

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

Reserved on: 04.06.2025.
Pronounced on: 07.07.2025

WP(C) No. 1154/2024

IQBAL MUBARIK

S/O: LATE HABIBULLAH KHANYARI

**R/O: RAJBAGH SRINAGAR A/P, VILLA 6F, PALMA SPRINGS. AL
SUFOAH, DUBAI, UAE.**

**PROP. "HOTEL BOULEVARD" DALGATE SRINAGAR THROUGH
HIS DULY CONSTITUTED ATTORNEY HAKIM MOHAMMAD
RAFIQ S/O: HAKIM MOHAMMAD AMIN R/O VASWANI HOUSE,
ROOM 17, 4TH FLOOR BEST MARG, MUMBAI 400001. A/P
ALAMDAR COLONY-B, LALBAZAR, SRINAGAR.**

...PETITIONER(S)

Through: - Mr. Manzoor A. Dar, Advocate with
Ms. Muzamil Jabeen, Advocate

Vs.

- 1. U.T OF JAMMU & KASHMIR THROUGH COMMISSIONER
SECRETARY HOME DEPARTMENT CIVIL SECTT.
JAMMU/SRINAGAR.**
- 2. DIRECTOR GENERAL OF POLICE JAMMU/SRINAGAR, PHQ
PEERBAGH, SRINAGAR.**
- 3. INSPECTOR GENERAL OF POLICE (CKR) KASHMIR, PHQ
BATMALOO, SRINAGAR.**
- 4. AIG BUILDINGS, POLICE HEAD QUARTERS, BATMALOO,
SRINAGAR.**
- 5. COMMISSIONER EXCISE AND TAXATION SOLINA RAMBAGH,
SRINAGAR.**
- 6. ADDITIONAL COMMISSIONER EXCISE AND TAXATION
SOLINA RAMBAGH, SRINAGAR.**

...RESPONDENT(S)

Through:- Mr. Mohsin Qadri, Sr. AAG with
Ms. Maha Majeed, Assisting Counsel

CORAM:

**HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE**

JUDGMENT

Per: Sanjeev Kumar-J:

1. The petitioner is owner of a hotel premises known by the name of "Hotel Boulevard" situated at Dalgate, Srinagar. The hotel premises owned by the petitioner are rented out to the Police Department of the Government of Jammu and Kashmir for the purpose of accommodating the Central Security Forces who are engaged in maintaining law and order in the valley.

2. On the basis of the recommendations made by the concerned Rent Assessment Committee, the petitioner had been receiving rent at the rate of Rs. 300/- per day per room. These rates were fixed by the Government in the year 2013 without any provision for enhancement. All the hoteliers similarly situated with the petitioner sought enhancement of the hiring charges from the Government, however no steps seems to have been taken in that regard till date.

3. Aggrieved by the inaction, the hoteliers filed OWP Nos. 1379/2016 and 827/2016, which came to be disposed of by this Court on 18.02.2019. The respondent-State was directed to constitute a Rent Assessment Committee for

making a revision of rent payable to hoteliers whose premises had been taken on rent by the Department of Home.

4. The short grievance projected by the petitioner in this petition is that, on the one hand the Government is reluctant to revise the per day per room rental fixed way back in the year 2013, and on the other hand the respondent Nos. 5 and 6 (the GST Authorities) have raised a demand under the Jammu and Kashmir Goods and Services Tax Act, 2017. In this petition, the petitioner does not dispute his liability to pay the GST on the per day rental income derived by him by hiring his hotel rooms to the Government but it is claimed that the GST element, which is payable by the petitioner, must be reimbursed/paid in addition to the fixed rent by the Government. It is in this background the petitioner has filed the instant petition seeking a direction to the respondent nos. 1 to 4 to pay the GST as per prescribed rates for the hotel accommodation taken on rent by them from the petitioner. The petitioner also prays for a direction to the respondent nos. 5 and 6 to recover the payment towards GST payable on hiring charges from the Police Department.

5. The writ petition is contested by the respondents No. 5 and 6 (the GST Authorities) who, in their objections, have submitted that after coming into force of Goods and Services

Tax Act, 2017, the accommodation in hotels, food and beverage services became taxable under GST Act, 2017, @12% in respect of a unit of accommodation with a declared tariff of Rs. 1000/- and above but less than Rs. 2500/- per day per unit. There was no GST on accommodation in a hotel having declared tariff below Rs. 1000/-. It is submitted that in terms of notification No. 12 of 2017 dated 28.06.2017, the aforesaid exemption remained in force till 13.07.2022, when vide notification No. 4 of 2022-Central Tax (Rate) dated 13.07.2022, the exemption limit up to Rs. 1000/- per unit per day was taken away. Resultantly, the hotel accommodation having declared tariff below Rs. 1000/- per day per unit has also been made taxable @ 12%. A similar notification i.e., SO 390 of 2022 dated 22nd August, 2022, has been issued by the Finance Department of Jammu and Kashmir, which too came into force w.e.f. 18th July, 2022.

6. It is contended that the petitioner is charging Rs. 300/- per day per room as tariff from the Jammu and Kashmir Police Department and, therefore, in terms of notification No. 4 of 2022 read with notification SO 390 of 2022 *supra*, the petitioner is liable to pay/deposit the GST @ 12% w.e.f. 18th July, 2022. Relying upon the provisions of Section 31(2) of the Jammu and Kashmir GST Act, 2017, and the Central GST Act, 2017, it is submitted that the liability to charge

GST from the tenant while issuing invoice for supplying taxable services is on the petitioner and it is the petitioner who is under a legal obligation to deposit the tax with the Government. There is, however, no separate reply filed by the Department of Home.

7. Having heard learned counsel for the parties and perused the material on record, the writ petition filed by the petitioner raises following questions for determination:-

(i) Whether the rental income received by the landlord from a tenant in respect of accommodation in a hotel (commercial accommodation) on the declared tariff per unit per day is exigible to GST?

(ii) If the answer to question No. 1 is in the affirmative, whether the Department of Home (the tenant herein) is under a legal obligation to disburse the agreed, rental along with GST to the landlord?

8. With the implementation of Goods and Services Tax regime in the year 2017, and the coming into force of the Central Goods and Service Tax Act, 2017 (CGST Act) and the Jammu and Kashmir Goods and Services Act, 2017 (J&K GST Act), brought significant transformation in the taxation laws, particularly in relation to rental income. Renting a property, whether residential or commercial, is classified as a supply of services taxable under the GST regime. After the

issuance of notification No. 04 of 2022-Central Tax (Rate) dated 13th July, 2022 and notification SO 390 of 2022 dated 22nd August, 2022, issued by the Government of Jammu and Kashmir, the rental income derived from hiring of hotel accommodation having declared tariff even below Rs. 1000/- per unit per day has been made taxable @ 12%. Ordinarily, the GST element must be included in the rent. There should be no dispute that the liability to collect the GST on the services supplied is on the supplier of the services and shall arise at the time of supply of goods and services as determined in accordance with Section 12 of the Jammu and Kashmir GST Act. The leasing or renting out of a commercial property is undoubtedly a supply of service taxable under the GST regime. It is in view of this admitted position of law that the petitioner has not contested the claim of the GST authorities to demand GST @ 12% on the rental income by the petitioner on account of hotel accommodation hired by the Department of Home.

9. Chapter III of J&K Goods and Services Act, 2017, deals with levy and collection of tax. Section 7 of the Act reads thus:-

“7. Scope of supply.—(1) For the purposes of this Act, the expression “supply” includes—

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business ;

(b) import of services for a consideration whether or not in the course or furtherance of business ;

(c) the activities specified in Schedule I, made or agreed to be made without a consideration ; and

(d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II.

(2) Notwithstanding anything contained in sub-section (1),—

(a) activities or transactions specified in Schedule III ; or

(b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, shall be treated neither as a supply of goods nor a supply of services.

(3) Subject to the provisions of sub-sections (1) and (2), the Government may, on recommendations of the Council, specify, by notification, the transactions that are to be treated as—

(a) a supply of goods and not as a supply of services; or

(b) a supply of services and not as a supply of goods.”

10. Section 7, as it is evident from its plain reading, given inclusive definition of expression “supply”. Apart from the activities/transactions mentioned in clause (a) to (c), the activities referred to in Schedule II shall also be treated as supply of goods or supply of services as the case may be. Clause (a) is wide enough to include rental or lease made by a person in furtherance of or in the course of business. To say that the renting of hotel rooms for consideration in course of business by the hoteliers is not a supply of service is not acceptable in view of clear and categorical provisions of Section 7 of J&K GST Act. There is similar provision in CGST Act as well.

11. The short submission made by the learned counsel for the petitioner is that when the rental income was determined by the Rent Assessment Committee appointed by the Government, the GST regime was not implemented and the rental income was not taxable under the Jammu and Kashmir General Sales Tax Act or Value Added Tax Act, 2005. It is because of this reason, the element of GST could not have been included in the tariff determined to be paid by the Government to the hoteliers like the petitioner.

12. We have given our thoughtful consideration to this aspect of the matter, and we are of the firm opinion that the tariff per unit per day in respect of the hotel accommodation of the petitioner has been fixed by the Government on the recommendations made by the Rent Assessment Committee much prior to the year 2017, when the GST regime was not implemented. It is, thus, obvious that the levy of GST was not contemplated while fixing the tariff by the Rent Assessment Committee. With the implementation of GST regime and enforcement of Central CGST Act and Jammu and Kashmir GST Act, the income derived by the petitioner and other hoteliers, who had rented out their hotel accommodation to Government for accommodating its security forces, is now taxable @ 12%. We also cannot lose sight of the fact that despite repeated requests and representations made by the hoteliers similarly situated with the petitioner, the rent has not been revised since 2013.

13. Be that as it may, the fact remains that the rental income received by the petitioner and other similarly situated hoteliers is now exigible to GST and, therefore, it is the liability of the Department of Home to reimburse such amount. The invoices of rent will thus have the rental fixed by the Government on the recommendation of the Rent Assessment Committee plus the GST as applicable. This amount of GST to be collected by the petitioner from the

Department of Home is thereafter required to be deposited with the GST authorities to fulfill the legal obligation of paying the GST on the services supplied. Taking the overall view of the matter and the nature of controversy projected by the petitioner, we propose to dispose of this petition by providing as under:-

(i) That the petitioner is liable to pay GST on the rental income which he is receiving from the Department of Home in respect of the hotel accommodation of petitioner hired by the Department of Home. The petitioner, therefore, shall be legally bound to seek appropriate registration under the CGST/Jammu and Kashmir GST Act and deposit the service tax at the prescribed rate with the GST authorities.

(ii) That the Department of Home, Government of Jammu and Kashmir, shall be liable to pay the prescribed rate of GST in addition to the rent payable to the petitioner per room per day as determined by the Government from time to time.

(iii) That it shall be a right time for the Department of Home to constitute a proper Rent Assessment Committee to revise the rental in respect of the hotel accommodations it has taken on rent for the last several years.

(iv) **Ordered accordingly.**

14. The Department of Home shall, w.e.f. August, 2025, start paying the GST in addition to the rental payable to the petitioner, and the petitioner shall immediately and without any further waste of time seek its registration under the Act to enable him to collect the GST from the Department of Home and deposit the same with the GST Authorities. Needless to say, this registration process shall be completed by the petitioner before 31st July, 2025.

15. **Disposed of.**

(SANJAY PARIHAR)
JUDGE

(SANJEEV KUMAR)
JUDGE

Srinagar,
07.07.2025

"Anil Raina Additional Registrar"

Whether the judgment is approved for reporting? Yes.