

BRIEF FACTS OF THE CASE:

The Present appeal has been preferred by the applicant M/s Loyalty Solutions and Research Pvt. Ltd. (LSRPLI) against the Advance Ruling No. HAR/HAAR/R/2017-18/4 Dated 11.04.2018 passed in their application dated 12.01.2018.

2. The applicant namely M/s Loyalty Solutions and Research Pvt. Ltd. (LSRPLI), owns and operates a reward point based loyalty programme that is integrated towards its partners and their customers. Under this programme, LSRPL is providing certain services to its clients/partners such as M/s Nice Chemicals Pvt. Ltd. (NICE). The applicant is managing the customer loyalty programme for its clients/partners such as NICE, which is based on issuance of reward points also known as payback points by the applicant to end customers. These reward payment points have value of 0.25 INR each.

3. The party has submitted a copy of the Agreement with M/s Nice Chemicals Pvt. Ltd. (NICE), as a representative agreement in support of its argument. Since this Agreement is with specific partner client, namely, NICE, this Agreement may be considered as the prototype of all Agreements made with various clients/ partners and all discussions regarding the Agreement are to be taken as relevant to and applicable for all the Agreements entered into by the applicant with various clients/ partners under reward point based loyalty programme.

4. For managing this loyalty programme, LSRPL is getting Management fee and/or service charges fee. The LSRPL are paying GST on the management fee as well service charges charged by them from NICE. The pattern of this loyalty programme is as follows.

- a) On purchase of products of "partners" to this loyalty programme, end-customers get reward/payment points.
- b) These rewards points can be redeemed by customers, while making future purchases of products of "partners".
- c) In pursuance to these reward points management, "partner" transfers amount equivalent to 0.25 of INR, per reward point, as issuance charges to LSRPL
- d) Whenever any purchase is made by end customer, by using/redeeming rewards points, LSRPL transfers amount equivalent to 0.25 INR per reward point used to the concerned store and the concerned store gives discounts on the payment to be received from end-customer to this extent.
- e) The rewards points have a validity period of 36 months, meaning thereby that the customer cannot redeem these reward points, after expiry of 36 months from the date of issuance.
- f) It may happen that the customer does not or is not able to redeem the rewards points, within their validity period of 36 months from the date of issue.



g) in such cases, as per the agreement, the rewards points are forfeited and amount equivalent to 0.25 INR per reward point is being retained by LSRPL

5. The question for advance ruling was that whether this amount of issuance fee retained/forfeited by LSRPL, would amount to consideration for actionable claims and subject to GST. The texts of the questions raised by the applicant is as under:

- a) Whether the value of points forfeited of the applicant on which money had been paid by the issuer of points on account of failure of the end customers to redeem the payback points within their validity period would amount to consideration for 'actionable claim' other than lottery, gambling or betting and therefore would not qualify as supply of either goods or services in terms of Section 7 read with schedule III of the Central Goods and Services Act, 2017, Haryana Goods and Services Act, 2017 or Integrated Goods and Services Tax Act, 2017 and therefore would be outside the scope and levy of GST.
- b) Whether the value of points forfeited of the applicant on which money has been paid by the issuer of points on account of failure of the end customers to redeem the payback points within their validity period can be treated as "supply of any other goods or services and consequently be chargeable to GST under the CGST, HGST or IGST Act?

Comments of the concerned officer U/S 98(1) OF THE CGST/HGST ACT, 2012

6. The Deputy Excise & Taxation Commissioner (ST), Gurgaon (East), vide letter No.3086 dt.22.03.18, submitted the requisite comments on both the above questions raised by the applicant, as under:

(a) The applicant recovers the underlying value of 0.25 INR per reward point to the Customers of the partners enrolled under the loyalty programme and on issuance of such points the applicant charges issuance fees. However, the applicant nowhere submits that the amount received by the applicant in return of issuing points are returned back to the partners when such points are not used within validity period. Therefore, it is not an actionable claim as the applicant fails to meet all the characteristics as stated by the applicant. The actionable claim as defined in section 3 of Transfer of Property Act, 1882 comprises two types of claims: (a) a claim to unsecured details and (b) claim to beneficial interest in movable property. If the beneficial interest in movable property is not in possession of the claimant it will be actionable claim but if it is in his possession or enjoyment, it will not be actionable claim but a good in possession. In the present case the pay back points are very much in the possession of the customers. Therefore, they cannot be termed as actionable claim. Hence, would attract GST.

(b) Yes, it would attract GST under the CGST, HGST or IGST Act as



applicant received issuance fees from the partners on issuance of payback points @ 0.25 INR per payback point. Since these payback points are issued in exchange of some consideration and acts as an discount for the customers, who uses these payback points and the applicant transfers the consideration attached with payback points to the vendors. Therefore, the above stated transaction will attract GST.

Decision of Advance Ruling Authority

7. Advance Ruling under Section 98 of the CGST/ HGST act 2017 was pronounced as under:

- I. The value of points forfeited of the applicant on which money had been paid by the issue of points on account of failure of the end customers to redeem the payback points within their validity period would amount to consideration received in lieu of services being provided by LSRPL to its clients and thus would be outside the scope of being considered as 'actionable claim' other than lottery, gambling or betting and therefore would qualify as supply of services in terms of Section 7 of the Central Goods and Services Act, 2017/ Haryana Goods and Services Act, 2017 and therefore would be within the scope of levy of GST
- II. The value of points forfeited of the applicant on which money has been paid by the issue of points on account of failure of the end customers to redeem the payback points within their validity period is to be treated as "supply" of services and consequently be chargeable to GST under the CGST, HGST or IGST Act, as the case may be.

Submissions made in the Appeal, by the Appellant:

8. The Appellant made the following written submissions in the Appeal:

"Loyalty Solutions and Research Private Limited (the "Appellant" or "LSRPL") owns and operates a reward points based multi-coalition loyalty program ("Loyalty Program") for various corporates (the "Partners") and their customers ("End Consumers") in India. The basic features of the said Loyalty Program operated by the Appellant are as follows:

- (1) Every End Customer enrolled under the Loyalty Program is issued reward points known as 'Payback Points' having standard value of 0.25 INR per reward point for making purchases from Partner stores. The "Payback Points" are issued by the Partner.
- (2) The Payback Points so issued can be redeemed by the End Customers with any of the 'Redemption Partners' for buying goods or services within the 'Payback Coalition Network'. Accordingly, such Payback Points are in the nature of 'debt' or 'actionable claims' which are to be honoured by the Appellant as and when presented for redemption.

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- (3) Since the points are 'debt' or 'actionable claims' which are to be honoured by the Appellant, the underlying value of the Payback Points so issued to / or redeemed by the End Customers is recovered by the Appellant from its Partners either at the time of their issuance or at the time of their redemption depending on the business model opted by the Partners.
- (4) The Payback Points so issued, normally have a validity period of 36 months during which the said points can be redeemed by the End Customers for any of the reward options available to them.
- (5) It is pertinent to note that the Appellant provides its Partners as well as the End Customers with a platform for allotting such Payback Points as well as to track redemption of Payback Points by End Customers. The Appellant also manages the reward options as well as relationships with the Redemption Partners for smooth redemption of such Payback Points. For such add on services, the Appellant charges a management fee against which Appellant issued invoice with GST at the appropriate rates to its partner and discharged GST liability accordingly in terms of the provisions of the CGST ACT, IGST ACT and HGST ACT and the rules made thereunder

The Appellant undertakes the aforementioned business of Loyalty Program through the following business models:

A. Redemption Model:

- i. The Partner allocates Payback Points to various End Customers depending upon the quantum of purchase and the same are uploaded in the Appellant's systems where they are shown as available for the customers to be redeemed / burnt.
- ii. As and when the customers burn / redeem the Payback Points available with them, the Partners become liable to compensate the Appellant for the underlying value of the Payback Points redeemed by the End Customers at their face value.
- iii. In such cases, in order to secure payment towards such Payback Points (as and when they are redeemed) the Appellant generally seeks securities such as Bank Corporate Guarantees to guarantee the payment of the value of the Payback Points which are redeemed by the End Customers
- iv. For providing the said services of loyalty program management, the Appellant realizes fixed fees, variable service fees and enrollment fees from its Partners ("Management Fees") and discharge GST liability on the same.

B. Issuance Model:

- i. The issuance model is identical to the aforesaid model except the fact that the payment of INR 0.25 per Payback Point is made upfront to the Appellant by the Partner without waiting for actual redemption.
- ii. The amount received by appellant upfront for the payback points is recorded as revenue in the Appellant's books of accounts due to various accounting principles and in terms of the provisions of the Income-tax Act, 1961 ("IT Act").
- iii. The amount so recovered is thereafter passed on to various Redemption Partners as and when the Payback Points are redeemed by the End Customers. Relevant debit entry in this regard is made in the Appellant's

books of accounts.

- iv. In cases where such Payback Points are not redeemed by the End Consumers within their validity period, the amount collected by the Appellant from Partners towards these points, being an unclaimed actionable claim / debt, becomes the income of the Appellant and retained by the Appellant. Therefore, on the day of expiry of Payback Points no new fee or income is generated by the Appellant and only the revenue received by the Appellant towards the Payback Points, being actionable claim / debt, becomes income of the Appellant and is retained by the Appellant.

It is pertinent to note that the Appellant always offers its Partners with the option to choose between either of the afore-mentioned business models where it is always up to the Partner as far as selection of business model is concerned.

It is further pertinent to note that some of the Appellant's biggest Partners have opted for the redemption model which can be inferred from the fact that during the F.Y.F.Y. 2014-15, F.Y. 2015-16 and F.Y. 2016-17 60 %, 51% , 49% of the revenue (excluding other income) earned by the Appellant respectively, was from redemption model partners as compared to 31%, 43%, 47% respectively, earned by the Appellant from the issuance model.

In this regard, some of the commercial considerations due to which the Partners opt for issuance model, are as follows:

- i. Partners are reluctant to provide appropriate bank guarantees to the Appellant to guarantee the value of payback points which are redeemed by the End customer.
- ii. Partners are more comfortable to discharge the amount upfront i.e. at the time of the issuance of Payback Points rather than discharging on a continuous basis as the points are redeemed on daily basis and require considerable man-hours to constantly track and pay for the same.
- iii. Partners do not have adequate accounting and technical infrastructure required for recording the data in relation to the issuance and redemption of Payback Points.

Therefore, at the time of signing the contract under any of the afore-mentioned business models, i.e. issuance model or redemption model, the commercial considerations for providing the management services is not influenced by the possible retention of point expiry income by the Appellant, which may or may not happen at a future date under the issuance model. There are certain Partners under the issuance model where End Customers have a 100% redemption rate and there is no point expiry income. It is therefore clear that the only services provided under the present business model is management of loyalty program for which the parties consciously negotiated and agreed on a consideration which is referred here to as the Management Fee. The said Management Fee charged by the Appellant is not influenced in any manner by possible point expiry. Accordingly, commercially agreed amount reflects the true and correct consideration payable by to one party to another for rendition of an agreed service.

Moreover, the retention of Point expiry Income is only a matter of chance and is totally contingent upon redemption of Payback Points by the End Customer and is not related in any manner to rendition of any service. Therefore, the Appellant since its inception is not providing any service in relation to such point expiry and

therefore no GST liability can be fastened upon the Appellant in this regard. Actually for such point expiry, no services has actually happened.

In light of the aforementioned factual scenario, the Appellant filed an application for advance ruling with the Haryana Authority for Advance Ruling ("HAAR") on 12 January 2018 to seek an advance ruling on the following questions:

a) Whether the value of points forfeited, on which money has been paid by the issuer of points on account of failure of the End Customers to redeem the Payback Points within their validity period would amount to consideration for 'actionable claim' other than lottery, gambling or betting and therefore would not qualify as 'supply' of either 'goods' or 'services' in terms of Section 7 read with Schedule III of the Central Goods and Services Tax Act 2017 ("CGST Act"), Haryana Goods and Services Tax Act 2017 ("HGST Act") or Integrated Goods of Services Act ("IGST Act") and therefore would be outside the scope and levy of GST?

b) Whether the value of points forfeited of the Appellant on which the money has been paid by the issuer of points on account of failure of the End Customers to redeem the Payback Points within their validity period can be treated as 'supply' of any other 'goods' or 'services' and consequently be chargeable to GST under the CGST, HGST or IGST Act?

1. In this regard, a brief summary of the statement containing Appellant's interpretation of GST provisions *vis-à-vis* the aforementioned factual scenario, as made in the Appellant's application for advance ruling is as follows:

i. While "actionable claims" have been expressly included under the definition of "goods", only actionable claims in the nature of lottery, betting and gambling are covered under the scope of levy of GST in terms of Section 7 read with Entry 6 to Schedule III of the CGST Act and the HGST Act or IGST Act

ii. Therefore, any goods which are in the nature of 'actionable claims' would not be chargeable to GST unless such 'actionable claims' are in the nature of lottery, betting and gambling.

iii. In this regard, it was submitted that Section 2(1) of the CGST Act, defines the term 'actionable claim' as follows:

"(1) actionable claim shall have the same meaning as assigned to it in section 3 of the Transfer of Property Act, 1882 (4 of 1882)"

iv. Further, Section 3 of the Transfer of Property Act, 1882 ('TPA') defines 'actionable claims' as under:

"actionable claim means a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property, or to any beneficial interest in movable property not in the possession, either actual or constructive, of the claimant, which the civil courts recognize as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent."

v. In light of the above and various other judicial precedents¹ it was submitted that Payback Points, which create a beneficial interest in a movable property that is not in possession of the End Customers when such Payback Points are issued/accrued, squarely fall within the meaning and definition of 'actionable claims' as provided under TPA.

vi. It was further submitted that since the Payback Points are **not in the nature** of lottery, betting or gambling, the supply of Payback Points cannot be treated as a supply of 'goods' or 'services' as per Schedule III of the CGST Act and the HGST Act. Accordingly, it was submitted that supply of such Payback Points is outside the scope and levy of GST under the CGST Act, HGST Act or the IGST Act.

vii. Accordingly, any amount retained by the Appellant on account of lapsed Payback Points is nothing but a consideration for Payback Points, which, as discussed above, are in the nature of actionable claims and are therefore outside the scope or levy of GST.

viii. It was further submitted that since any consideration received from issuance of an actionable claim is outside the purview of GST, the Appellant is of the view that any amount retained by the Appellant in relation to expired Payback Points would not be chargeable to GST.

2. That the personal hearing with respect to the aforementioned application for advance ruling was held on 11 April 2018 and was attended by the Appellant's legal representatives. During the course of personal hearing, the Appellant's legal representatives reiterated the submissions made in the application for advance ruling.

3. In pursuance to the aforementioned proceedings the HAAR passed the Advance Ruling bearing no. HAR/HAAR/R/2017-18/4 dated 11 April 2018 communicated to Appellant on 27th June, 2018 (the "**Impugned Order**"). In this regard, a brief summary of the findings of the Impugned Order are as follows:

i. During their validity period, Payback Points issued to various End Customers, are indeed in the nature of 'actionable claims' as defined under the provisions of the TPA.

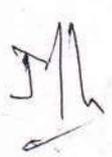
ii. However, after the expiry of the said Payback Points, they can no longer be redeemed / encashed by the End Customer, who loses all its rights over them. Therefore, on the expiry of their validity period, the Payback Points no longer remain to be in the nature of 'actionable claims'.

iii. Therefore, post the expiry of the said Payback Points, they are not covered within the specific exclusion provided under Schedule III of the CGST Act and the HGST Act.

iv. Accordingly, the amount retained by the Appellant post the expiry of the Payback Points is nothing but revenue of the Appellant coming from the respective Partners which has been earned by them, owing to the activities of their providing services to the said Partners in the form of management of Loyalty Program.

v. It was further stated that the agreement, entered into by the Appellant with its Partners for the provision of the services of Loyalty Program management, is also evident of the fact that revenue is retained by the Appellant post expiry of Payback Points.

vi. The amount retained by the Appellant due to expiry of Payback Points is therefore liable to be considered as consideration for supply of services by the Appellant to its Partners in the normal course of business. Such amount is liable to be added to the value of services being provided by the Appellant to its Partners in terms of the provisions of the CGST Act.



4. Therefore, even though the Impugned Order rightly held that Payback Points are in the nature of actionable claims, it was **wrongfully held that the nature of such Payback Points changes post the expiration of its validity period** whereby the amount retained by the Appellant on account of such expiration, are liable to be added to the value of taxable supplies in terms of Section 15 of the CGST Act and the HGST Act.

5. **In light of the aforementioned findings in the Impugned Order, it is now an admitted position that Payback Points are in the nature of 'actionable claim' and therefore any consideration received in lieu of such Payback Points would be outside the scope of the GST laws.**

6. The moot question that is being agitated by the Appellant *vide* the present appeal is

(1) whether the nature of Payback Points (which are considered as actionable claim during their validity period in the impugned order of the Authority of Advance Ruling) changes post expiration of their validity period? and The amount retained by the Appellant on account of such expiration is therefore liable to be added to the value of taxable supplies made by the Appellant?

(2) How can Payback points which are considered as “**goods**” during their validity period becomes supply of “**service**” post their expiration?

7. Being aggrieved by the finding of the Impugned Order the Appellant has preferred this appeal on the grounds mentioned hereunder which are without prejudice to one another.

The Appellant craves leave, to add to, amend, modify, rescind, supplement or alter any of the grounds mentioned hereunder and/or produce such records, documents, calculations as deemed necessary either before or at the time of hearing of this appeal.

Questions being agitated by the Appellant in present APPEAL:

9. The appellants raised the following questions for determination by the Appellate Authority for the Advance Ruling.

1) Whether the nature of Payback Points (Which are considered as actionable claim during their validity period in the impugned order of Authority of Advance Ruling changes post expirations of their validity period? And the amount retained by the Appellant on account of such expiration is therefore liable to be added to the value of taxable supplies made by the Appellant?

2) How can Payback points which are considered as “goods” during their validity period becomes supply of “services” post expiration?

10. **Date of Receipt of the Appeal and Question of Time-bar.**

The Appeal to the Appellate Authority for Advance Ruling (in Form GST ARA 02) was received in the office of the Appellate Authority on 30.07.2018. The date of Communication of the Advance Ruling to the Applicant Appellant was 27th June 2018 as mentioned in the form *ibid* for Appeal.

The Section 100 (2) of the Central GST and Haryana GST Acts of 2017 reads as under:

"100. (1) The concerned officer, the jurisdictional officer or an applicant aggrieved by any advance ruling pronounced under sub-section (4) of section 98, may appeal to the Appellate Authority.

(2) Every appeal under this section shall be filed within a period of thirty days from the date on which the ruling sought to be appealed against is communicated to the concerned officer, the jurisdictional officer and the applicant: Provided that the Appellate Authority may, if it is satisfied that the appellant was prevented by a sufficient cause from presenting the appeal within the said period of thirty days, allow it to be presented within a further period not exceeding thirty days.

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

In terms of Section 100(2) the appeal was required to be submitted within 30 days from the date of communication of the Advance Ruling viz. 27th June 2018 but having been submitted on 30.07.2018, the same is time-barred.

11. Record of Personal Hearing.

The personal hearing was fixed for 9.10.2018. Advocates S/Shri Sandeep Chilana and Atulya Kshore and S/Shri Rupanter Aggarwal, Tax Head and Pramod Mahanta, Chief Financial Officer of the Appellant firm M/s. Loyalty Solutions and Research Pvt. Ltd. (LSRPLI) attended the hearing on the fixed date and time.

a. On the issue of time-bar:

The Appellant Authority for Advance Ruling (AAAR) noted that the Appeal is time-barred whereas the Appellant has not made any request for condoning the delay and no reason for the delay has been cited.

The appellant submitted that the delay occurred as the Authority was only recently notified and it took them time to trace out the office of the Authority. They further submitted that the Application was sent by Speed Post and they had no reason to believe that it would reach late.

The AAAR pointed out that relevant notification notifying the Appellate Authority was dated 18.10.2017 and not a recent one as argued by the Appellant. That, in the absence of an evidence of application's timely receipt, the argument of timely dispatch held no good. That, the appeal has clearly become time-barred and right had already accrued to the authority to decide on the Appeal.

However, the AAAR observed that given this to be a very initial phase of Advance Rulings or Appeals therein, a liberal view can be taken notwithstanding the non-adherence to time-schedule by the Appellant. Also, the Appeal being within the condonable period of further 30 days in

terms of Proviso to Section 100(2) of the Acts *ibid*, the request for condonation of delay is being acceded to.

b. Submission of the Applicant:

During the hearing the appellant while reiterating the submissions made in their written reply put forth that the basic emphasis of their submissions was that an Actionable claim remains an actionable claim.

They submitted that they are the holders of the IPR for the scheme of loyalty program and admitted that they are the manager of the entire functioning of the scheme at the ends of the partners and end-customers.

In this regard the appellant brought forth the following points:

- i.** There are 3 types of supplies, - '*Goods*', '*Services*' and '*Actionable Claims*';
- ii.** There are no Invoices issuable for the '*Actionable Claims*';
- iii.** That it was clear from their written submissions in the Appeal that the entire scheme of loyalty program is theirs; they are the issuers and managers of the loyalty programme; the program/scheme is open to end-customers and they can independently enrol for the program under which there are numerous partners and the *Payback points* can be redeemed under several partners.
- iv.** That, the end-customers can directly sue them for non-redemption or deficiency of service; they have the option to sue them directly or the partner from the purchases with whom the points were generated.
- v.** That, they are the generators and issuers of the *Payback Points*;
- vi.** They are selling the payback points which are actionable claims therefore their revenue in the instant case has resulted from the sale of payback points/ Actionable Claims.
- vii.** That, they charge '*Management fee*' from the *Partners* and the amount incurring on account of unredeemed points has no bearing on the consideration for the services provided to the *Partners* because in several cases 100% of the generated points get redeemed and no income occurs on account of unredeemed payback points.

12. **Discussions:**

We have gone through the facts in case, the submissions of the Appellant and the record of personal hearing.



The observations to the above mentioned point are enumerated below point-wise. Discussion in details has been taken up thereafter.

i. There are 3 types of supplies, - 'Goods', 'Services' and 'Actionable Claims';

The submission of the appellant is misplaced.

All kinds of actionable claims have been recognised as Goods in the GST Law.

Relevant definitions are being reproduced for the sake of ready reference.

Section 2(1) of the Central and Haryana GST Acts define Actionable Claims to have the same meaning as assigned in Section 3 of the Transfer of Property Act 1882. The definition of Actionable Claims given in Section 3 of the Transfer of Property Act 1882 is given below:

“Actionable claim” means a claim to any debt, other than a debt secured by mortgage of immoveable property or by hypothecation or pledge of moveable property, or to any beneficial interest in moveable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognize as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent:

As mentioned, all kinds of actionable claims have been recognised as Goods in the GST Law. Section 2(52) of the Central and Haryana GST Acts define 'Goods' as under:

(52) “goods” means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply;

Thus, under the GST law, there are only 3 types of supplies – Goods or Services or both. Supplies of all actionable claims are the supplies of Goods for the purpose of GST law.

Also, as discussed infra, the amounts accounted for as revenue from the unredeemed *Payback-points* by the appellant, do not qualify to be actionable claims. The discussion on this aspect has been taken up infra.

ii. There are no Invoices issuable for the 'Actionable Claims';

As mentioned, the unredeemed *Payback-points* by the appellant do



not qualify to be actionable claims. Admittedly, the appellants receive payment against the total generated points, upfront in terms of the contract executed with the 'partners' and record the same as revenue in their accounts. Obviously the payment received from the 'Partners' and accounted for as 'Revenue' forms the consideration against the contracted services for the appellant.

iii. That it was clear from their written submissions in the Appeal that they entire scheme of loyalty program is theirs; they are the issuers and managers of the loyalty programme; the program/scheme is open to end-customers and they can independently enrol for the program under which there are numerous partners and the Payback points can be redeemed through several partners.

It is observed that no services have been provided by the Appellants to the end-customers against the unredeemed points by the end-customers.

In view of this fact, the ownership of the loyalty program and its management has no bearing on the nature of the amount generated on account of unredeemed payback points.

iv. That, they are the generators and issuers of the Payback Points;

It is observed that as a manager and operator of the Loyalty scheme, the appellants are surely generators of the program but the points can never be generated unless there is a transaction between the end-customers and the 'Partners'.

It is observed that necessary financial back-up for the generation and redemption of the points is provisioned by the 'Partners'; the generation forms a component of the overall functioning of the scheme by the appellant.

v. That, the end-customers can directly sue them for non-redemption or deficiency of service; they have the option to sue them directly or the partner from the purchases with whom the points were generated.

It is observed that as the name suggests and as it turns out from the tenets of the loyalty scheme as such, the loyalty program is aimed at generating, maintaining and retaining the end-customer's loyalty towards the *Partners*, for the requisite supplies.

The end-customers undertaking the transaction identifies the

Partner as the provider of the payback points and for the remedy for any deficiency in servicing of the promised payback points will naturally tend to turn up to/ sue the *Partners*. As such the handling of opted suing by the end-customers of the appellant is merely a facility undertaken by the appellant on behalf of the *Partners* and forms a service by the appellant against consideration from *Partners*.

Moreover the services are rendered by the Appellant to the *Partners* and nature of Appellants' relationship with end-customers is part of their contract/ concept. For taxation matters the relation between Appellants and end-customers has no bearing on the relationship between Appellant and the vender *Partners*. Whatever revenue is accruing to them, is from the vender *Partners* only. End-customers are nowhere in the scheme of things as for as supply of services is concerned.

vi. They are selling the payback points which are actionable claims therefore their revenue in the instant case has resulted from the sale of payback points/ Actionable Claims.

It is observed that the appellants are not selling any payback points but are providing a facility by way of a software programme to the *Partners* to help *Partners* generate and retain loyalty of the customers undertaking any transactions with them.

Even if it is deemed for the arguments sake that the appellants are selling the Payback points, the consideration flows to them for the same from *Partners* only. However it is not the appellant's case that there is a separate agreement with the partners for the same. Admittedly the transaction linked generation of payback points is a part of the service package for the overall management of the scheme by the appellants.

It is further observed that the making available of the payback points to the end-customers is also not the selling of these points to the end-customers as the consideration for the same is coming from the *Partners* only. In fact there is no service either to the end-customers, by the appellants on the same corollary that the consideration for the payback points or their maintenance and facilitation of redemption is flowing from the *Partners* and by virtue of the agreements executed between the appellants and the *Partners*.

vii. That, they charge 'Management fee' from the *Partners* and the amount incurring on account of unredeemed points has no

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bearing on the consideration for the services provided to the *Partners* because in several cases 100% of the generated points get redeemed and no income occurs on account of unredeemed payback points.

It is observed that the since entire consideration for the provided services is flowing from the *Partners* under the same contract, the consideration flowing comprises of 2 components - fixed and variable. The fixed component is called Management Fee and the amount occurring on account of the leftover unredeemed payback points is the second variable component of service charges.

13. **Findings**

We have very carefully gone through the appellant's submissions made both with the written Appeal and at the time of the personal hearing.

From the submissions made by the appellant in writing as a part of the written Appeal and those made at the time of the hearing it is very clear that the loyalty programme is a programme devised with the aim of generating and maintaining customer loyalty towards the partners entering into agreement with the appellants for the running and managing the overall scheme.

It is not the appellant's case that consideration for maintaining and facilitating encashment of payback points is flowing from the end-customers. In fact it is admitted position that the amount received upfront from the *Partners* in respect of the generated payback points is booked as revenue in their account.

Obviously, the consideration for total payback points including those becoming unredeemed ones after validity period, has flowed from the *Partners*.

We observe that this consideration has two components - fixed and variable. The fixed component is what has been received by the appellants by the name of Management Fee and the variable component is the amount booked as revenue in respect of the unredeemed leftover payback points.

Appellant's contention that AAR has admitted that payback points are in the nature of actionable claim and therefore any consideration is out of the provision of GST is grossly misplaced. In fact Appellant is in possession of points and revenue at their end. Whenever customers claim/ redeem the points it is their liability to honour the claim of Customers. However when there can be no claims by the end-customers



after the expiry of validity period, these are no more actionable claims. These stand lapsed at the end of the Customers and Appellant treat the redeemed money as revenue which can never be described as any claim against anyone.

The consideration for the unredeemed payback points has already flowed from the *Partners*. After validity period the same has become appellant's revenue by virtue of the contract for servicing of the loyalty scheme including the points *ibid*, executed between the *Partners* and the appellants. Even if it is admitted that there is a provisioning of service by the appellant to the end-customers, there cannot be any such service or actionable claim against the payback points not redeemed by them against anyone.

ORDER

As discussed supra, we take a lenient view and allow the submissions made during hearing to be treated as a request for condoning of the delay, and allow the instant Appeal which has been filed within extendable period of further 30 days in terms of Section 100(2).

Having regards to the facts of the case and the discussions supra, we dismiss the Appeal and uphold the Advance Ruling.

Ashima
23/10
Smt. Ashima Brar,
Commissioner,
Excise & Taxation,
Haryana

Manoranjan Virk
23/10/18
Mrs. Manoranjan K Virk,
Chief Commissioner,
Central Goods & S. Tax Zone,
Haryana