



BEFORE THE AUTHORITY FOR ADVANCE RULING - ANDHRA PRADESH

Goods and Service Tax

D.No.12-468-4, Adjacent to NH-16 Service Road, Kunchanapalli, Guntur-522501

Present

1. Sri. K. Ravi Sankar, Commissioner of State Tax (Member)
2. Sri. B. Lakshmi Narayana, IRS, Joint Commissioner of Central Tax (Member)

AAR No. 07/AP/GST/2024 dated: 09.05.2024

1	Name and address of the applicant	M/s Transmission Corporation Of Andhra Pradesh Limited
2	GSTIN	37AABCT0088P1ZU
3	Date of filing of Form GST ARA-01	13.02.2024
4	Personal Hearing	02.04.2024
5	Represented by	R. Narasimha Murthy, Advocate
6	Jurisdictional Authority –State	Special Circle, Vijayawada 3 Division
7	Clause(s) of section 97(2) of CGST/SGST Act, 2017 under which the question(s) raised	e) determination of the liability to pay tax on any goods or services or both;

ORDER

(Under sub-section (4) of Section 98 of Central Goods and Services Tax Act, 2017 and sub-section (4) of Section 98 of Andhra Pradesh Goods and Services Tax Act, 2017)

1. At the outset we would like to make it clear that the provisions of CGST Act, 2017 and APGST Act, 2017 are in parimateria and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the APGST Act.
2. The present application has been filed u/s 97 of the Central Goods & Services Tax Act, 2017 and AP Goods & Services Tax Act, 2017 (hereinafter referred to CGST Act and APGST Act respectively) by M/s. Transmission Corporation Of Andhra Pradesh Limited (hereinafter referred to as applicant), registered under the AP Goods & Services Tax Act, 2017.

3. Brief Facts of the case:

1. M/s. Transmission Corporation Of Andhra Pradesh Limited, (Hereinafter referred to as "applicant") a Licensed Distribution Company for supply of electricity. The Applicant enters into multiple contracts and agreements with Suppliers (contractors) in order to construct and maintain the Transmission Network in the State of Andhra Pradesh in line with demand growth and general expansion in an efficient manner so as to ensure highest availability of electricity at lowest operational costs.
2. The Applicant mainly deals in Goods and Services, which include:
 - Electrical energy
 - Various Wastes and Scraps.
 - Electrical transformers, static converters (for example, rectifiers) and inductors - other transformers: having a power handling capacity exceeding 500 KVA.
 - Consulting Engineer
 - Erection, commissioning and installation, etc..
 - Works Contract Services
3. The Applicant opts for tendering process and enters into contract agreement with the successful bidders. The Applicant submits that the time is essence of the most of contracts since any delay in supply of goods or services would lead to delay in providing the services to the end customers and it also leads to cost enhancements. In view of the above, the Applicant fixes a time limit for the supplies to be affected and in case of delay, the contracts contain a clause of penalties, which are nothing but liquidated damages, that will be deducted from the amounts due to the suppliers for compensating the loss borne by the Applicant on account of the supplier not adhering to the time limits agreed upon by the contracting parties as per the agreement. The Applicant further submits that the penalty so recovered is either appropriated by the Applicant or again returned to the supplier after due consideration of the causes or on compassionate grounds.
4. To illustrate, the Applicant draws kind attention to Purchase Order No. 9000000391/PO.No.976/CE/Trans/P&MM/E.12/PMM12-e-20/2023/ Lot 3/D.No.86/24, dt.22.03.2024 and reference to Condition 9 of the contract, which is reproduced hereunder for ready reference:

9.PENALTY FOR LATE DELIVERY:

- a) The delivery period as per agreed delivery schedule shall be deemed to be the essence of the contract. In case of delay in delivery of materials and erection beyond

the agreed delivery schedule or to perform the services within the period specified in the contract whatever be the reason the APTRANSCO may at its option, demand and recover from the supplier from the contract price, as liquidated damages, a sum equivalent to 0.5% per week on the undelivered portion subject to a maximum of 5% of total value of the contract.

5. In the case of purchase order No. 963-PMM/2024/CE/Trans/SE/P&MM/EEIII/DEE-1/PMM31-e-25/D.N.o40/2024, dt.08.02.2024, it is mentioned.

10.PENALTY FOR DELAY IN SUPPLIES:

a) For Commissioning C&R panels Works:

In case of delay in scheduled works after completion period mentioned in Schedule –B (b), whatever be the reasons, the APTRANSCO can levy and collect the penalty @0.5% per week of delay or part thereof.

(b) For Supply of Material:

The time for and the dates for delivery mentioned in the contract will be deemed to be the essence of the contract. Subject to Force Majeure Clause as given at clause 11, if the Supplier fails to deliver any or all If the Materials or to perform the Services within the period (s) specified in the Contract, the Purchaser will, without prejudice to its other remedies under the contract, deduct from the Contract Price, as liquidated damages, a sum equivalent to 0.5% per week on the undelivered portion subject to a maximum of 5% of the total value of the contract. Once the maximum is reached the Purchaser may consider termination of the contract.

6. The Applicant is seeking an Advance Rulings with regard to application of GST on the penalties, i.e., liquidated damages collected by them from the Contractors/Suppliers on account of breach of contract.

4. Questions raised before the authority:

The applicant sought advance ruling on the following:

1. Whether the amount recovered by the Applicant from the Suppliers or the Contractors as part of breach of contract or for Non-performance of Contract within the stipulated period, as represented by the penalty, i.e., Liquidated Damages is leviable to GST ?

On Verification of basic information of the applicant, it is observed that the applicant is under State jurisdiction i.e ,Special circle, Vijayawada Division. Accordingly, the application has been forwarded to the jurisdictional officer and a copy marked to

the Central Tax authorities to offer their remarks as per Sec. 98(1) of CGST /APGST Act 2017.

In response, remarks are received from the State jurisdictional officer concerned stating that no proceedings lying pending with the issue, for which the advance ruling sought by the applicant.

5. Applicant's Interpretation of Law:

- A. The Applicant submits that the liquidated damages for breach of contract, i.e., delay in supply, are collected in the form of penalty to compensate the loss suffered by the Applicant in terms of Section 74 of the Contract Act, 1972. The quantum of penalty is based on the mutual agreement by the contracting parties.
- B. The issue involved in the subject matter is that whether such penalty is liable to be considered as a payment towards the declared service of "agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act" and whether GST is leviable on the said penalty.
- C. Liquidated damages are damages which an injured party is entitled to receive on account of breach of the conditions of the contract by the other contracting party. They refer to a pre-determined amount of compensation as stipulated in the contract, which the parties before entering into a contract agree upon, will be payable in case there is a breach of the terms of the agreement by any of the contracting parties as provided in Sections 73 and 74 of the Indian Contract Act, 1872. It is common for the parties entering into a contract to specify in the contract itself, as to what compensation would be payable in the event of a breach of the contract. Black's Law Dictionary defines 'Liquidated Damages' as cash compensation agreed to by a signed, written contract for breach of contract, payable to the aggrieved party.
- D. In the instant case, the penalty being collected by the Applicant is nothing but liquidated damages for failure to supply the goods/services within the stipulated period. The amount of such liquidated damage is agreed upon in the contract itself.
- E. The taxability of liquidated damages has been largely debated since Service Tax regime. Under the erstwhile Service Tax law, Section 66E of the Finance Act 1994 included "agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act" as taxable service, which is identical to the service specified under GST era. The issue of subjecting the liquidated damages to service tax levy was subject to judicial scrutiny and in number of judgements including in the case of

Neyveli Lignite Corporation. Ltd. v. CCE & Service Tax reported in 2021 (53) G.S.T.L. 401 (Tri. – Chennai; Paradip Port Trust Vs CCGST & EXCISE, BHUBANESWAR reported in 2022 (62) G.S.T.L. 186 (Tri. - Kolkata), it was held that the receipt of liquidated damages on the grounds of breach of contract or non-performance by the defaulting party cannot be subjected to service tax as the said liquidated damage received is not consideration for either tolerating an act or refraining from action.

- F. Under GST Enactments, Entry 5(e) in Schedule II of CGST Act, 2017 classified transactions viz., "agreeing to the obligation to refrain from an act, or to tolerate an act or situation, or to do an act" would constitute supply of service. Consequent upon the implementation of the GST law, the matter of levy of GST on liquidated damages has been agitated by the Department. In the case of GE T & D India Ltd. v. Deputy Commissioner of Central Excise, Chennai reported in 2020 (35) G.S.T.L. 89 (Mad.) held that notice pay is not taxable under service tax as the employer has not "tolerated" an act of the employee. Rather, employer has permitted a sudden exit upon being compensated by the employee in this regard.
- G. Consequent upon the said litigation, CBIC issued a clarification through Circular No. 178/10/2022 - GST dated 03rd August 2022 regarding the taxability in relation to liquidated damages and resolve the litigative point of views on various charges arising out of the breach of contract. The Board has divided and explained the scope of Entry 5(e) in Schedule II in following three segments:
- a. Agreeing to the obligation to refrain from an act- For eg- Non-compete agreements, where one party agrees not to compete with the other party in a product.
 - b. Agreeing to the obligation to tolerate an act or a situation- For eg- shopkeeper allowing a hawker to operate from the common pavement in front of his shop against a monthly payment by the hawker.
 - c. Agreeing to the obligation to do an act - For eg- agreement by Industrial unit to install equipment for zero emission/discharge.
- H. As per the Circular, to classify any transaction under the scope of Entry 5(e) of Schedule II, there should be nexus between the supply (i.e., agreement to do or to abstain from doing something) and consideration. In addition to the said nexus, following essentials are required to classify the activity or transaction under the relevant entry:
- (i) There must be a contract or agreement (whether implied or expressed) for the activity or transaction;

- (ii) The contractual obligation should be an independent arrangement (It could be independent stand-alone contract or may form part of another contract);
- (iii) Consideration must flow in return from one party to another party of the agreement/contract.

- I. Therefore, briefly stated if the aforesaid essentials are fulfilled/complied with, the activity or transaction would be subject to GST.
- J. On application of the above parameters, liquidated damages being collected by the Applicant cannot be said to be a consideration received for tolerating the breach or non-performance of contract. They are rather amounts recovered for not tolerating an act or situation and to deter such acts, i.e., such amounts are for preventing breach of contract or non-performance and thus, the said activity does not fall within the mischief of Entry 5(e) in Schedule II and thus, no GST liability arises on the said liquidated damages.
- K. The Applicant further submits that in large number of decisions rendered on the subject matter of liquidated damages, it has been held that collection of liquidated damages does not indicate tolerance of act or abstain from action. Some of such decisions are cited hereunder for ready reference:
 - a. Rajcomp Info Services Ltd. Vs Principal Commissioner, Cgst & C. Ex., Jaipur-I Reported In 2023 (73) G.S.T.L. 237 (Tri. - Del.)
 - b. South Eastern Coalfields Ltd. Vs Commr. Of C. Ex. & S.T., Raipur Reported In 2021 (55) G.S.T.L. 549 (Tri. - Del.)
 - c. Madhya Pradesh Power Transmission Co. Ltd. Vs Principal Commissioner Of Cgst & C. Ex., Bhopal Reported In 2023 (385) E.L.T. 152 (Tri. - Del.)
- L. Going by the ratio of above decisions read with the clarification issued by the CBIC vide Circular No. 178/10/2022 - GST dated 03rd August 2022, the Applicant contends that the liquidated damages collected under the nomenclature of penalty cannot be subjected to the levy of GST.

6. Personal Hearing:

The proceedings of Personal Hearing was conducted on 02.04.2024, for which the authorized representative, Sri R. Narasimha Murthy, Advocate and reiterated the submissions already made.

7. Discussion and Findings:

We have examined the issues raised in the application in light of the facts and arguments submitted by the applicant. We have considered the submissions made by the applicant in their application for Advance Ruling. We have considered the issues involved from which advance ruling is sought by the applicant and the relevant facts along with arguments made by the applicant and also their submissions made during the time of the personal hearing.

The applicant submits that, the delivery period as per agreed delivery schedule shall be deemed to be the essence of the contract. In case of delay in delivery of materials and erection beyond the agreed delivery schedule or to perform the services within the period specified in the contract whatever be the reason the APTRANSCO may at its option, demand and recover from the supplier from the contract price, as liquidated damages, a sum equivalent to 0.5% per week on the undelivered portion subject to a maximum of 5% of total value of the contract.

• **LIQUIDATED DAMAGES UNDER CONTRACT LAW**

Liquidated Damages refer to the amount of compensation pre-determined in a contract, in estimation of the actual loss or injury to be suffered by one party for the breach of obligations under the contract by the other party. Such compensation is stipulated under a 'Liquidated Damages' clause in the contract, which specifies the amount of compensation to be paid in case of specific types of breaches of the contract by the defaulting party. Liquidated Damages are often stipulated where such loss is of intangible nature, such as loss of revenue, loss of business, etc.

The terms 'Damages' and 'Liquidated Damages' have not been defined under the Indian Contract Act, 1872 (the Contract Act). However, Section 73 of the Contract Act provides for compensation for loss or damage caused by breach of contract, and Section 74 of the Contract Act stipulates compensation for breach of contract where penalty is stipulated, i.e., in the case of Liquidated Damages.

Sections 73 and 74 of the Contract Act provide for Damages and Liquidated Damages. Section 73 of the Contract Act provides for compensation for loss or damage caused by breach of contract. It states that a party who suffers by the breach of contract is entitled to receive compensation for any loss or damage naturally arising in the usual course of things from such breach, from the party who breaches the contract.

Section 74 of the Contract Act deals with compensation for breach of contract where penalty is stipulated. It states that in case of breach of a contract, if the contract stipulates the amount to be paid in case of such breach or stipulates any penalty, the aggrieved party is entitled to receive from the defaulting party reasonable compensation to the extent stipulated in the contract, without proving actual damage or loss caused to him.

The term 'Liquidated Damages' is defined in Black's Law Dictionary as "an amount contractually stipulated as a reasonable estimation of actual damages to be recovered by one party if the other party breaches. If the parties to a contract have properly agreed on liquidated damages, the sum fixed is the measure of damages for a breach, whether it exceeds or falls short of the actual damages."

- **APPLICABILITY OF GST ON LIQUIDATED DAMAGES**

As per Section 7(1A) of the CGST Act, scope of supply includes activities or transactions which constitute a supply under Section 7(1) of the CGST Act, as referred to in Schedule II of the CGST Act.

Paragraph 5 of Schedule II of the CGST Act stipulates the activities to be treated as supply of services, which includes in sub-clause (e) the activity of "agreeing to the obligation to refrain from an act, or to tolerate an act or situation, or to do an act."

On the basis of Paragraph 5 (e) of Schedule II of the CGST Act, the activity of the defaulting party 'tolerating' the non-defaulting party's non-performance under the contract on receipt of Liquidated Damages is considered as supply of service.

Section 9 of the CGST Act envisages the applicability of GST on supply of goods or services or both, as defined under Section 7 of the CGST Act. Such tax is levied on the value of taxable supply, as defined under Section 15 of the CGST Act to refer to the "transactional value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply." In light of Section 7 read with Paragraph 5 (e) of Schedule II and Section 9 of the CGST Act, GST is applicable on the value of Liquidated Damages paid by the defaulting party to the non-defaulting party for tolerating the act of non-performance or breach of the contract.

- **Decisions under the GST Regime:**

In the case of Maharashtra State Power Generation Company Ltd. (2018-VIL-33-AAR), wherein the Maharashtra Authority for Advance Ruling (AAR) held that Liquidated Damages are to be treated as consideration for an act of tolerance of non-performance, and thus the value of Liquidated Damages is subject to GST at the rate of 18% under the Heading 9997". The Maharashtra Appellate AAR has further affirmed the ruling of the Maharashtra AAR in [2018 (70 GST 411)].

Similar rulings have also been pronounced in the below mentioned matters:

Fastrack Deal Comm (P.) Ltd. (GUJ/GAAR/R/58/2020 dated 30.07.2020) – Gujarat AAR held that GST is applicable on advance forfeited for breach of terms of contract.

Amneal Pharmaceuticals (P.) Ltd. (GUJ/GAAR/R/51/2020 dated 30.07.2020) – Gujarat AAR held that GST is applicable on compensation paid by an employee to the employer for not serving the stipulated notice period.

M/S TP Ajmer Distribution Limited [(2019) 103 taxmann.com 227 (AAAR-RAJASTHAN)] – Rajasthan Appellate AAR held that GST is applicable on fees paid in lieu of dishonoured cheque.

M/S Bajaj Finance Limited (MAH/AAAR/SS-RJ/24/2018-19) – Maharashtra AAR held that GST is applicable on compensation paid by the owner to tenant for temporary relocation.

In common parlance of trade, before executing any transaction, parties enter into a legal contract wherein the rights and obligations of both the parties are clearly laid down. The basic structure of the contract is governed by the Indian Contract Act, 1872 which highlights the provisions relating to performance, non performance and the breach of contract. Going by the literal understanding of the word 'damage', it is a remedy in the form of monetary reward paid to a claimant as compensation to loss or injury. Black's Law Dictionary defines damage as under:

"A pecuniary compensation or indemnity, which may be recovered in the courts by any person who has suffered loss, detriment, or injury, whether to his person, property, or rights, through the unlawful act or omission or negligence of another."

Indian Contract Act clearly provides for compensation for loss or damage caused by breach of contract to the affected party. Such damages may be a pre-estimated damage which the parties agree while making the contract or may be left to be decided by court on basis of assessment of loss or injury.

The Black's Law Dictionary defines the terms as under:

Liquidated Damages "An amount contractually stipulated as a reasonable estimation of actual damages to be recovered by one party if the other party breaches; also if the parties to a contract have agreed on Liquidated Damages, the sum fixed is the measure of damages for a breach, whether it exceeds or falls short of the actual damages."

Unliquidated Damages "Damages that cannot be determined by a fixed formula and must be established by a judge or jury." Having set the context of the importance of the term damage, its significance in the contract, let us deep dive into the intricacies which revolve around taxability of such damages under the indirect tax laws.

Provisions under the Central Goods and Services Tax Act, 2017 ('the CGST Act'), GST is applicable on supply of goods or services or both.

The term "Supply" has been defined as under:

"(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, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

(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."

Schedule II to the CGST Act which lists out certain activities to be treated as supply of goods or supply of services specifically provides in Para 5(e) as under: "(5) The following shall be treated as supply of services, namely: (e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act;" The aforementioned terms have not been defined under the CGST Act, Refrain from act:

- **An agreement for non compete with each other.**

For example: Sale of brand name by X to Y where X agree that he will not sell similar product under any other brand in the market for a specified number of years. In this case, as per the contract, X specifically refrain himself from acting (selling) the product.

- **Tolerate an act or situation :**

The person or institution may agree to tolerate an act of others. Toleration is defined in Black's Law Dictionary (Tenth Edition) as "The act or practice of permitting or enduring something not wholly approved of; the act or practice of allowing something in a way that does not hinder."

For example: In a society, for work to be permitted to be carried in the lift during a particular time etc., society charges the person carrying out the repair for the inconvenience caused to other members. This, in commercial term, is known as "hardship amount". In such situation, the members agree to tolerate the act carried out by other person. This benefits the society in the form of certain considerations.

- **To do an act:**

Service provider may sometimes agree for doing a particular act for which he receives payment.

For example: The retailers enter into agreement with the companies that they will sell the cold drink of particular brand of the Company, and he will not sell the cold drink of other company. In such case, retailers agree to act in a particular manner for which he is paid the amount.

Since supply is undertaken for a consideration, one may refer to the definition of 'Consideration' which in relation to supply of goods or services 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;

(b) the monetary value of any act or forbearance, 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"

It would be worthwhile to analyse the guidelines and precedence set in the erstwhile Service tax law since the similar provision existed under earlier laws as well. Analysis of provisions of the erstwhile law and judicial precedents Service tax was leviable on provision of service, which means an activity for consideration carried out by one person for another. The term was explained in "Taxation of Services: An Education Guide" as under:

The concept 'activity for a consideration' involves an element of contractual relationship wherein the person doing an activity does so at the desire of the person for whom the activity is done in exchange for a consideration. An activity done with such a relationship i.e., without the express or implied contractual reciprocity of a consideration would be an 'activity for consideration' even though such an activity may lead or may not lead to accrual of gains to the person carrying out the activity.

It is a well settled law that flow of money can be a subject matter of service tax and consideration should have 'nexus' with an identified supply of service.

In our view, in order to render a transaction liable for tax, the nexus between the consideration agreed and the services activity to be undertaken should be direct and clear. It can be established that a specific amount has been agreed upon as a quid pro quo for undertaking any particular activity or otherwise by a partner, it can be assumed that there was a consideration agreed upon for any specific activity so as to constitute a service." Given aforementioned legal provisions and judicial precedents, it is evident that it is a well settled law that receipt of money along with activity would tantamount to consideration and consideration is flowing at the desire of the party for undertaking a particular activity, or otherwise same would be qualified as consideration.

There is a marked distinction between 'conditions to a contract' and 'consideration for the contract'. A service recipient may be required to fulfil certain conditions contained in the contract but that would mean that this value would form part of the value of taxable services provided. The purpose of imposing compensation or penalty is to ensure that the defaulting act is not undertaken or repeated and the same can be said to be towards 'toleration' of the defaulting party. Liquidated damages were not received to make good the losses or injuries from 'unintended' events and does arise from an obligation on part of any of the parties. Hence, the same can be considered as the payments for a service." Damages are to compensate for disruption of a service and towards non-performance of the service. They should be viewed as alternative mode of performance and accordingly, should be subject to tax.

The empowerment to levy liquidated damages is for the reason that there had been a delay and the same would be tolerated, but for a price or damages. The income though presented in the form of a deduction from the payments to be made to the contractor was the income of the applicant and would be a supply of 'service' by the applicant in terms of clause (e) of Para 5 of Schedule II appended to the Central Goods and Services Tax Act, 2017". The nature of "damages" for the purpose of GST the reciprocal obligations are essential to constitute supply and accordingly any payment in the nature of damages to balance equities between parties, in the presence of enforceable reciprocal obligations, would constitute supply and would attract GST. Conclusion, Aforementioned discussion clearly outline recovery of liquidated damages or penalty from other party can be said to be supply of service, as either or the receiving party is carrying on any activity to receive compensation or there is intention or otherwise of the defaulting party to breach or violate the contract and suffer the loss. The purpose of

imposing compensation or penalty is governed by the provisions of Indian Contract Act to ensure the defaulting act is not undertaken or repeated. The same maybe equated as receipt of consideration on account of toleration of an act.

In the present case, compensation amounts are claimed by the applicant from the customers for non-performing of contractual obligations or breach of the contract. The moot point here is whether the above said activity is supply or not or in words whether the said collection in the form of liquidity damages is consideration or not. It is immaterial to decide whether the amount collected by the applicant is for tolerating the act or for not toleration the act.

In order to decide the same, we have a closer look into the definition of consideration as per GST Act.

section 2(31) '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;
- (b) the monetary value of any act or forbearance, 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:

Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply;

As per the above definition, the meaning of the word consideration is very broad. It 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.

In the present case the customers are paying certain amount to the applicant. The amount so paid is neither ad-hoc, unconditional nor at the whims of any customer nor the appellant. There is a clear mathematical formula as to calculation of such amount

and the conditions/scenarios contingent upon which the amounts are payable are clearly narrated in the agreement itself.

It is simply inconceivable that any prudent business person will pay amounts for no merit and benefit. It is certain that the customer is paying the said amounts only for certain advantage derived or to ward-off any disadvantage incurred. Hence it is only in response to something done by the applicant. It is inconsequential whether the payment is for tolerating the mistake or not-tolerating.

The circular No.178/10/2022-GST dt.03.08.2022 and case laws relied upon by the applicant is not universal and absolute. The circular is only meant to clarify the position of law and shall be applied reasonably having regard to the facts of the case. The circular had clearly mentioned, interalia, vide para 7.1.6 that "Therefore, such payments, even though they may be referred to as fine or penalty, are actually payments that amount to consideration for supply, and are subject to GST, in cases where such supply is taxable. Since these supplies are ancillary to the principal supply for which the contract is signed, they shall be eligible to be assessed as the principal supply, as discussed in detail in the later paragraphs. Naturally, such payments will not be taxable if the principal supply is exempt.

Thus the circular had said payment towards damages are incidental to the main supply and if the main supply is taxable they shall also be taxable and if the principal supply is exempt then the incidental shall also be exempt. Thus the circular shall be understood in the proper context.

Therefore, in the light of section 7 read with definition of consideration u/s 2(31), compensation amounts paid by defaulting party to the non-defaulting party for tolerating the act of non performance or breach of contract have to be treated as consideration for tolerating of an act or a situation under an agreement and hence such an activity constitutes supply of service and the compensation amounts such as liquidity damages are exigible to tax under GST Act.

RULING

(Under Section 98 of Central Goods and Services Tax Act, 2017 and the Andhra Pradesh Goods and Services Tax Act, 2017)

Question: Whether the amount recovered by the Applicant from the Suppliers or the Contractors as part of breach of contract or for Non-performance of Contract within the stipulated period, as represented by the penalty, i.e., Liquidated Damages is leviable to GST ?

Answer : Yes

**Sd/-K. Ravi Sankar
Member**

**Sd/-B. Lakshmi Narayana
Member**

//t.c.f.b.o//


Deputy Commissioner (ST)
Registrar
Authority for Advance Ruling
O/o. Chief Commissioner (State Tax)
Andhra Pradesh, Vijayawada.

To

M/s. Transmission Corporation Of Andhra Pradesh Limited, APTRANSCO Nilayam, Gunadala, Vijayawada, Krishna, Andhra Pradesh, 520004 **(By Registered Post)**

Copy to

1. The Assistant Commissioner of State Tax, Special Circle, Vijayawada 3 Division **(By Registered Post)**
2. The Superintendent, Central Tax, CGST Benz Circle Range, Vijayawada Division. **(By Registered Post)**

Copy submitted to

1. The Chief Commissioner (State Tax), O/o Chief Commissioner of State Tax, Kunchanapalli, Guntur District, (A.P)
2. The Principal Chief Commissioner (Central Tax), O/o Principal Chief Commissioner of Central Tax & Customs, Visakhapatnam Zone, GST Bhavan, Port area, Visakhapatnam-530035. A.P. **(By Registered Post)**

Note: Under Section 100 of the APGST Act 2017, an appeal against this ruling lies before the Appellate Authority for Advance Ruling constituted under Section 99 of APGST Act, 2017, with in a period of 30 days from the date of service of this order.