

HARYANA APPELLATE AUTHORITY FOR ADVANCE RULING

(Constituted under Section 99 of the Haryana Goods and Services Tax Act, 2017 read with Central Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

Sh. Manoj Kumar Srivastava, IRS (C&IT) Chief Commissioner Central Goods and Service Tax Zone Panchkula Member, Appellate Authority for Advance Ruling, Haryana	Sh. Ashok Kumar Meena, IAS Commissioner Excise & Taxation Department Haryana Member, Appellate Authority for Advance Ruling, Haryana
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HAAAR Order-In-Appeal No.: HAAAR/2023-24/01

Date: 16.07.2024

(Passed by Haryana Appellate Authority for Advance Ruling under Section 101(1) of the Haryana Goods and Services Tax Act, 2017 read with Central Goods and Services Tax Act, 2017)

Preamble

1. In terms of Section 102 of the Central Goods & Services Tax, Act 2017/Haryana Goods & Services Tax Act 2017 ('the Act', in Short), this Order may be amended by the Appellate Authority, so as to rectify any error apparent on the face of the record, if such error is noticed by the Appellate Authority on its own accord, or is brought to its notice by the concerned officer, the jurisdictional officer or the Appellant within a period of six months from the date of the Order.
2. In terms of Section 103(1) of the Act, this advance ruling pronounced by the Appellate Authority under Chapter XVII of the Act shall be binding only: -
 - (a) on the Appellant who had sought it in respect or any matter referred to in sub-section (2) of Section 97 for advance ruling:
 - (b) on the concerned officer or the jurisdictional officer in respect of the Appellant.
3. In terms of Section 103 (2) of the Act, this advance ruling shall be binding unless the law, facts or circumstances supporting the said Advance Ruling have changed.
4. In terms of Section 104(1) of the Act, where the Appellate Authority finds that advance ruling pronounced by it under sub-section (1) of Section 101 has been obtained by the Appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void ab-initio and thereupon all the provisions of this Act or the rules made thereunder shall apply to the Appellant as if such advance ruling has never been made.

DETAILS OF THE APPELLANT:

Name and Address of the Appellant	M/s.Imaging Solutions Private Limited, c/o Imran Baig, D-4 Annex., Maharani Bagh, New Delhi
GSTIN/User id of the Appellant	062200004368ART
Advance Ruling Order against which appeal is filed	HR/HAAR/17/2022-23 dated 26.03.2023
Date of Filing of Appeal	24.04.2023
Represented By	Sh. Bharat Bhandari, Advocate
Jurisdictional Authority- Centre	CGST Commissionerate, Gurugram
Jurisdictional Authority- State	Deputy Excise & Taxation Commissioner (ST), Gurugram
Whether payment of fees for filing appeal is discharged. If yes, the amount and Challan No.	No, Partly Paid ₹ 10,000/- (5000/- CGST & 5000/- HGST) vide CIN No. SBIN23040600189701 dated 21.04.2023

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**Order under Section 101 of Central Goods and Services Tax Act, 2017 /
Haryana Goods and Services Tax Act, 2017**

The present appeal has been filed by M/s. Imaging Solutions Private Limited c/o Imran Baig, D-4 Annex., Maharani Bagh, New Delhi(hereinafter referred to as 'the Appellant') under Section 100 (1) of Central Goods and Services Tax Act, 2017/Haryana Goods and Services Tax Act, 2017 (hereinafter referred to as "the Act")against the Advance Ruling No. HR/HAAR/17/2022-23 dated 26.03.2023.

The Order of the Advance Ruling Authority (herein after referred to as 'AAR') was issued on 26.03.2023and the appeal was filed on 24.04.2023 which is within time in terms of Section 100(2) of the Act.

1. BRIEF FACTS OF THE CASE:

1.1 M/s. Imaging Solutions Private Limited c/o Imran Baig, D-4 Annex., Maharani Bagh, New Delhi, a duly registered company, was allotted Plot No. 1, Sector-18, Electronic City, Gurugram.

1.2A dispute regarding the Lease Deed dated 23.03.2001 arose between the Appellant and the Occupier-Company over the title of the property. The said dispute was referred to arbitration wherein Arbitral award dated 04.10.2018 was passed, which has not attained finality in view of the objections filed by both the Appellant and Occupier-Company under section 34 of the Arbitration Act, pending before the Hon'ble Delhi High Court.

1.3 Prior to passing of the above award, on 10.01.2011 the Appellant filed ejectment petition against the occupier-Company before the Rent Controller, Gurugram in view of the tenancy coming to an end under Lease Deed dated 23-03.2001.

1.4 The Occupier-Company filed an application for rejection of the Appellant's ejectment petition, which was not accepted by the Rent Controller vide order dt. 3.11.2011; against which the Occupier Company filed a Civil Revision No. 6890 of 2011 in the Punjab & Haryana High Court.

1.5 In Civil Revision No. 6890 of 2011 filed by the Occupier-Company, an order dated 13.12.2012 was by the Hon'ble Punjab & Haryana High Court in CM No. 24272-CII of 2012 in CM No. 16921-CII of 2012, the operative part of which is reproduced as under:

'After hearing learned Counsel for the parties, without going into the relative merits of the main case at this stage, it cannot be disputed that the present premises are being used by the petitioner company. It is also not in dispute that after exercising their option in terms of Clause 6 of the lease deed (P-3) the petitioner company had paid certain amounts from 2006 up till September, 2008 as per the rent specified in the lease deed, although the said amount was being claimed as such towards part payment of the total sale consideration of Rs. 1,50,00,000/- as stipulated in the lease deed P-3. It also cannot be disputed in law that as of now the Petitioner company has not become the owner of the Property in question, therefore, in my view the ends of justice

would be fully met if the Petitioner to is directed to deposit the following amounts in the following manner:-

1. The petitioner company shall deposit the arrears of rent at the rate of Rs.4,17,600/- pm (as per terms of the lease deed) w.e.f.01.10.2008 and payable till 30.04.2013 before the Registry of this Court.
2. Since the aforesaid amount/arrears are huge, it be deposited in the Registry of this Court on or before 30.04.2013 which will be further deposited in a fixed deposit of a nationalized bank fetching maximum rate of interest.
3. The petitioner company shall also be liable to deposit a sum of Rs. 4,17,600/- payable w.e.f. 01.5.2013 per month by 10th of each successive month in the Registry of this Court till the conclusion of 'lis'
4. The aforesaid amount deposited before the Registry of this Court shall be released to the successful party after the conclusion of the 'lis' between the parties subject to the final adjustment towards either rent or for use and occupation or sale consideration;.

Present CM disposed of.

(JASWANT SINGH)

JUDGE

December 13, 2012.

1.6 Pursuant to the direction made by the Hon'ble Punjab and Haryana High Court, the occupier deposited in the Registry of the High court the arrears of amount as well as the monthly deposits, which were further deposited in to a fixed deposit of a nationalized bank by the High court's Registry.

1.7 Civil Revision came to be disposed of on 22.01.2020 by the Hon'ble Punjab & Haryana High Court with the direction that ejectment proceedings shall be adjourned sine die till the conclusion of the proceedings under section 34 of the Arbitration and Conciliation Act which are pending before the Delhi High Court as the title of the property is subjudice and would have a bearing on the nature of relationship between the Appellant and Occupier-Company. However, Hon'ble High Court did not pass any direction qua the afore-mentioned amounts which had been deposited in the Registry of the Court.

1.8 Against this order dated 22.01.2020, the Appellant moved the Supreme Court of India by way of SLP (C) No. 8754 of 2020 which was disposed of vide order dated 13.09.2020. While disposing of the said SLP on agreed terms, the Hon'ble Supreme Court directed as follows:

"We have heard learned counsel for the parties at some length and consider it appropriate that the special leave petition itself can be disposed of on agreed terms as under without prejudice to the rights and contentions of the parties:

- i) *the impugned order dated 22.01.2020 is not interfered with;*
- ii) *the respondents will continue to make the deposits in terms of the orders passed on 13.12.2012 in CM No. 24272-CII/2012 in CM No. 16921-CII of 2012 in C.R. No. 6890/2011 by the Punjab and Haryana High Court including for the future;*
- iii) *the amount has not been deposited after January, 2020 and the arrears will also be deposited by the respondents within one month from today;*
- iv) *the amount to be deposited by the respondents be released to the petitioner against security. The security shall be of the immovable property in suit which is stated to be unencumbered as per the petitioner after having obtained instructions;*
- v) *The Registrar of the High Court will verify the security;*
- vi) *In view of both the parties having filed objections under section 34 of the Arbitration and Conciliation Act, 1996 (for short, "the Act"), on account of the award which does not permit specific enforcement of the agreement of the immovable property as claimed by the respondents but simultaneously seeks to award damages to the respondents on account of development of structures of the property and in the narrow compass in which arbitration words have to be scrutinized in view of the repeated judgments of this Court, the High Court will endeavor to bestow consideration on the applications filed by both the parties as early as found feasible.*

The special leave petition along with IA No. 86232/2020-application for direction is disposed of in the aforesaid terms.

Pending applications stand disposed of."

1.9 Being cognizant of the amounts which stood deposited before the High court's Registry and the lack of definition qua their nature, i.e. whether it would be considered 'rent', use and occupation charge' or 'sale consideration', in view of the litigation qua the title and nature of relation between the Appellant and Occupier-Company being pending before the Hon'ble Delhi High Court, the above detailed directions of the Hon'ble Supreme Court of India came to be and no adjudication qua the nature of the, said amount was made. Only the amount deposited with the registry of the Hon'ble High Court was ordered to be released to the Applicant, that too against security, i.e. the original title deeds of the suit property. @
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1.10 The aforementioned order of the, Hon'ble Supreme Court of India was executed and the Punjab & Haryana High Court was pleased to direct release of the deposited amount to the Appellant against security i.e. submission of original title documents with the Registry of the Hon'ble High Court.

1.11 It is in this manner that an amount of Rs. 9,66,97,804/- (Net of TDs) was received by the Appellant on 04.03.2022 from the Bank account of Registrar General of the

Punjab and Haryana High Court. The Occupier continues to deposit an amount of Rs. 4,17,600/- in the Registry of the Punjab and Haryana High Court, pursuant to the above order of the Hon'ble Supreme Court. The amount deposited is thereafter released into the Appellant's bank account from the bank account of the Registry of the Punjab and Haryana High Court. It is pertinent to note here that no Invoice (s) whatsoever raised by the appellant for the said deposits as the same are released to it by the Punjab and Haryana High Court under orders of the Apex Court after deposit of original documents of the suit land as security. No service whatsoever is provided by the appellant to the Occupier-Company and the amount received is only as per the dictate of the Hon'ble Courts.

1.12 The Appellant approached the Haryana Authority for Advance Ruling, GST seeking advance ruling on whether any tax is leviable and payable on the monthly amount so being released into the account of the Appellant from the official bank account of the Punjab and Haryana High Court under the above detailed orders of the Punjab & Haryana High Court as well as the order of the Hon'ble Supreme Court of India. It was further sought, in the event the above is answered in the affirmative, then who would be liable to pay the tax and under which mechanism and at what rate.

2. QUESTIONS ON WHICH ADVANCE RULING WERE SOUGHT:

2.1 Whether any tax is leviable and payable on the monthly amount being deposited by occupier in the registry of the High Court of Punjab & Haryana and which is thereafter released into the account of the applicant from the official bank account of the Punjab & Haryana High Court as directed by the Hon'ble Supreme Court of India vide order dated 13.09.2021 in SLP (C) No. 8754 of 2020, order dated 13.12.2012 assed in CM No. 2472-CII of 2012 in CM No. 16921-II of 2012 CR No. 6890 of 2011 and order dated 07.02.2022 passed in CM-88-II of 2022 in IOIN-EA-26 of 2021 in EA No. 26 of 2021 both by the Hon'ble Punjab & Haryana High Court.

2.2 If Question No.1 is answered in the affirmative, then who is liable to pay the tax, under which mechanism (Forward charge or Reverse charge) and at what Rate?

3. ORDER PASSED BY ADVANCE RULING AUTHORITY ON ABOVE QUESTIONS WAS AS UNDER:

3.1 The said Activity of the applicant is duly covered under the definition of the scope of supply as per section 7 of the CGST Act, 2017.

3.2 Forward Charge is applicable.

4. PRAYER OF 'APPELLANT':

The Appellant prayed to;

- a) Set aside/Modify the impugned advance ruling passed by the AAR;
- b) Declare that No GST is applicable till the time nature of deposits being made is not adjudicated upon by a court of competent Jurisdiction;
- c) Grant a personal hearing; and
- d) Pass any such further or other order(s) as may be deemed fit and proper in facts and circumstances of the case.

5. GROUNDS OF APPEAL:

The Advance ruling dated 24.03.2023 has been passed in an illegal, arbitrary and mechanical manner, without appreciating the nuances of the present case.

5.1 The Advance Ruling Authority has gone over and above the orders of the Hon'ble Supreme Court of India and the Hon'ble High Court and declared that the nature of the amount deposited by the Occupier-Company is rent. Absolutely no mention whatsoever has been made in the impugned ruling as to the very fact that even the Hon'ble Supreme Court has not given a finding as to the nature of the amount deposited as the litigation qua the title of the plot as well as the relationship between the Appellant and Occupier-Company is pending adjudication in the Delhi High Court. The Hon'ble Supreme Court of India has also stayed its hand in declaring or commenting on the relation between the Appellant and Occupier-Company but, in an approach completely alien to the statue books, the Haryana Advance Ruling Authority has put itself above the Apex Court of the land and declared the amount to be rental in nature so as to bring it into the ambit of 'Supply of Services' in a totally illegal manner. Thus, the impugned ruling needs to be set aside as the same is based on complete misreading of the facts and the misapplication of the CGST Act.

5.2 The amount deposited in the registry of the High Court does not fall within the definition of 'supply of services' by the Appellant under the GST regime as is apparent from the very order dated 13.12.2012 passed by the Hon'ble Punjab & Haryana High Court which has categorically held that the amount would finally be adjusted towards either rent or for use and occupation or sale consideration. Even the Hon'ble Supreme Court has made no alterations to the said order of the High Court. At the cost of repetition it is mentioned that till date the litigation between the Appellant and the occupier Company is pending. Thus, by no stretch of the imagination can it be held that any sort of service is being supplied by the Appellant to the Occupier-Company.

5.3 Another aspect of the case which has completely been ignored by the Haryana Advance Ruling Authority is the very fact that since the amount is being deposited in the Registry of the High Court only as per and under the specific directions of the High Court and Supreme Court, the Appellant in no manner is able to raise any sort of Invoice(s) against the same. In a completely cavalier manner, the Haryana Advance Ruling Authority has stated that "forward charge is applicable" without addressing the

above submission of the Appellant. The Ruling, as has been passed is not executable since no invoice can be raised by the Appellant as the amount which is being deposited by the Occupier is as per Court orders and not as per any agreement between the parties and in lieu of supply of any services. The approach of the Haryana Advance Ruling Authority is unfathomable in its casualness.

5.4 The amount deposited by the Occupier does not fall under the definition of consideration as defined under CGST Act, 2017 for the very fact that no supply of any service is being made by the Appellant to the Occupier, for which any consideration could possibly be said to be made. The Advance ruling under challenge has gone on war footing against the Appellant without appreciating that the Appellant has itself, in good conscience, approached the Authority to seek clarification in a peculiar situation in view of the orders passed by the Hon'ble courts as well as the pending litigations.

5.5 The Haryana Advance Ruling Authority, in its discussions and findings does not even refer to the reason as to why the deposits are being made in the first place. The ruling, in its findings and discussions, does not even make a passing reference to the orders of the Hon'ble Courts under which the deposit is being made by the Occupier and has completely washed away the role and orders of the Hon'ble Supreme Court of India and the High Court by merely relegating them to the status of "medium through which the consideration is being received by the applicant." The absolute disregard of the fact that deposits are made only and solely due to the orders of constitutional courts has led to a legally unsustainable ruling.

5.6 Further, the Haryana Advance Ruling Authority has lost sight of the fact that no GST is applicable on sale consideration of land as per Schedule III, clause 5 of the CGST Act, 2017. Therefore, in the event of the Courts of competent jurisdiction adjudicating that the amounts deposited in the Registry of the High Court are against sale consideration, no GST would be applicable thereon and any deposit made at this stage could possibly be returned as there is no provision of refund under the GST regime. Any imposition of GST at this stage would be to the prejudice of the Appellant as it would be akin to deciding the nature of the amount so deposited, that too by an Authority woefully lacking any jurisdiction to decide such a matter. @
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5.7 Further, it has been lost sight by the Authority that no Service Tax was applicable on the amount received by the Appellant during the subsistence of tenancy till 2011. Thus there arises no question of applicability of GST.

5.8 Further, it would not be in vain to reiterate that there is no valid legal lease deed in subsistence today under which the Occupier-Company is sitting in possession of the plot. Thus, the Appellant is not providing any service whatsoever to it and it is only under the various Court orders that the deposits are being made into the Registry of the High Court at Chandigarh.

5.9 Even if for the sake of arguments, it stated that the Appellant is supplying services to the Occupier company, though the same is vehemently denied, even then the provision to section 2(31) clearly exempts any deposit given in respect of the supply of goods or services or both from being considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply. In the present case, the Appellant is not considering the said deposits as consideration for any supply of services, as the deposits are being made only as per Court orders, as extensively detailed above. Section 2(31) of the CGST Act, 2017 is reproduced as follows:

Section 2(31) 'consideration' in relation to the supply of goods or services or both includes-

(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

(b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government:

Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply;

Thus there arises no occasion of the applicability of GST on the deposits being made into the Registry.

6. Record of Personal Hearing:

Sh. Bharat Bhandari, Advocate appeared on behalf of the 'Appellant' for personal hearing on 11.07.2024 wherein he admitted the fact that the appellant has partly deposited the Fee of ₹ 10000/- only (₹ 5000/- CSGT & ₹ 5000/- SGST) as prescribed Fee vide challan No. SBIN23040600189701 and there is no other Fee payment challan in respect of the present appeal.

7. Discussions and Findings:

7.1 We have gone through the records of the case.

7.2 Before going into the merits of the case, it is noteworthy to mention that perusal

of records of the case, reveal that the pre-requisite of payment of fee for filing appeal as per Section 100 (3) of the Act read with Rule 106 (1) of CSGT Rules, 2017 has not been fulfilled. The same are reproduced below for ready reference:

Section 100 (3): Every appeal under this section shall be in such form, accompanied by such fee and verified in such manner as may be prescribed.

Rule 106 (1): An appeal against the advance ruling issued under sub-section (6) of section 98 shall be made by an applicant on the common portal in FORM GST ARA-02 and shall be accompanied by a fee of ten thousand rupees to be deposited in the manner specified in section 49.

The corresponding Section 100 (3) of HGST Act, 2017 and Rule 106 (1) of HGST Rules, 2017 were also required to be adhered to by the Appellant.

7.3 After the concurrent reading of both the provisions, it transpires that the Appellant was mandated to deposit a total of ₹ 20,000/- as fee (₹ 10,000/- CGST and ₹ 10,000/- HGST) as a mandatory statutory precondition for filing appeal against the order of the Authority for Advance Ruling, Haryana. However, it is found that vide challan No. 23040600189701 dated 21.04.2023, the Appellant has paid only ₹ 10,000/- (₹ 5000/- CGST and ₹ 5000/- as HGST), which is not the required fee. Since the appeal filed by the Appellant is incomplete for want of deposition of requisite fee, the Authority is of the view that the appeal filed by the Appellant is not maintainable in terms of Section 100(3) of the Act.

ORDER

In view of the above discussions and findings, we are of the view that the appeal filed by the Appellant, being incomplete for want of deposition of requisite fee as mandated under the GST law, deserves to be rejected. Therefore, the appeal filed by M/s. Imaging Solutions Private Limited, c/o Imran Baig, D-4 Annex., Maharani Bagh, New Delhi, is rejected as not maintainable.

The appeal filed by M/s. Imaging Solutions Private Limited, c/o Imran Baig, D-4 Annex., Maharani Bagh, New Delhi, is disposed in above terms.


(Manoj Kumar Srivastava), IRS(C&IT)

Member
Chief Commissioner
Central Goods and Service Tax Zone
Panchkula
मुख्य आयुक्त
केन्द्रीय माल और सेवा कर, पंचकुला क्षेत्र
Goods & Services Tax, Panchkula Zone
Place: -Panchkula


(Ashok Kumar Meena), IAS

Member
Commissioner
Excise & Taxation Department
Haryana



Copy to (Regd AD/Speed Post/Email):-

M/s. Imaging Solutions Private Limited,
c/o Imran Baig, D-4 Annex.,
Maharani Bagh, New Delhi

Copy for information and necessary action to: -

1. The Member, GST, CBIC, North Block, New Delhi-110001
2. The Special Secretary, Goods and Services Tax Council, 5th Floor, Tower-II, Jeevan Bharti Building, Connaught Place, New Delhi- 110001
3. The Chief Commissioner, Central Goods and Service Tax Zone, Panchkula
4. The Commissioner, Excise & Taxation, Haryana
5. The Pr. Commissioner, CGST Commissionerate, Gurugram
6. The Deputy Commissioner, Excise & Taxation (ST), District-Gurugram
7. The Master/Guard File- 2023-24.
8. The GST-III branch in the Head office with the direction to get it uploaded on the website of GST Council Secretariat.

**Registrar
Appellate Authority for Advance Ruling
Haryana**