



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/2019-20/08
(In Application No.: 08/2019-20, dated 20.06.2019)

Name & Address of the Applicant	:	M/s Ashiana Maintenance Services LLP, 8 th Floor, Block-1, Vatika Business Park, Sohna Road, Sector-49, Gurugram, Haryana
GSTIN of the Applicant	:	06ABHFA2914P1Z9
Date of Application	:	20.06.2019
Clause(s) of Section 97(2) of CGST/HGST Act, 2017, under which the question(s) raised.	:	Clause:- (a) Classification of any goods or services or both (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 Personal Hearing	:	11.09.2019
Present for the Applicant	:	Tarun Kumar Sharma (CA) & Ankit Awal(CA)

Memo No.:1048

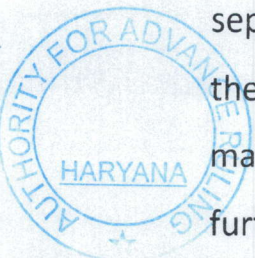
Dated: 28.08.2020

1. Brief submission of the applicant:

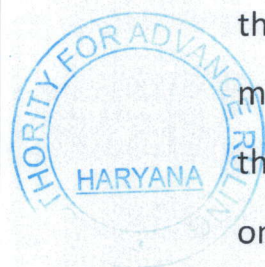
1.1 M/s Ashiana Maintenance Services LLP, 8th Floor, Block-1, Vatika Business Park, Sohna Road, Sector-49, Gurugram, Haryana (herein after referred as the 'applicant') is an LLP registered in India and is a facility management entity engaged in the business of management and maintenance of various residential projects. The applicant was earlier registered as a company, known as M/s Ashiana Maintenance Services Limited, and later converted to LLP, as known presently.

1.2 M/s Ashiana Housing Limited (for short 'AHL') is developing a group housing project, known as "Ashiana Anmol", comprising of various phases. AHL has developed Phase-I of the project upon a piece and parcel of land admeasuring 15,381.37 sq.mtr. situated at Revenue Estate of Village-Dhunela, Sector 33, Tehsil- Sohna, Distt. Gurugram, Haryana.

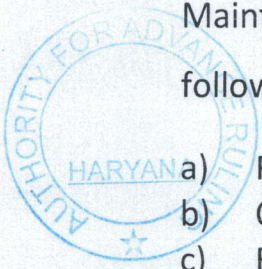
1.3 AHL has accordingly entered into Flat Buyer Agreements with prospective buyers in the said project. Clause 10.6 thereof provides that the Buyer will enter into a separate maintenance agreement with AHL or its assignee, which would spell out the scope and schedule of maintenance works, operation of the services and maintenance charges/ charges towards capital repairs and replacements. The Buyer further agrees to become a member of the Ashiana Anmol Owner's Association, an association formed for common interest of all intending buyers in accordance with provisions of the Haryana Apartment Ownership Act, 1983.



- 1.4 Accordingly, after formation of the Association, the Buyers/ Association will enter into Maintenance Agreement with the Applicant, the designated maintenance agency of AHL, to appoint the Applicant for providing the maintenance and management services in respect of common areas and common facilities of the Project.
- 1.5 Schedule-I of the Maintenance Agreement specifies the scope of work to be carried out by the Applicant therein, which includes sanitation, horticulture, operation and maintenance of water & power supply, civil maintenance, security, capital repairs and replacements, electrical and plumbing services.
- 1.6 Clause 6 of the Maintenance Agreement deals with the maintenance and other charges payable to the Applicant. Clause 6.3.3, *inter-alia*, provides for various reimbursements to the Applicant as under:
- a) Proportionate monthly costs of electricity and/or power used in common area;
 - b) Proportionate monthly costs of diesel, lubricating oil and other consumables for operation of generator;
 - c) Proportionate costs of water for use in horticulture, sanitation and other common use as per actuals.
- 1.7 As per the applicant, the cost of water used in common area is a part of maintenance charges received by the applicant.
- 1.8 Clause 7 of the Maintenance Agreement provides that the supply of water to individual units in the Project shall be undertaken by Haryana Shahari Vikas Pradhikaran (for short 'HSVP') and till the appropriate infrastructure for supply is developed by HSVP, the Applicant shall supply such water through water tankers procured from the market. For this purpose, it envisages entering into a separate MOU, draft of which forms part of Annexure-I of the Maintenance Agreement, with the members and collection of advance water charges by the Applicant from members. All expenses for arranging water tankers cost of water and distribution thereof to individual members is to be met from such advance charges. Further, once HSVP starts supplying water, water charges for each unit shall be collected from occupier of each unit on proportionate basis as per the rates fixed by HSVP.



- 1.9 In pursuance of above, the Applicant will enter into a Memorandum of Understanding (for short 'MOU') with each buyer for supply of water to the individual unit, till HSVP creates its infrastructure for supply of such water. Copy of the said MOU forms part of Annexure-I of the Maintenance Agreement. In terms of the MOU, the Applicant shall supply water to the units through water tankers.
- 1.10 It may be noted that both the Maintenance Agreement and the MOU will be entered into with the buyer, once the project is ready for handing over to the buyers.
- 1.11 As noted, water to individual units is to be supplied by HSVP and as the required infrastructure for such supply is not in place yet, the Maintenance Agreement envisages supply of such water by the Applicant during the intermittent period, for which purpose a separate MOU is to be entered into.
- 1.12 In this regard, at the outset, the scope of activities carried out by the Applicant under the Maintenance Agreement needs to be ascertained. Attention is invited to Clause 3.1 of the Maintenance Agreement, which provides that the Applicant shall manage, administer and maintain the project and provide the facilities & services as described in Schedule-I thereof.
- 1.13 Schedule-I lays down the detailed scope of work, where under the Applicant is required to undertake the following activities:
- Sanitation, Horticulture, Maintenance and operation of water supply, Maintenance and operation of power supply, Civil maintenance, Security, Capital repairs/replacements, Services of electrician and plumber.
- 1.14 The charges for the aforesaid activities have been specified in Clause 6 of the Maintenance Agreement. In terms of Clause 6, the buyer is required to pay the following charges to the Applicant:
- a) Fixed charges;
 - b) Capital charges;
 - c) Reimbursements;
 - Proportionate monthly costs of electricity and/or power used in common area;
 - Proportionate monthly costs of diesel, lubricating oil and other consumables for operation of generator;
 - Proportionate costs of water for use in horticulture, sanitation and other common use as per actual.
 - d) Services charges and taxes



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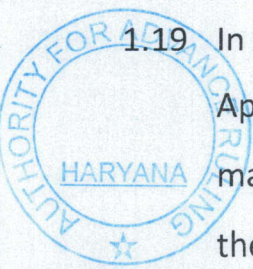
1.15 It is evident from the above that the Applicant is required to operate and maintain the project under the Maintenance Agreement. For these activities, the Applicant, apart from maintenance charges, is entitled to recover proportionate costs towards water and electricity used in the common areas, as provided in Clause 6.3.3. However, the supply of water to individual units in the project is not within the scope of activities to be carried out by the Applicant under the Maintenance Agreement. Such supplies are totally separate and independent of the activities carried out by the Applicant under the Maintenance Agreement. While Clause 6.3.3 of the Maintenance Agreement is clear to restrict the reimbursements to water/ electricity consumed in the common area, Note-2 in Schedule-I further provides that the cost of maintenance dues does not include repair/ maintenance within the unit and individual power bills.

1.16 Such mutual understanding of the parties is further enforced by Clause 7 of the Maintenance Agreement, which deals with supply of water in the individual units.

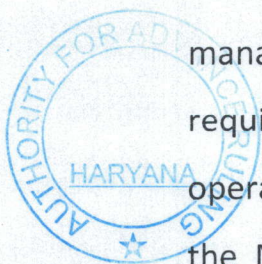
1.17 Clause 7.1 provides that the supply of water is to be undertaken by HSVP, which will be able to supply such water only after completion of requisite infrastructure under its water supply scheme. It further provides that till such infrastructure is developed by HSVP, the Applicant shall supply water to the units through water tankers procured from market.

1.18 Clause 7.4 provides that the Applicant shall enter into a separate MOU with the buyers for such supply of water and collect advance as water charges from buyers on estimate basis. Clause 7.5 further provides that once HSVP starts supplying water to units, the water charges for each unit shall be collected from each member on proportionate basis as per the rates specified by HSVP plus incidental expenses thereto.

1.19 In view of above, it is evident that the scope of activities to be undertaken by the Applicant under the Maintenance Agreement extends to operation and maintenance of the project. For such activities to be undertaken by the Applicant, the buyer is obliged to pay maintenance charges along with proportionate costs of water/ electricity used in the common area. However, the activity of water supply to the individual units is a separate activity to be undertaken by the Applicant till creation of infrastructure by HSVP and thereafter by HSVP itself.



- 1.20 Such supply of water in the individual units is totally independent of and separate from the supply of maintenance services by the Applicant under the Maintenance Agreement. It is for this reason that the Maintenance Agreement itself envisages entering into of a separate MOU for such purposes. Further, such supply of water under the MOU is merely a temporary arrangement, till the required infrastructure for supply of water is created by HSVP. The fact, that such supply is undertaken on a temporary basis, shows that it is not part of the maintenance agreement.
- 1.21 The recitals of the MOU record the background discussed above that the Applicant is carrying out management and maintenance of the project under the Maintenance Agreement and has also undertaken to supply water to the individual unit till the required infrastructure is created by HSVP to undertake such supply.
- 1.22 Clause 1 of the MOU provides that till required infrastructure is laid down and water supply to the project is commenced by HSVP, the Applicant shall procure and supply water to the units by buying water tanker from the open market.
- 1.23 Clause 3 read with Schedule-I of the MOU provide that the Applicant shall collect upfront water charges for two years from buyers of the units. Schedule-I of the MOU fixes the water charges depending on the category of the unit.
- 1.24 On occupation of the unit, such charges shall be amortized on monthly basis, as provided in Clause 4 read with Clause 7, based on overall consumption of water by the residents.
- 1.25 In the instant case, the Applicant is to provide management and maintenance services to the buyers under the Maintenance Agreement. Clause 10.6 of the Flat Buyer Agreement provides that the Buyer will enter into a separate Maintenance Agreement. The buyer will accordingly enter into the Maintenance Agreement with the Applicant. Under the Maintenance Agreement, the Applicant is required to manage and maintain the project including the common area. The Applicant is required to undertake a variety of activities including sanitation, horticulture, operation and maintenance of water/power supply, security etc. For such activities, the Maintenance Agreement envisages payment of maintenance charges to the Applicant, in addition to the reimbursements of proportionate costs towards water/ electricity used in the common area.



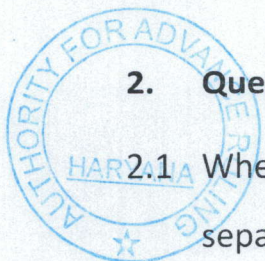
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- 1.26 The role of the Applicant under the Maintenance Agreement is limited to the aforesaid activities, like any other Maintenance Agency. The water and electricity to individual units is to be supplied only by the concerned governmental authority. Such water is to be supplied by HSVP in the present case, which is specifically provided for in the Maintenance Agreement itself.
- 1.27 However, for want of infrastructure required for supply of water by HSVP, the Applicant also undertakes to supply water to the units under the MOU with separate obligations and separate price. Such supply of water by the Applicant under the MOU is totally independent of and separate from supply of maintenance services under the Maintenance Agreement.
- 1.28 While such supply of water is to be undertaken by HSVP and not by the Applicant, it is only as an intermittent arrangement that the Applicant will enter into separate MOUs with the buyers for supply of such water during the intermittent period. The supply of water is identifiably separate and distinct from the supply of maintenance services. The parties intend to have such supplies differently. Mere fact of parties to both Maintenance Agreement and MOU being the same does not mean that these are supplied in conjunction with each other. For such reasons, it cannot be said to be naturally bundled with each other.
- 1.29 Once the Applicant enters into Maintenance Agreement with the buyer, it agrees to provide management and maintenance services to buyers. For the said services, the buyer is obliged to pay specified charges to the Applicant. This is irrespective of supply of water by the Applicant under a separate MOU and for separate prices.
- 1.30 From nature of the supplies explained above, it is clear that these supplies are neither naturally bundled with each other nor supplied in conjunction with each other. The supply of water by the Applicant under the MOU is a separate supply.

2. Questions raised before the authority:-


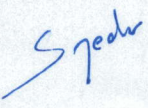

- 2.1 Whether the supply of water to individual units in the project under the MOU is a separate supply of goods or is composite/mixed supply with that of maintenance services?
- 2.2 If such supply is a separate supply of goods, what is the appropriate rate of GST chargeable thereon?



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3. Discussion & Findings:

- 3.1 We have considered the submissions made by the Applicant in their application for advance ruling as well as the submissions made by the authorized representative of the applicant during the personal hearing. We have also considered the issues involved, on which advance ruling is sought by the applicant, and relevant facts.
- 3.2 While going through the submissions we observe that the applicant proposes to engage in business of providing maintenance services with the housing society for which they enter into an agreement. The applicant provides maintenance services for maintenance of common area and levies GST for provision of such services.
- 3.3 It has been submitted by the applicant that they are providing maintenance services to Residential Welfare Association (RWA) i.e. Asiana Anmol Owners Association which was formed for common interest of all intending buyers. Thus, it is clear that the applicant is providing services to RWA which is further providing services to the individual flat buyers.
- 3.4 The applicant also submitted that they are going to enter into another contract i.e. MOU with residents of the society for supply of water. The applicant has submitted that in course of the aforesaid MOU they will purchase water tankers from the open market and subsequently supply the same to the individual residents of the society. Here, the applicant is unable to establish that how they will supply the water tankers to individuals when there is no water storage capacity in individual flats. It has been observed from the submissions of the applicant that the water is being supplied to the RWA and RWA is further supplying to the individual flats through common overhead/underground water storage tanks. Therefore, this authority is of the view that the supply of maintenance services and supply of water by RWA to the individuals is the same supply. The supply of water cannot be bifurcated when it is being supplied from the same water storage tank. It is clear from the above that the applicant is trying to bifurcate the supply of water into two parts as under:-

- 
- (i) Supply of water by RWA for maintenance activities; and
 - (ii) Supply of water by RWA for individual flat units
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3.5 Now, it is imperative to know the reason behind the above bifurcation being tried by the applicant. It has been observed that, the applicant is involved in two agreements where maintenance agreement provides maintenance services to the Association and MOU is for supply of water to the individual resident residing in the society.

3.6 Further, It has been found that GST on services provided by the Resident Welfare Association to its resident members is 18% when each unit household in a society pays more than Rs. 7500/- per month for said services and the supplier of services (RWA in the present case) is registered by way of crossing over of threshold limit of Rs. 20 lakhs. The relevant portion of the notification No. 12/2017 dated 28.06.2017 is as under:-

S. No.	Chapter/ Section Heading/ Group or Service Code	Description of Services	Rate %	Condi- tion
(1)	(2)	(3)	(4)	(5)
77	Heading 9995	Service by an unincorporated body or a non-profit entity registered under any law for the time being in force, to its own members by way of reimbursement of charges or share of contribution – (a) as a trade union; (b) for the provision of carrying out any activity which is exempt from the levy of Goods and service Tax; or (c) up to an amount of five thousand rupees per month per member for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex.	Nil	Nil

3.7 Further, circular No. 109/28/2019-GST dated 22.07.2019 issued by CBIC clarified on applicability of GST on services provided by RWA, the relevant portion is as under:-

A number of issues have been raised regarding the GST payable on the amount charged by a Residential Welfare Association for providing services and goods for the common use of its members in a housing society or a residential complex. The same have been examined and are being clarified below-

S. No.	Issue	Clarification													
1	Are the maintenance charges paid by residents to the Resident Welfare Association (RWA) in a housing society exempt from GST and if yes, is there an upper limit on the amount of such charges for the exemption to be available?	Supply of service by RWA (unincorporated body or a non-profit entity registered under any law) to its own members by way of reimbursement of charges or share of contribution up to an amount of Rs. 7500 per month per member for providing services and goods for the common use of its members in a housing society or a residential complex are exempt from GST. Prior to 25th January 2018, the exemption was available if the charges or share of contribution did not exceed Rs 5000/- per month per member. The limit was increased to Rs. 7500/- per month per member with effect from 25th January 2018. [Refer clause (c) of Sl. No. 77 to the notification No. 12/2018- Central Tax (Rate) dated 28.06.2019]													
2	A RWA has aggregate turnover of Rs.20 lakh or less in a financial year. Is it required to take registration and pay GST on maintenance charges if the amount of such charges is more than Rs. 7500/- per month per member?	<p>No. If aggregate turnover of an RWA does not exceed Rs.20 Lakh in a financial year, it shall not be required to take registration and pay GST even if the amount of maintenance charges exceeds Rs. 7500/- per month per member. RWA shall be required to pay GST on monthly subscription/ contribution charged from its members, only if such subscription is more than Rs. 7500/- per month per member and the annual aggregate turnover of RWA by way of supplying of services and goods is also Rs. 20 lakhs or more.</p> <table> <tr> <th>Annual turnover of RWA</th><th>Monthly maintenance charge</th><th>Whether exempt?</th></tr> <tr> <td rowspan="2">More than Rs. 20 lakhs</td><td>More than Rs. 7500/-</td><td>No</td></tr> <tr> <td>Rs. 7500/- or less</td><td>Yes</td></tr> <tr> <td rowspan="2">Rs. 20 Lakhs or less</td><td>More than Rs. 7500/-</td><td>Yes</td></tr> <tr> <td>Rs. 7500/- or less</td><td>Yes</td></tr> </table>	Annual turnover of RWA	Monthly maintenance charge	Whether exempt?	More than Rs. 20 lakhs	More than Rs. 7500/-	No	Rs. 7500/- or less	Yes	Rs. 20 Lakhs or less	More than Rs. 7500/-	Yes	Rs. 7500/- or less	Yes
Annual turnover of RWA	Monthly maintenance charge	Whether exempt?													
More than Rs. 20 lakhs	More than Rs. 7500/-	No													
	Rs. 7500/- or less	Yes													
Rs. 20 Lakhs or less	More than Rs. 7500/-	Yes													
	Rs. 7500/- or less	Yes													



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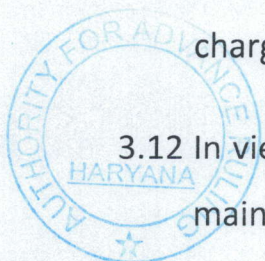
3.8 In the instant case, it has been found that the applicant is providing services to the RWA in two parts viz. maintenance services and supply of water. It has also been observed that as a general practice across trade and market, the maintenance services is inclusive of supply of water and hence supply of water provided by the applicant through a separate agreement i.e. MOU in the present case, raises a suspicion in its activity. The reason behind the suspicion is that the water received by the RWA is used for multiple purposes i.e. gardening, washing, cleaning and for the use in the apartments etc. and is stored in the common underground water tank which is maintained by the RWA.

3.9 In view of the above, it is clear that the applicant have bifurcated the services provided to RWA in order to escape the condition of Rs. 7500/- per month per member or it might be crossing the GST registration threshold limit of Rs. 20 lakhs.

3.10 Further, it has also been observed that, in general each society consists of many residential towers, and each tower consists of many residential apartments which have a common underground and overhead water storage tank. Even though the applicant might have a separate agreement for supply of water and for receiving charges on the basis of per square feet with the residents of the apartment in a particular tower but it is not possible to supply water to each apartment separately as mentioned in the said MOU, because the apartments do not have their own separate water storage tanks.

3.11 Therefore, in other words supply of water is actually to the RWA and the applicant is trying to split the contract into maintenance agreement and MOU to avoid the GST to facilitate RWA in order to keep the maintenance charges paid by the residents below Rs. 7500/- . Further, it has also been observed that water charges collected from the individual residents are on the basis of per sq feet (size of the flats), instead of per tanker of water, which is similar to the collection of the maintenance charges collected by the RWA.

3.12 In view of the above, it is quite evident that supply of water in MOU and supply of maintenance services in maintenance agreement are to the same RWA and relevant to each other, hence it is evident that there is no case of direct supply of water by the applicant to the individual resident of the society.



4. **Ruling:**

So, in light of the above discussion and findings, the Ruling of the Authority is as under:

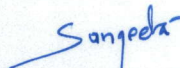
- 4.1 Maintenance agreement and MOU is directly linked with each other as there is no case of direct supply of water by the applicant to the individual resident of the society. The supply of water to individual units is not different from the supply of water for maintenance services. Therefore, the applicant is required to pay GST as applicable on maintenance agreement.


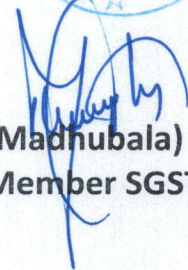
Ordered accordingly.

To be communicated.

13.09.2019

Panchkula.


(Sangeeta Karmakar)
Member CGST



(Madhubala)
Member SGST

Regd. AD/Speed Post

M/s Ashiana Maintenance Services LLP,
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Sohna Road, Sector-49, Gurugram, Haryana.

Copy to:

1. The Commissioner of Central Goods & Services Tax, GST Bhawan, Plot No. 36-37, Sector-32, Gurugram, Haryana.
2. Deputy Excise and Taxation Commissioner (ST), Gurugram (South).
3. Assistant Commissioner, CGST, GST Bhawan, Plot No. 36-37, Sector-32, Gurugram, Haryana.