

ODISHA AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICE TAX (GST)

RAJASWAVIHAR, BHUBANESWAR-751007(ODISHA)

PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING
U/S.98 OF THE GOODS AND SERVICE TAX ACT, 2017

Members Present:

1. Sri Gopal Krishna Pati, IRS, Additional Commissioner, Office of the Chief Commissioner, GST, Central Excise & Customs, Bhubaneswar
2. Sri P K Mohanty, OFS(SS), Special Commissioner of CT&GST, Commissionerate, CT&GST, Odisha, Baniyakar Bhawan, Cantonment Road, Cuttack-753001-Odisha.

Name and Address of the Applicant	M/s. Indian Metals and Ferro Alloys Limited, Principal Place of Business at IMFA Building, Bomikhal, Rasulgarh, Bhubaneswar-751010 , Odisha.
GSTIN or User ID	21AAACI4818F1Z2
Date of Filing of Form GST ARA-01	03.11.2022
Present for the Applicant in the Personal hearing.	R K Sahoo, Sr General Manager A K Sahoo, Manager
Date of Personal Hearing	29.11.2022

ORDER NO.04/ODISHA-AAR/2021-22/DATED


Subject: M/s. Indian Metals and Ferro Alloys Limited (herein after referred to as the 'Applicant') having principal place of business at IMFA Building, Bomikhal, Rasulgarh, Bhubaneswar-751010 , Odisha, a registered company bearing GSTIN 21AAACI4818F1Z2 has filed an application for advance ruling under Section 97 of CGST Act, 2017 and Section 97 of the OGST Act, 2017 in FORM GST ARA-01 discharging the fee of Rs. 5,000/- each under the CGST Act and the SGST Act.



1.1 At the outset, we would like to make it clear that the provisions of both the CGST Act and the OGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the OGST Act.

2.0 Submission of the Applicant

- 2.1 The Applicant bearing GSTIN-21AAACI4818F1Z2, is having its principal place of business at IMFA Building, Bomikhal, Rasulgarh, Bhubaneswar-751010 and 3 other additional places of business at (1) Therubali, Dist-Rayagada, Odisha-765018, (2) Kapeleswar, Choudwar, Cuttack, Odisha, 754071 (3) Kaliapani, Sukinda, Jajpur 750047, all in the state of Odisha. While the Applicant has its manufacturing unit at Therubali and at Choudwar, it has captive mines at Sukinda. As stated the Applicant has taken on rent certain premises at New Delhi and Jajpur in Odisha, as guest house. The guest houses are used to provide food and accommodation for the employees of the company who visit New Delhi for official purpose and also for the employees who visit mining office at Jajpur. While one of the apartments is taken on rent from a registered person, other is taken from unregistered person. In both the cases the houses taken on rent for guest house purpose are in the residential area and used by the Applicant Company for guest house of its employees.
- 2.2 The Applicant has stated that the term “Residential Dwelling” is not defined anywhere in GST Act or in the earlier Service Tax regime. However, Central Board of Indirect Taxes and Customs in its education guide dated 20.06.2012 has explained the phrase “residential dwelling” in clause 4.13.1 by interpreting the term in normal trade parlance as any residential accommodation, but does not include hotel, motel, inn, guest house, camp - site, lodge, houseboat, or like places meant for temporary stay.
- 2.3 It has been submitted that on normal course of business, the Applicant has taken a house on rent for use as its guest house at New-Delhi. As the term guest house is not covered within the ambit of residential dwelling as provided in education guide, the service provider at New-Delhi used to claim GST on its invoice under forward charge





mechanism which is paid by the Applicant. Notification No. 04/2022- Central Tax (Rate) dated 13.07.2022, amended the clause 12 of the Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 & thereby restricted the applicability of exemptions to a registered person. As per the said amendment, while any residential dwelling used as residence by a non-registered person is exempted from levy of GST, the said service received by a registered person is chargeable under GST.

2.4 The Applicant has submitted that Notification No. 05/2022- Central Tax (Rate) dated 13.07.2022, brought an amendment to Notification No. 13/2017- Central Tax (Rate) dated 28.06.2017 by inserting a serial number 5AA which read as follows:-

Sl. No.	Category of Supply of Services	Supplier of service	Recipient of Service
(1)	(2)	(3)	(4)
"5AA	Service by way of renting of residential dwelling to a registered person.	Any person	Any registered person."

3.0 The personal hearing was fixed on 29.11.2022 under due intimation to the Applicant, the jurisdictional officer of State GST & jurisdictional officer of Central GST (intimated through their respective Commissionerates along with a copy of application and the written submission of the Applicant). The Applicant through its representatives i.e. Shri Rabindra Kumar Sahoo, Sr GM Taxation & Shri A K Sahoo, Manager Taxation appeared for personal hearing . They re-iterated the submissions already furnished in the application for advance ruling. In course of hearing, they also submitted copies of rent agreement made between the service provider (house owner) & service receiver (the Applicant in this case) for reference of the members.

Discussion & findings

4.0 We have gone through the advance ruling application, question on which advance ruling has been sought and the Applicant's interpretation of law and/or facts, as the case may be, in respect of the question asked. We find that the question before us essentially pertains to the applicability of a notification issued under the provisions of the GST Act, 2017. We, therefore observe that the issue before us is squarely covered under





Section 97(2) of the CGST Act, 2017 and therefore we admit for consideration.

- 4.1 The Applicant has stated that it has got manufacturing unit at Therubali and at Choudwar and captive mines located at Sukinda, Odisha. The Applicant has further stated that it has taken on rent certain premises at New Delhi and Jajpur in Odisha for use as guest house. The guest houses are used to provide food and accommodation for the employees of the Applicant who visit New Delhi/Jajpur for official purposes. As stated, one of the apartments is taken on rent from a registered person where the other is taken from unregistered person. In both the cases, the houses taken on rent for guest house purpose are located in residential area.
- 4.2 The Applicant has drawn attention to the Notification No. 05/2022- Central Tax (Rate) dated 13.07.2022 which brought an amendment to Notification No. 13/2017- Central Tax (Rate) dated 28.06.2017 by inserting a serial number 5AA. The Applicant is of the view that renting of residential dwelling to a registered person whether used for residential or for any other purpose will fall under Reverse Charge Mechanism (RCM). But the Applicant in its submission has also contended that the term "Residential Dwelling" is not defined anywhere in GST Act or in the earlier service tax regime. However, as referred by the Applicant, Central Board of Indirect Taxes and Customs in its education guide dated 20.06.2012 has explained the phrase "residential dwelling" in clause 4.13.1 by interpreting the term in normal trade parlance as any residential accommodation, but does not include hotel, motel, inn, guest house, camp - site, lodge, houseboat, or like places meant for temporary stay. As the term guest house is not covered within the ambit of residential dwelling as provided in education guide, the service provider at New-Delhi is claiming GST on its invoice under forward charge mechanism which is being paid by the Applicant.
- 4.3 We see that renting of an immovable property/residential dwelling is considered a supply of service under GST as per schedule II of the CGST Act 2017. Till 17th July 2022, services by way of renting of residential dwelling for use as residence was exempted, whereas services by way of renting for commercial use (SAC Code -997212) was taxable @ 18%. However, the dynamics of renting of residential property under GST has changed w.e.f 18th of July 2022. The decision to bring the renting of

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residential dwellings under the tax net was taken in the 47th GST Council Meeting held in June 2022 by partially removing the exemption and including the same under RCM services when provided to a registered person.

4.4 The CBIC, vide notification No. 05/2022-Central Tax (Rate) dated the 13th July, 2022 notified that with effect from 18th July 2022, service by way of renting of residential dwelling to a registered person shall be attracting GST under RCM (Reverse charge mechanism). The relevant extract of the instant notification is reproduced here under:

Sl. No.	Category of Supply of Services	Supplier of Service	Recipient of Service
(1)	(2)	(3)	(4)
"5AA	Service by way of renting of residential dwelling to a registered person.	Any person	Any registered person."

4.5 From the above, it is clear that GST will be applicable even if the residential property is rented out to a registered person w.e.f. 18th July 2022. Liability to pay GST @ 18% under the reverse charge mechanism will arise on the recipient (tenant), if he is a registered person under GST with no other condition. Further, It may be noted that type or nature/purpose of use of residential dwelling i.e. for residence or otherwise by the recipient, has not been a condition in the said RCM notification. Hence, service of renting of residential dwelling to a registered person, would attract RCM irrespective of the nature of use.

4.6 For an easy understanding, the above mentioned implications have been tabulated below.

SN	Property	Used for	Recipient	Earlier	Now
1	Residential	Residence	Unregistered	Exempt	Exempt
2	--do--	--do--	Registered	Exempt	Taxable under Reverse Charge



3	Residential	Commercial	Registered	Taxable under Forward Charge	Taxable under Reverse Charge
4	--do--	--do--	Unregistered	Taxable under Forward Charge	Taxable under Forward Charge
5	Commercial	Commercial	Any person	Taxable under Forward Charge	Taxable under Forward Charge

- 4.7 Thus, a residential property given on rent to a registered person whether for residential purpose or otherwise shall attract RCM provisions. At the outset it is pertinent to understand whether in this case, the property on rent is a residential property or not and what shall be the GST implication if the same is being used as guest house by the Applicant? In the instant case, the Applicant has stated that it has taken on rent certain premises at New Delhi and Jajpur in Odisha, for use as guest house. The guest house is used to provide food and accommodation for the employees of the company. From the written submission made, contentions advanced by the representatives of the Applicant company and rent agreement copies furnished, the nature of rented properties under discussion clearly appear to be residential properties used for commercial purpose.
- 4.8 Thus, it may be concluded that irrespective of the purpose of use, if the residential dwelling is rented to a registered person under GST, the tenant has to discharge the GST liability under RCM as per Notification No. 05/2022 Central Tax (Rate) dated 13th July 2022

RULING

- 5.0 Q. Whether Service Received by a registered person by way of renting of residential premises used as guest house of the registered person is subject to GST under Forward Charge Mechanism (FCM) or Reverse Charge Mechanism.





Ans: Now, evaluating the question with reference to the fact of the case wherein the Applicant (registered person) has received the service by way of taking residential premises on rent for use as its guest house, it is observed that the said service received by the Applicant (registered person) is subject to GST under Reverse Charge Mechanism in view of the Notification No. 05/2022-Central Tax (Rate) dated 13th July, 2022.

6.0 The Applicant or jurisdictional officer, if aggrieved by the ruling, may appeal to the Odisha State Appellate Authority for advance ruling under Section 100 of the CGST/OGST Act, 2017 within 30 days from the date of receipt of the advance ruling.

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02/02/2023
(G K Pati)
Member, CGST



P K Mohanty
02/02/2023
(P K Mohanty)
Member SGST

2

C. No. V (30)02/ ARA/ODISHA/BBSR/2022/02 / 3547-49-A Dated: 23.02.2023

To

M/s. Indian Metals and Ferro Alloys Limited, Principal Place of Business at IMFA Building, Bomikhal, Rasulgarh, Bhubaneswar-751010, Odisha.

Copy forwarded to:

1. The Pr Commissioner, CGST & Central Excise, Bhubaneswar Commissionerate, Bhubaneswar.
2. The Commissioner, SGST Odisha, Baniyakar Bhawan, Old Secretariat Compound, Cuttack-753001, Odisha.
3. Office copy.

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