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## GST on Supply of Various services with Hostel Accommodation Service- A Critical Analysis of Recent Pronouncement by Rajasthan AADHAR

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### Abstract

Sometimes hostel accommodation services are provided to the students with additional amenities of gym, washing, housekeeping, etc. which are not mandatory but as complimentary. The Rajasthan Authority for Advance Ruling has classified the said activity into mixed supplies under GST which is subject to the highest rate of GST applicable on varying supplies included in such combined supplies. But, when we consider the phrases naturally bundled and in ordinary course of business, it appears that the aforesaid combined supply should be treated as Composite supply.

**Keywords:** Provision of Hostel Accommodation, Allied Services, Consolidated Charges, Mixed Supply, Rajasthan AADHAR.

### Introduction:



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In any structure of taxation, the incidence arises only after the occurrence of the taxable event. In the same manner, supply triggers the imposition of tax under GST. The supply may be of goods and services. In CGST Act, 2017, section 9 is the charging section. Section 9(1) is related to the forward charge mechanism, whereas section 9(3)/(4) relates to the reverse charge mechanism. The GST is levied on the value of supply. In the case of individual supply, there is no problem. But, consider a situation wherein a combination of goods or services or both are supplied at a consolidated amount under cover of a single invoice.

### Aim of Study

The unprecedented move of implementing new indirect tax legislation GST from July 1, 2017 is now four years old, but still, it is in an infant stage. The new challenges and intricacies are coming in the execution path, and even the legislatures are still trying to settle down the things rationally. The identification and distinction of supply into composite and mixed supply are one of the critical issues. There have been various pronouncements by AAR on varied issues. Recently Rajasthan AAAR has given a decision on the supply of allied services with Hostel accommodation service. The present paper critically examines said pronouncement by AAAR.

### Statutory Provision of bifurcation

The GST laws bifurcate the combination supplies into two categories viz Composite Supply and Mixed Supply.



## Composite Supply

As per Section 2(30) of the CGST Act, 2017 "Composite Supply" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply." The section 2(90) clarifies that, "principal supply means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary."

It is clear that the goods or services or both are bundled owing to natural necessities in a composite supply. Further, there must be the existence of 'principal supply.' For instance, hostels usually provide Services with complimentary breakfast and dinner, which is an ancillary service to the principal supply of hostel accommodation.

## Mixed Supply

As per Section 2(74) of the CGST Act, 2017, "Mixed Supply" means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply. Thus, mixed supply is altogether different from composite supply as supplies are not naturally bundled in mixed supply and can be supplied individually without in conjunction with each other.

## Need for bifurcation of combination supplies



Since the supplies of goods and services are subject to varying rates and the consolidated price cannot be bifurcated, eventually, one rate must be applied to the total amount. Now, a question arises as to how to decide the rate. In this regard, section 8 of the CGST Act, 2017 provides the answer.

**As per section 8, the tax liability on a composite or a mixed supply shall be determined in the following manner, namely:—**

- a) a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply; and
- b) a mixed supply comprising two or more supplies shall be treated as a supply of that

particular supply that attracts the highest tax rate.

Let us consider a combination of supplies which involves four supplies with applicable GST rates of 12%, 18%, 28%, and exempt from GST. If the consolidated amount charged is Rs. 1,00,000, then the GST rate to be applied shall be either the highest, i.e., 28%, or the rate of principal supply, if any, depending upon the nature of the supply.

Thus, it is imperative in a combination supply, whether it is a composite or a mixed supply.

## Hostel Accommodation Service

As per Wikipedia, A hostel is a form of low-cost, short-term shared sociable lodging where guests can rent a bed, usually a bunk bed in a dormitory, with shared use of a lounge and sometimes a kitchen. Rooms can be mixed or single-sex and have private or shared bathrooms. Private rooms may also be available, but the property must offer dormitories to be considered a hostel.

The Collins Dictionary has defined it as a large house where people can stay cheaply for a short period. Local government authorities or charities usually own hostels.

## Taxability

As per circular No. 32/06/2018-GST, dated 12-02-2018 issued by the Ministry of Finance (Department of Revenue), Govt. of India, Hostel accommodation services do not fall within the ambit of charitable activities as defined in para 2(r) of notification No. 12/2017-C.T. (RATE). However, services by a hostel, inn, guest house, club, or campsite, by whatever name called, for residential or lodging purposes, having a value of supply of a unit of accommodation below Rs. 1,000 or equivalent are exempt. It has further been clarified that accommodation service in hostels, including by Trusts having declared tariff below one thousand rupees per day is exempt. [Sl. No. 14 of notification No. 12/2017-C.T. (Rate). Therefore, GST exemption is not available if the value of supply is more than Rs. 1,000 per day.

## When various services are also supplied with Hostel Accommodation Service

Usually, providing accommodation services is made with the other allied facilities/services therein viz. canteen food, parking space for vehicles, coaching, library, entertainment, etc. If separate charges are made for these allied services, GST will be levied on these but not on the amount charged for hostel accommodation services provided the charges are up to Rs. 1,000 per day. Sometimes the hostel provides basic facilities which are required to stay and to study, which include well-furnished residence, round-the-clock security, homely ambiance, nutritious food, ample parking space, etc., and in consideration, the charge is made in the form of a lump-sum fee. In other words, the hostel charges a single amount for providing these services to the boarders.

## Taxability

When allied facilities and services are offered at a single package, then there arise two interconnected issues. *Firstly* whether the GST exemption is still available and *secondly*, if not, then

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whether it would be tantamount to composite supply or mixed supply.

The related issues have been analyzed, discussed, and interpreted by the Rajasthan AAR and Rajasthan Appellate Authority for Advance Ruling in the case of "Kalyani Infrastructure (P) Limited."

## In re Kalyani Infrastructure (P) Limited

### Brief Facts of the case:

1. M/s Kalani Infrastructure Pvt. Ltd. (appellant) is registered under GST law, and its unit M/s Fortune Icon is running a Hostel for residential accommodation of students. The appellant wishes to charge a consolidated amount of Rs. 17,000/- per month from the students against provision of hostel accommodation for residence purposes, including ancillary supply of food with certain other facilities.
2. It has been submitted that primarily the students approach for having accommodation facility and only when accommodation facility gets ensured, need for food and other allied facilities arises. Neither the appellants wish to charge any separate amount for the supply of food or other general facilities from the students, nor is there any bifurcation of the charges for residential accommodation along with food and other facilities provided to the students. Further, there would be no option for the students to opt for hostel accommodation without food or other facilities. All students would pay a consolidated amount of Rs.17,000/- per month whether or not they use the food or any other facility. Similarly, there is no option for any person to take only food or any other facility without being a hostel resident.
3. In this background, before the Rajasthan Authority of Advance Ruling, an application was filed to determine the classification and taxability of hostel accommodation where food and other general facilities are also provided, and no separate amount is charged from the students for the same. The question which the Advance Ruling was sought, are as under:-
  - a) Whether provision of hostel accommodation along with food facility to the students wherein consolidated amount is charged from the students is a composite supply where principal supply is that of rent of hostel accommodation?
  - b) Whether the entire charge recovered from the students would be exempt from GST under Sr. No. 14 of the CGST (Rate) Notification No. 12/2017 dated 28.06.2017 as amended if the charges per day is less than Rs.1000/-
  - c) To determine the taxability of the supply of hostel accommodation along with food facilities.
  - d) To determine the appropriate classification and applicable rate of GST on supply of hostel accommodation and food facility.

### Ruling by AAR

The Rajasthan Authority of Advance Ruling did not find favor and issued the Advance Ruling holding that:-

- a. The provision of hostel accommodation along with food facility, Play Room, Gym, Housekeeping, and Room Cleaning to the

students wherein consolidated amount is charged from the students is Mixed Supply.

- b. The entire charges recovered from the students are not exempted from GST under Sr. No. 14 of the CGST (Rate) Notification No. 12/2017 dated 28.06.2017.
- c. As various services provided by the applicant constitute a Mixed Supply, the rate of GST on the whole supply will be the rate of supply that attracts the highest rate of GST. As the highest rate amongst services provided is 18%, the GST rate on the whole supply will be 18% (SGST 9% + CGST 9%).

### Appeal against the ruling of AADHAR

Aggrieved by the Ruling mentioned above, the appellant has preferred the present appeal before this forum. The appellant, in its appeal, inter-alia, mentioned the following grounds of appeal.

1. The provision of hostel accommodation and food with other general facilities shall be treated as composite supply, where the principal supply is renting accommodation.
2. The Composite Supply of that hostel accommodation along with the food facility would be exempt as per Sr. No. 14 of the CGST (Rate) Notification No. 12/2017 dated 28.06.2017. as amended.

### Rajasthan Appellate Authority of Advance Ruling

The AAAR held as, " *We find that in the instant case the appellant is supplying various services like supply of food, TV in the dining hall, Playroom, Gym, Housekeeping of entire hostel premises, Room cleaning and Washing/ dry-cleaning of bed sheets & linen of rooms along with Hostel Accommodation service. In view of the discussions, we view that supply of various other services as detailed above with Hostel Accommodation service is not naturally bundled in the normal course of business. Each service is an independent service and can be supplied separately. It is obvious that a person can live in the hostel without availing of other services like food, TV, gym, etc.; but to make ones stay more comfortable, the said ancillary services are availed by him.*"

Thus, based on the above reasoning AAR held that hostel services are mixed supply since these services can be supplied separately and thus not naturally bundled. Thus, this shall be taxed at the highest rate of service as per the mixed supply concept.

It was also held that the total charges recovered from the students are not exempted from GST under Sr. No. 14 of the CGST (Rate) Notification No. 12/2017 dated 28.06.2017.

### Author's Interpretation



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The prime consideration in the above case was whether it was in the ordinary course of business and naturally bundled. In this connection, the CBIC education guide specifies various parameters to be considered in determining the inclusion in the meaning of naturally bundled. It provides that, "*The perception of the consumer or the service receiver. If a large number of service receivers of such a bundle of services reasonably expect such services to be provided as a package, then such a package could be treated as naturally bundled in the ordinary course of business.*"

1. If we analyze the given case from the consumer's standpoint, then it is clear that the students living in a hostel require the facilities for watching TV, which may be provided commonly through centralized cable connection/Dish as it is pretty infeasible for the students to take individual connections.
2. Further, students also need gym, playroom, etc. along with housekeeping services, room cleaning, and washing/dry cleaning of bed sheets/linen of rooms and clothes of students.
3. Moreover, this is not the requirement of a single student; instead, every student needs such services.
4. One cannot deny the fact that all the students may arrange these allied services individually on their own. Nevertheless, it would lead to huge expenditure and a messy scenario.
5. Thus, it seems to be quite possible that a shared service provider should provide these allied services, and none other than the hostel accommodation provider can arrange these in the best interest of the students considering their pocket and safety parameters.
6. Therefore, it is the perception of the students (service receiver) that a bundle of these services should reasonably be provided by the service provider (Hostel owner) as a package. Hence, these allied services could reasonably be treated as naturally bundled in the ordinary course of business, following the CBIC education guide mentioned above.

In the author's opinion, *without any intention to defame anyone and in a bonafide manner purely in academic interest*, initially the AAR and also by AAAR, the concept of naturally bundled has been misinterpreted. Moreover, the definition of composite supply as given in section 2(30) of the CGST Act, includes a significant parameter 'in the ordinary course of business.

This shows that while deciding whether it is composite supply, the standpoint of business should be taken. In the given case, where the hostel accommodation services are provided along with allied services (like a supply of food, TV in the dining hall, playroom, Gym, housekeeping, room cleaning, etc.), the phrase '*ordinary course of business*' can easily be applied. Thus, the opinion of AAR and AAAR that supplies are independent and can be supplied independently does not seem to be proper.

### Conclusion

If a person running a hostel for residential accommodation of students also provides additional amenities as part and parcel of hostel accommodation, the hostel accommodation service should be taken as principal supply and categorized as composite supply. But the opinion of Rajasthan AAAR is different.

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