

Advance Ruling No. 01/2023-24 dated 01.08.2023 in F. No. 01/S.Tax-UKD/GST/Sec-97/2023-24/DDN

समक्ष अग्रिम विनिर्णय प्राधिकारी उत्तराखण्ड(माल और सेवा कर)  
**BEFORE THE AUTHORITY FOR ADVANCE RULINGS FOR THE STATE  
OF UTTARAKHAND  
(Goods and Services Tax)**

Present:

श्री अनुराग मिश्रा (सदस्य)

**Shri Anurag Mishra (Member)**

श्री विवेकानंद मौर्य (सदस्य)

**Shri Vivekanand Maurya (Member)**

The 01<sup>st</sup> day of August, 2023

अग्रिम विनिर्णय संख्या. 01/2023-24

Ruling No: 01/2023-24

in

आवेदन संख्या . 01/2023-24

**Application No: 01/2023-24**

1	आवेदक Applicant	M/s India Optel Limited, OFIL Campus, Corporate Office, Raipur, Dehradun- 248008.
2	अधिकारिता अधिकारी Jurisdictional Officer	-----
3	आवेदक की ओर से उपस्थित Present for the Applicant	Sh. Mukesh Kumar, Company Representative
4	अधिकारिता अधिकारी की ओर से उपस्थित Present for the Jurisdictional Officer	None
5	Concerned Officer	Sh. Deepak Brijwal, Deputy Commissioner
6	आवेदन प्राप्ति की तिथि Date of receipt of application	04.05.2023
7	सुनवाई की तिथि Date of Personal Hearing	25.07.2023

**नोट:** इस अग्रिम विनिर्णय की प्राप्ति के 30 दिन के अन्दर उत्तराखण्ड माल और सेवाकर अधिनियम 2017 की धारा-99 के अन्तर्गत गठित अग्रिम विनिर्णय अपीलप्राधिकारी के समक्ष धारा- 100(1) के अन्तर्गत अपील दायर की जा सकती है।

**Note:** An appeal against this ruling lies before the appellate authority for advance ruling under Section 100(1) of the Uttarakhand Goods and Services Tax Act, 2017, constituted under Section 99 of the Uttarakhand Goods and Services Tax Act, 2017, within a period of 30 days from the date of service of this order.

**AUTHORITY FOR ADVANCE RULING  
GOODS & SERVICE TAX  
UTTARAKHAND**

**PROCEEDINGS**

This is an application under Sub-Section (1) of Section 97 of the Central Goods & Service Tax Act, 2017 and Uttarakhand State Goods & Service Tax Act, 2017 (hereinafter referred to as CGST/SGST Act) and the rules made there under filed by M/s India Optel Limited, OFIL Campus, Corporate Office, Raipur, Dehradun-248008 (herein after referred to as the "applicant") and registered with GSTIN 05AAGCI2642P5Z7 under the CGST Act, 2017 read with the provisions of the UKGST Act, 2017.

2. At the outset, we would like to state that the provisions of both the CGST Act and the SGST Act are the same except for certain provisions; therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the SGST Act.

3. The Advance Ruling under GST means a decision provided by the authority or the appellate authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub section (1) of section 100 in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant.

4. As per the said sub-section (2) of Section 97 of the Act advance ruling can be sought by an applicant in respect of:

- (a) Classification of any goods or services or both
- (b) Applicability of a notification issued under the provisions of this Act,
- (c) Determination of time and value of supply of goods or services or both,
- (d) Admissibility of input tax credit of tax paid or deemed to have been paid
- (e) Determination of the liability to pay tax on any goods or services or both
- (f) Whether the applicant is required to be registered
- (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.

4.2 In the present case applicant has sought advance ruling on the determination of the liability to pay tax on services, therefore, in terms of said Section 97(2) (b) of CGST/SGST Act, 2017, however, the application is with regard to "Determination of the liability to pay tax on any goods or services or both", Section 97(2) (e) of CGST/SGST Act, 2017 and the present application is hereby admitted.

**BRIEF FACTS OF THE CASE**

5. In the application dated 02.05.2023, the applicant submitted that:

Advance Ruling No. 01/2023-24 dated 01.08.2023 in F. No. 01/S.Tax-UKD/GST/Sec-97/2023-24/DDN

a. M/s India Optel Limited, entered into a contract with various vendors for supply of goods used in the course of business, who are registered with GST department and charge and collect GST on the supplied goods. In terms / conditions of the supply order issued to the vendors, following clause has been mentioned:

*“Liquidated Damage:- If the contractor fails to deliver the stores or any installments thereof within the period fixed for such delivery or at any time repudiates the contract before the expiry of such period, the General Manger may without any prejudice to the right of the purchaser to recover the damages for breach of contract. In the event of seller’s failure to have the stores delivered by the dates/ date specified in the contract, the buyer may, at his discretion withhold any payment until the whole of the store has been supplied and the buyer may also deduct from the seller as agreed, liquidated damages and not by way of penalty the sum of 0.5% of the contract price of the undelivered store for each and every week and part of a week for which the stores have been delayed subject to maximum of 10% of the value of delayed stores, in case the delay in delivery is acceptable to the buyer.”*

b. At Para 7.1.3 and 7.1.4 of Board Circular 178/10/2022-GST dated 03.08.2022, clarification has been issued with respect to GST applicability on liquidated damages, compensation and penalty arising out of breach of contract or other provisions of law, however, two view point have emerged, one that the contract is entered between two parties for execution and not for its breach and the clause for Liquidated Damages (LD) is mentioned in a contract only to ensure the performance and hence, the amount collected as LD do not constitute consideration for supply and are not table under GST. Other view point is that if there is express or implied agreement for the Liquidated Damages (LD), then the amount recovered against Liquidated Damages (LD) will constitute consideration for a supply and will be taxable.

c. The above ambiguity in the circular regarding the taxability of Liquidated Damages (LD) has bearing on the GST liability of the applicant on the amounts recovered as Liquidated Damages (LD) from their vendors.

### **QUESTION**

In view of the above facts, ‘the applicant’ is seeking advance ruling as to;

*Whether GST is applicable on Liquidated Damages recovered from the vendors?*

### **APPLICANT SUBMISSION**

6. From the record submitted by the applicant we find that applicant is registered in Uttarakhand with GSTIN bearing No. **05AAGCI2642P5Z7**. Before proceeding in the present case, we have to first go through the submissions made by the applicant which are as under:

i. That they are manufacturing unit and enter into agreements with various vendors for supply of goods and or services, wherein there is a clause, which prescribes that if

Advance Ruling No. 01/2023-24 dated 01.08.2023 in F. No. 01/S.Tax-UKD/GST/Sec-97/2023-24/DDN

the contractor fails to deliver the stores or any installments thereof within the period fixed for such delivery or at any time repudiates the contract before the expiry of such period, the General Manger may without any prejudice to the right of the purchaser to recover the damages for breach of contract. In the event of seller's failure to have the stores delivered by the dates/ date specified in the contract, the buyer may, at his discretion withhold any payment until the whole of the store has been supplied and the buyer may also deduct from the seller as agreed, Liquidated Damages (LD) and not by way of penalty the sum of 0.5% of the contract price of the undelivered store for each and every week and part of a week for which the stores have been delayed subject to maximum of 10% of the value of delayed stores, in case the delay in delivery is acceptable to the buyer.

- ii. In terms of the above said terms and conditions they recover various amount from the vendors, who do not adhere to the time line/ period granted to them for supply of goods and or services.
- iii. Under Para 7.1.3 of the Board Circular 178/10/2022-GST dated 03.08.2022, following has been provided:

*"7.1.3 It is argued that performance is the essence of a contract. Liquidated damages cannot be said to be a consideration received for tolerating the breach or non-performance of contract. They are rather payments for not tolerating the breach of contract. Payment of liquidated damages is stipulated in a contract to ensure performance and to deter non-performance, unsatisfactory performance or delayed performance. Liquidated damages are a measure of loss and damage that the parties agree would arise due to breach of contract. They do not act as a remedy for the breach of contract. They do not restitute the aggrieved person. It is further argued that a contract is entered into for execution and not for its breach. The liquidated damages or penalty are not the desired outcome of the contract. By accepting the liquidated damages, the party aggrieved by breach of contract cannot be said to have permitted or tolerated the deviation or non-fulfilment of the promise by the other party."*

- iv. Whereas Under Para 7.1.4 of the Board Circular 178/10/2022-GST dated 03.08.2022, following has been provided:

*"7.1.4 In this background a reasonable view that can be taken with regard to taxability of liquidated damages is that where the amount paid as 'liquidated damages' is an amount paid only to compensate for injury, loss or damage suffered by the aggrieved party due to breach of the contract and there is no agreement, express or implied, by the aggrieved party receiving the liquidated damages, to refrain from or tolerate an act or to do anything for the party paying the liquidated damages, in such cases liquidated damages are mere a flow of money from the party who causes breach of the contract to the party who suffers loss or damage due to such breach. Such payments do not constitute consideration for a supply and are not taxable."*

Advance Ruling No. 01/2023-24 dated 01.08.2023 in F. No. 01/S.Tax-UKD/GST/Sec-97/2023-24/DDN

- v. That going through these Para's it appears that two viewpoints emerges, one that the contract is entered between two parties for execution and not for its breach and the clause for Liquidated Damages (LD) is mentioned in a contract only to ensure the performance and hence, the amount collected as LD do not constitute consideration for supply and are not table under GST and the other view point is that if there is express or implied agreement for the Liquidated Damages (LD), then the amount recovered against Liquidated Damages (LD) will constitute consideration for a supply and will be taxable.
- vi. That the above pointed out ambiguity in the circular regarding the taxability of Liquidated Damages (LD) has bearing on the GST liability of the applicant on the amounts recovered as Liquidated Damages (LD) from their vendors.

### **PERSONAL HEARING**

Accordingly opportunity of personal hearing was granted to the applicant on 25.07.2023. Sh. Mukesh Kumar, Company Representative, on behalf of the applicant appeared for personal hearing on the said date and re-iterated the submission already made in their application. Sh. Deepak Brijwal, Deputy Commissioner, Concerned Officer from the State Authority was also present during the hearing proceedings. He presented the facts and requested the authority to decide the case on merits.

### **DISCUSSION AND FINDINGS**

7. In the present case we are not deciding any wider question but restricting our conclusion to the facts and circumstances which were filed by the applicant for our consideration. We have considered the submissions made by the applicant in their application for advance ruling as well as the submissions made by applicant and his authorized representatives during the hearing. We have also considered the issue involved on which advance ruling is sought by the applicant, relevant facts and the applicant's interpretation of law. Now we proceed by taking up the issue.

8. We have carefully considered all the submissions made by the Applicant. The applicant is a registered manufacturing entity engaged in manufacture and they enter into agreement with various vendors for supply of goods and or services and in the event of vendor's failure to deliver by the dates/ date specified in the contract, the applicant deduct Liquidated Damages (LD) from them and have approached the Advance Authority, with a view that there is an ambiguity in the Board Circular No. 178/10/2022-GST dated 03.08.2022 in view of Para 7.1.3 and 7.1.4, in respect of taxability on such liquidated damages.

In the present case liquidated damages are recovered by the applicant from the vendors/contractors in the event of their failure to have stores delivered by the date/dates specified in the contract. The moot point here is whether the activity is supply or not, in other words whether the said collection in the form of Liquidated Damages (LD) is

consideration or not? And whether the amount collected by them is consideration for tolerating an act and taxable service as per the entry at serial 5(e) of Schedule II or it is a Penalty / Compensation for not tolerating the act?

Therefore, before proceeding further, it would be prudent to go through the provisions of "Supply" and "Consideration" as provided in the CGST/SGST Act, 2017.

As per Section supply has been defined as under:-

*"7. Scope of supply. — (1) For the purposes of this Act, the expression —supply// includes—  
(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;  
[(aa) the activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration.*

*Explanation.—For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another;]*

*(b) import of services for a consideration whether or not in the course or furtherance of business;[and]*

*(c) the activities specified in Schedule I, made or agreed to be made without a consideration;*

*(1A) where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.*

'Consideration' is defined in Section 2(31) of the CGST Act 2017 as:

*'Consideration' in relation to the supply of goods or services or both includes,-*

*a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government"*

We are of the opinion that in the above definition of the "Supply" and "Consideration" the meaning of the word consideration is very broad and also includes any payment made or to be made, whether in money or otherwise,

a) in respect of,

b) in response to,

c) for inducement of supply of goods or services.

Advance Ruling No. 01/2023-24 dated 01.08.2023 in F. No. 01/S.Tax-UKD/GST/Sec-97/2023-24/DDN

Upon going through the sample copy of the agreement submitted by the applicant, we find that at Sl. (viii) of the Point 4 GENERAL TERMS & CONDITION, it has clearly been stipulated that the service provider must ensure to provide the service within stipulated time period otherwise liquidated damages and not by way of penalty the sum of 0.5% of the contract price of the undelivered store for each and every week and part of a week for which the stores have been delayed subject to maximum of 10% of the value of delayed stores. This shows that the quantum of liquidated damages has been determined pre-hand and there is no element of uncertainty in the same, whereas, to actually qualify as damage, there has to be an element of uncertainty. Damages are not known beforehand and if they are known beforehand, steps can be taken to act in such a way they don't occur. The mention of a particular rate of value and maximum limit beforehand of occurrence of damages clearly shows that there is a reasonable belief that such event can occur or happen in the ordinary course of business and hence a particular rate / term has been fixed while entering into the agreement, whereas in true sense the damages have had to be with an element of surprise, which is caused by loss or damage suffered by aggrieved party and hence to compensate the monetary loss due to said loss / damages, the damages are liquidated and where the amount paid as liquidated damages is an amount paid only to compensate for such loss or damage.

From the above, it is clear that the amount recovered as liquidated damages is neither ad-hoc, unconditional nor at the discretion of the applicant or his vendors. The mathematical terms for calculation of such value clearly indicate that the act of breach is not inconvincible, in the first place.

We also find that in the instant case all the three conditions as mentioned at Para 6.1 of the Circular, namely 1. Agreement or Contract 2. Consideration and 3. Contractual agreement is independent arrangements in its own right, are present in the contract entered between the applicant and the vendors and hence the ingredients for taxability are fulfilled. We are also of the opinion that the Para 7.1.3 starts with the words, "*It is argued that the performance is the .....*", the usage of said words clearly shows that it is a point of view for discussion and understanding of the issue only and not the final view of the Board.

Further, at Para 12 of the referred Circular it is mentioned that the taxability in each case shall depend on facts of the case, hence upon going through the contract/ agreement under question submitted by the applicant and the legal provisions we are of the opinion that, mention of specific rate for compensation of the monetary loss, in the contract/ agreement under question, clearly implies that buyer i.e. the applicant and sellers i.e. the vendors, have already factored in the cost of damages and there is no surprise element in the occurrence of such damages and hence the amount recovered under the head of Liquidated Damages (LD) is a consideration and is exigible to tax under the provisions of the CGST/SGST Act, 2017 and also that the said activity is a supply under the provisions of the CGST/SGST Act, 2017.

Further, we also find that in the contract, it is clearly mentioned that amount recovered, is not a penalty/compensation and maximum limit is only 10%, which appears very much within tolerable limit, and amount received in the name of liquidated damages, actually is a consideration for tolerating the act of not supplying stores in the prescribed time limit and hence in the light of section 7 read with definition of consideration under section 2(31), liquidated damages recovered by the applicant from their vendors is a consideration, for tolerating of an act or a situation under an agreement and hence such an activity constitutes supply of service as per entry at serial 5(e) of Schedule II and are exigible to tax @18% as per serial no. 35 of Notification No. 11/2017-Central /State tax rate, under HSN 9997.

9. In view of the discussions held above, we rule as under:

**RULING**

**Question - Whether GST is applicable on Liquidated Damages recovered from the vendors?**

**Answer- Yes, GST is applicable on Liquidated Damages recovered from the vendors.**

  
**ANURAG MISHRA**  
**(MEMBER)**

  
**VIVEKANAND MAURYA**  
**(MEMBER)**



Advance Ruling No. 01/2023-24 dated 01.08.2023 in F. No. 01/S.Tax-UKD/GST/Sec-97/2023-24/DDN

**AUTHORITY FOR ADVANCE RULING  
GOODS & SERVICE TAX: UTTARAKHAND  
OFFICE OF THE COMMISSIONER, SGST, UTTARAKHAND  
LADPUR RING ROAD, UPPER NATHANWALA, DEHRADUN**

**F. No.: 01/S.Tax-UKD/GST/Sec-97/2023-24/DDN/ 2720 Date: 01.08.2023**

**Copy to:**

1. The Chief Commissioner, CGST, Meerut Zone, Meerut for information please.
2. The Commissioner, SGST, Commissionerate, Uttarakhand for information and necessary action please.
3. The Commissioner, CGST, Commissionerate, Dehradun for information and necessary action please.
4. The Assistant Commissioner, Range-V, CGST, Dehradun for information and necessary action.
5. The Assistant Commissioner, Sec-3, SGST, Dehradun for information and necessary action.
6. The Concerned Officer, CGST, Dehradun.
7. The Concerned Officer, SGST, Dehradun.
8. The Appellate Authority of Advance Ruling, Uttarakhand for information please.
9. Guard File.