

GOA AUTHORITY FOR ADVANCE RULING.

(Constituted under section 96 of the Goa Goods and Services Tax Act, 2017 (Goa Act 4 of 2017) read with Rule 103 of the Goa Goods and Services Tax Rules, 2017)

BEFORE THE BENCH OF

- (1) Shri. J. K. Meena, Addl Commissioner of Central Tax
- (2) Smt. Sarita S. Gadgil, Addl Commissioner of State Tax

Advance Ruling No. GOA/GAAR/01 of 2019-20/ **1875**

Name of the Applicant	M/s Goa Industrial Development Corporation
Address	Plot No. 13A-2, EDC Complex, Patto Plaza, Panaji – Goa
GSTIN	30AAATG7792F1ZR
Date of Application	13/06/2019
Under Section 97(2) of the CGST/GGST Act, 2017 under which question raised	Is an obligation to refrain from an Act, or to tolerate an Act or a situation treated as supply of Goods/Services (Schedule II U/s 7 Scope of Supply).
Date of Hearing	20.08.2019
Persons Present for Hearing	CA Gautam Sardesai



PROCEEDING

(Under Section 98 of the Goa Goods and Services Tax, Act 2017)

The present application has been filed under section 97 of the Goa Goods and Services Tax Act, 2017 and the Central Goods and Services Tax, Act 2017



(hereinafter referred to as the SGST Act and CGST Act) by M/s Goa Industrial Development Corporation, Plot No. 13A-2, EDC Complex, Patto Plaza, Panaji – Goa, seeking an Advance Ruling in respect of the following question “Is an obligation to refrain from an Act, or to tolerate an Act or a situation treated as supply of Goods/Services (Schedule II U/s 7 Scope of Supply)”.

The applicant is a Government of Goa Undertaking and is having GSTIN 30AAATG7792F1ZR. The applicant vide Deed of Lease had allotted land admeasuring 38,40,886 m<sup>2</sup> to 7 parties for setting up Special Economic Zone (SEZ). However, this could not materialize due to protest from the people. As a result, deposit taken from the parties had to be refunded. However, GIDC refused to pay compensation on this deposit, as the original Deed of Lease never mentioned such clause. The parties approached the Supreme Court, who intervened and directed GIDC to compensate parties with interest at the rate of 8.25%. The Government of Goa through the Council of Ministers in its XXXIII<sup>rd</sup> Cabinet Meeting held on 27/07/2018, resolved to approve the proposal of Goa Industrial Development Corporation (GIDC) to take back all the land admeasuring 38,40,886 m<sup>2</sup> allotted to 7 parties for setting up Special Economic Zone and refund the amount paid by SEZ parties along with interest, earned on such amounts paid by the parties amounting to ₹ 256,56,90,593/-.

Section 9 of the GST Act says that there shall be levied a tax on supplies of goods or services or both. So we need to understand as to whether the aforesaid receipt of amount as compensation would be supply made by the applicant. A ‘Supply’ defined under section 7 of the CGST Act, 2017 is as follows:

7. (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;
  - (b) import of services for a consideration whether or not in the course or furtherance of business;

- (c) the activities specified in Schedule I, made or agreed to be made without a consideration; and
- (d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II.

(2) Notwithstanding anything contained in sub-section (1), —

- (a) activities or transactions specified in Schedule III; or
- (b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, shall be treated neither as a supply of goods nor a supply of services.

(3) Subject to the provisions of sub-sections (1) and (2), the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as—

- (a) a supply of goods and not as a supply of services; or
- (b) a supply of services and not as a supply of goods.

SCHEDULE I (See Section 7) ACTIVITIES TO BE TREATED AS SUPPLY  
EVEN IF MADE WITHOUT CONSIDERATION

1. Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.
2. Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business: Provided that gifts not exceeding fifty thousand rupees in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.
3. Supply of goods—
  - (a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or

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- (b) by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.
4. Import of services by a taxable person from a related person or from any of his other establishments outside India, in the course or furtherance of business.

SCHEDULE II (See Section 7) ACTIVITIES TO BE TREATED AS SUPPLY  
OF GOODS OR SUPPLY OF SERVICES

1. Transfer

- (a) any transfer of the title in goods is a supply of goods;
- (b) any transfer of right in goods or of undivided share in goods without the transfer of title thereof, is a supply of services;
- (c) any transfer of title in goods under an agreement which stipulates that property in goods shall pass at a future date upon payment of full consideration as agreed, is a supply of goods.

2. Land and Building

- (a) any lease, tenancy, easement, licence to occupy land is a supply of services;
- (b) any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly, is a supply of services.

3. Treatment or process Any treatment or process which is applied to another person's goods is a supply of services.

4. Transfer of business assets

- (a) where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, whether or not for a consideration, such transfer or disposal is a supply of goods by the person;
- (b) where, by or under the direction of a person carrying on a business





goods held or used for the purposes of the business are put to any private use or are used, or made available to any person for use, for any purpose other than a purpose of the business, whether or not for a consideration, the usage or making available of such goods is a supply of services;

(c) where any person ceases to be a taxable person, any goods forming part of the assets of any business carried on by him shall be deemed to be supplied by him in the course or furtherance of his business immediately before he ceases to be a taxable person, unless—

(i) the business is transferred as a going concern to another person; or

(ii) the business is carried on by a personal representative who is deemed to be a taxable person.

## 5. Supply of services

The following shall be treated as supply of services, namely: —

(a) renting of immovable property;

(b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.

Explanation. —For the purposes of this clause—

(1) the expression "competent authority" means the Government or any authority authorised to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely: —

(i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972; or

(ii) a chartered engineer registered with the Institution of Engineers (India); or

(iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority;

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- (2) the expression "construction" includes additions, alterations, replacements or remodelling of any existing civil structure;
- (c) temporary transfer or permitting the use or enjoyment of any intellectual property right;
- (d) development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software;
- (e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act; and**
- (f) transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.

#### 6. Composite supply

The following composite supplies shall be treated as a supply of services, namely: —

- (a) works contract as defined in clause (119) of section 2; and
- (b) supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration.

#### 7. Supply of Goods

The following shall be treated as supply of goods, namely: —

Supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.



From the above, we find that sub-section (1) of Section 7 states as –

‘Supply’ as per clause (a) is for supply of goods or services or both. It is for consideration and has to be in the course or furtherance of business.

‘Supply’ as per clause (b) is for import of services. It is for a consideration and may or may not be in the course or furtherance of business.

‘Supply’ as per clause (c) are the activities in Schedule I appended to the GST Act.

‘Supply’ as per clause (d) is the enumeration or categorization as given in Schedule II appended to the GST Act as to which activities should be treated as supply of ‘goods’ and which activities to be treated as supply of ‘services’. The clause does not define ‘supply’ but classifies the supply into either ‘supply of goods’ or ‘supply of services’. [Clause (e) of Schedule II defines “agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act” as a Supply of Services].

Further, Sub section (2) of section 7 states that –

Certain, specified or notified activities shall be treated neither as a supply of goods nor a supply of services.

We also find that Sub section (3) of section 7 states that –

That certain activities would be notified as being –

- (a) a supply of goods and not as a supply of services or
- (b) a supply of services and not as a supply of goods.

In the case before us we find that –

The applicant is a Government of Goa Undertaking and had entered into an agreement leasing land to parties for setting up Special Economic Zone (SEZ). However, this could not materialize due to protest from the people. As a result, deposit taken from the parties had to be refunded. However, GIDC refused to pay compensation on this deposit. As the original Deed of Lease never mentioned such clause. The parties approached the Supreme Court, who intervened and directed GIDC to compensate them @ 8.25%.

*SM*



In the process the applicant has agreed to do an act of vacating the claim by parties of setting up SEZ units for which GSIDC has paid consideration.

Thus the original amount which is paid back along with compensation would clearly qualify as 'Supply of Services'.

In view of the above facts and provisions the ruling is given as under:

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

The compensation paid by GIDC would clearly qualify as 'Supply' under clause 5(e) of Schedule II of the GST Act, and therefore the amount would attract tax liability.

  
(J. K. Meena)  
Member



  
(Sarita S. Gadgil)  
Member

Dated: -17/10/2019

Place: - Panaji – Goa

To,

M/s Goa Industrial Development Corporation,

Plot No. 13A-2, EDC Complex,

Patto Plaza, Panaji – Goa

Copy to

1. The State Tax Officer, Panaji Ward, Panaji – Goa;
2. The Dy. Commissioner of State Tax, Panaji Ward, Panaji;
3. The Commissioner of State GST, Panaji – Goa;
4. The Commissioner of Central GST, Panaji – Goa;
5. Office file;
6. Guard file.