

TAX INFO

Dated 03.10.2022

Latest update on GST Law: **Renting of residential accommodation for PERSONAL USE by registered person is exempt** as given in judgement by **Delhi High Court**.

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Name of Petitioner	Seema Gupta
Name of Respondent	Union Of India
Court	Delhi High Court
Date of Judgement	27.09.2022
Appeal No.	W.P.(C) 10986/2022 & CM APPL. 32131/2022

Brief Facts of the Case Law:

Present writ petition was filed challenging Clause (A)(b) of the Notification No.04/2022-Central Tax (Rate) dated 13th July, 2022, as unsustainable being ultra vires Article 14 of the Constitution of India and also beyond the powers conferred under the GST law. The exemption granted by a previous Notification dated 28th July, 2017 for renting of residential accommodation is no longer available to tenants who are registered under GST as per the new Notification dated 13th July'2022. This amendment is particularly affecting those who are doing their business as a proprietary concern, like the Petitioner.

In the counter affidavit by the Department, it was observed that renting of dwelling to businesses merited imposition of GST, while the existing exemption of renting of residential dwellings to non-businesses may continue. There is no justification for exemption where the service of renting of residential dwellings is supplied to a business (registered person). Clearly, where the residential dwelling is rented by a person who is the proprietor of a proprietorship firm in his personal capacity for use as his own residential dwelling, and such renting is not on account of its business i.e., not accounted for in the firms account but is on personal account, the exemption shall continue to be available to him. Similarly, where the residential dwelling is rented by a partner of a partnership firm in his personal capacity for his own residential use and not accounted for in business entity's account, the exemption will be available. The same would be the position in case of partnership firms or other forms of businesses.

Findings and Decision of the Court:

The Government is bound to tax or exempt any supply of goods and services only on recommendations of the GST Council. Since the government is bound by the recommendations of the GST Council, a proposal to amend Notification No.04/2022 – Central Tax (Rate) to bring in greater clarity regarding taxability of registered persons, is being examined to be placed before the GST Council, as the Notification No.04/2022-Central Tax (Rate) dated 13.07.2022 does not specify that GST would be charged only where the registered person has rented (taken on rent) residential dwelling in the course or furtherance of business.

However, for the present purposes, it is reiterated for clarity that renting of a residential dwelling to a proprietor of a registered proprietorship firm who rents it in his personal capacity for use as his own residence and not for use in the course or furtherance of business of his proprietorship firm and such renting is on his own account and not that of the proprietorship firm, shall be exempt from tax under Notification No.04/2022-Central Tax (Rate) dated 13.07.2022. The Department shall also be bound by the aforesaid clarification. Consequently, the aforesaid clarification that renting of a residential dwelling by a proprietor of a registered proprietorship firm, who rents it in his/her own personal capacity for use as his/her own residence as well as not for use in the course or furtherance of business of his/her proprietorship firm and such renting is on his/her own account and not that of proprietorship firm shall be exempt from GST, is accepted by this Court and the Department shall be bound by the same.

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