of residential dwelling for use as residence- Scope

FACTS IN BRIEF

The petitioner is co-owner of a residential property in Bengaluru. He along with other co-owners have given the property to a company on lease. The lessee has further leased out the property as Hostel for providing accommodation to students and working professionals. After issuance of Notification No. 09/2017-Integrated tax (Rate) dated. 28th June' 2017 by the government, the petitioner filed an application before the Authority for Advance Ruling, Karnataka (AAR) in relation to exemption on lease of residential premises for use as hostel whereby the authority held that renting of residential dwelling for use as a hostel does not fall under Entry 13 of the Exemption Notification and exemption is available only if the residential dwelling is used as a residence by the the lessee itself. Against the order of AAR, petitioner filed an appeal before the Appellate Authority of Advance Ruling Karnataka (AAAR) which is dismissed by the the authority. In the aforesaid factual background, present writ petition has been filed before the High Court against the order of AAAR.

JUDGEMENT/ORDER OF THE AUTHORITY

The High Court held as :-

- Entry 13 contained in the exemption notification "is unambiguous and is clear". It provides exemption of IGST in respect of 'services by way of renting of residential dwelling by way of use as residence', but the expression 'residential dwelling' has not been defined. Further, as per education guide of CBIC dated 20.06.2012, residential dwelling means any residential accommodation and is different from hotel, Inn, guest house etc. which is meant for temporary stay and clarification is in the absence of anything to the contrary in the act, binds the respondent.
- **When word is not defined in the Act, it is permissible to refer to the dictionaries to find out the general sense in which the word is understood in common parlance and it cannot be held that the same does not include hostel used for residential purpose.**
- **The HC relied on the judgment of Hon'ble Supreme Court in Kishore Chandra Singh vs. Babu Ganesh Prasad Bhagat AIR 1954 SC 316 wherein, it was held that the expression residence only connotes that a person eats, drinks and sleeps at that place and not necessarily that the person should own it.**
- The notification does not require the lessee itself use the premises as residence. Therefore, benefit of exemption cannot be denied to the petitioner on the ground that lessee is not using the premises. Thereby, HC allowed the writ petition by setting aside the AAR/AAAR orders.

OUR COMMENTS

SL No. 12 of Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 provides an exemption for renting of residential dwelling to be used as residence. Prima facie, it appears that only a residential dwelling used as residence is exempted. But, scope of this exemption is wide. The word residential dwelling is not defined in law. In the above judgment Hon'ble HC has taken reference from Black Law Dictionary and Oxford Dictionary for ascertaining meaning of 'Residential Dwelling'. On analysing the exemption entry in line with meaning as per CBIC education guide and dictionary, it can be stated that a property is said to be a residential dwelling if it is rented for use as a living space and for a considerable period of time. The Exemption Notification does not require the lessee itself to use the premises as residence. Therefore, current judgment puts a remark that permanent residency is not necessary for availing benefit of this exemption and should be helpful in all such cases.