2025 INSC 1380

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7846 OF 2023

THE STATE OF KARNATAKA & ANR. ...APPELLANT(S)

VERSUS

TAGHAR VASUDEVA AMBRISH & ANR. ...RESPONDENT(S)

WITH

CIVIL APPEAL NO. 7847 OF 2023

J U D G M E N T

J.B. PARDIWALA, J. :

1. Since the issues raised in both the captioned appeals are the same and the challenge is also to the self-same judgment and order passed by the High Court of Karnataka, those were taken up for hearing analogously and are being disposed of by this common judgment and order.

2. These appeals arise from the judgment and order passed by the High Cout of Karnataka dated 07.02.2022 in Writ Petition No. 14891 of 2020 by which the writ petition filed by respondent No. 1 herein (original petitioner) was allowed thereby setting aside the order dated 31.08.2020 passed by the Appellate Authority for Advance Ruling, Karnataka (for short, "the AAAR"). The AAAR in its ruling had declared while affirming

the ruling of the Authority for Advance Ruling, Karnataka (for short, "the AAR") that the services provided by the respondent No. 1 herein (original petitioner) in the form of leasing of residential premises as hostel to students and working professionals does not fall within the ambit of Entry 13 of the Notification No. 9/2017- Integrated Tax (Rate) dated 28.06.2017. In other words, the respondent No. 1 herein would not be entitled to the exemption on services viz. renting of residential dwelling for use as a residence under Entry 13 of the Notification No. 9/2017 dated 28.06.2017.

FACTUAL MATRIX

3. The facts giving rise to these appeals may be summarised as under.

4. The respondent No. 1 before us is the co-owner of a residential property situated in Bangalore. The property consists of 42 rooms. It is a four storied building with terrace and common area. On 21.06.2019 the respondent No. 1 along with other the co-owners executed a lease deed in favour of M/s DTwelve Spaces Private Limited (fort short, "the lessee"). The lessee in turn leased out the residential property as hostel to provide long term accommodation to students and working professionals with the duration of stay ranging from 3 months to 12 months.

5. The Central Government by way of Notification No.9/2017-Integrated Tax (Rate) dated 28.06.2017 (hereinafter referred to as "the Exemption Notification") has granted exemption from payment of goods

and services tax in respect of services which includes renting services which are provided with respect to residential dwelling for use as residence.

6. The respondent No. 1 herein (original petitioner) with a view to seek clarification with regard to his eligibility to claim exemption on the rent received by him from the lessee by letting the property preferred an Advance Ruling application in the prescribed Form under Section 97 of the Integrated Goods and Services Tax Act, 2017 (for short, "the Act") before the AAR. The AAR vide its ruling dated 23.03.2020 *inter alia* held that the services viz. renting of residential dwelling for use as a residence do not fall under Entry 13 of the Exemption Notification. It held that the lessee being a company is not itself using the premises in question. In such circumstances, it was held by the AAR that the respondent No. 1 herein has to charge goods and services tax (for short, 'GST') while issuing invoices to the lessee provided it was registered under the Act. Accordingly, it was held that the benefit of Exemption Notification is not available to the respondent No.1 herein (original petitioner).

7. The respondent No. 1 herein (original petitioner) being dissatisfied with the ruling of the AAR filed an appeal under Section 100 of the Act before the AAAR. The AAAR vide order dated 31.08.2020 *inter alia* while affirming the AAR's ruling held that the property rented out by the respondent No. 1 herein (original petitioner) is a hostel building which is more akin to a sociable accommodation rather than what is commonly understood as residential accommodation. In other words, the

AAAR held that the subject property rented out by the respondent No. 1 herein (original petitioner) cannot be termed as a rented accommodation. It was further held that the benefit of Exemption Notification is available only if the residential dwelling is used as a residence by the person who has taken the same on rent/lease. Thus saying so, the appeal filed by the respondent No. 1 herein (original petitioner) was ordered to be dismissed.

8. In such circumstances referred to above, the respondent No. 1 herein (original petitioner) invoked the jurisdiction of the High Court by filing Writ Petition No. 14891 of 2020 and questioned the legality and validity of the order passed by the AAAR.

9. The High Court formulated the following question of law for its consideration:-

> *"Whether the service of leasing of residential premises provided by the petitioner as hostel to students and working professionals is covered under Entry 13 of the Notification 9/2017 dated 28.06.2017 i.e. "services by way of renting of residential dwelling for use as residence" issued under the Act."*

10. The High Court vide its impugned judgment and order allowed the writ petition holding that Entry 13 of the Notification No. 9/2017 which provides for exemption with respect to *'services by way of renting of residential dwelling by way of use as residence'* being clear and unambiguous, the petitioner was entitled to avail the benefit under the

exemption notification. The High Court held that the definition of 'residential dwelling' in erstwhile service tax law as provided by the Education Guide dated 20.06.2012 issued by the Central Board of Indirect Taxes and Customs (CBIC), i.e. *'residential dwelling means any residential accommodation and is different from hotel, motel, inn, guest house etc, which is meant for temporary stay'* is binding on the revenue. It was held that leasing of residential premises as hostel to students and working professionals would not attract GST.

11. Relying on the decision of this Court in ***Kishore Chandra Singh Deo v. Babu Ganesh Prasad Bhagat,*** reported in ***AIR 1954 SC 316*** and the Bombay High Court decision in the matter of ***Bandu Ravji Nikam v. Acharyaratna Deshbushan Shikshan Prasark Mandal, Kolhapur***, reported in **2003 (3) Mah L.J. 472**, the High Court held that the hostel is used by the students for the purpose of residence and the duration of stay is more as compared to a hotel, guest house.

12. The High Court further observed that if a particular expression is not defined in the Act, it is permissible to refer to the dictionary meaning of such expression. The High Court, after referring to the dictionary meanings of the words 'residential dwelling' and decisions of this Court in ***Mohinder Singh v. State of Haryana,*** reported in ***AIR 1989 SC 1367*** and ***Commissioner of Central excise, Delhi v. Allied Air-Conditioning Corpn.,*** reported in in ***2006 (7) SCC 735,*** held that hostels used for residential purpose by the students and working women is covered under 'residential dwelling'. The residential dwelling is being

rented and used by the students and working women for the purpose of residence and there is no such condition in the Exemption Notification that the lessee itself has to use the premises as residence.

13. The High Court further held that the findings of the AAAR that the hostel accommodation is more akin to a sociable accommodation and that the petitioner is registered as a commercial establishment under the Karnataka Shops and Commercial Establishment Act, 1961 are not relevant in any manner for the purpose of determining the eligibility of the respondent No. 1 herein (original petitioner) for exemption.

14. Being dissatisfied with the judgment and order passed by the High Court, the revenue is before us.

SUBMISSIONS ON BEHALF OF THE REVENUE

15. Mr. V. Chandrashekara Bharathi, the learned counsel appearing for the revenue vehemently submitted that the High Court committed an egregious error in taking the view that the first transaction between the lessor and the lessee i.e. the service of leasing of residential premises provided by the respondent No. 1 herein (original petitioner) to M/s DTwelve Spaces Private Limited (lessee) entitles the lessor to seek exemption under Entry 13 of the Exemption Notification 9/2017 dated 28.06.2017.

16. He would submit that for the purpose of making the relevant entry applicable, the following three conditions need to be fulfilled:-

a. There must be a supply of service of renting.

b. The renting service must pertain to a residential dwelling, and

c. Such residential dwelling must be used as a residence.

17. He would submit that all the above three conditions must be conjunctively satisfied. According to him, even if one of the limbs is not triggered, then the benefit of the exemption cannot be claimed.

18. The learned counsel invited our attention to the following relevant clauses of lease deed dated 21.06.2019: -

1. "The lessee (M/s DTwelve) is engaged in the business of running, managing, operating the day-to-day affairs of residential premises and, sub leases/sub-licenses such residential premises to individuals (including student) for the purpose of long stay accommodation (purpose)."

2. Clause 2.1 of the lease deed reads as follows:

"In consideration of the rent, maintenance, costs, operations cost as agreed herein, to be paid by the lessee as set out in the agreement and the lessor's representations, warranties, covenants and obligations contained herein the lessor(s) hereby grants permission and leases unto the lessee the leased premises for the purpose during the

subsistence of the lease term, subject to the terms and conditions of this agreement".

3. Clause 12 of the lease deed reads as follows:

"12.1 – The parties hereby acknowledge that the lessee has taken the lease of the entire property from the lessor(s) for all the activities that are in the opinion of the lessee, necessary for the purpose.

12.2 – The lessee has a right to sub-lease or /and license and/or sub-license the entire property during the lease term to any third party for the purposes".

19. According to the learned counsel, the plain reading of the clauses referred to above has the following effect:-

a. The co-owners under the lease agreement recognised that M/s DTwelve Spaces Private Limited were running and managing various premises and leased it to individuals for long stay accommodations.

b. In addition to recognizing the above, the same was also agreed and declared between the parties that it would be the purpose of the lease deed.

c. The sole reason for the lease is for the above purpose as per Clause 2 and that is why the right to sub-lease was granted to M/s. DTwelve Spaces Private Limited for the same purpose under Clause 12.

20. He would argue that considering the above, M/s. DTwelve Spaces Private Limited being the party to the first transaction cannot be said to be using the property as residence and thereby rendering the first transaction ineligible for exemption under the said entry.

21. He submitted that the High Court ought to have rejected the contention canvassed on behalf of the respondent No. 1 herein (original petitioner) that Entry 13 does not prescribe any condition that the lessee must himself use the property as residence for the following reasons:-

(i) When admittedly, what is being tested for exemption is the first transaction, the respondent cannot be permitted to import the facts and circumstances of the second transaction in an attempt to satisfy the contours of the exemption notification. In other words, the respondent is relying on the first transaction to satisfy the first two conditions (services by way of renting of residential dwelling) and relies on the second transaction to satisfy the third condition (for use as residence). This is simply not permissible.

(ii) It is incorrect to state that the exemption entry does not prescribe the lessee to use the property as residence. Though not explicitly stated, it has been implicitly prescribed. What is eligible as exemption under Entry 13 is the supply of "service by way of renting". This supply involves two parties. One is the supplier i.e., the co-owners and the other is the recipient who is M/s DTwelve Spaces Private Limited. When this supply of service is exempted under the Notification, the respondent No. 1 cannot be permitted to rely on

transactions with parties not privy to the supply, to satisfy the contours of the exemption notification. The supplier of this service i.e., the co-owners have no connection whatsoever with the persons who utilize the property ultimately. The present case is not concerned with such persons in any manner. Since what is exempt is the supply of a service, it is implied that the recipient of the supply must satisfy the condition precedent for the exemption notification to trigger and the supplier cannot travel beyond the supply to claim exemption.

22. He would further submit that:-

a) The charge of GST is on the taxable event of supply defined under Section 7, and the levy on such supply is prescribed under Section 9.

b) The Exemption Notification No. 9/2017 exempts 'inter-state supply of services'. In other words, the Exemption Notification is supply specific and supply-centric, aligned with the levy of GST which too is supply-specific.

c) Consequently, the conditions prescribed in Entry 13 of Notification 9/2017 must be tested purely within the premise of a particular supply. This approach is aligned with the principle that exemption notifications are to be construed strictly.

d) Therefore, the submission of the revenue that the facts of the second limb between the lessee and the end consumer must not be

factored for testing the supply of service between the lessor and the lessee, will not amount to rewriting the Notification.

e) Unless and until Entry13 itself prescribes the ultimate end use of being used as residence, such conditions cannot be imported into the Exemption Notification. In fact, it is this submission of the assessee that amounts to rewriting the Notification.

f) The judgement in ***Government of Kerala v. Mother Superior Adoration Convent*** reported in **(2021) 5 SCC 602**, has no applicability since the underlying circumstances of the exemption in the present case has no similarity with the exemption considered in the case of ***Mother Superior*** (supra).

g) Section 3(1)(b) of the Kerala Building Tax Act, 1975 exempted buildings that are used "principally" for religious, charitable or educational purposes. It is the expression "principally" that weighed in favour of this Court while extending the exemption to residential accommodations for Nuns and hostel accommodation attached to various educational institutions. This Court applied the dominant object test only because the exemption Section allowed such test to be conducted.

h) Further, in Para 15 of ***Mother Superior*** (supra), a factual finding had been rendered that the buildings seeking exemptions were all attached to either convents or educational institutions. On facts it was found that these attached buildings were not let out for the purpose of earning profit but were let out as integrally connected with

the religious or educational activity. It is on this factual basis that the exemption was extended. In the same Para 15, it has been categorically held that had the very same persons rented a building, which was let out purely for earning market rent, would not have entitled the building for exemption. In the present case, admittedly, the Agreement between the Lessor and the Lessee is a commercial transaction purely for the purpose of making profit.

i) ***Mother Superior*** (supra) undoubtedly held that in beneficial exemptions, the ambiguity must be ruled in favour of the subject. Assuming without admitting that Entry 13 of Notification 9/2017 is indeed a beneficial notification, the subject which is the target of the benefit would be service recipient in the context of GST Law. The Service recipient in so far as the first supply is concerned between the lessor and the lessee is the lessee, a profit-oriented commercial entity. The Exemption Notification definitely was not conceived to extend the benefit to such commercial entities, which intended to carry out its commercial ventures by taking properties on lease.

23. In the last, the learned counsel submitted that the respondent No. 1 herein (original petitioner) is not entitled to exemption as the property in question does not qualify as a residential dwelling. The classification as to whether the property in question would qualify as a residential dwelling or not must solely depend on the nature of the property and not on its ultimate use, as the Exemption Notification itself treats these two aspects as independent of each other. Admittedly, the

present property comprises of 42 rooms, each attached with its own washroom. Such a property, by applying the common parlance test, can never qualify as a residential dwelling. Further, the Notification under question does not define what a residential dwelling is. Under the erstwhile Service Tax Regime, Section 66(D)(m) exempted the same services as covered by the present Entry 13 of Notification 9/2017. Since the entries are *pari materia*, the education guide is of paramount importance, more particularly paragraphs 4.13 and 4.13.1 respectively.

24. The learned counsel invited our attention to Para 4.13.1 which defines 'residential dwelling' as follows:-

> *"The phrase residential dwelling has not been defined in the Act. It has therefore to be interpreted in terms of the normal trade parlance as per which it is any residential accommodation, but does not include hotel, motel, inn, guest house, camp site, lodge, houseboat, or like places meant for temporary stay."*

25. He would submit that the above definition is in two parts. The first part requires the property under question to be a residential accommodation, and the second part carves out certain exceptions from the ambit of the definitions, despite being for residential accommodation. The property in question which has 42 rooms with 42 attached washrooms each are akin to the kinds of properties that have been excluded under the education guide from the definition of residential dwelling. Therefore, according to the learned counsel, the property in question does not qualify as a residential dwelling.

26. In such circumstances referred to above, the learned counsel prayed that there being merit in these appeals, the same may be allowed and the judgment and order passed by the High Court may be set aside.

SUBMISSIONS ON BEHALF OF THE RESPONDENT NO. 1 (LESSEE)

27. On the other hand, Mr. Arvind P. Datar, the learned senior counsel appearing for the respondent No. 1 while vehemently opposing the appeals submitted the no error, not to speak of any error of law, could be said to have been committed by the High Court in passing the impugned judgment and order.

28. He submitted that the respondent No. 1 along with four other joint owners had collectively let out the subject residential property to M/s DTwelve Spaces Private Limited – lessee for sub-letting the said property to working women and students for long term stay ranging from 3 months to 11 months. He pointed out that the available data reveals that the students or working women on an average stayed for eight months in the said property.

29. The learned counsel submitted that M/s DTwelve Spaces Private Limited (lessee) is an aggregator and has set up a unique business model that has proved immensely beneficial to several students and working professionals. Several landlords have entered into lease agreements with M/s DTwelve Spaces Private Limited (lessee) for renting out hostel/PG accommodation for students or working professionals. The website of M/s DTwelve Spaces Private Limited shows the availability of such

accommodation in different cities enabling parents/students/working professionals to book residential accommodation/hostel accommodation.

30. Mr. Datar pointed out that the lease deed was entered into on 16.06.2019. The total rent paid from June 2019 to June 2022 was Rs. 1,12,38,200/-. The total IGST liability at the rate of 18% was Rs. 20,22,876/-. He further brought to our notice that from 2022, IGST is being paid at 18% as an amendment to Entry 13 of the Exemption Notification came into effect on 18.07.2022.

31. According to Mr. Datar, the contention canvassed on behalf of the appellant that such exemption should be denied because the lessee being a company is not using the subject residential property itself for the residential purposes deserves to be outright rejected. He would argue that, if such a submission is accepted, it would amount to rewriting the Entry 13 as "services by way of renting of residential dwelling for use as residence by the lessee".

32. He submitted that all the three conditions cumulatively required to be fulfilled to be eligible for exemption from payment of IGST, viz. (a) services must be of renting; (b) the property so let out must be a residential dwelling, and (c) such residential dwellings must be given for use as a residence stand fulfilled in the present case.

33. He submitted that the High Court after due consideration of all the relevant provisions rightly reached to a plausible conclusion which requires no interference at the hands of this Court under Article 136 of the Constitution.

34. In such circumstances referred to above, Mr. Datar prayed that there being no merit in the appeals, those may be dismissed.

ANALYSIS

35. Having heard the learned counsel appearing for the parties and having gone through the materials on records, the only question that falls for our consideration is whether the amount at the rate of 18% is payable on the rental amount paid by the lessee to the respondent No. 1 herein?

36. We would like to first address ourselves on the issue whether the subject property could be termed as a "residential dwelling". The term "residential dwelling" is not defined under the GST laws. Under the erstwhile Finance Act, 1994, an Education Guide dated 20.06.2012 issued by the CBIC explained it as follows:-

> "*4.13.1 What is a 'residential dwelling'?*
>
> *The phrase 'residential dwelling' has not been defined in the Act. It has therefore to be interpreted in terms of the normal trade parlance as per which it is any residential accommodation, but does not include hotel, motel, inn, guest house, camp-site, lodge, house boat, or like places meant for temporary stay."*

37. Prior to the implementation of the GST, only commercial properties let out were subjected to service tax even if a residential property was used for commercial purposes. Service tax was charged at a rate of 15% of the rent for commercial properties. However, rental income from residential properties did not attract service tax. This meant that landlords who owned commercial properties and rented them out

were required to register for service tax and pay the tax on the rental income received. On the other hand, landlords who owned residential properties and rented them out were not required to register for service tax or pay tax on the rental income they received.

38. On the introduction of GST, the tax regime for rental income has undergone a significant change. Under the GST regime, renting both commercial and residential properties is treated as a taxable supply of service. GST is applicable on rental income received by landlords as well as rent paid by tenants.

39. However, the Central Government, on being satisfied that it is necessary in the public interest and on the recommendation of the GST Council, has issued Notification No. 9/2017- Integrated Tax (Rate) dated 28.06.2017 giving exemption from levying GST on various services described item wise in the Notification. For our purpose, it relates to Entry No. 13 by which an unconditional exemption was provided to renting of a residential dwelling to any person when the same is used for residence. Meaning thereby, GST is payable in the case of renting of a residential dwelling to any person when the same is used for the commercial purpose.

40. In the above context, we may refer to few judgments wherein the meaning of the expression "residential dwelling" has been explained.

41. The Delhi High Court in ***V.L. Kashyap v. R.P. Puri*** reported in **12 (1976) DLT 369**, wherein, in para 25, it has been held as under:-

> *"25. The rule of law deducible from the aforesaid decisions is that the work 'dwelling house' is synonymous with residential accommodation as distinct from a house of business, warehouse, office, shop, commercial or business premises. The word 'house' means a building. It would include the out-houses, courtyard, orchard, garden etc. which are part of the same house, but it cannot include a distinct separate house."*
>
> (Emphasis supplied)

42. The United Kingdom House of Lords in ***Uratemp Ventures Limited v. Collins*** reported in **(2001) 3 WLR 806**, wherein the term 'dwelling house' has been interpreted to mean even a single room as part of a house.

43. The High Court of Bombay in ***Bandu Ravji Nikam*** (supra) has explained "residential dwelling" in detail. In this case, a suit for eviction of a tenant was contested by the tenant saying that the landlord was attempting to evict him in order to lease out the premises to a hostel and that hostel accommodation amounted to 'non residential accommodation' which was impermissible under Section 25 of Bombay Rent Control Act. The High Court held that by the very nature of the use of students hostel, it is only a residential user as hostel, is a house of residence or lodging for students and that just because the hostel owners charge some amount from the students, such accommodation cannot be treated as commercial or non residential.

44. In ***Bandu Ravji Nikam*** (supra), the Bombay High Court further held as under in para 10:-

> *"10. ... Undoubtedly, "hostel" is nothing but a house of residence or lodging for students. Just because the respondent*

may charge some amount from the students for providing that facility, may not necessarily mean that it is a commercial or non residential user. Further, there is perceptible difference between "hotel or lodging house" and 'student hostel', though in both cases accommodation may be provided on monetary consideration. In the latter, the occupant cannot claim to be a "tenant" or a "licensee" nor can he claim protection of the provisions of the Bombay Rent Act. Whereas, in the case of the former, part III of the Act would apply. Besides, it will be useful to notice the observations of this Court in para 20 of the decision in the case of Kishinchand (supra). This court has held that the word "residence" may receive a liberal meaning, for a man's residence is very often the place where he sleeps at night. This court in the said case adverted to the decision of the Privy Council (AIR 1937 PC 46), wherein it is observed that "there is no reason for assuming that it contemplates only permanent residence and excludes temporary residence". Reference is also made to Sri Sri Sri Kishore Chandra Singh Deo vs Babu Ganesh Prasad Bhagat and others, AIR 1954 Sc 316, wherein it is observed that

> *"Residence only connotes that a person eats, drinks and sleeps at that place and that it is not necessary that he should own it".*

This Court then proceeded to hold that the legislature is using words "non-residential purpose" in Section 25 did not intend to prohibit use of a building containing a residential flat for the purposes of construction of Marriage Halls, Charitable Hospitals and "quarters" and garages for Doctors and Nurses. As in the present case, "Students hostel" was also to be used for sleeping, eating, studies etc. temporarily if not permanently day to day, it cannot be described as "non-residential" use within the meaning of Section 25 of the Act. Accordingly, if the suit premises were to be used as students hostel, then surely it would be for the residential purpose of the students of the College run by the respondent trust. In that case also, the respondent trust would be entitled to claim possession of the suit premises for the requirement of the trust. If this be so, there is no force in the argument pressed into service that no decree could be passed as the nature of requirement would be prohibited by Section 25 of the Act."

(Emphasis supplied)

45. We must also look into the meaning of the expressions "residence" and "dwelling" as provided in Concise Oxford English

Dictionary 2013 Edition as well as the Blacks Law Dictionary 6th Edition to ascertain their meaning in common parlance and in popular sense which read as under:-

> ***"The Concise Oxford Dictionary:***
>
> *Domicile: 1. the country in which a person has permanent residence.*
>
> *2. the place at which a company or other body is registered.*
>
> *Residence: 1. the fact of residing somewhere.*
>
> *2. a person's home.*
>
> *3. the official house of a government minister or other official figure.*
>
> ***Blacks Law Dictionary:***
>
> *Residence: Place where one actually lives or has his home; a person's dwelling place or place of habitation; an abode; house where one' home is; a dwelling house.*
>
> *Dwelling: The house or other structure in which a person or persons live; a residence; abode; habitation; the apartment or building, or a group of buildings, occupied by a family as a place of residence. Structure used a place of habitation."*

46. Further in common parlance, 'residential dwelling' means any building, structure, or part of the building or structure other than offices or factories, that is used or intended to be used as a home, residence, or sleeping place by one person or by two or more persons maintaining a common household, to the exclusion of all others.

47. Thus, any residential accommodation meant for long term stay can be referred to as "residential dwelling". The materials on record further indicate that as per the Khatha Extract and layout plans and records available with the Bruhat Bangalore Mahanagara Palike, the plot and property is shown as residential in nature. In view of the aforesaid,

we have no hesitation in reaching the conclusion that the subject property is a "residential dwelling".

48. The only question now left to be addressed is whether the third condition to be eligible for exemption from payment of the GST i.e. *"such residential dwelling must be given for use as a residence"* is fulfilled in the present case or not.

49. In the present case, the third condition could also be said to be satisfied as the property was taken on rent only for use as a residence. There is no further condition that the tenant or lessee must itself use it as a residence. Indeed M/s DTwelve Spaces Private Limited (lessee) is an aggregator who facilitates the use of residential dwelling for hostel accommodation. The third condition stood satisfied as M/s DTwelve Spaces Private Limited is the lessee and all the students/working women are none else but sub-lessees. It is well-settled that what is a lease between the owner of a property and a tenant becomes a sub-lease when it is entered into between the tenant and his sub-tenant.

50. Taking the view aforesaid, for the period 2019-2022 all the three conditions of Entry No.13 cited above stood complied with.

51. We are not impressed by the submission canvassed on behalf of the revenue that since lessee did not use the hostel as a residence but rather sub-leased the same to students/working women, such transaction does not fall within Entry 13 of the Exemption Notification. At the cost of repetition, it is observed that Entry 13 of the Exemption Notification does not mandate that the lessee must use the residential

dwelling as its own residence. Giving any other interpretation would mean adding an additional condition to Entry 13.

52. Mr. Datar is right in his submission that giving Entry 13 a narrow interpretation by holding that it is available only when the property so rented is used by service recipient themselves would ultimately lead to the legislative intent being defeated as the exemption is extended to cases wherein residential dwelling is rented out and ultimately used as residence even for the purpose of the person using it. In other words, the legislative intent behind this exemption clause is that a rented property that is used as residence should not suffer 18% GST or IGST.

53. In the case on hand, the ultimate use of the property as residence remains unchanged. However, if 18% GST is levied on this transaction between the respondent No. 1 and the lessee i.e. M/s DTwelve Spaces Private Limited, the same would ultimately be passed on to the students and working professionals which would lead to a situation where the legislative intent behind granting exemption for residential use is defeated.

54. In ***Mother Superior*** (supra), it was held as follows:

> *"26. It may be noticed that the five-Judge Bench judgment [Commr. of Customs v. Dilip Kumar & Co., (2018) 9 SCC 1] did not refer to the line of authority which made a distinction between exemption provisions generally and exemption provisions which have a beneficial purpose. We cannot agree with Shri Gupta's contention that sub silentio the line of judgments qua beneficial exemptions has been done away with by this five-Judge Bench. It is well settled that a decision is only an authority for what it decides and not what may logically follow from it (see Quinn v. Leathem [Quinn v. Leathem, 1901 AC 495 (HL)] as followed in State of Orissa v.*

Sudhansu Sekhar Misra [State of Orissa v. Sudhansu Sekhar Misra, (1968) 2 SCR 154 : AIR 1968 SC 647] , SCR at pp. 162-63 : AIR at pp. 651-52, para 13).

27. This being the case, it is obvious that the beneficial purpose of the exemption contained in Section 3(1)(b) must be given full effect to, the line of authority being applicable to the facts of these cases being the line of authority which deals with beneficial exemptions as opposed to exemptions generally in tax statutes. This being the case, a iteral formalistic interpretation of the statute at hand is to be eschewed. We must first ask ourselves what is the object sought to be achieved by the provision, and construe the statute in accord with such object. And on the assumption that if any ambiguity arises in such construction, such ambiguity must be in favour of that which is exempted."

(Emphasis supplied)

55. In ***Union of India v. Wood Papers Limited***, reported in **(1990) 4 SCC 256**, it was pointed out that an exemption notification should be construed strictly at the threshold. But once the exception/exemption is applicable, then a liberal construction must be adopted. The ration of this judgment clearly applies to the present case. Entry 13 grants exemption from GST for *renting of residential dwellings for use as residence*. On a strict construction thereof, all the three requirements referred to above are satisfied. Once the exemption notification is applicable, it should be construed liberally. Thus, if the conditions are satisfied, the benefit should be available to both lessees and the sub-lessees as well.

56. In the above context, we may refer to the following observations of this Court in ***Wood Papers Limited*** (supra):-

"4. Entitlement of exemption depends on construction of the expression "any factory commencing production" used in the Table extracted above. Literally exemption is freedom from

liability, tax or duty. Fiscally it may assume varying shapes, specially, in a growing economy. For instance tax holiday to new units, concessional rate of tax to goods or persons for limited period or with the specific objective etc. That is why its construction, unlike charging provision, has to be tested on different touchstone. In fact an exemption provision is like an exception and on normal principle of construction or interpretation of statutes it is construed strictly either because of legislative intention or on economic justification of inequitable burden or progressive approach of fiscal provisions intended to augment State revenue. But once exception or exemption becomes applicable no rule or principle requires it to be construed strictly. Truly speaking liberal and strict construction of an exemption provision are to be invoked at different stages of interpreting it. When the question is whether a subject falls in the notification or in the exemption clause then it being in nature of exception is to be construed strictly and against the subject but once ambiguity or doubt about applicability is lifted and the subject falls in the notification then full play should be given to it and it calls for a wider and liberal construction. Therefore, the first exercise that has to be undertaken is if the production of packing and wrapping material in the factory as it existed prior to 1964 is covered in the notification."

57. In ***Collector of Central Excise v. Parle Exports (P) Ltd.*** reported in **(1989) 1 SCC 345**, this Court while accepting that exemption clause should be construed liberally applied rigorous test for determining if expensive items like Gold Spot base or Limca base or Thums Up base were covered in the expression food products and food preparations used in Item No. 68 of First Schedule of Central Excises and Salt Act and held 'that it should not be in consonance with spirit and the reason of law to give exemption for non-alcoholic beverage basis under the notification in question'. Rationale or ratio is same. Do not extend or widen the ambit at stage of applicability. But once that hurdle is crossed construe it liberally. Since the respondent did not fall in the

first clause of the notification there was no question of giving the clause a liberal construction and hold that production of goods by respondent mentioned in the notification were entitled to benefit.

PURPOSIVE INTERPRETATION OF ENTRY 13

58. The principle of 'purposive interpretation' or 'purposive construction' is based on the understanding that the Court is supposed to attach that meaning to the provisions which serve the 'purpose' behind such a provision. The basic approach is to ascertain what is it designed to accomplish? To put it otherwise, by interpretative process the Court is supposed to realise the goal that the legal text is designed to realise. As Aharan Barak in ***Purposive Interpretation in Law*** puts it:-

> *"Purposive interpretation is based on three components: language, purpose, and discretion. Language shapes the range of semantic possibilities within which the interpreter acts as a linguist. Once the interpreter defines the range, he or she chooses the legal meaning of the text from among the (express or implied) semantic possibilities. The semantic component thus sets the limits of interpretation by restricting the interpreter to a legal meaning that the text can bear in its (public or private) language."*

59. Of the aforesaid three components, namely, language, purpose and discretion 'of the Court', insofar as purposive component is concerned, this is the *ratio juris*, the purpose at the core of the text. This purpose is the values, goals, interests, policies and aims that the text is designed to actualize. It is the function that the text is designed to fulfil.

60. We may also emphasize that the statutory interpretation of a provision is never static but is always dynamic. Though literal rule of

interpretation, till some time ago, was treated as the 'golden rule', it is now the doctrine of 'purposive interpretation' which is predominant, particularly in those cases where literal interpretation may not serve the purpose or may lead to absurdity. If it brings about an end which is at variance with the purpose of statute, that cannot be countenanced. Not only legal process thinkers such as Hart and Sacks rejected intentionalism as a grand strategy for statutory interpretation, and in its place they offered purposivism, this principle is now widely applied by the Courts not only in this country but in many other legal systems as well. (See : ***Shailesh Dhairyavan v. Mohan Balkrihna Lulla*** reported in **(2016) 3 SCC 619**)

61. Giving Entry 13 a narrow interpretation by holding that it is available only when the property so rented is used by service recipient themselves would ultimately lead to legislative intent being defeated as the exemption is extended to cases wherein residential dwelling is rented out and ultimately used as residence, irrespective of the person using it. The legislative intent behind this exemption clause is that a rented property, that is used as residence should not suffer 18% GST or IGST. However, if Entry 13 is given such a narrow interpretation, then, exemption will not be available in cases where a lessee has sub-leased the property for use as residence.

62. In the present matter, the ultimate use of the property remained unchanged. In other words, it remained as *'use for residence'* by students/working women. However, if 18% GST is levied on this

transaction between the respondent No. 1 and the lessee, the same will be passed on to the students and working professionals which would ultimately lead to a situation where legislative intent behind granting exemption for residential use is defeated.

63. In addition to above, it is pertinent to note that exemption envisaged under Entry 13 is an *activity specific exemption* and not *person specific exemption*. There are many exemptions given under GST law which are *person specific exemptions* and are applicable only when service provider or recipient is among the notified category of persons. On the other hand, there are many exemptions which are *activity specific exemptions* whereby an *activity* is given an exemption, and such exemptions are not dependent on the person using the service that is exempt.

64. For instance, under Entry 1, exemption is provided to *services by an entity registered under section 12AA of the Income-tax Act, 1961 by way of charitable activities*. Here, exemption is provided only if charitable activities are provided by an entity registered under Section 12AA of the Income Tax Act. Entry 26 is another example which provides exemption to *transmission or distribution of electricity by an electricity transmission or distribution utility.*

AMENDMENTS IN 2022

65. Entry 13 was amended w.e.f. 18.07.2022 and it now reads as follows:-

> "*Services by way of renting of residential dwellings for use as residence* ***except where the residential dwelling is rented to a registered person."***

66. Thus, from 18.07.2022, there is no exemption available for respondent 1, as he has rented to a registered person. Through these appeals, the revenue is, in effect, trying to give retrospective application to the amendment made in 2022, which is impermissible.

67. Apart from the above amendment in 18.07.2022, further Explanation was added to Entry 13 w.e.f. 01.01.2023 which reads as follows:-

> *"Explanation- for the purpose of exemption under this entry, this entry shall cover services by way of renting of residential dwelling to a registered person where, -*
>
> *(i) The registered person is proprietor of a proprietorship concern and rents the residential dwelling in his personal capacity for use as his own residence; and*
>
> *(ii) Such renting is on his own account and not that of the proprietorship concern."*

68. The Explanation clearly shows that even if the rent is paid by a registered person, the exemption will be available if it is used for the purpose of own residence and is rented in the personal capacity. Therefore, the intention from the beginning was to ensure that rental agreements for use of the property for residential purposes are granted exemption from GST.

69. In view of the aforesaid discussion, we have reached the conclusion that we should not interfere with the impugned judgment and order

passed by the High Court. As a result, both the appeals fail and are hereby dismissed.

70. Pending application, if any, stand disposed of accordingly.

.....J
(J.B. PARDIWALA)

.....J
(K.V. VISWANATHAN)

NEW DELHI;
DECEMBER 4, 2025