



**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/05/2022-23 DATED

Name & Address of the Applicant.	M/s AS&D Enterprise LLP Office Space, Number 02-119, Wework Blu One Square, Delhi Square, Delhi Jaipur Expy, Phase-IV, Udyog Vihar, Section -18, Gurgaon, Haryana, 122022.
GSTIN of the Applicant.	06ABTFA2616C1ZP
Online ARN No.	AD060122001738I dated 10.01.2022
Clause 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
Date of Hearing:	13.09.2022

Memo 321

Dated: 22/09/2022

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 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.

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

Statement of facts as per ARA-01:-

The applicant is Limited Liability Partnership Company registered under the Goods and Services Tax Act, 2017. The applicant is engaged in the business of providing security services to various business entities situated all over India.

The security services are provided in the form of deployment of security personnels to keep ward & watch and providing safety and security of assets/installations/offices/buildings/ properties/equipments etc. of the site or any other locations as may be specified by the recipient.

The applicant's interpretation of law on the query:- As per section 2(98) of CGST Act, "reverse charge" means the liability to pay tax by the recipient of supply of goods or services or both instead of the supplier of such goods or services or both sub-section (3) or sub-section (4) of section 9, or under sub-section (3) or sub-section (4) of section 5 of Integrated Goods and Services Tax Act. Therefore, under Reverse Charge Mechanism, the liability to pay tax is fixed on the recipient of the supply of goods or services instead of the supplier in respect of notified categories of goods or services.

Consequently, in exercise of the powers conferred by sub-section (3) of section 9 of the CGST Act, the Central Government, vide Notification No. 13/2017-CT(Rate) dated 28.06.2017, notified certain categories of supply of services on which the liability to pay tax is on the recipient of such services under reverse charge mechanism (RCM). **In the understanding of the applicant, services provided by it are taxable @ 18% as per Notification No. 11/2017-CT (Rate) Chapter 99 (Heading 9985).** The Government vide Notification No. 29/2018 - dated 31.12.2018 amended Notification No. 13/2017 CT (Rate) dated 28.06.2017 to insert entry No. 14.

The relevant part of the notification is as under:-

Sr. No.	Category of Supply of Services	Supplier of Services	Recipient of Services
14.	Security services (services provided by way of supply of security personnel) provided to a registered person: Provided that nothing contained in this entry shall apply to, (i) (a) a Department or Establishment of the Central Government or State Government or Union territory; or (b) local authority; or (c) Governmental agencies; which has taken registration under the Central Goods and Services Tax Act, 2017 (12 of 2017) only for the purpose of deducting tax under	Any person other than a body corporate	A registered person, located in the taxable territory."

Hence, the above-mentioned entry is applicable if Security services i.e. services provided by way of supply of security personnel are provided by any person, other than a body corporate, to a registered person. Therefore, tax shall be paid on forward charge basis by the supplier and provisions of sub-section (3) of section 9 of GST Law would not be applicable in the following cases:

- a) Security services provided by any person to above mentioned exempted categories of persons.
- b) Security services provided by the body corporate to any person.
- c) Security services provided by any person to unregistered person.

As it can be seen from the above-mentioned provisions and explanation, the responsibility to pay tax under reverse charge basis is casted upon the recipient if he receives the notified security services from a person who is not a body corporate. Accordingly, an explanation has been provided in Notification No. 13/2017-CT(Rate) itself to give definition to the term "body corporate" which is reproduced below:

(b) "Body Corporate" has the same meaning as assigned to it in clause (11) of section 2 of the Companies Act, 2013.

And as per Clause (11) of section 2 of the companies Act, 2013 "body corporate" or "corporation" includes a company incorporated outside India, but does not include- (i) a co-operative society registered under any law relating to co-operative societies; and (ii) any other body corporate (not being a company as defined in this Act), which the Central Government may, by Notification, specify in this behalf;

Perusal of section 2(11) of Companies act, 2013, reveals that the above definition does not itself provide meaning of the term 'Body Corporate'. Rather it provides certain inclusions and exclusions from its ambit for the purposes of this notification under GST Law. The LLP is neither covered under inclusions clause nor exclusions provided in the provisions. Accordingly, one need to understand the term 'Body Corporate' by its general meaning. In general parlance, a 'Body Corporate' is understood to mean any entity which has a legal existence separate from its partners. Any LLP, incorporated under the Limited Liability Partnership Act, 2008, has a separate identity and perpetual succession which is prima facie sufficient to treat LLP as a body corporate. The Limited Liability Partnership Act, 2008 was enacted by Parliament to make provisions for formation and regulations of LLPs and for matters connected therewith or incidental thereto, accordingly, it will be appropriate to make reference to relevant provisions of the said Act of 2008 to understand nature of LLPs. Section 2(1)(d) of LLP Act, 2008, defines the term 'body corporate' as under: "Body Corporate" means a company as defined in clause

but does not include-

- (i) a corporation sole;
- (ii) a co-operative society registered under any law for the time being in force; and
- (iii) any other body corporate (not being a company as defined in section 3 of the Companies Act, 1956 (1 of 1956) or a limited liability partnership as defined in this Act), which the Central Government may, by Notification in the Official Gazette, specify in this behalf.

Further, section 3 of LLP Act, 2008, describes nature of any Limited Liability Partnership. Section 3: Limited Liability Partnership to be Body Corporate.

- (1) A limited liability partnership is a body corporate formed and incorporated under this Act and is a legal entity separate from that of its partners.
- (2) A limited liability partnership shall have perpetual succession.
- (3) Any change in the partners of a limited liability partnership shall not affect the existence, rights or liabilities of the limited liability partnership

The Ministry of Corporate Affairs in "FAQS on nature of Limited Liability Partnership" has described structure of LLP as: "LLP shall be a body corporate and a legal entity separate from its partners. It will have perpetual succession".

Bare perusal of above provisions of Limited Liability Partnership Act, 2008 and FAQs of Ministry of Corporate Affairs it can be said that LLPs incorporated under LLP Act, 2008 are body corporate for all legal purposes.

Reverting back to 2(11) of The Companies Act, 2013, which has been referred by Notification No. 13/2017-CT(Rate), we are of the understanding that LLPs are body corporates and accordingly is not covered by entry no. 14 of Notification No. 13/2017 CT(Rate), meaning thereby tax has to be paid by the applicant under forward charge basis.

On the other hand, explanation (e) to Notification No. 13/2017-CTR, describes the 'Limited Liability Partnership' as partnership firm. Relevant extracts of Notification No. 13/2017-CTR are reproduced hereunder.

(e) A "Limited Liability Partnership" formed and registered under the provisions of the Limited Liability Partnership Act, 2008 (6 of 2009) shall also be considered as a partnership firm or a firm.

Due to the said explanation, there may be a view that tax is to be paid by the recipient under RCM. However, point to be considered is that the entry no. 14 of the said notification does not make any reference to the term 'Partnership

firm, 'Limited Liability Partnership' or 'Firm'. On the contrary, entry 14 of the said notification, makes reference to the term 'Body Corporate' only, meaning of which

entry 14 of the Notification No. 13/2017-CT(Rate) dated 28.06.2017 and the tax liability arising from said supply should be paid by the applicant under forward charge basis and not by the recipient under reverse charge basis.

PERSONAL HEARING:

Sh. Jatin Harjai, Advocate present on behalf of the applicant and enumerated the legal and factual aspects of the matter.

DISCUSSIONS AND FINDINGS:

The matter is being heard at length by the authority. The same is examined on all legal aspects of the issue at hand. The query in the plain words is that whether an LLP can be considered as Body corporate under the provisions of the GST Act, 2017 or not? And if it is a body corporate, then as per provisions the GST law, it shall charge tax on the supply of security services under forward charge mechanism. Reverse charge mechanism of levying the tax under the Act won't be applicable in the present case. The above mentioned submissions of the applicant with reference to the subject matter are being taken into cognizance and it is observed that Body Corporate has not been defined under the GST Act, 2007 whereas the body corporate referred in the explanation (b) of the notification no. 13/2017-CT(Rate) which states that it will be have the same meaning as assigned to it in section 2(11) of the Companies Act, 2013. Application of the notification no. 29/2018 dated 31.12.2018 in the present matter is to be considered on all factual and legal aspects.

As per our understanding of the matter, the scope of the applicability of the said notification is that the RCM is relevant only when the security services are provided to a registered person and only when the supplier of services is any person other than a body corporate. E.g. if a proprietary concern or a partnership firm provides security services to a registered person then RCM is applicable but if a private Ltd. Company provides such services the same will attract forward charge instead of RCM. Following points can be inferred from the conjoint reading of the notification and the provisions of the GST Act, 2017 and Companies Act, 2013 and LLP Act, 2009:

- a. The term 'security services' as per the notification means "services provided by way of supply of security personnel"
- b. Security services provided by any person other than a body corporate are to be covered under the said notification.
- c. If the person is obtaining security services from a body corporate, the provisions of RCM will not be applicable.
- d. As per definition of "body corporate" under section 2(11) of the Companies Act, 2013. It includes a private company, public company, one personal company, small company, Limited Liability Partnership, foreign company etc. However,

- (ii) Any other body corporate (not being a company as defined in the Companies Act, 2013) which the Central Government may, by notification, specify in this behalf.
- e. If the recipients of the services is not registered person than the liability to pay tax under the GST Act is on the supplier of the security services as per section 9(1) though he is not a body corporate.
- f. An LLP is being considered as a body corporate as per section 2(d) of LLP Act, 2008.
- g. A person who is liable to pay tax under section 9(3) shall compulsorily register under the GST Act.

For the better understanding of the issue at hand, the basic features of an Limited Liability Partnership needs to be understood:-

In general terms, an LLP is viewed as an alternate corporate business model that involves the integration of the advantages of a limited liability company with the flexibility of a partnership. It allows its members the flexibility of organizing their internal structure as a partnership based on a mutually arrived agreement. From the LLP Act, 2008 the main features inter alia are that the LLP shall be a body corporate and a legal entity separate from its partners. Any two or more person, associated for carrying on a lawful business with a view to profit, may by subscribing their names to an incorporation document and filling the same with the registrar, form-a Limited Liability Partnership. It will have perpetual succession. Even if the partners opt to leave, the LLP persists. It can enter into the contracts and own property in its own capacity. **It is a separate legal entity having to bear the full liability for its assets which makes it possible for partners' liability to be limited to their agreed contribution to the LLP.**

The LLP Act, 2008 confers powers on the Central Government to apply provisions of the Companies Act, 1956 as appropriate, by notification with such changes or modifications as deemed necessary.

Whereas a Body Corporate is an organization such as a company or government that is considered to have its own legal rights and responsibilities. The body corporate is a separate legal entity and can enter into its own contracts and manage its own legal proceedings.

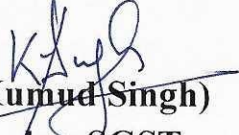
From the above, it can be inferred that an LLP is an Body Corporate for the purpose of Companies Act, 2013 and the same would apply to the term body corporate for the purpose of the notification no. 13/2017-CGST(Rate) dated 28.06.2017 and as amended on 31.12.2018 vide notification no. 29/2018. In consequence the Reverse Charge Mechanism would not be applicable in the present case. Moreover, the legislative intention behind the application of RCM is on those supplies in which the government/executive do not have control over the supplier or who are working in the unorganized sector. So, the RCM is made applicable for any person other than body corporate by the said notification.

9(1) of the CGST/HGST Act, 2017 read with the relevant provision of IGST Act, 2017.

7. Ruling: -

Question	Answer
Whether services (Security services) provided by the applicant LLP are covered by entry 14 of Notification No. 13/2017-CT(Rate) dated 28.06.2017 and liable for tax under reverse charge mechanism or Not?	No (the services provided by the applicant, limited liability company partnership are not covered under the entry 14 of the notification no. 13/2017 dated 28.06.2017 and 29/2018 dated 31.12.2018. The reverse charge mechanism for the levy of tax under section 9(3) is not applicable in the present case).


(Sunder Lal)
Member CGST


(Kumud Singh)
Member SGST

Regd. AD/Speed Post

M/s AS&D Enterprise LLP
Ground Floor, Mahendra Kumar Agarwal,
Amarjyoti School Wale, Sanoli Khurd,
Sonipat, Haryana-132103

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 (ST), Range- Gurgaon, District- Gurgaon (East), Ward- Gurgaon (East) Ward-1, Haryana.
3. The Deputy/ Assistant Commissioner, Central Goods & Service Tax, Commissionerate:- Gurugram, Division:- East-1, Range:- R-29, 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.