



HARYANA AUTHORITY FOR ADVANCE RULING,
GOODS AND SERVICES TAX,



HARYANA VANIJYA BHAWAN, PLOT NO I-3, SECTOR 5,
PANCHKULA-134151 (HARYANA)

ADVANCE RULING NO.HAR/HAAR/R/2018-19/ 13

(In Application No.: 13/2018-19, dated 29.06.2018)

Name & Address of the Applicant	: M/s Awla Infra, P.O. Ellenabad, VPO, Neemla, Tehsil Ellenabad, Sirsa.
GSTIN of the Applicant	: 06AATFA9966C1Z0
Date of Application	: 29.06.2018
Clause(s) of Section 97(2) of CGST/HGST Act, 2017, under which the question(s) raised.	: (a) Classification of goods and/ or services or both. (b) Applicability of a notification issued under provisions of this Act.
Date of Personal Hearing	: 13.09.2018
Present for the Applicant	: Dr. Subash C. Batra, GM (Warehousing Operations) .

Factual Background As Per Applicant

1. A Scheme known as "SCHEME FOR CONSTRUCTION OF GODOWNS FOR FCI – STORAGE REQUIREMENTS, THROUGH PRIVATE ENTREPRENEURS – 2008" (in short known as PEG-2008 Scheme) was framed by the Food Corporation of India (FCI) at the behest of Government of India. The details of the scheme are available on the official web-site of the FCI.
2. The Haryana State Cooperative Supply and Marketing Federation Ltd. (HAFED) was notified as nodal agency for construction of godowns in the State of Haryana under the said PEG-2008 Scheme of the Central Government/ FCI.
3. Accordingly, during the year 2011, HAFED invited tenders from private parties, for construction of godowns for FCI Storage Requirements to be managed and supervised by HAFED for a guaranteed lease of Ten years on Build, Own & Operate/ lease basis for varying capacities for storage of food grains at various locations in the State of Haryana. Copy of the Tender Document is placed at Annexure-2 on record.
4. M/s Awla Infra participated in the above tender enquiry and on being successful at the tender enquiry, were issued Letter of Allotment for Construction of godowns for specified capacity at one location (Elenabad) under the said PEG-2008 Scheme of the Govt. of India at agreed rates of rent per quintal per month.
5. M/s Awla Infra accordingly constructed storage capacity at one location (Elenabad) under the said scheme in terms of the respective Letter of Allotment. Agreements were signed between the Private Investor (M/s Awla Infra) and the Nodal Agency (HAFED) and between the Nodal Agency (HAFED) and the FCI. This is a tripartite arrangement where one agreement has been executed between the private investor and the nodal agency and the other agreement has been executed between the nodal agency and the FCI. Copy of the agreement between the Private Investor and the HAFED is placed on record at Annexure-3.

Sanyokta

6. Under the said PEG-2008 Scheme, there are two types of PEGs –

- (i) On Lease only basis and
- (ii) On Lease and Services basis.

In case of Lease only basis, godowns have been built by the Private Investor and have been leased out to the Nodal Agency which manages storage, preservation and warehousing of the stocks of the FCI stored therein.

In case of Lease and Services basis, godowns have been built by the Private Investor and have been leased out to the Nodal Agency and the storage, preservation and warehousing of the stocks of the FCI stored therein is managed by the Private Investor under the supervision of the Nodal Agency.

The present case falls under the PEG scheme of 'Lease and services basis' type.

7. In terms of the provisions of the Central Goods and Services Tax Act, 2017 (in short GST Act) "Rent received on leasing of Immoveable Property" is taxable, while the "Storage or Warehousing of Agricultural Produce (Wheat & Paddy) and Rice" is exempt from GST.
8. In terms of the agreement between the nodal agency and the private investor, "It shall be the responsibility of the lessor to deposit the service tax (if applicable) with the concerned Authority as per rates applicable from time to time. Service Tax as applicable can be claimed by the lessor along with the monthly rent provided the lessor furnishes an invoice for the same containing valid service tax registration number."
9. In terms of the agreement between the nodal agency and the FCI, Private Investors will be responsible for the payment of service tax as applicable on storage charges of food grains and claim the same from FCI through the Nodal Agency. The relevant clause is understood to be as under:-
 - 9.1 - For godowns hired on lease & services basis: Storage charges for godowns constructed for lease & services by Private Investors and supervised by the Nodal Agency shall be reimbursed to the Nodal Agency at the monthly rates/qtl. as approved by SLC/HLC for lease & services. FCI shall also pay to the Nodal Agency, 15% of the monthly rates/qtl. as approved by SLC/HLC as supervision charges on submission of separate bills. There shall be annual increase of 33% of percentage increase in WPI in rent (Rate approved by HLC/SLC) for such godowns provided on lease with services by Private Investors to the Nodal Agency. Private Investors will be responsible for the payment of service tax as applicable on storage charges of food grains and claim the same from FCI through the Nodal Agency.
10. Private investors were made to quote the rates of monthly rentals exclusive of the taxes, as a result of which ibid provisions were made in the agreements between private investors and nodal agency and between nodal agency and FCI. With the substitution of Service Tax Act by the GST Act by the Govt. of India, the above provisions in the agreements have apparently to be read as, "Private Investors will be responsible for the payment of GST as applicable on storage charges of food grains and claim the same from FCI through the Nodal Agency".
11. GST Cell of FCI Head Office at New Delhi has issued Letter No. F-19/GST/2016-17/Part-I/Fin/GST_29 dated 07.09.2017 regarding applicability of GST as per which the present case falls under Sr. No. 1 – Agreements of FCI with nodal agencies (where Private investors construct godowns). According to this letter dated 07.09.2017 of the FCI, in case of both type of scheme with or without services the agreement between FCI and Nodal agencies is in the nature of Storage and Warehousing services and that Storage and Warehousing services for agriculture produce, food grains including Pulses, Rice etc. is fully exempted under GST. Copy of this letter dated 07.09.2017 of the FCI is placed on record as Annexure-4.

b.
Sanjeeta

Question(s) on which advance ruling is required

'Whether GST is exempt or is applicable on the Private Entrepreneurs Godowns built under the PEG-2008 scheme of the FCI and leased out to the Nodal Agency (UPSWC) on 'Lease and services basis' for the storage of FCI's food grain stocks (Wheat)'.

Applicant's interpretation of law and/or facts, in respect of the aforesaid question(s)

12. Under the Service Tax regime, District Office, FCI, Hisar released the amount of service tax of Rs. 3.43 crores to the applicant through the nodal agency – HAFED continuously for a period of more than three years on their raising the invoices and it was only after receiving the amount from the FCI/ HAFED, they had deposited the service tax with the treasury. FCI, District Office, Hisar, however, subsequently in the fourth year, recovered/withheld the entire amount of Rs. 3.43 crores from their subsequent rent bills while the entire amount had been deposited by them to the Govt. Treasury as service tax. Now they are struggling hard to get the amount refunded from Service Tax Dept. and/ or FCI for almost two years with no solution in the offing and resultantly they are suffering financial loss and harassment for no fault of theirs. The applicant understands that there is no change in the nature of taxation under the GST regime as against the Service Tax regime.

Comment of the Officer under section 98 (1) of the CGST/HGST Act, 2017

13. The Deputy Excise & Taxation Commissioner, Sirsa being the jurisdictional officer had submitted his comments as required under section 98 (1) of the CGST/HGST Act, 2017 as under:-
- 13.1 That as per provisions of section 7 of Haryana GST Act/CGST Act and Schedule II Sr. No.5 appended to section 7, the renting/leasing of immovable property is supply of services. Since the applicant being the owner of immovable property, supplies the services for commercial purposes to Hafed, thus the amount received on account of Rent/lease is taxable being supply of taxable services falling under section 7 of HGST Act, 2017.
- 13.2 It is further pointed out that as per Notification No.46/ST-2 dated 30th June 2017 Haryana Goods and Services Tax Act (Rate), Sr.No.24 and Notification No. 47/ST-2 dated 30th June 2017 Haryana Goods and Services Tax Act (Rate) Sr.No.54, the GST Rate on loading, unloading, packing, shortage or warehousing of agriculture produce is Nil but renting of immovable properties i.e. Godowns given for commercial use is not covered in the above said notifications and is thus not exempt from the levy of GST. The intention of the exemption given to the agriculture services under heading 9986 at Sr. No. 24 of the notification no. 46/ ST-2 of 2017 is the exemption to the support services for agriculture which means services relating to *cultivation of plants* and rearing of all life forms of animals etc. i.e. where such services are extended for the *cultivation of plants*.
- 13.3 The plain reading of both the notifications makes it amply clear that the renting/leasing of warehouse by the applicant is not extended for cultivation of plants. The dominant intention which can be deciphered from the lease agreement between the present applicant and HAFED is that the present applicant is in the business of leasing/renting warehouses/godowns and any services, if rendered, are ancillary and incidental thereto. Hence, the said agreement falls within the scope of supply as defined under section 7 of HGST/CGST Act, 2017.
- 13.4 Further it will not be out of place to mention that the agreement between the owner of the godowns and HAFED is having commercial terms and conditions which itself shows that the godowns have been given on rent or lease for commercial purposes and not for supporting cultivation of plant.
- 13.5 Explanation F. No.354/173/2017-TRU dated 15-11-2017 appended by the present applicant in support of his claim does not squarely cover the case of the present applicant as in the said explanation only the term Market Produce is defined and in the end of the said definition "*any produce out of cultivation of plants and rearing of all life*

b
Sanjeet

forms of animals, except the rearing of horses, for food, fiber, fuel, raw material or other similar products, on which either no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market" only are covered. Further it has been submitted that the contract between Hafed and the present applicant reveals that the lessee shall provide insecticides, fumigation, spraying equipments etc. which are not applied when the agriculture produce is sold in the primary market.

- 13.6 In view of facts and submissions made above, it is obvious that the amount of rent paid by Hafed to the owner of godowns is taxable in the hands of owner of godowns, whether to reimburse the same or not is to be determined by the agreement entered in between the lessor and lessee.
- 13.7 In view of the above, the jurisdictional officer has submitted that the applicant is liable to pay GST @ 18% for leasing/renting the warehouse for commercial use.

Record of Personal Hearing

14. Personal hearing in the case was conducted on 13.09.2018 which was attended by Sh. Subash C. Batra, GM (Warehousing Operations) of the firm. The applicant besides reiterating the submissions made in their application had given additional submissions which were taken on record.
15. It had been submitted that as Nodal Agency, (HAFED)/ FCI have refused /are refusing to pay the GST to the Private Investor on the plea that this arrangement with the Private Investor falls under the classification of Storage or Warehousing of Agricultural Produce and Rice and is therefore, exempt from the payment of GST. For them, both sides it is the Central Govt. – one side it is the GST Dept. and the other side it is the FCI and we as private investor are only intermediary and as intermediary we cannot be put to any harassment or made to suffer for the reason that there is any ambiguity in the rules or the activity involved is open to different interpretation.
16. After detailed discussions the application was admitted being covered by clauses (a) & (b) of section 97 (2) of the CGST/HGST Act 2017. As regard merits, the decision was reserved which is being released today.

Discussion and finding of the authority

17. As per the documents placed on record it is understood that under the scheme for construction of godowns for FCI-storage requirement through private entrepreneurs-2008 (known as PEG-2008 scheme), the Haryana State Co-operative Supply and Marketing Federation Ltd. (Hafed) was notified as Nodal Agency for construction of godowns in the State of Haryana.
18. The Haryana State Cooperative Supply and Marketing Federation Ltd. (HAFED) was notified as nodal agency for construction of godowns in the State of Haryana under the said PEG-2008 Scheme of the Central Government/ FCI.
19. Accordingly, during the year 2011, HAFED invited tenders from private parties, for construction of godowns for FCI Storage Requirements to be managed and supervised by HAFED for a guaranteed lease of Ten years on Build, Own & Operate/ lease basis for varying capacities for storage of food grains at various locations in the State of Haryana.
20. M/s Awla Infra, the applicant participated in the above tender enquiry and on being successful at the tender enquiry, were issued Letter of Allotment for Construction of godowns for specified capacity at one location (Elenabad) under the said PEG-2008 Scheme of the Govt. of India at agreed rates of rent per quintal per month.
21. Under the said PEG-2008 Scheme, there are two types of PEGs –
- (i) On Lease only basis and



Sangeeta

(ii) On Lease and Services basis.

- 21.1 In case of Lease only basis, godowns have been built by the Private Investor and have been leased out to the Nodal Agency which manages storage, preservation and warehousing of the stocks of the FCI stored therein.
- 21.2 In case of Lease and Services basis, godowns have been built by the Private Investor and have been leased out to the Nodal Agency and the storage, preservation and warehousing of the stocks of the FCI stored therein is managed by the Private Investor under the supervision of the Nodal Agency.
- 21.3 The applicant's case, as per its agreement with the Nodal Agency, falls under the PEG scheme of 'Lease and services basis' type.
22. The applicant has brought in our notice a letter no. SF-19/GST/2018-19/Fin/GST-63, dated 31.07.2018 wherein the Food Corporation of India has clarified the applicability of GST on services provided by private investors to Nodal Agencies under PEG schemes as under:-
1. Agreements of Nodal Agencies with private investors in case of PEG godowns on 'Lease Only Basis'.
The agreement between Nodal Agencies with Private Investors under this scheme is in the nature of 'Renting of Immovable Property' which is subject to levy of GST.
 2. Agreements of Nodal Agencies with private investors in case of PEG godowns on 'Lease with Services Basis'.
The agreement between Nodal Agencies and Private Investors is in the nature of 'Storage and Warehousing Services' which is fully exempted under GST.

It is the clarification on the second category of agreements on which the applicant has sought the clarification.
23. It is the argument of the applicant that till date they have only stored stock of wheat for Hafed on behalf of FCI and no other commodity other than wheat has been in storage in their PEG. However, as per clause 19 of the contract agreement between Hafed and the applicant it is clearly mentioned that the Lessee, though hiring these spaces for keeping FCI and /or its own food stocks, however, Lessee will be free to use these spaces for keeping stocks belonging to any other party.
24. The relevant notifications for the purpose of understanding the nature of the services provided by the applicant are as per Sr. No. 24 (e) of notification no. 11 /2017-Central Tax (Rate), dated 28.06.2017 and Sr. No. 54 (e) of notification no. 12/ 2017-Central Tax (Rate), dated 28.06.2017 read with the corresponding State Tax notification No. 46/ST-2 & 47/ST-2 both dated 30.06.2017. The SAC 9972 is also relevant to determine the true classification of the services provided by the applicant.
25. The scope of entry 24 (e) and 54 (e) in respective notification no. 11 and 12 of Central Tax (Rate) are limited to services in relation to agriculture produce and cultivation of plants. The term agriculture produce has further been defined in clear terms by way of explanation (vii) appended to the said notification no. 11 and definition (d) appended to the said notification no. 12 as under:-

"Any produce out of cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fiber, fuel, raw material or other similar products, on which either no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market".
26. Further, as per the scheme of classification of services appended to notification no. 11/2017-Central Tax (Rate), dated 28.06.2017 and its corresponding State tax


Sangeeta

notification no. 46/ST-2, dated 30.06.2017 the service code 997212 is for renting or leasing services involving own or leased non-residential property. Such services attract 18% GST as per Sr. no. 16 of notification no. 11/2017-Central Tax (Rate), dated 28.06.2017 and its corresponding State tax notification no. 46/ST-2, dated 30.06.2017.

27. Since, as per the copy of contract/agreement with Hafed, the applicant is providing both the services, i.e., the support services in relation to agricultural produce as well as Real Estate Services in terms of SAC 997212, and since both these services are capable of being provided independent of each other, these cannot be understood to be naturally bundled and supplied conjointly in the ordinary course of business. Therefore, the applicant has/is providing 'Mixed Supply' as per section 2 (74) of the CGST/HGST Act, 2017 and attract tax rate of that particular supply which attracts the highest rate of tax in terms of section 8 (b) of the Act *ibid*.

Advance ruling under section 98 of the CGST/HGST Act 2017

In the backdrop of above discussions and findings the advance ruling on the questions is pronounced as under: -

'Whether GST is exempt or is applicable on the Private Entrepreneurs Godowns built under the PEG-2008 scheme of the FCI and leased out to the Nodal Agency (UPSWC) on 'Lease and services basis' for the storage of FCI's food grain stocks (Wheat)'.


Ruling

In view of the above discussions and findings it is ruled that the services, i.e., leasing of immovable property and support services in relation to agricultural produce, provided by the applicant are in the nature of 'Mixed Supply' in terms of section 2 (74) of the Act *ibid* and hence, attract 9% CGST + 9% HGST (18% IGST) as applicable to SAC 997212.

Ordered accordingly.
To be communicated.

11.9.2018
Panchkula.


(Sangeeta Karmakar)
Member CGST


(Vijay Kumar Singh)
Member SGST

Regd. AD/Speed Post

M/s Awla Infra, P.O. Ellenabad,
VPO, Neemla, Tehsil Ellenabad, Sirsa.

Copy to

1. **Dy.** Commissioner, GST Division, Sirsa, 1st Floor, Opp. Welcome Palace, 1 KM Stone, NH 703, Barnala Road, Sirsa.
2. Deputy Excise & Taxation Commissioner (ST), Sirsa.
3. Commissioner, CGST & CE, 2nd Floor, Pacific City Centre, Opposite Shangrila Hotel, Near Jat Bhawan, Delhi Bypass, Rohtak.