



**BEFORE THE AUTHORITY FOR ADVANCE RULING - ANDHRA PRADESH
Goods and Service Tax**

D. No. 5-56, Block-B, R.K. Spring Valley Apartments, Eedupugallu, Vijayawada-521151

Present:

1. Sri. D. Ramesh, Additional Commissioner of State Tax (Member)
2. Sri. M. Sreekanth, Joint Commissioner of Central Tax (Member)

AAR No. 12 /AP/GST/2020 dated:05-05-2020

1	Name and address of the applicant	M/s.Lakshmi Tulasi Quality Fuels Proprietrix:DUMPALA RAMA TULASI Sy No-73, Railway Station Road, Yreemukapalli, YSR District, Kadapa (Cuddapah) -516001, Andhra Pradesh.
2	GSTIN	37ALMPD5548B1Z7
3	Date of filing of Form GSTARA-01	31.12.2019
4	Date of Personal Hearing	05.02.2020
5	Represented by	M/s. Lakshmikumaran& Sridharan, Advocates
6	Jurisdictional Authority - Centre	Assistant Commissioner (State Tax) Kadapa-1 Circle.
7	Clause(s)ofsection97(2)of CGST/SGSTAct,2017underwhichthe question(s) raised	(b) Applicability of a notification issued under the provisions of this Act

ORDER

(under sub-section (4) of section 98 of Central Goods And Service Tax Act, 2017 and under sub- section (4) of Section 98 of Andhra Pradesh Goods and Services Tax Act, 2017)

1. The present application has been filed u/s 97 of the Central Goods & Services Tax Act, 2017 and AP Goods & Services Tax Act, 2017 (herein after referred to CGST Act and AP GST Act respectively) by M/s Lakshmi Tulasi Quality Fuels, (herein after referred to as applicant), registered under the Goods & Services Tax.



2. The provisions of the CGST Act and APGST Act are identical, except for certain provisions. Therefore, unless a specific mention of the dissimilar provision is made, a reference to the CGST Act would also mean a reference to the same provision under the APGST Act. Further, henceforth, for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST or AP GST Act would be mentioned as being under the GST Act.

3. Brief Facts of the case:

M/s. Lakshmi Tulasi Quality Fuels, (herein referred to as applicant), holding GSTIN: 37ALMPD5548B1Z7, having registered address at Sy.No.73, Railway Station Road, Yreemukapalli, YSR District, Kadapa (Cuddapah) Andhra Pradesh, 516001 are registered taxable person. The applicant is having Petrol bunk and engaged in supply of petroleum oils and lubricants. Further, the applicant is the absolute and sole owner of a building located at Plot No.67, Padmashree Gardens, Vattinagulapally, Rajendra Nagar, R.R.Nagar, Telengana. The applicant has entered into a lease agreement dt: 31-7-2019 with D-Twelve Spaces Private Limited (hereinafter referred to as 'Lessee') a company incorporated under the provisions of the Companies Act, 2013 which is inter alia engaged in the business of running, managing and operating the day to day affairs of residential premises and sub lease of such residential premises to individuals (including students) for the purpose of long stay accommodation. As per the terms of the Lease agreement, in consideration of grant of lease to use and possess the aforesaid property, the lessee is required to pay to the applicant a monthly rent of Rs.7,20,000/- and all operational costs such as electricity, telecom and water charges as per the actual meter reading or based on the invoice or the bill issued by the relevant authorities.

Further, as per the terms of the lease agreement, the lessee has the right to sub-lease the aforesaid property during the lease term to any third party with prior intimation to the applicant for the purpose of long stay accommodation.

4. Questions raised before the authority:

The applicant seeks advance ruling on whether she is eligible for the exemption from payment of GST on the monthly rentals received by her on lease of her residential building at Telangana to D-Twelve Spaces Private Limited, as per Sl.No.13 of the Notification No.9/2017 Dt:28-6-2017.

On Verification of basic information of the applicant, it is observed that the applicant falls under State jurisdiction, i.e. Assistant Commissioner (ST), Kadapa-I Circle, Kadapa Division. Accordingly, the application has been forwarded to the jurisdictional officers and a copy marked to the Central tax authorities to offer their remarks as per the Sec. 98(1) of CGST /APGST Act 2017.



In response, remarks are received from the jurisdictional officer concerned stating that there are no proceedings lying pending or passed relating to the applicant on the issue, for which the Advance Ruling sought by the applicant

5. Applicant's interpretation of law and facts:

The applicant's contention is that she is eligible for the exemption from payment of GST granted under Sl.No.13 of Exemption Notification, i.e. Notification No.9/2017 Dated 28-06-2017, the reference of which is extracted below:

Sl. No.	Chapter, Section, Heading, Group of Service Code (Tariff)	Description of Services	Rate (percent)	Condition
13	Heading 9963 or Heading 9972	Services by way of renting of residential dwelling for use as residence	Nil	Nil

The applicant claims that on perusal of the aforesaid Sl.No.13 of exemption notification, it can be deduced that the exemption would be applicable if the following conditions are cumulatively fulfilled:-

- The service in question should be by way of renting of residential dwelling.
- The residential dwelling should be for use as residence.

6. Record of Personal Hearing:

The authorized representatives of the applicant, Sri M/s. Lakshmikumaran & Sridharan, Advocates & Tax Consultant appeared for Personal Hearing on 05.02.2020 and reiterated the submission already made in the application.

7. Discussion and Findings:

We have examined the issues raised in the application i.e. eligibility for exemption from payment of GST on the monthly rentals received by her on lease of her residential building at Telangana to D-Twelve Spaces Private Limited as per exemption granted under Sl.No.13 of the Notification No.9/2017-Integrated Tax (Rate) dt:28-6-2017.

The applicant has presented the "Lease Deed" executed in between the applicant and M/s. Dtwelve Spaces Private Limited on 31-7-2019 as Exhibit - 2.



The applicant has let out her building located in Telangana on a monthly rental basis of Rs.7,20,000/- as per Clause 7 of the agreement. As per Clause 9, the lessee shall pay all operational costs to the lessor based on the invoice or the bill issued by the relevant authorities. As per Clause 13, the Lessee shall have the right to engage with third-party service providers for all activities required for the purpose including food catering, hospitality, security, cleanliness, event organization, transportation, management and supervision of the Total Property as deemed necessary by the Lessee for the Purpose.

As per Clause 15, the Lessee shall have the right to deploy branding strategies on the Total Property and use all entrances, exterior walls, areas and structures on the total property, at its own costs and expense, to put up nameplates, hoardings, flyers, boards and any other signage or advertisements (Signage) for this Purpose. As per Clause 8 of Annexure – E (Covenants) of the agreement, the lessor shall ensure that as and when the local municipality provides non-residential potable water connections for the leased premises, including but not limited to commercial, the lessor will procure the same, solely at its own cost and expenses. As per Clause 12, the lessee has the right to sub-lease the aforesaid property during the lease term to any third party with prior intimation to the applicant for the purpose of long stay accommodation. For this, the applicant presented sample sub-lease agreement as Exhibit – 3.

The Exhibit – 3 presented by the applicant is examined. It is a “Residents Enrollment Form” but not a sub-lease agreement as claimed by the applicant. Apart from the resident’s personal details, there are columns like Food preference, Optional Service Price etc., are being collected in the enrolment form. With regard to the “Rules and Regulations” attached to the Resident Enrollment Form, apart from others there are conditions like “Rents will be calculated according to your rent ledger”, “Premium dishes will be limit” etc.

Further, it is examined from the agreement between the Lessor and Lessee (Exhibit-2), there are 73 rooms in the building with all amenities like exhaust fans, geysers, lights and fittings, curtain rods, sanitary fittings, curtain rods etc., provided by the Lessor.

Reading the lease agreement (Exhibit-2) and “Residents Enrolment Form” (Exhibit-3) together and also taking note of the various observations made above, it appears that apart from renting of the rooms, the inmates are also being provided with food and hospitality services. As verified from the records, the lessee is a registered Taxable Person.

Though the applicant claims that she has rented out residential dwelling for use as residence, it appears that the premise is a non-residential property. Considering the number of rooms and amenities provided in it, boarding and hospitality services extended to the inmates and all the clauses of the agreements discussed above, it appears that the building was constructed for the purpose of running a lodge house. It is clear that the lessee is engaged in commercial activity of renting of rooms in the dwelling and providing boarding and hospitality services to the inmates.



Therefore, it is clear that the lessor has rented out her dwelling for commercial activity, and supply of such services, in the facts and circumstances of the case, are classifiable as "Rental or leasing services involving own or leased non-residential property" under Service Code (Tariff) 997212. It is taxable in the hands of the lessor and is liable for IGST at the rate of 18 percent.

RULING

Query: Whether the applicant is eligible for the exemption from payment of GST on the monthly rentals received by her on lease of her residential building at Telangana to D-Twelve Spaces Private Limited, as per Sl.No.13 of the Notification No.9/2017 Dated 28-6-2017.

Answer: 1) The classification of service provided by M/s. Lakshmi Tulasi Quality Fuels, is covered under SAC 997212 and hence under entry no.16 of Notification No.8/2017 (Integrated Tax)(Rate), Dt:28-6-2017, liable to IGST @ 18%.

2) The entry No.13 of Notification No.9/2017 (Integrated Tax) (Rate) Dated 28-6-2017 – "services by way of renting of residential dwelling for use as residence" is not applicable to the present case on hand.

Sd/- D.RAMESH
(MEMBER)

Sd/-M. SREEKANTH
(MEMBER)

//t.c.f.b.o//


Assistant Commissioner (ST)
Assistant Commissioner (State Tax)
O/o. Chief Commissioner of State Tax,
Andhra Pradesh, Vijayawada.

TO

1) M/s. Lakshmi Tulasi Quality Fuels, Proprietrix: DUMPALA RAMA TULASI
Sy No-73, Railway Station Road, Yreemukapalli, YSR District, Kadapa (Cuddapah) -
516001, Andhra Pradesh. **(By Registered Post).**

2) M/s. Lakshmi Tulasi Quality Fuels, Flat # 402, Padmaja Residency, Cooperative
Colony, Kadapa-516001. **(By Registered Post).**



Copy to

1. The Assistant Commissioner of State Tax, Kadapa-I Circle, Kadapa Division.
(By Registered Post)

2. The Superintendent, Central Tax Kadapa Range, CGST Kadapa Division.
(By Registered Post)

Copy submitted to

1. The Chief Commissioner (State Tax), O/o Chief Commissioner of State Tax,
Eedupugallu, Vijayawada, (A.P)

2. The Chief Commissioner (Central Tax), O/o Chief Commissioner of Central tax
& Customs, Visakhapatnam Zone, GST Bhavan, Port area, Visakhapatnam-
530035. **(By Registered Post)**

Note: Under Section 100 of the APGST Act 2017, an appeal against this ruling lies before the Appellate Authority for Advance Ruling constituted under Section 99 of APGST Act, 2017, with in a period of 30 days from the date of service of this order.

