



**HARYANA AUTHORITY FOR ADVANCE RULING,
GOODS AND SERVICE TAX,**



**HARYANA VANIJYA BHAWAN, PLOT NO. 1-3,
SECTOR 5, PANCHKULA-134151 (HARYANA)**

ADVANCE RULING NO. HR/HAAR/08/2022-23 DATED

Name & Address of the Applicant.	M/s Amarnath Aggarwal Sco-10-11, Sector-2, Panchkula 134109
GSTIN of the Applicant.	06AABCA3736B1ZA
ARN No.	AD060618000470G dated 16.06.2018
Clause(s) of Section 97(2) of CGST/HGST Act, 2017, under which the questions have been raised.	(b) Applicability of a notification issued under the provisions of this Act; (e) Determination of the liability to pay tax on any goods or services or both. (g) Whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.
Date of Hearing:	28.09.2022

Memo 357/AETL(AAR)
Dated: 14.10.2022

APPLICANT'S ELIGIBILITY FOR SEEKING AN ADVANCE RULING:

To file an application before the Authority of Advance Ruling, the applicant must satisfy the conditions prescribed under the Central Goods and Services Tax Act, 2017 (hereinafter referred to as CGST Act, 2017) and Haryana Goods and Services Tax Act, 2017 (hereinafter referred to as HGST Act, 2017). Since the provisions of both the Acts are *parimateria*, any reference to provisions of CGST Act, 2017 in this order should be construed as a reference to corresponding provisions in IGST Act, 2017/HGST Act, 2017 as well.

Sections 97(2) of the CGST Act, 2017 prescribes that Advance Ruling may be sought inter alia on the question of (b) Applicability of a notification issue under the provisions of this Act. (e) Determination of the liability to pay tax on any goods or services or both. (g) Whether any particular thing done by the applicant with respect to any goods and/or services or both amounts to or results in a supply of goods and/or services or both, within the meaning of that term.

Proviso with reference to the Section 98(2) of CGST Act, 2017 states that where the questions raised in the application is already pending or decided in any proceedings in the case of the applicant under any provision of this Act, the application may be rejected by the Advance Ruling Authority after providing an

opportunity of being heard to the applicant. And in this case, the applicant has undertaken in form ARA-01 that the issue is neither pending nor decided in any proceedings under any of the provisions of the Act. Besides the applicable fees in the case has been paid. So, he is eligible to seek an Advance Ruling under the above provisions and the case is being heard on merits.

Statement of facts as per ARA-01:-

The applicant is a registered taxpayer under the CGST Act, 2017. The taxpayer is a Pvt. Ltd. company. We are developers and developing residential complexes which includes, plots, commercial shops, group housing flats. We are doing various activities under this GST registration. We are collecting GST as applicable from the customers and depositing the same with the department after adjusting the input tax credit available to us.

We have our own arrangement of water supply activities which as under:

“We have laid water supply pipe lines, over head tanks, tubewells and water treatment yard in the complexes. The underground water is being lifted through Tubewell to Treatment yard and after treatment the water is again lifted to overhead tank through motor pumps and then supplied the same to the residents through pipe lines. The water reading meters have installed for individual residents. The consumption of water reading is taken periodically and the intimation of consumption of water is informed to the consumers on prescribed rate. The invoice cum Receipt is issued to the customers at the time of payment alongwith GST.”

As per our understanding the said water supply activities is covered under GST code no. 996921. Accordingly we are collecting the GST and depositing it in the govt. treasury alongwith other due GST taxes after adjusting the input tax credit.

Some residents are protesting that the Goods and Services Tax, 2017 is not applicable on the distribution of water supply as stated above and they had complained on the issue of charging GST on water supply bills at various fora.

Queries on which Advance Ruling has been sought by the applicant:-

1. Whether the activities as mentioned above are covered under the GST Act?
2. If covered, inform HSN/SAC Code.
3. Rate of GST to be charged on these services?



PERSONAL HEARING:

On 28.09.2022 Sh. Virbhan Garg, Manager of applicant company (Amravati Enclave) presented the matter before the authority on behalf of the applicant and enumerated the detail facts of the case.

DISCUSSION AND FINDING:

The case is heard *in extenso* by the authority. The details of the matter has been perused. The invoices which are being raised by the applicant to the residents of the Amarvati Enclave complex for the supply of the services are examined by the authority during the hearing proceedings. It is observed that the applicable tax has been charged by the applicant in these invoices.

There are a few invoices in which tax has been calculated but not charged. These are the instances in which the residents has denied to pay the tax amount. Further, he has informed that Democratic Welfare Association of Amravati Enclave Residents has filed a writ petition no. 12909 of 2019 before the Hon'ble Punjab and Haryana High Court, Chandigarh. The writ has been filed by the residents who are not willing to deposit the applicable tax on the water supply. In this reference, it is noticed that the proviso to Section 98 (2) is not applicable in the present matter as the applicant himself has not filed any appeal/case before any forum under the GST Act, 2017.

The affairs of the Amarvati Enclave Complex like common area maintenance, common area electricity supply, water supply & sewerage disposal and management are looked after/managed by the applicant company. He has also apprised that there are 2-3 resident welfare societies in the Amarvati Enclave complex.

Now, the main issue is whether the activity of the supply of water to the residents of this society is a taxable event or not under the GST Act, 2017? In this regard, it is observed by the authority that as per the notification no. 12/2017 dated 28.06.2017, Pure Services (excluding works contract services) or other composite supplies involving supply of other goods provided to the local authority by way of any activity in relation to any function entrusted to municipality under article 243W of the constitution of India are nil rated. Whereas the applicant is a Private Limited Company registered under the companies Act, 2013 and not entitled for the said exemption.

The relevant provisions under the CGST Act, 2017 are as under:-

Section 2(17) "business" includes--



- (a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;
- (b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);
- (c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;
- (d) supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;
- (e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;
- (f) admission, for a consideration, of persons to any premises;
- (g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;
- [(h) activities of a race club including by way of totalisator or a license to book maker or activities of a licensed book maker in such club; and]
- (i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities;

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:

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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;

Section 2(47) "exempt supply" means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply;

Section 2(105) "supplier" in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied;

Section-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, licence, 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; [and]
- (c) the activities specified in Schedule I, made or agreed to be made without a consideration; [***]

(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.

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.”

In common parlance, a water distribution system is a part of water supply network with components that carry potable water from a centralized treatment plant or wells to consumers to cater the demand of the residential societies. It also includes the water supply for commercial, industrial and fire fighting requirements.

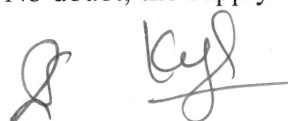
From the perusal of the above mentioned legal provisions with reference to the issue at hand, the activity of water distribution system by the applicant to the residents of the Complex is covered under definition of business as enumerated above and it is a taxable supply. The scope of the supply under the GST Act is quite vast and encompasses all the supplies of goods and services which are not explicitly exempted by the government. The water distribution system is an independent business enterprise and here in the present case it is part of business activities of the applicant. It can also be said that it is a supply which is being done by the applicant for the furtherance of business.

The relevant entry no. 3 of **Pure Services** in the exemption notification dated 12/2017-CT(R) which got amended on 18.11.2021 w.e.f 01.01.2022 is as: *Pure Services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union territory or local authority by way of any activity in relation to any function entrusted to a Panchayat under Article 243 G of the Constitution or in relation to any function entrusted to a Municipality under Article 243W of the Constitution.*

From this, it can be construed that for any supply to be covered under the Pure Services that there should be no supply of goods, the recipient should be Central government/State government/Union territory/ Local Authority and services should be by way of any activity in relation to any function entrusted to a panchayat under article 243G of the constitution or in relation to any function entrusted to a Municipality under Article 243W of the Constitution. Exclusion in this entry is already mentioned.

Conclusion:-

From the above discussions and legal provisions applicable in the case it can be said that the activity undertaken by the applicant cannot be considered as Pure Services which has been mentioned at serial no. 3 in the Notification No. 12-CT(R) dated 28.06.2017 wherein the services are nil rated. No doubt, the supply of water


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supply/water distribution system by the Municipal Committee/Panchayat/Local Authority or by any Government agency is exempted under the provisions of the GST Act, 2017. It is also to be noted unless there is any express/explicit option is given in the exemption notification by the Government, the concessional or exempted rate of tax cannot be availed by any taxpayer. And there is no such exemption given under the provision of the Act for the said activity to the residential societies.

So, it can be concluded that the activities of water distribution system/water supply services being undertaken by the applicant in the present case is a taxable supply under the CGST/HGST Act, 2017.

7. Ruling: -

Questions	Answers
1. Whether the water supplies activities done by the applicant are covered under the GST Act?	Yes
2. If covered, Inform HSN/SAC Code.	996921(Water distribution Services)
3. Rate of GST to be charged on these services.	18 %


(Sunder Lal)
Member CGST


(Kumud Singh)
Member SGST

Regd. /Speed Post

M/s Amarnath Aggarwal
Sco-10, Sector -2, Panchkula
134109

Copy to:

1. The Additional Commissioner, Central Goods & Service Tax Commissionerate, Plot No. 5, Sector 25, Panchkula (Haryana).
2. The Deputy Excise and Taxation Commissioner of State Tax, Panchkula.
3. The Deputy/ Assistant Commissioner, Central Goods & Service Tax, Commissionerate:-Panchkula, Plot No. 5, Sector 25, Panchkula(Haryana).

Note: An Appeal against this advance ruling order lies before the Haryana Appellate Authority for Advance Ruling for Goods and Service Tax Haryana Vanijya Bhawan, Plot No. 1-3, Sector 5, Panchkula-134 151 (Haryana), within 30 days from the date of service of this order.