



HARYANA AUTHORITY FOR ADVANCE RULING,
GOODS AND SERVICES TAX,
HARYANA VANIJYA BHAWAN, PLOT NO 1-3, SECTOR 5,
PANCHKULA-134151 (HARYANA)



ADVANCE RULING NO.HAR/HAAR/R/2019-20/09
(In Application No.: 09/2019-20, dated 15.07.2019)

Name & Address of the Applicant	:	M/s Haryana State Warehousing Corporation, Bay No. 15-18, Sector-2, Panchkula, Haryana.
GSTIN of the Applicant	:	06AAACH3948K1ZF
Date of Application	:	15.07.2019
Clause(s) of Section 97(2) of CGST/HGST Act, 2017, under which the question(s) raised.	:	Clause(b)-applicability of a notification issued under the provisions of this Act.
Date of Personal Hearing	:	10.10.2019
Present for the Applicant	:	Sh. B.K Nohria (C.A), Sh. N.K Nohria (C.A), Sh. Manoj Kumar (C.A) and Sh. Vimlesh Kumar (Account Assistant)

Memo No.: 1049/AAR
Dated: 28/8/2020

1. Brief submission of the applicant:

- 1.1 The Applicant is incorporated under Section 18 of the Warehousing Corporations Act, 1962, which is an Act of Parliament. At present the equity of the Applicant is held equally by the Government of Haryana and Central Warehousing Corporation, which is established under Section 3 of the Warehousing Corporations Act, 1962.
- 1.2 The 100% of equity and control of the Central Warehousing Corporation lies with the Government of India. However he later clarified, vide his letter dated 10.10.2019 that equity share of Government of India is 55.02% as against 100% stated in written statement. The management of the Applicant is regulated as per the Section 20 of the Warehousing Corporations Act, 1962 under which five Directors are nominated by Central Warehousing Corporation and five Directors are nominated by Government of Haryana alongwith a Managing Director. The decisions and functions performed by the applicant are on the basis of orders given by the Government of India and/or Government of Haryana.



- 1.3 Definition of Government Entity as per Para 2 (zfa) in Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017 as amended by Notification No. 32/2017- Central Tax (Rate) dated 13.10.2017 is as follows:

“Government Entity” means an authority or a board or any other body including a society, trust, corporation,

- (i) set up by an Act of Parliament or State Legislature; or
- (ii) established by any Government, with 90% or more participation by way of equity or control, to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority.

2. Question on which Advance Ruling is sought:

- 2.1 Whether definition of Government Entity as defined in Para 2 (zfa) in Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017 as amended by Notification No. 32/2017- Central Tax (Rate) dated 13.10.2017 is applicable on the applicant?

3. Discussion:

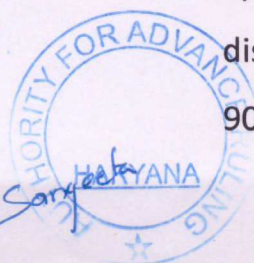
- 3.1 In order to determine whether the applicant i.e. Haryana Warehousing Corporation is a ‘Government Entity’ or not, it is necessary to deeply examine and interpret the definition of ‘Government Entity’ as contained in Para 2 (zfa) in Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017 as amended by Notification No. 32/2017- Central Tax (Rate) dated 13.10.2017. It reads: “Government Entity” means an authority or a board or any other body including a society, trust, corporation,

- (i) set up by an Act of Parliament or State Legislature; or
- (ii) established by any Government, with 90% or more participation by way of equity or control, to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority.



3.2 In order to qualify for a Government Entity the applicant must have been setup by an Act of the Legislature of the Union or of the State or it must have been established by any of the Governments i.e. the Union or of the State. It is a matter of fact that the Haryana Warehousing Corporation is established under Section 18 of the Warehousing Corporation Act, 1962 which is an Act of Parliament. But the definition also provides for 90% or more participation by way of equity or control of the respective Governments. It means that if the Authority or Board or any other body is established by an Act of Parliament, the Union Government must have 90% or more participation by way of equity or control. The condition applies to a State Government if such body is established by a State Legislature.

3.3 In this case, admittedly the equity share of Central Government is 55.02%. Therefore, the condition of 90% or more participation by way of equity is not fulfilled. Further, the applicant has submitted that as per Section 20 of the Warehousing Corporation Act 1962, five directors are nominated by Central Warehousing Corporation with the condition that one shall be nominated in consultation with the State Bank and at least one shall be non-official. Five directors are nominated by the State Government and a Managing Director is appointed by the State Government in consultation with the ten directors discussed above. Firstly, since out of ten directors, five are nominee of the State Government, the Central Government cannot be said to have more than 90% control. Secondly, even if the cumulative control of Central and State Government is considered, the same falls short of the condition of 90% control as stipulated in the definition discussed above. Reason being, **at least one** of the five directors nominated by the Central Warehousing Corporation is a non-official and one has to be appointed in consultation with the State Bank which has only 54% share of the Government of India. So, essentially at the maximum, eight out of the ten directors are purely Government nominees. The Managing Director is appointed by the State Government in consultation with the ten directors discussed above. In nutshell, the applicant fails to satisfy the condition of 90% control also.



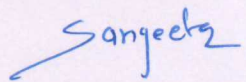
A handwritten signature in blue ink, appearing to be 'R. K. Sharma'.

4. **Ruling:**

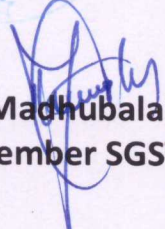
- 4.1 The applicant i.e. Haryana Warehousing Corporation is not a 'Government entity' in light of the definition contained in Para 2 (zfa) in Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017 as amended by Notification No. 32/2017- Central Tax (Rate) dated 13.10.2017.

Ordered accordingly.
To be communicated.

11.10.2019
Panchkula.


(Sangeeta Karmakar)
Member CGST




(Madhubala)
Member SGST

Regd. AD/Speed Post

**M/s Haryana State Warehousing Corporation,
Bay No. 15-18, Sector-2, Panchkula, Haryana.**

Copy to:

1. The Commissioner, Central Goods & Service Tax, Panchkula Commissionerate, SCO 407-408, Sector-8, Panchkula, Haryana.
2. Assistant Commissioner, Central Goods & Service Tax, Panchkula Division, SCO 407-408, Sector-8, Panchkula, Haryana.
3. Deputy Excise and Taxation Commissioner (ST), Panchkula.

o/c