

Renting of Accomodation To Students

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INTRODUCTION

The Authority for Advance Ruling, Karnataka ('Authority') in its recent ruling in the case of *Taghar Vasudeva Ambrish*¹ has denied the exemption from goods and services tax ('GST') on letting out of affordable residential accommodation to students. In this article, we briefly refer to the factual background and the relevant provisions, and then make an attempt to critically analyze the ruling.

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OVERVIEW OF THE INDUSTRY ²



India is touted as one of the youngest nations in the world. A good chunk of its population is currently pursuing higher education. Given that gross enrollment ratio in India stands at abysmal 24.5 per cent and culturally there is significant stress on education for all, it is expected that number of students pursuing higher education will witness a consistent rise. For instance, student enrolments have increased from 32.3 million in 2013-14 to 36.64 million in 2017-18. It is expected that by 2030 nearly 140 million people will be in the college-going age group³.

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Despite the rise, the universities have been too slow in adding to their hostel intake when compared to the growth in student numbers. The hostel intake that universities offer is woefully inadequate - a little over 6.5 million hostel beds⁴. For a large majority of the country's student population, finding accommodation is often a daunting task. In the light of such background, student housing sector is witnessing significant interest from operators and investors. There are eleven major players⁵ operating majorly in Tier I⁶ and Tier II⁷ cities. More than US\$ 700 million has been committed to these players by investors, such as Warburg Pincus, Sequoia Capital, Goldman Sachs and HDFC³.

These players usually operate in 4 different business models, which are discussed as under³:

Model	Marketplace/aggregator model	Incentive model	Lease model	Ownership model
How it works	The operator acts as a marketplace for listing properties and the aggregator charges the landlord and tenant for every property closed. Asset light model and allows for rapid expansion.	The operator partners with the landlord and charges the landlord a fee for maintaining/standardizing the property basis the brand introduced at the site/location.	The operator acquires properties on long-term leases, refurbishes them and then a rental is charged from students on a per	This is the traditional ownership model wherein the operator owns the assets. These assets have been acquired or built by the operator.

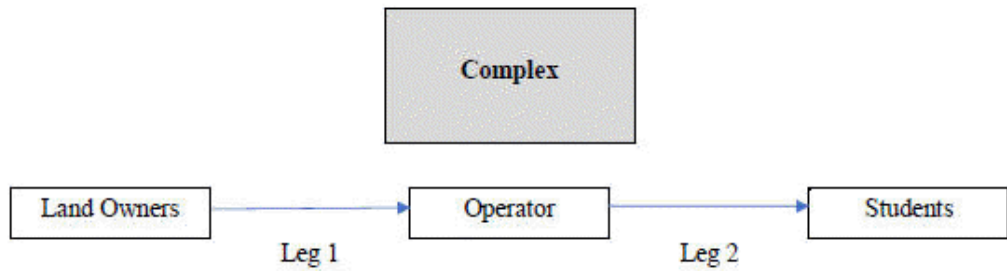
bed/lease basis. The model requires higher capital for asset creation and can mean slower pace of expansion.

Key operators	Nestaway and Studentacco	COHO and Stanza Living	Stanza Living, Your Space, Zolo, Renaissance Living, COHO and Oxford Caps	Flock Co-Living
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SUMMARY OF THE RULING

Factual background

The instant case is an example of the lease model discussed in preceding paragraphs. Herein, the applicant along with 4 others ('Land Owners') had leased out a complex to M/s D. Twelve Spaces Private Limited ('Operator'). The complex comprised of 42 rooms with attached bathrooms. The Operator was engaged in renting of such rooms to students on long term basis (3 to 11 months). Along with the accommodation, the Operator also provided a host of other services, such as maintenance, food and Wi-Fi. The transaction is diagrammatically represented as under:



Relevant provisions under GST law

Section 9 of the Central Goods and Services Tax Act, 2017 ('CGST Act') provides for the imposition of central tax on all intra-state supplies of goods and services. Section 7(1) defines the expression 'supply' to cover all forms of supply. In terms of Sub-section (1A), certain activities have been deemed to be either supply of goods or supply of services as delineated in Schedule II. Entry 5(a) of Schedule II deems renting of immovable property as a service.

Section 9 authorizes the Central Government to notify rates at which services will be exigible to GST. The Central Government in exercise of the aforesaid powers has issued Notification No. 11/2017-CentralTax dated June 28, 2017. The activity of renting of immovable property is covered under Group 99721 under Heading 9972, covering 'real estate services'.

Section 11 of the CGST Act authorizes the Central Government to notify services which will be exempt from GST. The Central Government in exercise of aforesaid powers has issued Notification No. 12/2017-CentralTax dated June 28, 2017 ('Notification 12/2017'). Entry 12 thereof covers "services by way of renting of residential dwelling for use as residence".

Observations of the Authority

In the instant case, the Operators were claiming the benefit of exemption from GST under Entry 12 on Leg 2. The Land Owners approached the Authority to determine the eligibility to claim exemption on grant of lease to Operator for stay of students on long term basis, i.e. Leg 1. The Authority whilst denying the benefit of exemption, passed following observations:

- The Landowners executed contract for grant of lease of complex with Operator. The complex consisted of 42 rooms with attached toilets. They are like hotel rooms, which do not qualify as residential dwelling; and
- The complex is not used by lessee for residence.

ANALYSING THE ELIGIBILITY OF EXEMPTION

It is pertinent to expound upon the exemption entry and test its qualification in the present facts.

The scope of exemption entry (Entry 12)

Entry 12 covers "services by way of renting of residential dwelling for use as residence". The aforesaid exemption entry can be fragmented into following parts:

- The nature of service must be that of renting ('Condition 1');
- The immovable property must qualify as residential dwelling ('Condition 2'); and
- The residential dwelling must be rented out for use as residence ('Condition 3')

At this juncture, it is pertinent to test the satisfaction of each condition reproduced above.

Satisfaction of Condition 1

Condition 1 requires that nature of service must be that of renting. The term 'renting' is defined in Notification 12/2017⁸ in the most expansive manner, to cover allowing, permitting or granting access, entry, occupation, use or any such facility, wholly or partly, in an immovable property. It specifically covers grant of lease, whether the lessee enjoys possession or not.

In the present instance, Land Owners have granted lease of complex to the Operator. The Operator enjoys the lease by sub-leasing the rooms in complex to the students. The activity squarely falls within the ambit of 'renting' discussed above. Hence, Condition 1 stands duly satisfied in the present instance.

Satisfaction of Condition 2

Condition 2 requires that immovable property must qualify as a residential dwelling. The term 'residential dwelling' is combination of two expressions: 'residential' and 'dwelling'. While the term 'dwelling' is a noun, the term 'residential' is an adjective which qualifies the nature of 'dwelling'. The term 'dwelling' is a derivative of the expression 'dwell' (verb), referring to a place where one dwells. The definitions of term 'dwell' are reproduced as under:

- The *Cambridge Dictionary*⁹ defines the expression as 'to live in a place';

- The **Collins Dictionary**¹⁰ defines the expression as 'if you dwell somewhere, you live there';
- The **Oxford Dictionary**¹¹ defines the expression as 'to live somewhere'

The definitions of term 'dwelling' as obtained from various sources are as under:

- The **Cambridge Dictionary**¹² defines the expression as 'a place where people live';
- The **Collins Dictionary**¹³ defines the expression as 'a place where someone lives';
- The **Black's Law Dictionary**¹⁴ defines the expression as a house or other structure in which a person lives'; and
- 2014 Oklahoma Statute Title 21. Crimes and Punishments¹⁵ defines the expression as 'includes every house, trailer, vessel, apartment or other premises, any part of which has usually been occupied by a person lodging therein at night and any structure joined to and immediately connected with such house, trailer or apartment'

From the above, it is clear that the expression 'dwelling' refers to a place where one inhabits or lives. Such a place need not necessarily refer to a house. In the case of *US v. Castillo*¹⁶, it was held that a dwelling is any structure, including a tent or vessel, that is used for human habitation. The idea of living or habitation is central to theme of expression 'dwelling'. The mankind has dwelled in various structures: Starting from cave, igloos, hut to castles, flats, mansions, convents. In this list, it is pertinent to include houseboats, motor homes, tents, tree houses and even space stations. Owing to poverty, man has also dwelled on pavements and in unused sewer tunnels.

In the exemption entry, the term 'dwelling' is qualified by the term 'residential', which means designed for residence. In *Smt. Jeewanti Pandey v. Kishan Chandra Pandey*¹⁷, the Supreme Court held that 'residence' is more or less of a permanent character. The expression 'resides' means to make an abode for a considerable time; to dwell permanently or for a length of time; to have a settled abode for a time. It is the place where a person has fixed home or abode. Thus, a dwelling which designed in a manner that allows it to be used with some degree of permanence forms a 'residential dwelling'.

From the above, it can be discerned that while the mankind has dwelled in space station, cave, tents, unused sewer tunnels, they are not designed in a manner that allows them to be used with any degree of permanence. Objectively speaking, a super structure closed from all four sides, having a roof and providing separate space for bath and toilet is good enough to enable permanent stay. In fact, Maryland Public Safety Section 9-1001 defines the expression 'residential dwelling' as building or part of a building that provides living or sleeping facilities. It further includes hotel, motel, boarding house, lodging, dormitory.

In the instant case, the complex comprised of rooms with attached toilets. The rooms were designed in a manner that would allow the occupant to sleep, change clothes, take bath, have food *et al.* The occupant could indeed reside therein with permanence. The complex leased out by Land Owners in favour of Operator merely was agglomeration of 42 residential dwellings. A complex or 42 residential dwellings mean the same thing. The mere fact that complex leased comprised of 42 residential dwellings will not impact the nature of immovable property. Hence, Condition 2 stands duly satisfied in the present instance. In our humble opinion, the Authority erred in ruling that complex will not qualify as residential dwelling.

Satisfaction of Condition 3

Condition 3 requires that the residential dwelling must be rented out for use as residence. As noted above, the term 'residence' implies stay with a certain degree of permanence¹⁸.

The residence as a legal concept is dependent on intention of the person in respect of whom the question of residency has arisen. This intention is factual in nature and can be adjudged using following factors: (i) Purpose and period of stay; (ii) The extent to which occupant exposes himself to the environmental and economic conditions prevailing at the designated place; and (iii) Declaration of intent to the society.

While no single factor referred above is conclusive, all the factors cumulatively help in deciding the intent of occupant. In the present instance, the students sought to occupy the room. These rooms are more often than not occupied by the students for entire period of the course, say 3-4 years. The period is indeed commercially broken into 11 months to avoid registration¹⁹. The students having regard to the period of stay ensure that all facilities and amenities essential for their continuous stay are available with them at the room. The students also use the said address to open their bank accounts, obtain cell phone numbers etc. In fact, they go to their homes only during the course of holidays, with the intention to return back. This is in sharp contrast to an astronaut living in space station and tourists camping in forest who possess *animus revertendi*, i.e. the intention to return.

The only impediment that arises in satisfaction of Condition 3 is the fact that in present case it was the Land Owners who had approached the Authority with respect to claim for exemption on Leg 1. The Operator, i.e. the recipient lessee, did not use the complex for its own residence, but sub-leased the same to students to earn income. It is trite law that exemptions must be interpreted strictly. The person claiming exemption must satisfy that he strictly falls within the four corners of exemption entry.

In this regard, it is pertinent to note that the entry reads: 'renting of residential dwelling for use as residence'. The entry covers activity of renting of a residential dwelling. It merely stipulates that the purpose of renting must be that of its use as residence. However, the entry does not stipulate the person by whom such use should be made. Simply put, the entry does not restrict the use of immovable property only by the recipient. A contrary interpretation would require that the entry be read as: 'renting of residential dwelling for use as residence by the recipient of supply'.

In our opinion it is quite reasonable to expect that Central Government would not want to restrict the benefit of exemption only to instances when the premises are occupied by the recipient. The expression 'recipient' refers to a person who is liable to pay consideration for the services. There will often be cases where the recipient who is liable to pay the consideration does not occupy the premises; and, the premises are occupied by a relative of the recipient. Further, it is compliance difficult to ensure, that in each case exemption is availed only where the recipient occupies the premises. This justifies the Central Government's approach to provide a general exemption depending only upon the nature of activity and nature of premises, without providing any stipulation restricting it to occasions when recipient occupies the premises.

Keeping in view the above, it can be said that Condition 3 also stands duly satisfied in the present instance. Accordingly, Land Owners are duly entitled to exemption under Entry 12 of Notification 12/2017. In our humble opinion, the Authority erred in holding that rooms were not meant for use as residence.

CONCLUSION

The Operator will not be entitled to input tax credit of the tax paid to Land Owners on Leg 1, as it is engaged in exempted supply. Entire tax amount will become a cost for the Operators. The issue will have a far-reaching impact on the industry.

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- [1.](#) *Taghar Vasudeva Ambrish* [2020] 116 taxmann.com 373 (AAR - KARNATAKA) dated March 23, 2020.
- [2.](#) The Herald of a New Chapter: Student Accommodation in India, September 2019, Student Accommodation Provider Association of India and CBRE.
- [3.](#) Higher Education in India: Vision 2030, Ernst & Young.
- [4.](#) All India Survey on Higher Education, Ministry of Human Resource Development (2017-18).
- [5.](#) Studentacco, Nestaway, Oyo Life, Stanza Living, Zolo, Oxfordcaps, CoHo, Good Host Spaces, Your Space, Renaissance and Living Spaces.
- [6.](#) Delhi-NCR, Bangalore, Mumbai, Chennai, Hyderabad and Pune.
- [7.](#) Jaipur, Nagpur, Dehradun, Chandigarh, Jalandhar, Ahmedabad, Kota, Coimbatore, Indore and Vadodara.
- [8.](#) Refer Paragraph 2(zz) of Notification 12/2017.
- [9.](#) Cambridge Dictionary (accessible at <https://dictionary.cambridge.org/dictionary/english/dwell>).
- [10.](#) Collins Dictionary (accessible at <https://www.collinsdictionary.com/dictionary/english/dwell>).
- [11.](#) Oxford Dictionary (accessible at <https://www.oxfordlearnersdictionaries.com/definition/english/dwell?q=dwell>).
- [12.](#) Cambridge Dictionary (accessible at <https://dictionary.cambridge.org/dictionary/english/dwelling>).
- [13.](#) Collins Dictionary (accessible at <https://www.collinsdictionary.com/dictionary/english/dwelling>).
- [14.](#) Black's Law Dictionary, 1979 (Fifth Edition), page 454.
- [15.](#) 2014 Oklahoma Statute Title 21. Crimes and Punishments Section 1439.
- [16.](#) United States of America v. Castillo, as per Justice Edith Jones, United States Court of Appeals.
- [17.](#) Smt. Jeewanti Pandey v. Kishan Chandra Pandey, [1982] 1 SCR 1003.
- [18.](#) In contrast to Income-tax Act, 1961 wherein Section 6 stipulates the number of days for which an individual must be present in India for determining residential status, the GST law does not prescribe any such objective criteria.
- [19.](#) Refer Section 17(1)(d) of the Registration Act, 1908.