



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/2019-20/22  
(In Application No.: 22/2019-20, dated 11.12.2019)

|  |   |  |
|--|---|--|
| Name & Address of the Applicant  | : | M/s Haryana State Warehousing Corporation,<br>Bay No. 15-18, Sector-2, Panchkula, Haryana.   |
| GSTIN of the Applicant   | : | 06AAACH3948K1ZF  |
| Date of Application  | : | 11.12.2019   |
| Clause(s) of Section 97(2) of<br>CGST/HGST Act, 2017, under which the<br>question(s) raised. | : | Clause(a)- classification of any goods or<br>services or both;<br>(e)- determination of the liability to<br>pay tax on any goods or services<br>or both; |
| Date of Personal Hearing   | : | 25.02.2020   |
| Present for the Applicant  | : | Sh. N.K Nohria (C.A), Sh. Ram Saran, S.A.M<br>(Accounts) and Sh. Vimlesh Kumar (Account<br>Assistant)  |

**Memo No.:** 1062/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. Applicant acts as a procurement agency for and on behalf of the Government of Haryana and Government of India through Food Corporation of India and their agencies.
- 1.2 The Applicant purchase paddy from the *arthias* situated at various market committees within the state of Haryana and gets the same milled from rice millers.
- 1.3 The applicant enters into the contract with the rice millers as per the rates defined/ fixed by the Central Government.
- 1.4 As per the contract, rice millers are charged 12% per annum on daily basis in the form of interest for delay in delivery of milled rice as per the time prescribed in the contract which is recorded in the books of applicant as income in the form of holding charges.
- 1.5 The objective of this provision is to act as an inducement to due performance of a particular contractual obligation, or to regulate beforehand in an agreed and certain manner the rights of the parties, rather than leave them to the less predictable remedies otherwise available, and in particular the assessment of damage in the event of the breach of the obligation in the question.



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- 1.6 Indian contract Act, 1872 deals with 'liquidated damages' in Section 73 and 74 of the said Act. Accordingly, these are reproduced below:

### Section 73

*"When a **contract** has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the **contract**, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it."*

### Section 74

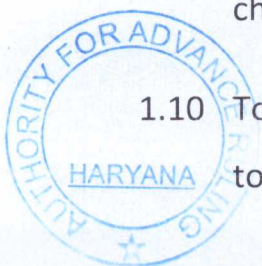
*"When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for."*

Liquidated damages are nothing but monetary compensation for suffering arising out of breach of contract.

- 1.7 That as per Para 5(e) of Schedule II to the Central Goods and Services Act, 2017 agreeing to the obligation to tolerate an Act is a supply of service.
- 1.8 As per the applicant, interest also known as holding charges are taxable supplies.
- 1.9 It falls under the HSN 999794. Agree to tolerate an act. The applicant is tolerating an act of delay in delivery of milled rice by the rice millers and is charging interest (holding charges) on the same.

- 1.10 To classify the said supply under HSN 999794, there are certain conditions to be met which are as follows:

- a. There must be an agreement. In the given case there is a written contract between the applicant and the rice millers.



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- b. There must be benefit and obligation. The rice miller is availing benefit of enhanced period for the delivery of milled rice and it had an obligation under contract to provide the milled goods within specified period and to pay interest in case of delay in delivery of goods.
- c. There must be a toleration of act. The applicant is tolerating an act of delay in delivery of goods and not taking any legal recourse for the specific performance of the contract.
- d. In the opinion of the applicant, it is a taxable supply.

**2. Question on which Advance Ruling is required:**

- 2.1 (a) Whether interest charged for delay in delivery of goods is taxable under Section 9 of CGST Act, 2017 or HGST Act, 2017 or exempt under Section 11 of CGST Act, 2017 or HGST Act, 2017.
- (b) What is the HSN Code of the service mentioned in Para (a) supra?

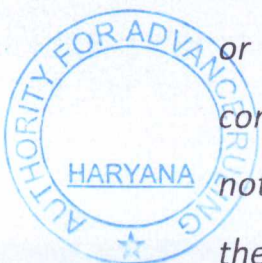
**3. Discussion and Findings:**

- 3.1 In order to determine whether the interest charged for delay in delivery of goods is taxable under Section 9 of CGST Act, 2017 or HGST Act, 2017 or exempt under Section 11 of CGST Act, 2017 or HGST Act, 2017, the relevant Sections are reproduced below.

- 3.2 Section 9 of CGST Act, 2017:

*Section 9: Levy and collection*

*(1) Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.*





(2) The central tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council.

(3) The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

(4) The central tax in respect of the supply of taxable goods or services or both by a supplier, who is not registered, to a registered person shall be paid by such person on reverse charge basis as the recipient and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

(5) The Government may, on the recommendations of the Council, by notification, specify categories of services the tax on intra-State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services:

Provided that where an electronic commerce operator does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax:

Provided further that where an electronic commerce operator does not have a physical presence in the taxable territory and also he does not have a representative in the said territory, such electronic commerce operator shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax.



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3.3 Section 11 of CGST Act, 2017:

Section 11: Power to grant exemption from tax

(1) Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by notification, exempt generally, either absolutely or subject to such conditions as may be specified therein, goods or services or both of any specified description from the whole or any part of the tax leviable thereon with effect from such date as may be specified in such notification.

(2) Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by special order in each case, under circumstances of an exceptional nature to be stated in such order, exempt from payment of tax any goods or services or both on which tax is leviable.

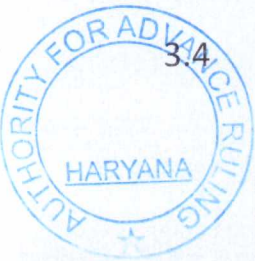
(3) The Government may, if it considers necessary or expedient so to do for the purpose of clarifying the scope or applicability of any notification issued under sub-section (1) or order issued under sub-section (2), insert an explanation in such notification or order, as the case may be, by notification at any time within one year of issue of the notification under sub-section (1) or order under sub-section (2), and every such explanation shall have effect as if it had always been the part of the first such notification or order, as the case may be.

**Explanation:-** For the purposes of this section, where an exemption in respect of any goods or services or both from the whole or part of the tax leviable thereon has been granted absolutely, the registered person supplying such goods or services or both shall not collect the tax, in excess of the effective rate, on such supply of goods or services or both.

Further, HSN Code 999794 describes as under:-

| HSN Code | Description                  |
|----------|------------------------------|
| 99       | Services                     |
| 9997     | Other Services               |
| 99979    | Other miscellaneous services |
| 999794   | Agreeing to tolerate an act  |

3.4



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3.5 Schedule II of Central Goods and Services Act 2017, describes activities to be treated as supply goods or supply of services. Relevant portion i.e. Para 5 of the Schedule II of Central Goods and Services Act 2017 is reproduced as under:

*5. Supply of services*

*The following shall be treated as supply of services, namely:—*

*(a) renting of immovable property;*

*(b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.*

*Explanation.—For the purposes of this clause—*

*(1) the expression "competent authority" means the Government or any authority authorised to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely:—*

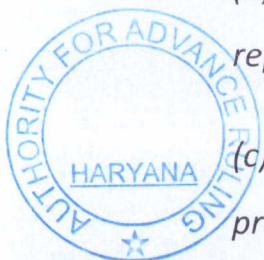
*(i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972; or*

*(ii) a chartered engineer registered with the Institution of Engineers (India); or*

*(iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority;*

*(2) the expression "construction" includes additions, alterations, replacements or remodelling of any existing civil structure;*

*(c) temporary transfer or permitting the use or enjoyment of any intellectual property right;*



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(d) development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software;

**(e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act; and**

(f) transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.

3.6 On perusal of Para 5(e) of Schedule II of Central Goods and Services Act 2017; it is observed that for an activity to be supply of service there must be an agreement; that there must be benefit and obligation; that there must be a toleration of act.

As submitted by the applicant (a) there is a written contract between the applicant and the rice millers; (b) the rice miller is availing benefit of enhanced period for the delivery of milled rice and it had an obligation under contract to provide the milled goods within specified period and to pay interest in case of delay in delivery of goods and (c) the applicant is tolerating an act of delay in delivery of milled rice by the rice millers and is charging interest (holding charges) on the same and not taking any legal recourse for the specific performance of the contract.

3.7 We agree with the contention of the party. The interest charged by the applicant for delay in delivery of milled rice as per the time prescribed in the contract is a supply of service under Para 5(e) of Schedule II of Central Goods and Services Act 2017.

3.8 The service "agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act" falls under the HSN Classification 99794 and is a taxable supply.



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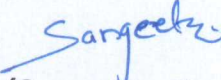


4. **Ruling:**

- (i) The interest charged for delay in delivery of goods is taxable under Section 9 of CGST Act, 2017.
- (ii) The said service merits classification under HSN 999794.

Ordered accordingly.  
To be communicated.

03.03.2020  
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 of Central Goods & Services Tax, SCO No. 407-408, Sector-8, Panchkula, Haryana.
2. Deputy Excise and Taxation Commissioner (ST), Panchkula.

o/c