



**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/2017-18/4
(In Application No.4, dated 12.01.2018)**

Name & Address of the Applicant	: M/s Loyalty Solutions and Research Private Limited, Ground Floor and First Floor, Plot No.34, Sector-44, Institutional Area, Gurgaon-122003 (Haryana)
GSTIN of the Applicant	: 06AABCL1714C1Z7
Date of Application	: 12.01.2018
Clause(s) of Section 97(2) of CGST/HGST Act, 2017, under which the question(s) raised.	: (V) Determination of the liability to pay tax on any goods of services or both. (VII) Whether any particular thing done by the applicant with respect to any goods and/or services or both amounts to or results in a supply of goods and/or services or both, within the meaning of that term.
Date of Personal Hearing	: 11/04/18
Present for the Applicant	: Sh Sandeep Chilana & Sh Atulya Kishore , Advocate (POA)

1. The applicant namely M/s Loyalty Solutions and Research Pvt. Ltd. (LSRPL), 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/partner, 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.

2. 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 a 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 is 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.

3. 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 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 by LSRPL and the amount equivalent to 0.25 INR per reward point is being retained by LSRPL.
4. The question for advance ruling is that whether this amount of issuance fee retained/forfeited by LSRPL, would amount to consideration for actionable claims and subject to GST. The text 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, 2017

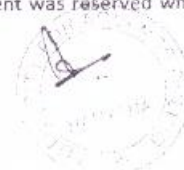
5. The Deputy Excise & Taxation Commissioner (ST), Gurgaon (East), vide letter No.3086 dt.22.03.18, submitted the requisite comments on both the above questions raised by the applicant, as under:

- (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 IPA Act, 1882 comprises two types of claims: (a) a claim to unsecured details and (b) a 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 of enjoyment, it will not be actionable claim but a chose 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 a 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.

Record of Personal Hearing

6. Personal hearing in the case was conducted on 11.04.2018 which was attended by Sh. Sandeep Chilana & Sh. Atulya Kishore, Advocates (POA). They had reiterated the submissions made in their application. After detailed discussions the application was admitted being covered by clause (e) & (g) of section 97 (2) of the CGST/HGST Act 2017.

On the merit of the case they were heard in detail. Their main contention is that the redemption points issued to their clients for further distribution to the participant/end customers is in the nature of actionable claim and as per exclusion entry 6 of schedule-III of the CGST/HGST Act, these are not leviable to GST. Any amount of forfeited redemption points thus, also does not attract any GST. After hearing them in detail the judgment was reserved which is being released today.



DISCUSSIONS AND FINDINGS OF THE AUTHORITY

7. As per Section 2(i) of the CGST/HGST Act, 2017, actionable claim shall have the same meaning as assigned to it in section 3 of the Transfer of Property Act, 1882;

As per Section 3 of the Transfer of Property Act, 1882, actionable claim is 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 possession either actual or constructive, of the claimant, which the civil courts recognize as affording grounds of relief whether such debt or beneficial interest be existent, accruing or conditional or contingent.

8. Further, Section 2 (52) of the CGST/HGST Act, defines goods as 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;

It is also to be noted that Schedule III to the CGST Act, 2017 provides for activities or transactions which shall be treated neither as supply of goods nor as supply of services. Point 6 in schedule III includes actionable claims other than lottery, betting and gambling. Therefore, such actionable claims which are not lottery, betting, gambling, though are goods under Section 2(52) of the CGST Act, but are excluded from levy of GST in terms of Schedule III to CGST Act.

9. Rewards points earned by the end customers for purchase of products of "partners" to loyalty programme are indeed "actionable claim". However, the question arises that, when these reward/payback points are not redeemed by the customer for the reasons that their validity period has expired, do such reward points continue to be actionable claim?

10. In this regard, it is observed that after the expiry of validity date, these reward/payback point can no longer be redeemed/encashed by the end customer and the end customer loses any right over them. Also, as per the definition of "actionable claim", given under Section 3 of the Transfer of Property Act, no legal action can be taken by the end customer in connection with enforcing their right over redeeming these reward/payment points. This implies that after expiry of their validity period, these reward/payment points are not "actionable claim". Consequently, the action of forfeiture of rewards/payment who validity period has lapsed, does not mean that actionable claim been transferred, as after expiry of validity period, these reward/payback points are no longer covered under the definition of "actionable claim". Thus, the provisions of Schedule III to CGST Act, 2017 also do not come into picture, under such circumstances.

11. In view of above, the money equivalent to these reward/payback points, i.e. issuance fee given by partners and lying with LSRPL, which is retained by LSRPL in the name of forfeiting reward/payback points is nothing but revenue of LSRPL coming from the respective "partners" which has been earned by them owing to the activities of their providing services to the said "partners" through the loyalty programmes run by LSRPL.

12. Even from the clauses of agreement between LSRPL and the "partners", it is evident money equivalent of reward points expired/ not redeemed by customers/forfeited after expiry, would be retained by LSRPL. Thus, the agreement itself provides for revenue to LSRPL, in shape of retaining the issuance fee. In the event of the forfeiture, the issuance fee received by the applicant from the partner in relation to such lapsed payment points, is retained by the LSRPL. Thus, the agreement between LSRPL and the partner specifically provides that it is actually the issuance fee that is being retained by LSRPL in the event of non-redemption of loyalty points by customers.

Thus, this amount is liable to be considered as consideration for supply of services by LSRPL to its partners in the normal course of business and becomes part of remuneration for LSRPL for providing services.

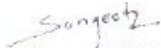
13. LSRPL is already charging service/management fee from the partner, on which LSRPL is paying GST. Thus, the retention of amounts received from partners as issuance fee by LSRPL and retained by LSRPL on account of non-redeeming of reward/payment points by end-customer would be liable to be added to the value of services being provided by LSRPL to their partners. As per clause (c) of Sub-Section (2) of Section 15 of the CGST/HGST Act, 2017, any amount charged for anything done by the supplier in respect of supply of goods and services or both, at the time of, or before delivery of goods or supply of services. In the instant case, retention of issuance fee after forfeiture of reward/payment points, amounts to charging of amount equivalent to amount retained as issuance fee for the services which have been provided by LSRPL, to its partners.


ADVANCE RULING UNDER SECTION 98 OF THE CGST/HGST ACT, 2017

14.1. 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 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.

14.2. 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 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.

11.04.2018
Panchkula


(Sangeeta Karmakar)
MEMBER


(Vijay Kumar Singh)
MEMBER

Regd. AD/Speed Post

M/s Loyalty Solutions and Research Private Limited,
Ground Floor and First Floor, Plot No.34,
Sector-44, Institutional Area,
Gurgaon-122003 (Haryana)

Copy to:

- 1) The Deputy Excise and Taxation Commissioner (ST), Gurgaon (East).
- 2) The Additional Commissioner, Central GST Commissionerate, Gurugram.