

Ruling

GST payable under FCM on Residential Dwellings Leased for Commercial Use.

Observations & Findings

The Applicant, Deepak Jain, along with family members (Lessors) own a property located in Jaipur, Rajasthan which will be referred to as the "Demised Premises." The Applicant entered into a lease agreement with Back Office IT Solutions Private Limited (Lessee). The Lessee specializes in providing comprehensive fund accounting, reporting, and analytics solutions to fund administrators in the hedge fund industry.

The property is officially designated as residential by the Jaipur Development Authority (JDA). However, the Lease Agreement clearly specifies its exclusive use for commercial purposes, particularly as a branch or office of the Lessee. The property's construction was specifically geared toward commercial functionality. Additionally, the Lessee's electricity connection falls under the "medium industry" category.

The Applicant has sought the Advance Ruling to know whether the Demised Premises should be considered within the definition of a residential dwelling for GST purposes and which are the factors important to include in definition of residential dwelling.

The AAR noted that prior to July 18, 2022, there existed a GST exemption for the leasing of residential dwellings when utilized for residential purposes, while leasing residential dwellings for commercial use incurred a tax rate of 18%. However, significant changes were introduced on July 18, 2022, wherein the leasing of residential dwellings for use as a residence, by a registered individual, became subject to GST, shifting the mechanism to reverse charge. The AAR also referred to precedents set in Andhra Pradesh, where it was established that premises constructed and employed not for residential purposes but for conducting business activities, such as operating hostel accommodations, did not qualify as residential dwellings for GST purposes.

Considering these observations, the AAR gave the following ruling answering the two questions:

- The Demised Premises, even though designated as residential by local authorities, was used for commercial purposes as per the lease agreement. Therefore, the lease of the property for commercial use falls under the forward charge mechanism, making the lessor liable to pay GST.
- The important factors to be included in the definition of Residential Dwelling is the purpose for which the dwelling is put to use and the length of stay intended by the users.