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**HARYANA AUTHORITY FOR ADVANCE RULING,
GOODS AND SERVICES TAX,
HARYANA VANIYA BHAWAN, PLOT NO I-3, SECTOR 5,
PANCHKULA-134151 (HARYANA)**



ADVANCE RULING NO. HAR/HAAR/R/2018-19/24
(In Application No.:24/2018-19, dated 20.08.2018)

Name & Address of the Applicant	: M/s Yum Restraunts (India) Pvt. Ltd., Tower-D, Global Business Park, 12 th Floor, MG Road, Gurugram, Haryana.
GSTIN of the Applicant	: 06AAACY1883EIZD.
Date of Application	: 20.08.2018
Clause(s) of Section 97(2) of CGST/HGST Act, 2017, under which the question(s) raised.	: (a) classification of any goods or service or both.
Date of Personal Hearing	: 23-10-2018.
Present for the Applicant	: Sh.Sidharth Srivastava, Advocate (POA)

1. M/s Yum Restraunts (India) Pvt Ltd., Tower-D, Global Business Park, 12th Floor, MG Road, Gurugram, Haryana [hereinafter referred to as the "Applicant"], is the owner of various trademarks, service marks and trade names and has a comprehensive restaurant system for the preparation, marketing and sale of certain quality food products under the various trademarks owned by them.

2. The Applicant has entered into a technology license agreement with its franchisee (herein called as the Licensee) across India, wherein the Applicant has granted the Licensee the right to use the system, the system property and marks for the term, solely in connection with the conduct of business at the outlet and subject to terms and conditions of the agreement.

3. The aforesaid three rights granted to the Licensee are detailed below:

- a. **Right to use the Systems-** The System is a comprehensive restaurant system for retalling of a limited menu of uniform and quality food products, with emphasis on prompt and courteous behavior and wholesome atmosphere. The System is meant for providing standards and policies to Licensee's for uniform operation of all restaurants within the System. These includes but are not limited to, serving designated food and beverage products; the use of only prescribed equipment and building layout and design, strict adherence to designated food and beverage specifications and to prescribed standards of quality, service and cleanliness in restaurant operations.

Right to use System Property-

- i. The term System Property has been defined to mean the contents of the manuals and all other knowhow, information, specification, Systems and data used by the Applicant or in respect of the System.
- ii. The term Manual has been defined to mean the manuals, notices and correspondence published or issued from time to time by the Applicant in any form, containing the standards and other requirements, rules, procedures and guidelines relating to the System.
- iii. The term Standards has been defined to mean the standards, specifications and other requirements of the System as determined, changed or added to by the Applicant from time to time including without limitation the standards, specifications and other requirements related to the preparation, marketing sale of the approved products, customer service procedure, the design, décor and fitout of the outlet, the equipment at the outlet and the content, quality and use of advertising and promotional materials.



Signature

			programme and the like
253		997333	Licensing services for the right to reproduce original art-works
254		997334	Licensing services for the right to reprint and copy manuscripts, books, journals and periodicals
255		997335	Licensing services for the right to use research and development products
256		997336	Licensing services for the right to use trademarks and franchises
257		997337	Licensing services for the right to use minerals including its exploration and evaluation
258		997338	Licensing services for right to use other natural resources including telecommunication spectrum
259		997339	Licensing services for the right to use other intellectual property products and other resources nowhere else classified

and

296	Heading		Other professional, technical and business services
	9983		
297	Group		Management consulting and management services; information technology services
	99831		
305	Group		Architectural services, urban and land planning and landscape architectural services
	99832		
314	Group		Engineering services
	99833		
324	Group		Scientific and other technical services
	99834		
334	Group		Veterinary services
	99835		
338	Group		Advertising services and provision of advertising space or time
	99836		
345	Group		Market research and public opinion polling services
	99837		
348	Group		Photography and videography and their processing services
	99838		
356	Group		Other professional, technical and business services
	99839		
357		998391	Specialty design services including interior design, fashion design, industrial design and other specialty design services
358		998392	Design originals
359		998393	Scientific and technical consulting services
360		998394	Original compilations of facts or information
361		998395	Translation and interpretation services
362		998396	Trademarks and franchises
363		998397	Sponsorship services and brand promotion services
364		998399	Other professional, technical and business services nowhere else classified



12. Further, explanation notes to classification of services, contains following clarification in respect of classification code 997336.

997336 Licensing services for the right to use trademarks and franchises

This service code includes licensing services for the right to use trademarks and to operate franchises.

In respect of classification code 998336, the explanation notes contain following clarification.

998396 Trademarks and franchises

This service code includes original trademarks and franchises, i.e. the legally registered ownership of a certain brand name.

Note : These products are produced on own account with the intent of deriving benefits from allowing others to use these trademarks or franchises.

This service code does not include :

- licensing services for the right to use trademarks and franchises, cf. 997336
- research and development work leading to a product or concept that is being trademarked, cf. 9981
- advisory services for the organization of marketing channels (including franchises), cf. 998311
- management services for rights to trademarks and franchises, cf. 998599

Thus, from the above, it is amply clearing that classification code/heading 998396 does not cover the activity of licensing right to use trademarks and franchises, as the same is covered vide classification code/chapter heading 997336. Further, Group 99733 covers Licensing services for the right to use intellectual property and similar products. Therefore, licensing services for right to use the "system" and "system property" in respect of which advance ruling has been sought in the instant case [even if "marks" have been taken out of ambit of this advance ruling due to reasons that there is separate agreement for right to use the same this agreement does not cover right to use "marks"], being right to use intangible property which is similar to copyright, patents, trademarks, designs, which is also capable of being possessed, transferred and their right to use can be licensed, merits classification under the group 99733.

13. When the classification code for the said services stand decided under classification code 9973, the same also stands covered vide serial number 17 of Notification 11/2017-CT dt.28.06.2017, for the purpose of levy of appropriate rate of GST, which is as under:

Sr. No.	Chapter, Section or Heading	Description of Service	Rate (per cent.)	Condition
(1)	(2)	(3)	(4)	(5)
17	Heading 9973 (Leasing or rental services, with or without operator)	(i) Temporary or permanent transfer or permitting the use or enjoyment of Intellectual Property (IP) right in respect of goods other than Information Technology software.	6	-
		(ii) Temporary or permanent transfer or permitting the use or enjoyment of Intellectual Property (IP) right in respect of Information Technology software. [Please refer to Explanation no. (v)]	9	-
		(iii) Transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.	Same rate of central tax as on supply of like goods involving transfer of title in goods	-
		(iv) Any transfer of right in goods or	Same rate of	-



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of undivided share in goods without the transfer of title thereof.	central tax as on supply of like goods involving transfer of title in goods	
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14. In view of the above, this authority is of the opinion that the subject activity is covered vide serial number 17(i) of the Notification 11/2017-CT(Rate) dated 28-06-2017, as "Temporary or permanent transfer or permitting the use or enjoyment of Intellectual property (IP) right in respect of goods other than Information technology software" and leviable to CGST @ 6% and SGST @ 6%.

RULING:

15. In terms of clause (c) of para 5 of Schedule II of the Central Goods and Service Tax Act, 2017, the impugned activity right to use "system" and "system property" is right to use intellectual property which merits classification under code 9973 (Serial number 232 (for heading 9973) & 250 (for group 9973) of annexure to Notification No.11/2017-CT dt.28.06.17) and the same is covered vide serial number 17(i) of Table to the said notification, chargeable to CGST @ 6% and SGST @ 6%.

Ordered accordingly.

To be communicated.

Dated : 19.11.2018

Panchkula,


(Sangeeta Karmakar)
Member CGST


(Vijay Kumar Singh)
Member SGST

Certified true copy

Regd. AD/Speed Post

M/s Yum Restraunts (India) Pvt Ltd.,
Tower-D, Global Business Park,
12th Floor, MG Road, Gurugram (East).



Copy to:

- 1) The Commissioner, CGST Commissionerate, Gurugram, GST Bhawan, Plot No 36-37, Sector 32, Gurugram, Haryana- 122001
- 2) The Deputy Excise and Taxation Commissioner, Gurugram (East).
- 3) The Assistant/ Deputy Commissioner, Central Tax Division, Gurugram, CGST Gurugram Commissionerate, GST Bhawan, Plot No 36-37, Sector 32, Gurugram, Haryana- 122001.