

**AUTHORITY FOR ADVANCE RULING, TAMILNADU
ROOM NO.206, 2ND FLOOR, PAPJM BUILDING,
NO.1, GREAMS ROAD, CHENNAI-600 006**

**PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING U/s 98 OF THE
GOODS AND SERVICES TAX ACT, 2017**

Members present:

Shri R.Gopalsamy, I.R.S., Additional Commissioner/Member, Office of the Principal Chief Commissioner of GST & Central Excise, Chennai -600 034.	Smt N.Usha, Joint Commissioner (ST)/ Member, Office of the Authority for Advance Ruling, Tamil Nadu, Chennai-600 006.
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Advance Ruling No. 22 /ARA/2023 Dated: 20.06.2023

1. Any appeal against this Advance Ruling order shall lie before the Tamil Nadu State Appellate Authority for Advance Rulings, Chennai as under Sub-Section (1) of Section 100 of CGST Act / TNGST Act 2017, within 30 days from the date on the ruling sought to be appealed is communicated.
2. In terms of Section 103(1) of the Act, Advance Ruling pronounced by the Authority under Chapter XVII of the Act shall be binding only-
 - (a) on the applicant who had sought it in respect of any matter referred to in sub-section (2) of Section 97 for advance ruling.
 - (b) on the concerned officer or the jurisdictional officer in respect of the applicant.
3. In terms of Section 103(2) of the Act, this advance ruling shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.
4. Advance Ruling obtained by the applicant by fraud or suppression of material facts or misrepresentation of facts, shall render such ruling to be void ab initio in accordance with Section 104 of the Act.
5. The provisions of both the Central Goods and Service Tax Act and the Tamil Nadu Goods and Service Tax Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Service Tax Act would also mean a reference to the same provisions under the Tamil Nadu Goods and Service Tax Act.

GSTIN Number, if any / User id		33AAACS4643J1ZF
Legal Name of Applicant		State Industries Promotion Corporation of Tamilnadu Limited
Registered Address / Address provided while obtaining user id		19/A, Rukmani Lakshmipathy Road, Egmore, Chennai – 600008
Details of Application		GST ARA – 01 Application Sl.No.37/2022 dated 22.06.2022
Jurisdictional Officer		Centre: North Commissionerate Division: Egmore, Range III
Concerned Officer		State: Egmore Assessment Circle
Nature of activity(s) (proposed / present) in respect of which advance ruling sought for		
A	Category	Service Provider
B	Description (in brief)	Applicant is an institution formed as a State Industrial Development Corporation (SIDC) by the Government of Tamil Nadu with the objective to promote industrial growth in the state of Tamil Nadu. Applicant is providing the assistance to promote the objective of the state by identifying, developing, maintaining Industrial areas in the State.
Issue/s on which advance ruling required		<ol style="list-style-type: none"> 1. Applicability of a notification issued under the provision of this Act, 2. Determination of the liability to pay tax on any goods or services.
Question(s) on which advance ruling is required		<ol style="list-style-type: none"> 1. Whether the Supply of raw water and its incidental charges are liable to be taxed under the prevailing GST Laws. 2. Whether the Maintenance charges for usage of common facilities are liable to be taxed under the prevailing GST Laws. 3. Whether the Participatory Infrastructure Development Scheme (PIDP) charges are liable to be taxed under the prevailing GST Laws. 4. Whether the interest collected towards delayed payment for Upfront lease premium and Differential lease premium are liable to be taxed under the prevailing GST Laws.

	<p>5. Whether the interest for delayed payment of consideration for the points mentioned in Sr.No.01 to 03, as above, are liable to be taxed under the GST Laws.</p> <p>6. Whether the Penalty for delay in execution of the project and delay in execution of lease deed are liable to be taxed under the prevailing GST Laws.</p>
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1.1 The applicant M/s State Industries Promotion Corporation of Tamilnadu Limited (hereinafter referred to as Applicant) is registered under the GST Act, 2017 with GSTIN 33AAACS4643J1ZF. The Applicant has sought Advance Ruling on the following questions:

1. Whether the Supply of raw water and its incidental charges are liable to be taxed under the prevailing GST Laws.
2. Whether the Maintenance charges for usage of common facilities are liable to be taxed under the prevailing GST Laws.
3. Whether the Participatory Infrastructure Development Scheme (PIDP) charges are liable to be taxed under the prevailing GST Laws.
4. Whether the interest collected towards delayed payment for Upfront lease premium and Differential lease premium are liable to be taxed under the prevailing GST Laws.
5. Whether the interest for delayed payment of consideration for the points mentioned in Sr.No.01 to 03, as above, are liable to be taxed under the GST Laws.
6. Whether the Penalty for delay in execution of the project and delay in execution of lease deed are liable to be taxed under the prevailing GST Laws.

1.2 The applicant has submitted a copy of challan evidencing payment of application fees of Rs.5,000/- each under sub-rule (1) of Rule 104 of CGST Rules 2017 and SGST Rules 2017.

2.1 The Applicant is an institution formed as a State Industrial Development Corporation (SIDC) by the Government of Tamilnadu. It is providing the assistance to promote the objective of the State by identifying, developing, maintain Industrial

area across the State of Tamilnadu and is in the business of developing Industrial Complexes/Industrial Parks/Industrial Growth Centers by acquiring lands across the State under the "Acquisition of Land of the Industrial Purpose Act, 1997/any other act as applicable for land acquisition purpose'. Further, these complexes/Parks are provided with all basic infrastructure facilities such as Road, Street lights, water supply system, arrangement for ready Power Supply, sewerage and Storm water drain, green environment, etc.

2.2 The brief process of on boarding the Allottee(s) into the industrial complexes /parks/growth center is as under:

- a) The Allottees shall submit an application along with pre-determined initial plot deposit amount for Land Allotment through SIPCOT Online Portal with their interest to obtain the land on lease basis along with the basic infrastructure for undertaking their Industrial activities.
- b) The Applicant after evaluating the project proposal of the Allottee(s) and availability of land(s) shall approve the application submitted by the Allottee(s) and allot the earmarked area as laid down in the allotment order.
- c) The conditions/charges as available in the allotment order are as under:

Sr.No	Nature	Description
1.	Initial Plot Deposit	The Allottee(s) shall be required to make payment of pre-determined interest free Initial Plot Deposit while making an application for Land Allotment. Further, if the Allottee(s) fails to complete the payment obligations indicated in the Allotment order, the initial plot deposit amount shall be forfeited, and land allotment will be cancelled.
2.	Upfront lease payment	The allottee(s) shall be required to make an upfront lease payment (inclusive of Plot Cost & Pre-determined interest free caution deposit) to obtain the earmarked area for a pre-determined lease payment (99 years in general). Caution Deposit will be refunded upon the implementation of the project by the allottee within stipulated time.

3.	Penalty for delay in executing the lease deed	The Allottee(s), if fails to execute the lease deed within stipulated time, shall be required to make a payment as per the prevailing policy.
4.	Differential lease premium	<p>The said premium (as per prevailing policy) shall be required to be paid by the allottee:</p> <ol style="list-style-type: none"> 1. Upon transfer of remaining leasehold rights/change in management of the shareholding pattern. 2. Delay in implementation of the project. <p>Further, any delay in payment of the differential lease premium will result in payment of interest as per the prevailing policy.</p>
5.	<p>Water Supply:</p> <p>The Allottee(s) shall be required to execute a separate agreement in order to obtain dedicated water connection. The consumption of the same shall be charged based on the meter installed at the Allottee(s) premises.</p>	<p>In this regard, following charge shall be collected:</p> <ul style="list-style-type: none"> • Water charge as per Meter Consumption Reading. • Interest for delay in payment obligations. • Reconnection charges.
6.	Maintenance charges	<p>The Allottee(s) shall be required to make payment for the common amenities and facilities (road, street, drainage, electricity, etc) as per the prevailing policy.</p> <p>If the payment to the above is delayed, the Allottee(s) shall be required to pay the dues along with the interest as per prevailing policy on such delayed payment.</p>

7.	<p>Participatory Infrastructure Development Scheme (PIDP):</p> <p>As per the scheme, the Applicant shall support upgradation of the existing infrastructure at the request of the Allottee(s).</p>	<p>The Applicant will undertake the infrastructure development as per the request received from the Allottee(s) or Association of Allottee(s). However, the total project cost shall be borne by Applicant and the Allottee(s) collectively.</p> <p>Further, the Applicant shall divide the cost incurred based on the agreed ration and raise demand on agreed instalments basis.</p> <p>If the payment to the above is delayed, then the Allottee(s) shall be required to make payment in the form of interest for the delayed payment.</p>
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3. Explanation/interpretation for each of the items for which advance ruling is sought has been submitted by the Applicant as under:

I) Supply of raw water:

- i. The Applicant collects water/procures water and supplies it to various allottee(s) via pipelines, without undertaking any process or treatment on such water which is unquestionably goods. Consequently, such supply of would be treated as supply of goods.
- ii. The Applicant refers to the Notification No.2/2017- Central Tax (Rate) dt.28.06.2017, which exempts supply of goods specified in the notification from CGST. Entry 99 of the notification grants exemption from CGST to water (except to water which has undergone specified treatment, or the water sold in sealed container).
- iii. The issue that needs to be examined is whether the exemption under the aforesaid entry is applicable in cases where raw water supplied by the Applicant via pipelines to the Allottee(s) (Tenants) from the infiltration wells/bore wells/open wells/storage reservoir without any process is covered under the said category.
- iv. A bare reading of the aforesaid entry would reveal that all types of water is exempt under GST other than two categories of water:
 1. aerated, mineral, purified, distilled, medicinal, ionic, battery, de-mineralized water and
 2. water sold in sealed container

- v. The terms 'aerated, mineral, purified, distilled, medicinal, ionic, battery, de-mineralized', imply some amount of processing/treatment on the water. However, in the present case, the water is supplied as it is without any treatment or processing being carried out on the water and hence, the exception from exemption will not be applicable. Likewise, the second category 'sold in sealed containers' is also not applicable as in the present case the water is supplied through pipelines and not in sealed containers.
- vi. Since neither of the exceptions from the exemption entry are applicable in the present case, the supply of untreated/unprocessed water via pipelines to various Allottee(s) would be covered under entry no.99 of Notification No.02/2017 - CT(Rate) dt.28.06.2017, and will be exempted from levy of GST.
- vii. The Applicant has also referred to Circular No.52/26/2018 dt.09.08.2018 which has clarified that as per S.No.99 of Notification CT(Rate) dt.28.06.2017 by virtue of which water [other than aerated, mineral, purified, distilled, medicinal, ionic, battery, de-mineralized and water sold in sealed container] falling under HS code 2201 attracts NIL rate of GST.
- viii. Therefore, supply of drinking water for public purposes, if not supplied in a sealed container, is exempt from GST."

II. Maintenance cost for usage of common facilities:

- i. The Applicant collects maintenance cost for the usage of common basic infrastructure facilities from Allottee(s) such as road, streetlights, drainage, avenue plants, etc., as per the prevailing policy.
- ii. The above said cost is collected based on the actual cost incurred by the Applicant on behalf of Allottee(s) for maintaining the Industrial parks in a usable condition. There are no separate value-added services rendered by the Applicant on its own to become a taxable service.
- iii. Considering the above explanation, the Applicant is of the view that the cost collected is only a reimbursement of actual cost towards maintaining the industrial parks in a usable condition and hence shall not be liable to tax under GST laws.

III. Participatory Infrastructure Development Scheme (PIDP):

- i. The Applicant will undertake the infrastructure works such as upgradation of roads, drains, street-light and others on a request received from the Allottee(s) or

Association of Allottee(s). However, the total project cost shall be borne by Applicant and the Allottee(s) collectively.

ii. The Applicant shall divide the actual cost incurred based on the mutually agreed ratio and raise a demand to Allottee(s) in instalments.

iii. Since only actual cost incurred is collected, there are no separate services which is rendered by SIPCOT on its own to become taxable supply.

iv. Considering the above explanation, the Applicant is of the view that the cost collected is only a reimbursement of actual cost towards maintaining the industrial parks in a usable condition and hence shall not be liable to tax under GST laws.

IV. Interest for delayed payment for the Lease premium:

i. The Applicant collects Upfront lease payment (inclusive of plot cost & pre-determined interest free caution deposits) to obtain the earmarked area for a pre-determined lease term (99 years in general).

ii. They also collect differential lease premium as per prevailing policy from Allottee(s) upon transfer of remaining Leasehold rights/change in Management of Shareholding Pattern.

iii. The Applicant is a person and, in the course, or in furtherance of its business, disposes of lands by leasing them out for a consideration as one-time premium.

iv. The taxable event in GST is 'supply' of goods or services or both. The transaction to become taxable it must be covered within the meaning & scope of 'supply'. As per Section 7 of the CGST Act, the expression supply includes 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.

v. Applicant relies on 2 (a) on Land and Building of Schedule II, of the CGST Act, which covers Activities or Transactions to be treated as supply of goods or supply of services under 2(a) deals with that any lease, tenancy, easement, licence to occupy land is a supply of services;

vi. The Applicant refers to the Notification No.12/2017-CT(Rate) dt.28.06.2017, which exempts supply of services specified in the notification from CGST to upfront

amount (initial deposit) collected by granting long term (thirty years or more) lease of Industrial plots, provided by the State Government Industrial Development Corporation or Undertaking to Industrial units, under entry no 41 for the Heading 9972 is Nil.

vii. The Applicant also refers to the term 'consideration' as defined under Section 2(31) of CGST Act.

viii. Based on the above, the Applicant infers that the differential lease premium shall not be taxable, since the amount collected from the allottee is also upfront premium for the transfer of remaining leasehold rights (which is more than 30 years of lease term).

ix. Considering the above, the Applicant during the course of business levies interest for the delayed payment of contractual obligation (i.e interest on Differential lease premium and interest collected towards delayed payment for upfront lease premium) to ensure effective collection of outstanding dues, which, the Applicant infers, is not taxable as the main supply is exempted vide Entry no.41 of Notification No.12/2017-CT(Rate) dt.28.06.2017.

x. Further, the Applicant relies on Section 15(2) clause (c) of CGST Act, which states that any incidental expenses charged by the supplier to the recipient and any other amount charged for anything done during the supply until the time of delivery of the goods or supply of the services shall be included in the value of the supply. Accordingly, any charges collected above shall be subject to tax only when the services supplied is taxable under CGST Act. Considering the same, the Applicant is of the view that the incidental charges (interest charges) above shall be exempted from GST.

V. The Applicant has stated that during business, they are collecting interest for delayed payment for maintenance charges for usage of common facilities and Participatory Infrastructure Development Scheme (PIDP) scheme and that taxability of the same will depend on levy of GST on main supply. Referring to Section 15(2) clause (c) of the CGST Act, which states that any incidental expenses charged by the supplier to the recipient and any other amount charged for anything done during the supply until the time of delivery of the goods or supply of the services shall be included in the value of the supply, the Applicant has stated that any charges collected as stated above shall be subjected to tax only when the services supplied is taxable under CGST, Act. Considering this, the Applicant is seeking ruling on the

taxability of the main supplies as stated in the above paras to contemplate on the taxability of the incidental interest charges.

VI. The Applicant has stated that during business, they are levying penalty for the delayed execution of contractual obligation to ensure effective implementation of project which is not taxable as the main supply is exempted vide entry no.41 of Notification No.12/2017- CT (Rate) dt.28.06.2017. Referring to Section 15(2) clause (c) of the CGST Act, which states that any incidental expenses charged by the supplier to the recipient and any other amount charged for anything done during the supply until the time of delivery of the goods or supply of the services shall be included in the value of the supply, the Applicant has stated that any charges collected as stated above shall be subjected to tax only when the services supplied is taxable under CGST, Act. Considering this, the Applicant is of the view that the incidental charges (Penalty charges) shall be exempted from the preview of GST Laws.

4.1 The applicant, after consent, was given an opportunity to be virtually heard on 12.01.2023. The applicant through authorized representative (AR) Shri Rishi Haran of the applicant appeared before the authority and reiterated the submissions. The AR explained about the maintenance charges for common facilities and Participatory Infrastructure Development charges (PIDP) and proportionate recovery of the same from allottee(s). The AR agreed to submit copy of invoices issued to allottee for recovery of maintenance charges and PIDP charges along with the copy of invoices issued by vendors to SIPCOT for providing such services.

4.2 Applicant submitted invoices called during PH by mail along with some additional submission.

5.1 The applicant is under the administrative control of Central Tax. The said jurisdictional authority was addressed to report if there are any pending proceedings against the applicant on the issues raised by the applicant in the ARA application and for comments on the issues raised. The said authority has stated that there are no pending proceedings against the applicant on the issues raised by the applicant in the ARA application. While giving comments on the issue the said Authority has stated as under:

- i. In the present case SIPCOT procures water and supplies to various allottees via pipelines without undergoing any treatment process on such water and charges interest on delayed obligations on water charges and reconnection charges. Hence, it appears that such supply of raw water is exempted under GST as per Sl.No. 99 of Notification No.02/2017- CT(Rate) dt.28.06.2017 and incidental charges like interest and reconnection charges which will be included in the value of supply as defined under Section 15(2) of CGST Act, 2017 is also exempted.
- ii. With regard GST on cost collected by SIPCOT maintenance such as road, street lights, drainage, avenue plants from the allottees for which SIPCOT it has been opined that the said maintenance cost collected is taxable at 18% under Chapter Head 9987 as per Sl.No.25 of Notification No.11/2017-CT(Rate) dt.28.06.2017 as amended.
- iii. With regard to taxability of infrastructure works, the Central Authorities have quoted Circular No.61/2020 dt.21.08.2020 issued by SIPCOT from which it is noticed that work undertaken by the Applicant i.e upgradation of roads, street lights, drains and others on request, appears to be construction service. Further, the definition of Works Contract has been restricted to any work undertaken for an Immovable Property as Works Contract and defined Works Contract has been defined in Section 2(119) of the CGST Act, 2017 as 'works contract' means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract. As per para 6(a) of Schedule II to the CGST Act, 2017, it is clear that works contract as defined in Section 2(119) of the CGST Act,2017 shall be treated as a supply of services which is taxable @ 9% as per Sl.No.3 (vi) of Notification No.20/2017-CT(Rate) dt.22.08.2017.
- iv. With regard to interest on delayed payments it is opined by the Central authorities that it is included in the value of supply as per Section 15 (2) of CGST, Act, 2017 and is exempted considering the that it is incidental charges to the Upfront lease premium and Differential lease premium charges which is exempted as per Sl.No.41 of Notification No.12/2017-CT(Rate) dt.28.06.2017. With regard to interest for delayed payment on supply of raw

water the same is exempted as the main supply is exempted as discussed above. However, interest on delayed payment of maintenance charges for usage of common facilities and PIDP charges are taxable accordingly as the main supply are taxable.

- v. With regard to penalty for delay in execution of the project and delay in execution of lease deed, the same are exempted as the same is included in the value of supply as defined in Section 15(2) of the CGST Act, 2017.

5.2 The concerned State Tax Officer has not submitted any report with regard to any pending proceedings in the against the applicant nor any comments.

6. The submissions made by the applicant in the advance ruling application as well as the additional submissions made during the personal hearing, have been carefully examined. The applicant filed advance ruling application under the category viz. (i) applicability of notification issued under the provisions of the Act, (ii) determination of the liability to pay tax on service, and (iii) 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, is within the meaning as per Section 97(2) (b), (e) & (g) of GST Act, 2017. We also take cognizance of the fact that subject matter of the application viz., providing assistance to promote the objective of the State by identifying, developing, maintain Industrial areas in the State, thereby fulfills the requirement of Section 95(a) of the Act.

7. Each question raised in the application is discussed as under:

I) Whether the Supply of raw water and its incidental charges are liable to be taxed under the prevailing GST Laws:

- a) With regard to the above question, it is observed that the applicant, referring to Notification No.02/2017-CT(Rate) dt.28.06.2017, Entry at 99, has stated that the Notification grants exemption from CGST to water (except to water which has undergone specified treatment, or the water sold in sealed container) and that the issue that needs to be examined is whether the exemption under the aforesaid entry is applicable in cases where raw water supplied by the Applicant via pipelines to the Allottee(s) (Tenants) from the infiltration wells/bore wells/open wells/storage reservoir or from water supplies received from local body or water board, without any process is covered under the said category. The Applicant has also stated in additional information submitted

that the term “Incidental charges” collected for supply of Raw water to Industrial units situated in SIPCOT would include Interest for delay in payment obligations (Water Charges), Penalty for delay in payment obligations (Water Charges) and Reconnection charges for water supply.

- b) The entry no. 99 of exemption notification No.02/2017-CT(Rate) dt.28.06.2017 which provides for exemption to water is reproduced as under:

S.No.	Chapter / Heading / Sub-heading / Tariff item	Description of Goods	Rate
99.	2201	Water [other than aerated, mineral, purified, distilled, medicinal, ionic, battery, de-mineralized and water sold in sealed container]	Nil

Therefore, raw water supplied by the Applicant to the industrial units is exempted as per the above entry.

- c) Regarding the incidental charges collected from the allottees such as Interest for delay in payment obligations (Water Charges), Penalty for delay in payment obligations (Water Charges), it is observed that when the principal supply of raw water is exempted, recovery of interest or penalty for delayed payment of water charges and Reconnection charges are not liable to tax, as clarified in Para No. 9 of circular No. 178/10/2022 – GST dt.03.08.2022, issued by the Department of Revenue.

II) Whether the Maintenance charges for usage of common facilities are liable to be taxed under the prevailing GST Laws.

- a) The Applicant collects certain charges towards maintenance of common basic infrastructure facilities from Allottee(s) such as road, streetlights, drainage, common buildings, avenue plants, etc., as per the prevailing policy.
- b) Further, the Applicant has stated that the above cost is collected based on the actual cost incurred by them on behalf of the Allottee(s) for maintaining the industrial park in usable condition and that no separate value added services rendered by the applicant on its own to become a taxable service. That the cost collected is only a reimbursement of actual cost towards maintaining the Industrial park in a usable condition and hence shall not be liable to tax under GST laws.

- c) The view expressed by the Applicant supra, needs to be examined in view of the definition of Pure Agent provided under Rule 33 of the CGST Rules, which is reproduced as under:

Rule 33. Value of supply of services in case of pure agent.-

Notwithstanding anything contained in the provisions of this Chapter, the expenditure or costs incurred by a **supplier as a pure agent** of the recipient of supply shall be excluded from the value of supply, **if all the following** conditions are satisfied, namely,-

- (i) the supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorisation by such recipient;
- (ii) the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and
- (iii) the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.

Explanation. - For the purposes of this rule, the expression "pure agent" means a person who -

- (a) enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;
- (b) neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply;
- (c) does not use for his own interest such goods or services so procured; and
- (d) receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account.

- d) In this regard, we find that in as much as the Applicant has not submitted any documents as required in the Rule/definition of pure agent discussed above, i.e any document such as agreement entered into with the Allottee(s) to act as Pure agent, to incur expenditure or costs, in the course of supply of goods or any other document in support of their claim; the charges collected cannot be treated as reimbursable even if it is only a reimbursement of actual cost.
- e) From above, it is seen that as per provision of Section 7(1) (a), the activity of collecting Maintenance charges for usage of common facilities, would fall in category of supply. A transaction which is incidental or ancillary to sub-clause (a) falls under the scope of sub-clause (b) of Section 2(17) of CGST Act, 2017. The provisions of sections 7(1)(a) of CGST Act, 2017 read with clause (b) of section 2(17) of CGST Act, 2017 indicates that the activities of the appellant would fall under the definition of supply hence chargeable to GST.
- f) In this regard, it is observed that there may be transfer of property in goods and/or services in the course of maintenance of the aforesaid amenities/buildings which is made against a consideration. Therefore, these activities fall under the scope of supply envisaged under Section 7 of the GST Act and hence liable for GST @ 18% under SAC 995429 vide Sl. No. 3 of Notification No. 11/2017-Central Tax (Rate), dated 28.06.2017.

III) Whether the Participatory Infrastructure Development Scheme (PIDP) charges are liable to be taxed under the prevailing GST Laws?

- a) As per explanation given by the Applicant, they undertake the infrastructure works such as upgradation of roads, drains, street-lights and others on a request received from the Allottee(s) or Association of Allottee(s) and that the total project cost shall be borne by the Applicant and the Allottee(s) collectively and that the demand is raised as per mutually agreed ratio and that only actual cost incurred is collected, there are no separate services rendered by SIPCOT on its own to become taxable supply. Further, it is stated that the cost collected is only a reimbursement of actual cost and hence not liable to tax under GST laws.
- b) In this regard, the Applicant has not submitted any document in support of their stand to fit in the definition of Pure Agent so as to treat the activity as

non-taxable in the context of Rule/definition of Pure Agent reproduced at para 9(II) (c), to prove that the cost collected is only a reimbursement of actual cost. Hence, it is very clear that the Applicant is not a Pure Agent who has entered into agreement with the allottee(s) to act as Pure agent to incur expenditure or costs in the course of supply of goods or services or both, it is immaterial whether the cost incurred is actual in nature or not.

- c) Hence, the provisions of sections 7(1) (a) of CGST Act, 2017 read with clause (b) of section 2(17) of CGST Act, 2017 indicates that the activities of the appellant would fall under the definition of supply hence chargeable to GST.
- d) It is observed that the activity of rendering infrastructure works as described above, whether on request from the allottee(s) on their own, there may be transfer of property in goods and/or services in the course of upgradation/renovation or reconstruction of the aforesaid structures/buildings which is made against a consideration. Therefore, these activities fall under the scope of supply envisaged under Section 7 of the GST Act and hence liable for GST @ 18% under Group 99859 (other support services) vide Sl. No. 23(iii) of Notification No. 11/2017-Central Tax (Rate), dated 28.06.2017.

IV) Whether the interest collected towards delayed payment for Upfront lease premium and Differential lease premium are liable to be taxed under the prevailing GST Laws.

- a) As stated by the Applicant, the allottee(s) shall be required to make an upfront lease payment (inclusive of Plot Cost & Pre-determined interest free caution deposit) to obtain the earmarked area for a pre-determined lease period (99 years in general). Though, the lease of land is termed as supply of service as per schedule II of the GST Act, one time upfront amount (called as premium,any other name) leviable in respect of the service, by way of granting long term (thirty years, or more) lease of industrial plots, provided by the State Government Industrial Development Corporations or Undertakings or by any other entity having 20 percent, or more ownership of Central Government, State Government, Union territory to the industrial units or the developers in any industrial or financial business area is exempted as per entry No.41 of the Notification No 12/2017-Central Tax (Rate), dated 28.06.2017.

- b) When the principal supply itself is exempted, the interest collected towards delayed payment for Upfront lease premium and Differential lease premium are not liable to be taxed under GST Act, as clarified in Para No. 7.1.6 of Circular No. 178/10/2022 – GST dt.03.08.2022, issued by the Department of Revenue.

V) Whether the interest for delayed payment of consideration for the points mentioned in Sr. No. 01 to 03, as above, are liable to be taxed under the GST Laws.

- a) With respect of Sl.No.1, as discussed at para 7(I)(c), when the principal supply of raw water is exempted, recovery of interest or penalty for delayed payment of water charges and reconnection charges are not liable to tax, as clarified in Para No. 9 of Circular No. 178/10/2022 – GST dt.03.08.2022, issued by the Department of Revenue.
- b) With respect of Sl.No 2 & 3, as per Section 15 (2) (d) of CGST Act, the value of supply shall include interest or late fee or penalty for delayed payment of any consideration for any supply. In as much as the principal supply i.e maintenance service and PIDP are taxable, interest and penalty collected towards rendering such services will also form part of the value of supply and liable to be tax appropriately in consonance with the principal supply.

VI) Whether the Penalty for delay in execution of the project and delay in execution of lease deed are liable to be taxed under the prevailing GST Laws.

- (a) The Applicant has stated that they are collecting upfront lease payment (Inclusive plot cost & pre-determined interest free caution deposit) to allot earmarked area for a pre-determined lease payment (99 years in general). Caution deposit is refunded upon implementation of the project by the allottee within stipulated time. And that they are levying penalty for the delayed execution of contractual obligation to ensure effective implementation of project.
- (b) Since the main supply i.e the upfront fee collected is exempted as per entry no.41 of Notification No.12/2017- CT (Rate) dt.28.06.2017, penalty for delay in execution of the project and delay in execution of lease deed are not liable to be taxed under the prevailing GST Laws

8. In view of the above, we rule as under:

RULING

1. Whether the Supply of raw water and its incidental charges are liable to be taxed under the prevailing GST Laws.

As discussed in Para 7(I) supra, the Supply of raw water and its incidental charges are not liable to be taxed under the prevailing GST Laws.

2. Whether the Maintenance charges for usage of common facilities are liable to be taxed under the prevailing GST Laws.

As discussed at para 7(II) supra, Maintenance charges for usage of common facilities are liable to be taxed under the prevailing GST Laws.

3. Whether the Participatory Infrastructure Development Scheme (PIDP) charges are liable to be taxed under the prevailing GST Laws.

As discussed at para 7(III) supra, Participatory Infrastructure Development Scheme (PIDP) charges are liable to be taxed under the prevailing GST Laws.

4. Whether the interest collected towards delayed payment for Upfront lease premium and Differential lease premium are liable to be taxed under the prevailing GST Laws.


As discussed at para 7(IV) supra, interest collected towards delayed payment for Upfront lease premium and Differential lease premium are not liable to be taxed under the prevailing GST Laws.

5. Whether the interest for delayed payment of consideration for the points mentioned in Sr.No.01 to 03, as above, are liable to be taxed under the GST Laws.

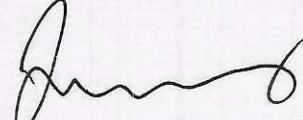
As discussed at para 7(V) (a) supra, interest for delayed payment of consideration for the points mentioned in Sr.No.01 is not liable to be taxed, whereas as per discussion at para 7(V) (b) supra, consideration for the points mentioned in Sr.No.02 & 3, are liable to be taxed under the GST Laws.

6. Whether the Penalty for delay in execution of the project and delay in execution of lease deed are liable to be taxed under the prevailing GST Laws.

As discussed at para 7(VI) supra, Penalty for delay in execution of the project and delay in execution of lease deed are not liable to be taxed under the prevailing GST Laws


(N. USHA)
Member (SGST)




(R. GOPALSAMY)
Member (CGST) 20/06/23

To

M/s. State Industries Promotion Corporation of Tamilnadu Limited
No. 19/A, Rukmani Lakshmipathy Road,
Egmore, Chennai – 600 008.

//By RPAD//

Copy submitted to:

1. The Principal Chief Commissioner of CGST & Central Excise,
No. 26/1, Uthamar Mahatma Gandhi Road, Nungambakkam,
Chennai – 600 034.
2. The Principal Secretary/ Commissioner of Commercial Taxes,
2nd Floor, Ezhilagam, Chepauk, Chennai – 600 005.

Copy to:

1. The Commissioner of GST & Central Excise,
Chennai North Commissionerate.
2. The Assistant Commissioner (ST),
Egmore Assessment Circle,
No. 88, Mayor Ramanathan Salai,
Spurtank Road, Chepet, Chennai – 600 031.
3. Master File / spare – 1.