

KARNATAKA APPELLATE AUTHORITY FOR ADVANCE RULING
6TH FLOOR, VANIJYA THERIGE KARYALAYA, KALIDASA ROAD,
GANDHINAGAR, BANGALORE – 560009

(Constituted under section 99 of the Karnataka Goods and Services Tax Act, 2017 vide Government of Karnataka Order No FD 47 CSL 2017, Bangalore, Dated:25-04-2018)

BEFORE THE BENCH OF

SHRI. D.P.NAGENDRA KUMAR, MEMBER

SHRI. M.S.SRIKAR, MEMBER

ORDER NO.KAR/AAAR-14-H/2019-20

DATE:23-02-2020

Sl. No	Name and address of the appellant	M/s SRI DMS HOSPITALITY PRIVATE LIMITED, No 4, Bidadi Main Road, Opposite Sri Rama Temple, Bidadi, Ramanagar, Rural, Karnataka,562109.
1	GSTIN or User ID	29AAZCS4895D1ZE
2	Advance Ruling Order against which appeal is filed	KAR/ADRG 86/2019 Dated: 25th Sept 2019
3	Date of filing appeal	25-11-2019
4	Represented by	Shri. Koushal Chartered Accountant
5	Jurisdictional Authority- Centre	Principal Commissioner of Central Tax, Bangalore West Commissionerate.
6	Jurisdictional Authority- State	LGSTO 155, Ramnagaram
7	Whether payment of fees for filing appeal is discharged. If yes, the amount and challan details	Yes. CIN No SBIN19112900426834 dated 25.11.2019 for Rs 20,000/-

PROCEEDINGS

(Under Section 101 of the CGST Act, 2017 and the KGST Act, 2017)

1. At the outset we would like to make it clear that the provisions of CGST, Act 2017 and SGST, Act 2017 are in *pari materia* and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the KGST Act.

2. The present appeal has been filed under section 100 of the Central Goods and Service Tax Act 2017 and Karnataka Goods and Service Tax Act 2017 (herein after referred to as CGST Act, 2017 and SGST Act, 2017) by M/s SRI DMS HOSPITALITY PRIVATE LIMITED, No 4, Bidadi Main Road, Opposite Sri Rama Temple, Bidadi, Ramanagar, Rural, Karnataka, 562109 (herein after referred to as Appellant) against the advance Ruling No. KAR/ADRG 86/2019 dated: 25th Sept 2019.

Brief Facts of the case:

3. The Appellant is a company engaged in providing accommodation services and Rental or leasing services involving own or leased residential property. The Appellant has entered into an agreement with Dr Banraji B.H on 21-03-2018 for getting the building having two floors totally measuring 1023.00 Square meters at Plot Number 66-E, Phase II, Sector-II, KIADB, Shanamangala Village limit, Bidadi Industrial area, Bidadi, Ramanagara Taluk on a monthly rent of 2,35,000/- per month for a period of 3 years to be exclusively used for accommodation purpose.

4. Further the Appellant company has entered into an agreement with Sodexo Food Solutions India Private Limited dated 02-04-2018 for sub-letting 31 rooms at 1st and 2nd floor of the building at Plot Number 66-E, Phase II, Sector-II, KIADB, Shanamangala Village limit, Bidadi Industrial area, Bidadi, Ramanagara Taluk on a monthly rent of 5,25,000/-per month for residential accommodation of the staff and executives of Sodexo Food Solutions India Private Limited and also providing the following facilities as per the requirement of Sodexo Food Solutions:

- (i) Washrooms and toilets are common infrastructure required in the building,
- (ii) bunkers with lockers, partitions,
- (iii) water purifier with RO,
- (iv) Dining tables and chairs,
- (v) Security service for 24 hours, Maintenance work,
- (vi) television set with DTH connection,
- (vii) Water sump,
- (viii) OHT (2,000 Litres*3)

The Appellant raises an invoice to the Sodexo Food Solutions India Private Limited for Rs 5,25,000/- towards monthly rent with water and maintenance and also raises an invoice for Rs 1,22,893/- towards EMI per month for the additional facilities provided.

5. With the above background, the Appellant approached the Authority for Advance Ruling (AAR) seeking a ruling on the following question:

- i. *Classification of service provided by Sri DMS Hospitality Private Limited to Sodexo Food Solutions India Private Limited?*
- ii. *Classification of service provided by the Building owner to Sri DMS Hospitality Private Limited?*
- iii. *Applicability of GST Notification No. 12/2017-Central tax (Rate) dated 28th June 2017, "Services by way of renting of residential dwelling for use as residence" is exempt from GST?*
- iv. *Applicability of GST on EMI per month charged from Sodexo Food Solutions India Private Limited and security services provided by Sodexo Food Solutions India Private Limited?*

6. The AAR vide its order dated 25th September 2019 gave the following ruling:

- i. *The Classification of service provided by Sri DMS Hospitality Private Limited to Sodexo Food Solutions India Private Limited is covered under SAC 997212 and liable to tax under entry no. 16 of Notification No.11/2017 – Central Tax (Rate) dated 28.06.2017.*
- ii. *The Classification of service provided by the building owner to M/s Sri DMS Hospitality Private Limited is covered under SAC 997212 and hence liable to tax under entry no. 16 of Notification No.11/2017 – Central Tax (Rate) dated 28.06.2017.*
- iii. *The entry no.12 of Notification No.12/2017- Central Tax (Rate) dated 28.06.2017 – "services by way of renting of residential dwelling for use as residence" is not applicable to the present case on hand*
- iv. *The EMI charged on the goods supplied is an instalment for the goods transferred and is a supply of goods under clause 1(c) of Schedule II to the CGST Act and hence is liable to tax at the rate applicable to each of the goods supplied at the time of delivery of such goods. The security services provided is covered under SAC 998529 under entry 23(ii) of Notification No.11/2017- Central Tax (Rate) dated 28.06.2017 and is hence liable to tax at respective rates.*

7. Aggrieved by the said ruling, the appellant has filed this appeal on the following grounds.

7.1 The Appellant contends that GST is applicable only to premises used for accommodation services by Inns, guest house, lodging houses and exemption is provided in the case of renting of residential dwelling for use as residence, hence as per Notification No. 12/2017- Central Tax (Rate) dated 28th June 2017 as “Services by way of renting of residential dwelling for use as residence” is exempt from GST. They submitted that the term ‘dwelling’ is not defined in the GST law or notification. However, based on definitions under various dictionaries, the term ‘dwelling’ means a house, flat or other place of residence.

7.2. They submitted that typically accommodation in a guest house is for a shorter period and the landlord charges a tariff for each guest house and such charges are on a per day basis. Further, the landlord of the guest house also facilitates cooking and serving of food and housekeeping services similar to an Inn or a hotel accommodation. On the other hand, in the case of renting of residential dwelling, the landlord gives the residential flats on rent for a longer period like 2-3 yrs subject to an extension period. Further, the landlord does not provide supply of food and beverages or any housekeeping services. The landlord may provide beds, chairs, tables, etc as part of the amenities for some consideration which is included in the monthly rental value of the flats or may charge for it separately. In their case, they submitted that they have not provided a guest house for the staff of Sodexo Food Solutions India Pvt Ltd as the stay is not for a short period; that they have rented the flats for use as residence by the staff of Sodexo Food Solutions for which they charge a monthly rent as well charges for amenities and security services. They submit that they do not provide any food or beverage or housekeeping facilities; that the period of stay at the rented premises is not temporary and there is reasonable degree of permanence.

7.3. They submitted that they provide residential accommodation to approx. 600 staff of Sodexo Food Solutions on the ground, first and second floor of their building; that the staff are not temporary staff of Sodexo Food Solutions but would stay at the premises for more than a year; that the rent agreement is valid for a period of 36 months with a further extension of 11 months. In the event a staff of Sodexo Food Solutions leaves the organisation, he will vacate the premises and a new staff member will be allotted the flat. They submitted that as per the agreement entered into with Sodexo Food Solutions, the accommodation would be only for residential use of the staff of Sodexo and the latter shall not use the said premises for office, business seminars etc or for any commercial purposes. In view of the above, the Appellant contends that they are eligible for the exemption under Notification No 12/2017 CT (R) dated

28-06-2017 for renting of residential dwelling for use as residence. Further, they also submitted that they are also eligible for exemption on the monthly EMI charges collected from Sodexo Food Solutions India Private Limited for providing additional amenities and security services because the same has been used for residential dwelling purpose.

PERSONAL HEARING

8. The appellant was called for a personal hearing on 31st Jan 2020 but the same was postponed to 18th Feb 2020 on their request. The appellant was represented by Shri. Koushal, Chartered Accountant who reiterated the submissions made in the grounds of appeal.

DISCUSSIONS AND FINDINGS

9. We have gone through the records of the case and considered the submissions made by the Appellant in their grounds of appeal as well as at the time of personal hearing. The issue before us relates to two transactions viz. (i) renting of a two-floor building by the owner Dr Banraji B.H to the Appellant; and (ii) sub-letting of the same premises on rent by the Appellant to M/s Sodexo Food Solutions India Pvt Ltd. In both the above transactions we have been called upon to decide whether the same is an activity of renting of residential dwelling for use as residence which is exempted from GST by virtue of entry No 12 of Notification No 12/2017 CT (R) dated 28-06-2017.

10. Before we proceed further, we find that there has been a delay in filing the present appeal. The order of the Authority of Advance Ruling dated 25.09.2019 was admittedly received by the appellant on 26th September 2019. The appeal was filed before this Appellate Authority on 25th November 2019 after a period of 60 days from the date of receipt of the order of the lower Authority.

11. The provisions of Section 100(2) of the CGST Act mandates that an appeal should be filed within 30 days from the date of communication of the advance ruling order that is sought to be challenged. However, in terms of the proviso to Section 100(2) of the said Act, the Appellate Authority is empowered to allow the appeal to be presented within a further period

of 30 days if it is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the initial period of 30 days.

12. In the instant case, the appeal filed against the Advance Ruling order dated 25.09.2019 is evidently belated by 60 days. The appellant, however, has not explained the reason for the delay in filing the appeal. Be that as it may, in the interest of justice, and considering the fact that the delay is within the condonable powers of this Authority, we are inclined to suo moto condone the delay in filing this appeal and proceed with a decision on the merits of this case.

13. Coming to the main issue at hand, the Appellant has referred to the two agreements which were furnished by them to the lower Authority. One is the 'rent agreement' between the Appellant and Dr Banraji B.H, and the other is an agreement between the Appellant and Sodexo Food Solutions India Pvt Ltd. On perusal of both these agreements we observe that Shri. Banraji B.H as owner of the building at Plot Number 66-E, Phase II, Sector-II, KIADB, Shanamangala Village limit, Bidadi Industrial area, Bidadi, Ramanagara Taluk, has vide agreement dated 21-03-2018, given the said premises on rent to the Appellant for the purpose of accommodation. The Agreement between the owner and the Appellant merely indicates that the premises at Plot No 66-E measuring 106ft x 58ft is rented to the Appellant for a monthly rent of Rs 2,35,000/- for purpose of accommodation. The agreement has not indicated whether the premises which is let out is a single unit house, a multi-storied building having more than one house or an apartment complex. The type of building which is given on rent has not be indicated in this agreement between the owner and the Appellant. As rightly observed by the lower Authority, a rental agreement for residential dwelling will invariably make a mention of the type of dwelling, the number of rooms and the facilities available in the dwelling. An absence of this information in the agreement appears to indicate that the building which was rented out by the owner was not suitable for use as dwelling for residence. Further, it is also seen that the property at Plot No 66-E was allotted to the owner Shri. Banraji B.H by the Karnataka Industrial Development Board (KIADB) in August 2014. KIADB is a statutory body constituted for the development of industries in the industrial areas of Karnataka. Lands are allotted by the KIADB to entrepreneurs only after the proposals for the proposed utilization of the land for industrial projects is approved by the competent authority. Therefore, it can be justifiably inferred that the land was allotted to the owner for industrial purposes and not for residential purposes. Therefore, the building on this land allotted by KIADB cannot be construed as residential building and consequently

the building rented out by the owner to the Appellant was not a residential building. Therefore, we hold that the transaction between the owner Shri. Banraji B.H and the Appellants is not one of renting of residential dwelling for use as residence. This transaction is in the nature of renting of non-residential building and hence is liable to be taxed under Heading 997212 and chargeable to tax at 18% GST under entry Sl.No 16 of Notification No 11/2017 CT (R) dated 28-06-2017.

14. Coming to the agreement between the Appellant and M/s Sodexo Food Solutions Pvt Ltd, it is seen that the same is a licensee agreement dated 02-04-2014 wherein the building of 2 floors at Plot No 66-E has been sub leased to M/s Sodexo Food Solutions for a monthly license fee of Rs 5,25,000/-. The licensee agreement mentions the sub-leasing of flats for residential purposes. However, there is no mention of the number of flats sub-leased. The agreement only mentions the facilities which are provided by the Appellant to M/s Sodexo Food Solutions such as washrooms and toilets, bunkers with lockers, partitions, dining tables and chairs, water purifier, security services, etc. It is observed that the same non-residential premises which the Appellant took on rent from the owner has been sub-leased by the Appellant to M/s Sodexo Food Solutions for use by their employees. The Appellant has provided this non-residential building on monthly lease along with the facilities which were required by Sodexo Food Solutions. Since the premises rented out to the Appellant by the owner is a non-residential premise, the same continues to be non-residential when sub-leased by the Appellant. It is not of relevance whether the employees of Sodexo Food Solutions use the premises for residential purposes. What is important to determine the taxability of a supply is the nature of the supply made by the service provider. In this case, the Appellant as service provider is merely sub-leasing a non-residential premise to another entity. This activity of renting/leasing of property which is primarily non-residential is taxable under Heading 997212 and chargeable to tax at 18% GST under entry Sl.No 16 of Notification No 11/2017 CT (R) dated 28-06-2017.

15. As regards the taxability of the charges for the additional facilities provided by the Appellant to Sodexo Food Solutions, it is seen that in terms of the agreement, the Appellant charges an amount of Rs 1,22, 893/- towards the following facilities:

- (i) Washrooms and toilets are common infrastructure required in the building,
- (ii) bunkers with lockers, partitions,
- (iii) water purifier with RO,

- (iv) Dining tables and chairs,
- (v) Security service for 24 hours, Maintenance work,
- (vi) television set with DTH connection,
- (vii) Water sump,
- (viii) OHT (2000 Liters*3)

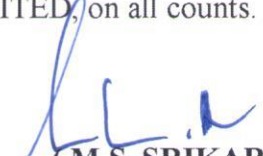
We agree with the lower Authority's finding that this amounts to supply of goods as per entry no.1(c) of Schedule II to the Central Goods and Services Tax Act which reads "any transfer of title in goods under an agreement which stipulates that property in goods shall pass at a future date upon payment of the full consideration as agreed, is a supply of goods". Accordingly, it is liable to tax at the rate applicable to each of the goods at the time the delivery of the goods is given to Sodexo Food Solutions India Pvt. Ltd. So also, the security services provided by the Appellant is liable to tax as applicable under SAC 998529 at 18% (CGST @ 9% + KGST @ 9%) under entry 23(ii) of Notification No.11/2017- Central Tax (Rate) dated 28.06.2017.

16. In view of the above discussion, we pass the following order

ORDER

We uphold the Advance Ruling No KAR/ADRG 86/2019 dated 25-09-2019 and dismiss the appeal filed by M/s SRI DMS HOSPITALITY PRIVATE LIMITED, on all counts.


(D.P.NAGENDRAKUMAR)
Member
Karnataka Appellate Authority
for Advance Ruling


(M.S. SRIKAR)
Member
Karnataka Appellate Authority
for Advance Ruling

To,

The Appellant

Copy to

1. The Member (Central), Advance Ruling Authority, Karnataka.
2. The Member (State), Advance Ruling Authority, Karnataka
3. The Principal Commissioner of Central Tax, Bangalore West Commissionerate
4. The Assistant Commissioner, LGSTO-155, Ramnagaram
5. Office folder