TELANGANA STATE AUTHORITY FOR ADVANCE RULING
CT Complex, M.J Road, Nampally, Hyderabad-500001.
(Constituted under Section 96(1) of TGST Act, 2017)

Present:

Sri S.V. Kasi Visweswara Rao, Additional Commissioner (State Taxes)
Sri Sahil Inamdar IRS., Additional Commissioner (Central Taxes)

A.R.Com/06/2023 **Date:17.04.2023**

TSAAR Order No.10/2023

[ORDER UNDER SECTION 98(4) OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 AND UNDER SECTION 98(4) OF THE TEALANGANA GOODS AND SERVICES TAX ACT, 2017.]

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1. M/s. TPSC (India) Private Limited, A-1 Module, D-Quadrant, 2nd Floor, Cyber Towers, HITEC City, Madhapur, Hyderabad, Telangana – 505 081 (36AABCT1309H1ZN) has filed an application in FORM GST ARA-01 under Section 97(1) of TGST Act, 2017 read with Rule 104 of CGST/TGST Rules

2. At the outset, it is made clear that the provisions of both the CGST Act and the TGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the TGST Act. Further, for the purposes of this Advance Ruling, the expression 'GST Act' would be a common reference to both CGST Act and TGST Act.

3. It is observed that the queries raised by the applicant fall within the ambit of Section 97 of the GST ACT. The Applicant enclosed copies of challans as proof of payment of Rs. 5,000/- under SGST and Rs. 5,000/- under CGST towards the fee for Advance Ruling. The Applicant has declared that the questions raised in the application have neither been decided nor are pending before any authority under any provisions of the CGST/TGST Act'2017. The application is, therefore, admitted after examining it and the records called for and after hearing the applicant as per section 98(2) of TGST Act'2017.

4. BRIEF FACTS OF THE CASE:

4.1 Statement of relevant facts as per the applicant having a bearing on the question(s) on which Advance Ruling is required is reproduced below-

The applicant M/s. TPSC (India) Private Limited is engaged in taking up Thermal Projects in various cities in India and during the financial year 2013-2014, the applicant company was allotted an Erection and Pre-Commissioning works related to Steam Turbine Generator and Auxiliaries, project of NTPC, Kudgi, Karnataka and duration of completion of the project was for (4) years upto 2017.

The execution of the project was in Kudgi, Karnataka State, and was completed (taking over) on 06-Dec-2018. The entire contract was awarded by NTPC to TJPS (Toshiba JSW Power

Systems Pvt Ltd.,) and in turn, TJPS awarded the erection works to TPSC India Private Limited (Applicant).
On the entire contract value, VAT and Service Tax were remitted by the Applicant Company. During the execution of the contract, the applicant Company gave sub-contract to various companies, who were also registered dealers in their respective states.

The Applicant Company received a quotation for Sub-contract from M/S. Delta Global Allied Limited (formerly known as Delta Mechons India Limited; Hereafter referred to as DGAL) (Quotation Ref No. DGAL/TPSC/032/P.Fab.Erec/2012/REV 00) for piping and Pre-Fabrication of Non- IBR Piping of all 3 units w.r.t 3 x 800 MW NTPC Kudgi Thermal Power Project, Bijapur- Karnataka. Based on the quotation, TPSC (India) Private Ltd (Hereafter referred to as TPSC, Applicant herein) issued a purchase order PO-1 dated 27/09/2013 amounting to Rs. 11,82,85,000 and PO-2 dated 10th June 2014) for Rs. 10,25,00,000. After receiving PO, DGAL commenced work and raised several invoices till January 2017 amounting to Rs. 30,05,01,903/- and service tax of Rs. 2,94,21,453/- and TPSC (Applicant) made all payments except for the retention amount Rs.91,53,199/-. (For retention also Tax Paid by TPSCI)

PO	Particulars	Schedule	Duration in months
PO1	1. Fabrication for Unit 1, 2 & 3	Feb 14 to Dec 14	11
	2. Erection for Unit 1	Apr 14 to Feb 15	11

PO	Particulars	Schedule	Duration in months
PO2	1. Erection for Unit 2	Sep 14 to Apr 15	8
	2. Erection for Unit 3	Jan 15 to Aug 15	8

The Applicant Company submit that due to the delay in the supply of Isometric drawings, raw materials, and IBR Pipes by the Applicant, the project completion was delayed. But however, the entire contract was completed before implementation of GST and duly suffered VAT and Service Tax. However, handing over of the completed project was in December 2018. Even the in the case of supply of materials and labour in post GST period, the applicant and the sub-contractor has remitted the appropriate tax. DGAL were not able to handle higher quantum of work and the same had been accepted by DGAL. Hence the Applicant had been constrained to descope certain quantum work awarded to DGAL under Unit 1 and Unit 2. Due to descoping of work, DGAL lodged a claim against the Applicant and such claim was refuted and stoutly objected by the Applicant.

The Applicant had engaged 4 other sub-contractors, namely Shilpa Engineering Erectors, Fortuna Engi Tech and Structurals (India) Private Limited (Fortuna), Associated Engineering Services (AES) and Axis Inspection Solutions, to complete the work that had been unattended and descoped from the DGAL. Having not satisfied with the process and duration of the contract, DGAL issued a notice to proceed for Arbitration for compensation.

Claim No.	Description	Amount
1	Fabrication Unit1,2,3 And Erection Unit1- Additional Indirect Man Months due to Extended Stay	5,26,03,795.00
2	Fabrication Unit1,2,3 And Erection Unit1- Additional Direct Man Months due to Extended Stay	2,40,64,800.00
3	Fabrication Unit1,2,3 And Erection Unit1- Additional Machinery Months due to Extended Stay	57,49,963.00
4	Fabrication Unit1,2,3 And Erection Unit1 - Cost Impact of Price Variation(PVC) due To Extended Stay	85,51,143.00
5	Fabrication Unit1,2,3-Cost Impact due to Increase in Inch Dia BOQ	68,19,469.00

6	Fabrication Unit1,2,3- Cost Impact of Additional Indirect Man Months for Revision of Fabrication Spools Drawings	7,86,121.00
7	For Fabrication Unit1,2,3 And Erection Unit1-Towards Profit on Additional Cost incurred during Extended Stay	1,23,62,784.00
8	Fabrication Unit1,2,3 And Erection Unit1- Cost Impact Towards 5% Quantity Variation	17,95,227.00
9	Erection Unit2- Additional Indirect Man Months due to Extended Stay	3,32,57,667.00
10	Erection Unit2 - Additional Direct Man Months due to Extended Stay	1,26,52,132.00
11	Erection Unit2- Additional Machinery Months due to Extended Stay	27,46,860.00
12	Erection Unit2- Cost Impact Towards Loss of Revenue due to De-Scoping of Unit2 Works	24,93,552.00
13	Deleted	
14	Erection Unit3- Additional Indirect Man Months Due to Extended Stay	3,03,81,688.00
15	Erection Unit3- Additional Machine Months Due to Extended Stay	10,36,608.00
16	Erection Unit3- Loss of Revenue Due to De-Scoping of Works	4,73,96,187.00
17	Erection Unit2 and 3-Price Variation (PVC)	60,00,007.00
18	Fabrication Unit1,2,3 And Erection Unit1,2,3 - Interest Cost on Account of Delayed Payment of Progress Invoices	57,32,689.00
19	Fabrication Unit1,2,3 And Erection Unit1,2,3- Retention Amount	91,53,199.00
20	Erection Unit2,3-Towards Profit on Additional Cost incurred during Extended Stay	1,20,11,243.00
21	Fabrication Unit1,2,3 And Erection Unit1,2,3- Extra Work Payment and Excess TDS deducted.	18,59,127.00
22	Erection Unit1,2-Erection of Hangers and Supports	8,16,243.00
23	Fabrication Unit1,2,3 And Erection Unit1,2,3- Depreciations on T&P's and Site Offices due to Extended System	70,18,692.00
24	Fabrication Unit1,2,3 And Erection Unit1,2,3- Loss of Opportunity	5,14,90,908.00
	Total	**33,67,80,102.00**

Therefore, in pursuance to the Arbitration Notice, Applicant nominated Justice M. Jagannadha Rao as its Arbitrator and DGAL nominated Justice Deepak Verma and both the Arbitrators appointed Justice Anil R. Dave as Presiding Arbitrator. The place of Arbitration was fixed at Hyderabad. After submission of all relevant documents and material evidences, and recording of oral evidences, Arbitration Award was passed on 27th May, 2022 by quantifying the damages payable to DGAL due to delay on the part of the Applicant. The Applicant justified the delay on their part due to various unavoidable circumstances. DGAL submitted the following claims before the Arbitral Tribunal:

The above claim by DGAL is totally in the nature of damages and compensation for various indirect losses claimed to have been suffered by them due to delay in the completion of the project. In none of the instances, DGAL has claimed any amount towards the supply of materials or labor and the entire claim pertains to the pre-GST period. It is to be noted that all the work allocated was completed in the Pre-GST Period and the payments were also settled to DGAL in the Pre-GST period itself. The Applicant had given a sub-contract to DGAL during the pre- GST period and the contract was also completed before the implementation of GST in India. The Applicant and the Sub-Contractor have duly remitted VAT and Service Tax on the entire contract value and therefore, the damages claimed by the sub-contractor, DGAL cannot

be assessed under GST net by holding the arbitral award shall be exigible to GST at the hands of the applicant.

Summary of Award passed by the Tribunal as Compensation

S.No	Particulars	Amount
1.	Liquidated damages due to delay on the part of the Applicant was allowed based on the Claims Submitted by the Claimant	21,66,92,163
2.	Interest @13% from cause of action till SoC 23.12.2017	4,34,98,940
3.	Interest @13% on Principal awarded from 23.12.2017 to 23.05.2022	12,44,17,417
4.	**Principal + Interest from cause of action till 23.05.2022**	38,46,08,520
5.	Future Interest @9% on 38,46,08,520 from date of Award	
6.	Cost	3,99,43,757
	Total	**42,45,52,277**

The above said award amount is in the nature of (Compensation) liquidated damages claimed by DGAL from the Applicant and interest on such liquidated damages. Therefore, neither the liquidated damages nor the interest thereon is liable to be taxed under GST.

Against the Arbitral Award, the Applicant herein preferred an appeal u/s.34 of Section 34 of the Arbitration and Conciliation Act, 1996, before the Principal Special Court in the Cadre of District Judge for Trial and Disposal of Commercial Disputes at Hyderabad, in C.O.P.No.93/2022, seeking set aside the impugned Award 27.05.2022. While the pendency of the appeal, both parties came to an amicable settlement to settle the entire award amount at Rs.38,56,91,204/-.

On 24.12.2022, both parties have arrived at a settlement, which is extracted in the Minutes of Meeting (MOM). As per MOM, it has been agreed that instead of the Arbitral Award Amount of Rs.42,45,52,277/- fixed by the Arbitral Tribunal, the Applicant herein shall pay a sum of Rs.38,56,91,204/- to DGAL and amicably settle the matter. The settlement amount of Rs.38,56,91,204/- is not a different or distinct amount from the award amount fixed by the Arbitral Tribunal. In other words, instead of claiming/remitting the award amount of Rs.42,45,52,277/-, both parties have mutually agreed to bring down/reduce the Arbitral Award to Rs.38,56,91,204/-. The amount agreed in MOM is an arbitral award amount and cannot be distinguished and treated as a distinct amount from arbitral award. Therefore, it cannot be presumed or concluded that the settlement amount of Rs.38,56,91,204/- is to refrain or abstain DGAL from enforcing the arbitral award.

We state that the payment of liquidated damages by the applicant does not fall within the scope of Entry 5(e) of Schedule II to CGST Act, as no consideration passed on for any of the act mentioned therein. Further the liquidated damages in the case on hand are not towards agreeing to the obligations to refrain DGAL from an act, or to tolerate an act or situation of DGAL, or to do an act by DGAL, but solely in due compliance with the arbitral award. In other words, the applicant has not sought any obligation or refrained DGAL from doing any act. The Amount payable as the Arbitral Award is purely in the form of Compensation payable for the delay in the completion of the contract and does not involve any additional supply or labor.

It is relevant to point out that Circular No.178/10/2022, dt-3.8.2022 considered similar facts and held that liquidated damages awarded in arbitration are not liable to be taxed under GST. The said Circular is squarely applicable to the facts herein and in view of the said circular the

amount of Rs.38,56,91,204/- representing liquidated damages. In short, the settlement amount of Rs.38,56,91,204/- is not a consideration for abstaining/refraining, DGAL from implementing the arbitral award but due to compliance with the arbitral award.

4.2 Company Background:

TPSC (INDIA) PRIVATE LIMITED (CIN: U29219TG1998PTC030591) with a registered address at A-1 Module, D - Quadrant, 2nd Floor, Cyber Towers, HITEC City, Madhapur, Hyderabad, Telangana - 500 081, INDIA and hereinafter briefly referred to as Applicant herein.

The Applicant Company is an assessee on the files of Hyderabad in the State of Telangana and has Branch Office in Greater Noida (UP).

The Applicant Company, TPSC(INDIA) PRIVATE LIMITED, Is a wholly owned subsidiary of Toshiba Plant Systems & Services Corporation, Japan (TPSC). TPSC(INDIA) Private Limited was incorporated in India on 1/12/1998 and it operates in the areas of Engineering, Procurement, Construction, and Commissioning of Power Projects (Coal based Thermal Power Projects, Combined Cycle Gas Power Projects, Hydro Power Projects, and other Industrial Projects.

5. QUESTIONS RAISED:

1. Whether the contract be completed during the Pre-GST period and the consequential demand based on the completed contract can be brought to assessment under GST Act, 2017?
2. Whether the liquidated damages, without any supply of materials and labor be assessed to GST under GST Act, 2017?
3. The mutually agreed and settled amount, based on arbitral award, in the nature of compensation, payable for delay in completion of the contract and agreed to be payable by the Applicant to DGAL without any supply of goods or services, is liable to be taxed under GST?
4. Whether DGAL is eligible to claim ITC on the GST amount if any levied on the mutually agreed arbitral award amount received from the Applicant?
5. Whether there is any taxability under GST on Interest payable on the liquidated damages?

6. PERSONAL HEARING:

The Authorized representatives of the unit namely Sri. Lenin Ravi Bharath, Director & COO, Sri K. Kammimura, Managing Director, Sri Shankar Mahalingam, Exe. VP Finance, Sri Nazir Munshi, Consultant attended the personal hearing held on 20.03.2023. The authorized representatives reiterated their averments in the application submitted and requested to dispose the case on merit basis.

The Authorized representative contended during the hearing as follows:

a. That they have issued two purchase orders to their sub-contractor M/s Delta Global Allied Ltd (DGAL) who have completed the execution beyond the time limit provided to them.
b. That M/s DGAL have alleged that the delay in execution of the project due to non-finalization of its drawings or supply of raw materials by the applicant and claimed compensation regarding the same.

c. That M/s DGAL applied for arbitration and received an award for Rs. 42 Crs. For the compensation.

d. That in view of Circular No. 178/10/2022, dt. 03.08.2022 issued by Govt. of India, Ministry of Finance such compensation including the liquidated damages claimed for breach or non-performance of the contracts by one of the parties shall be exempted.

Opinion expressed by Sri S.V. Kasi Visweswara Rao, Additional Commissioner (State Member), on the issues raised by the applicant.

7. DISCUSSION & FINDINGS:

The applicant is a works contractor for construction of thermal power projects. The applicant awarded a sub-contract to M/s. Delta Global Allied Limited (DGAL) for the purpose of executing one such contract. The contract was completed prior to 01-07-2017 but was handed over in December' 2018. The applicant de-scoped certain quantum of work awarded to DGAL due to the inability of the DGAL to handle higher quantum of work. This work was later entrusted to other suppliers.

Aggrieved by reducing the quantum of work DGAL issued a notice for arbitration for compensation. The arbitration tribunal awarded a compensation of Rs.42.45 Cr. against which the applicant has preferred an appeal under Section 34 of Arbitration and Conciliation Act, 1996 before the Principal Special Court. During the pendency of this appeal the parties to the dispute entered into an amicable settlement out of court for an amount of Rs.38.56 Cr.

The principle issue before the Authority for Advance Ruling is to determine whether a mutually agreed amount for settling a dispute arising out of breach of contract constitute a supply within the scope of Entry 5(e) of Schedule-II to the CGST Act, 2017 and hence taxable.

In this connection it is pertinent to observed that the scope of entry 5(e) of Schedule-II to the CGST Act, 2017 has been elaborately discussed in the GST Council and based on the discussion a circular has also been issued to clarify the types of transactions which fall under this entry.

In the agenda for discussion in the 47th GST Council Meeting the Fitment Committee made recommendation for issuing clarification in relation to services of liquidated damages, breach of contract, etc., at Sl.No.20 in page No.92 of 279 in Annexure-IV to the Agenda for GST Council Meeting (Volume-II). The same is extracted here under:

Proposal	Details of Request	Discussion in FitCom & its recommendation
To clarify applicability of GST on payments in the nature of liquidated damages, compensation, penalty, cancellation charges, late payment surcharge etc. arising out of breach of contract or otherwise.	A number of cases have been brought to the notice of the Board where question has been raised regarding taxability of an activity or transaction as the supply of service of agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act.	Agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act" has been declared to be a supply in para 5 (e) of Schedule I of CGST Act. Various transactions have been sought to be classified by the tax authorities under the said description and in many cases this has led to disputes and litigation. The issues arising out of taxation of activities by way of "agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act" were deliberated in detail. It was felt that the entry is being very

		widely and at times erroneously interpreted which is leading to a lot of disputes and litigations. It was generally felt that a circular clearly explaining the situations in which an activity shall amount to a supply of service by way of agreeing to refrain from an act or to tolerate an act or a situation etc. may be issued. After detailed deliberations over course of two meetings, the Fitment Committee recommended that the issues involved may be clarified by way of the enclosed draft circular placed at Annexure B. The draft circular incorporates the basic principles of GST law, Indian and international jurisprudence and international VAT/GST guidelines and practices and elucidates guiding principles with the help of suitable examples/ illustrations. Issuance of the guidance note/ circular is expected to resolve/ reduce litigation.

The draft circular prepared by the fitment committee was also put on agenda as Annexure-B at page No.109 to 117 and the same was discussed and recorded in minutes at page No.37 of the minutes. The said circular was notified vide Circular No.178/10/2022-GST, dated: 03-08-2022. This circular was ratified in the 48th GST Council Meeting held on 17-12-2022.

This circular discusses the taxability of an activity on a transaction as supply of service of agreeing to the obligations to refrain from an act or to tolerate an act or a situation, or to do an act under the GST. This includes applicability of GST on payments in the nature of liquidated damage, compensation, penalty, cancellation charges, late payment surcharge, etc., arising out of breach of contract or otherwise and scope of entry at para-5(e) of schedule-II of Central Goods & Service Tax Act, 2017.

The entry at para-5(e) of Schedule-II of the CGST Act, 2017 makes the following activity a supply which is exigible to tax under the said act.

"Agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act".

The circular has discussed at length the illustration which will be covered by the entry-5(e) of schedule-II as follows:

a) The phrase "Agreeing to the obligation to refrain from an act" is illustrated in the circular with the following examples:
   i. Non-compete agreements, where one party agrees not to compete with the other party in a product, service or geographical area against a consideration paid by the other party.
   ii. A builder refraining from constructing more than a certain number of floors, even though permitted to do so by the municipal authorities, against a compensation paid by the neighboring housing project, which wants to protect its sun light.
   iii. An industrial unit refraining from manufacturing activity during certain hours against an agreed compensation paid by a neighboring school which wants to avoid noise during those hours.

b) The phrase "Agreeing to the obligation to tolerate an act or a situation" is illustrated in the circular in the following examples:
   i. A shop keeper allowing a hawker to operate from the common pavement in front of his shop against a monthly payment by the hawker.
   ii. An RWA tolerating the use of loud speakers for early morning prayer by a school located in the colony subject to the school paying an agreed sum to the RWA as compensation.

c) The phrase "Agreeing to the obligation to do an act" is illustrated in the circular in the following example:

   An industrial unit agrees to install equipment for zero emission / discharge at the behest of the RWA of a neighboring residential complex against a consideration paid by such RWA, even though the emission/discharge from the industrial unit was within permissible limit and there was no legal obligation upon the individual unit to do so.

It is observed in the circular that doubts have persisted regarding the description "Agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act" and tax authorities have initiated investigation and advance ruling authorities have upheld taxability under GST on the following items:

i. Liquidated damages paid for breach of contract;
ii. Compensation given to previous allottees of coal blocks for cancellation of their licenses pursuant to Supreme Court Order;
iii. Cheque dishonor fine/penalty charged by a power distribution company from the customers;
iv. Penalty paid by a mining company to State Government for unaccounted stock of river bed material;
v. Bond amount recovered from an employee leaving the employment before the agreed period;
vi. Late payment charges collected by any service provider for late payment of bills;
vii. Fixed charges collected by a power generating company from State Electricity Boards (SEBs) or by SEBs/DISCOMs from individual customer for supply of electricity;
viii. Cancellation charges recovered by railways for cancellation of tickets, etc.

While discussing the aspect of "Liquidated Damages" it is observed in the circular that:

Para-7.1: Breach or non-performance of contract by one party results in loss and damages to the other party. Therefore, the law provides in Section 73 of the Contract Act, 1972 that when a contract has been broken, the party which suffers by such breach is entitled to receive from the other party compensation for any loss or damage caused to him by such breach. The compensation is not by way of consideration for any other independent activity; it is just an event in the course of performance of that contract.

Para-7.1.1: It is common for the parties entering into a contract, to specify in the contract itself, the compensation that would be payable in the event of the breach of the contract. Such compensation specified in a written contract for breach of non-performance of the contract or parties of the Circular No. 178/10/2022-GST contract is referred to as liquidated damages. 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.

Para-7.1.2: Section 74 of the Contract Act, 1972 provides that when a contract is broken, if a sum has been named or a penalty stipulated in the contract as the amount or penalty to be paid in case of breach, the aggrieved party shall be entitled to receive reasonable compensation not exceeding the amount so named or the penalty so stipulated.

Para-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-fulfillment of the promise by the other party.

Para-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.

Para-7.1.5: Examples of such cases are damages resulting from damage to property, negligence, piracy, unauthorized use of trade name, copyright, etc. Other examples that may be covered here are the penalty stipulated in a contract for delayed construction of houses. It is a penalty paid by the builder to the buyers to compensate them for the loss that they suffer due to such delayed construction and not for getting anything in return from the buyers. Similarly, forfeiture of earnest money by a seller in case of breach of 'an agreement to sell' an immovable property by the buyer or by Government or local authority in the event of a successful bidder failing to act after winning the bid, for allotment of natural resources, is a mere flow of money, as the buyer or the successful bidder does not get anything in return for such forfeiture of earnest money. Forfeiture of Earnest money is stipulated in such cases not as a consideration for tolerating the breach of contract but as a compensation for the losses suffered and as a penalty for discouraging the non-serious buyers or bidders. Such payments being merely flow of money are not a consideration for any supply and are not taxable. The key in such cases is to consider whether the impugned payments constitute consideration for another independent contract envisaging tolerating an act or situation or refraining from doing any act or situation or simply doing an act. If the answer is yes, then it constitutes a 'supply' within the meaning of the Act, otherwise it is not a "supply".

Para-7.1.6: If a payment constitutes a consideration for a supply, then it is taxable irrespective of by what name it is called; it must be remembered that a "consideration" cannot be considered de hors an agreement/contract between two persons wherein one person does something for another and that other pays the first in return. If the payment is merely an event in the course of the performance of the agreement and it does not represent the 'object', as such,

of the contract then it cannot be considered 'consideration'. For example, a contract may provide that payment by the recipient of goods or services shall be made before a certain date and failure to make payment by the due date shall attract late fee or penalty. A contract for transport of passengers may stipulate that the ticket amount shall be partly or wholly forfeited if the passenger does not show up. A contract for package tour may stipulate forfeiture of security deposit in the event of cancellation of tour by the customer. Similarly, a contract for lease of movable or immovable property may stipulate that the lessee shall not terminate the lease before a certain period and if he does so he will have to pay certain amount as early termination fee or penalty. Some banks similarly charge pre- payment penalty if the borrower wishes to repay the loan before the maturity of the loan period. Such amounts paid for acceptance of late payment, early termination of lease or for pre-payment of loan or the amounts forfeited on cancellation of service by the customer as contemplated by the contract as part of commercial terms agreed to by the parties, constitute consideration for the supply of a facility, namely, of acceptance of late payment, early termination of a lease agreement, of prepayment of loan and of making arrangements for the intended supply by the tour operator respectively. 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.

A reading of the above clauses of the above circular will reveal the situation, conditions and legal premises when the consideration for tolerating a breach of contract becomes taxable under GST and according to the above clauses:

a. A consideration by way of compensation for breach of contract is not an independent activity and it is just an event in the course of performance of the contract. (Para-7.1)

b. Liquidated damages cannot be said to be consideration received for tolerating the breach or non-performance of contract. According to the circular these payments are made for not tolerating the breach of contract. By accepting the liquidated damages, the party aggrieved by the breach of contract cannot be said to have permitted or tolerated the deviation or non-fulfillment of the promise by the other party. (Para-7.1.3)

c. Where the amount paid as liquidated damages is an amount paid only to compensate for injury, loss or damage suffered by the aggrieved party to breach of the contract, in such cases liquidated damages are mere flow of money from party who causes breach of contract to party who suffer loss or damage due to such breach. Such payments do not constitute consideration for a supply and are not taxable.(Para-7.1.4)

d. Amount paid for facility of acceptance of late payments, early termination of lease or for pre-payment of loan or the amount of security deposit forfeited for cancelation of service by the customer may be referred to as fine or penalty but are actually payments made for a supply of such facility and are subject to GST. (Para-7.1.6)

In view of the above prescriptions in the circular the nature of transaction which took place between the applicant and his sub-contractor is analyzed as follows:

1. The applicant has not fulfill his promise to award the total work to the sub-contractor as stipulated in their work order.
2. There is a breach of contract by the applicant on which he has paid liquidated damages by way of out of court settlement.

3. By accepting the liquidated damages the sub-contractor cannot be said to have permitted or tolerated the deviation on non-fulfillment of the promise.
4. Thus the liquidated damages are paid only to compensate injury or loss of damage suffered by the aggrieved party due to breach of the contract.

Hence, the above conditions of flow of consideration fall under para-7.1.3 and para-7.1.4 of circular No.178/10/2022, dated: 03-08-2022, therefore such consideration as stipulated in the said circular are not taxable as there is no supply of service under entry-5(e) of Schedule-II of the CGST Act, 2017.

8. <u>In view of the foregoing, the ruling is given by State Member as under:</u>

In view of the above discussion, the questions raised by the applicant are clarified as below:

Questions	Ruling
1. Whether the contract completed during the Pre-GST period and the consequential demand based on the completed contract can be brought to assessment under GST Act, 2017?	No. Under Section 13 of CGST Act,2017, the time of supply will determine taxability of a service under CGST
2. Whether the liquidated damages, without any supply of materials and labor be assessed to GST under GST Act, 2017?	No. Please see discussion above
3. The mutually agreed and settled amount, based on arbitral award, in the nature of compensation, payable for delay in completion of the contract and agreed to be payable by the Applicant to DGAL without any supply of goods or services, is liable to be taxed under GST?	No. Please see discussion above
4. Whether DGAL is eligible to claim ITC on the GST amount if any levied on the mutually agreed arbitral award amount received from the Applicant?	Does not arise
5. Whether there is any taxability under GST on Interest payable on the liquidated damages?	Does not arise

(S.V. KASI VISWESWARA RAO)
ADDL. COMMISSIONER(STATE TAX)

<u>Opinion expressed by Sri Sahil Inamdar, Additional Commissioner, (Central Member), on the issues raised by the applicant are as given below.</u>

9. <u>DISCUSSION & FINDINGS:</u>

9.1 The applicant is a works contractor for construction of thermal power projects. The applicant awarded a sub-contract to M/s. Delta Global Allied Limited (DGAL) for the purpose of executing one

such contract. The contract was completed prior to 01-07-2017 but was handed over in December' 2018. The applicant de-scoped certain quantum of work awarded to DGAL due to the inability of the DGAL to handle higher quantum of work. This work was later entrusted to other suppliers.

9.2 Aggrieved by reducing the quantum of work DGAL issued a notice for arbitration for compensation. The Arbitral Tribunal with Hon'ble Justice Mr. Anil R. Dave as Presiding Arbitrator was constituted at Hyderabad, Telangana. The arbitration tribunal awarded a compensation of Rs.42.45 Cr. against which the applicant has preferred an appeal under Section 34 of Arbitration and Conciliation Act, 1996 before the Principal Special Court of Telangana. During the pendency of this appeal the parties to the dispute entered into an amicable settlement out of court for an amount of Rs.38.56 Cr.

9.3 The principle issue before the Authority for Advance Ruling is to determine whether a mutually agreed amount for settling a dispute arising out of breach of contract constitute a supply within the scope of Entry 5(e) of Schedule-II to the CGST Act, 2017 and hence taxable.

9.4 In this connection it is pertinent to observe that the scope of entry 5(e) of Schedule-II to the CGST Act, 2017 has been elaborately discussed in the GST Council and based on the discussion a circular has also been issued to clarify the types of transactions which fall under this entry.

9.5 In the agenda for discussion in the 47th GST Council Meeting the Fitment Committee made recommendation for issuing clarification in relation to services of liquidated damages, breach of contract, etc., at Sl.No.20 in page No.92 of 279 in Annexure-IV to the Agenda for GST Council Meeting (Volume-II). The same is extracted here under:

Proposal	**Details of Request**	**Discussion in Fit.Com & its recommendation**
To clarify applicability of GST on payments in the nature of liquidated damages, compensation, penalty, cancellation charges, late payment surcharge etc. arising out of breach of contract or otherwise.	A number of cases have been brought to the notice of the Board where question has been raised regarding taxability of an activity or transaction as the supply of service of agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act.	Agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act" has been declared to be a supply in para 5 (e) of Schedule-I of CGST Act. Various transactions have been sought to be classified by the tax authorities under the said description and in many cases this has led to disputes and litigation. The issues arising out of taxation of activities by way of "agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act" were deliberated in detail. It was felt that the entry is being very widely and at times erroneously interpreted

		which is leading to a lot of disputes and litigations. It was generally felt that a circular clearly explaining the situations in which an activity shall amount to a supply of service by way of agreeing to refrain from an act or to tolerate an act or a situation etc. may be issued. After detailed deliberations over course of two meetings, the Fitment Committee recommended that the issues involved may be clarified by way of the enclosed draft circular placed at Annexure B. The draft circular incorporates the basic principles of GST law, Indian and international jurisprudence and international VAT/GST guidelines and practices and elucidates guiding principles with the help of suitable examples/ illustrations. Issuance of the guidance note/ circular is expected to resolve/reduce litigation.

9.6 Circular No.178/10/2022-GST dated 03-08-2022 discusses the taxability of an activity on a transaction as supply of service of agreeing to the obligations to refrain from an act or to tolerate an act or a situation, or to do an act under the GST. This includes applicability of GST on payments in the nature of liquidated damage, compensation, penalty, cancellation charges, late payment surcharge, etc., arising out of breach of contract or otherwise and scope of entry at para-5(e) of schedule-II of Central Goods & Service Tax Act, 2017.

9.7 The entry at para-5(e) of Schedule-II of the CGST Act, 2017 makes the following activity a supply which is exigible to tax under the said act.

> "Agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act".

9.8 The Circular No.178/10/2022-GST dated 03-08-2022 has discussed at length the illustration which will be covered by the entry-5(e) of schedule-II as follows:

a) The phrase "Agreeing to the obligation to refrain from an act" is illustrated in the circular with the following examples:

i. Non-compete agreements, where one party agrees not to compete with the other party in a product, service or geographical area against a consideration paid by the other party.

ii. *A builder refraining from constructing more than a certain number of floors, even though permitted to do so by the municipal authorities, against a compensation paid by the neighboring housing project, which wants to protect its sun light.*

iii. *An industrial unit refraining from manufacturing activity during certain hours against an agreed compensation paid by a neighboring school which wants to avoid noise during those hours.*

b) *The phrase "Agreeing to the obligation to tolerate an act or a situation" is illustrated in the circular in the following examples:*

i. *A shop keeper allowing a hawker to operate from the common pavement in front of his shop against a monthly payment by the hawker.*

ii. *An RWA tolerating the use of loud speakers for early morning prayer by a school located in the colony subject to the school paying an agreed sum to the RWA as compensation.*

c) *The phrase "Agreeing to the obligation to do an act" is illustrated in the circular in the following example:*

An industrial unit agrees to install equipment for zero emission / discharge at the behest of the RWA of a neighboring residential complex against a consideration paid by such RWA, even though the emission/discharge from the industrial unit was within permissible limit and there was no legal obligation upon the individual unit to do so.

It is observed in the circular that doubts have persisted regarding the description "Agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act" and tax authorities have initiated investigation and advance ruling authorities have upheld taxability under GST on the following items:

i. *Liquidated damages paid for breach of contract;*
ii. *Compensation given to previous allottees of coal blocks for cancellation of their licenses pursuant to Supreme Court Order;*
iii. *Cheque dishonor fine/penalty charged by a power distribution company from the customers;*
iv. *Penalty paid by a mining company to State Government for unaccounted stock of river bed material;*
v. *Bond amount recovered from an employee leaving the employment before the agreed period;*
vi. *Late payment charges collected by any service provider for late payment of bills;*
vii. *Fixed charges collected by a power generating company from State Electricity Boards (SEBs) or by SEBs/DISCOMs from individual customer for supply of electricity;*
viii. *Cancellation charges recovered by railways for cancellation of tickets, etc.*

While discussing the aspect of "Liquidated Damages" it is observed in the circular that:

Para-7.1: Breach or non-performance of contract by one party results in loss and damages to the other party. Therefore, the law provides in Section 73 of the Contract Act, 1972 that when a contract has been broken, the party which suffers by such breach is entitled to receive from the other party compensation for any loss or damage caused to him by such breach. The compensation is not by way of consideration for any other independent activity; it is just an event in the course of performance of that contract.

Para-7.1.1: It is common for the parties entering into a contract, to specify in the contract itself, the compensation that would be payable in the event of the breach of the contract. Such compensation specified in a written contract for breach of non-performance of the contract or parties of the Circular No. 178/10/2022-GST contract is referred to as liquidated damages. 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.

Para-7.1.2: Section 74 of the Contract Act, 1972 provides that when a contract is broken, if a sum has been named or a penalty stipulated in the contract as the amount or penalty to be paid in case of breach, the aggrieved party shall be entitled to receive reasonable compensation not exceeding the amount so named or the penalty so stipulated.

Para-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-fulfillment of the promise by the other party.

Para-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.

Para-7.1.5: Examples of such cases are damages resulting from damage to property, negligence, piracy, unauthorized use of trade name, copyright, etc. Other examples that may

be covered here are the penalty stipulated in a contract for delayed construction of houses. It is a penalty paid by the builder to the buyers to compensate them for the loss that they suffer due to such delayed construction and not for getting anything in return from the buyers. Similarly, forfeiture of earnest money by a seller in case of breach of 'an agreement to sell' an immovable property by the buyer or by Government or local authority in the event of a successful bidder failing to act after winning the bid, for allotment of natural resources, is a mere flow of money, as the buyer or the successful bidder does not get anything in return for such forfeiture of earnest money. Forfeiture of Earnest money is stipulated in such cases not as a consideration for tolerating the breach of contract but as a compensation for the losses suffered and as a penalty for discouraging the non-serious buyers or bidders. Such payments being merely flow of money are not a consideration for any supply and are not taxable. The key in such cases is to consider whether the impugned payments constitute consideration for another independent contract envisaging tolerating an act or situation or refraining from doing any act or situation or simply doing an act. If the answer is yes, then it constitutes a 'supply' within the meaning of the Act, otherwise it is not a "supply".

Para-7.1.6: If a payment constitutes a consideration for a supply, then it is taxable irrespective of by what name it is called; it must be remembered that a "consideration" cannot be considered de hors an agreement/contract between two persons wherein one person does something for another and that other pays the first in return. If the payment is merely an event in the course of the performance of the agreement and it does not represent the 'object', as such, of the contract then it cannot be considered 'consideration'. For example, a contract may provide that payment by the recipient of goods or services shall be made before a certain date and failure to make payment by the due date shall attract late fee or penalty. A contract for transport of passengers may stipulate that the ticket amount shall be partly or wholly forfeited if the passenger does not show up. A contract for package tour may stipulate forfeiture of security deposit in the event of cancellation of tour by the customer. Similarly, a contract for lease of movable or immovable property may stipulate that the lessee shall not terminate the lease before a certain period and if he does so he will have to pay certain amount as early termination fee or penalty. Some banks similarly charge pre- payment penalty if the borrower wishes to repay the loan before the maturity of the loan period. Such amounts paid for acceptance of late payment, early termination of lease or for pre-payment of loan or the amounts forfeited on cancellation of service by the customer as contemplated by the contract as part of commercial terms agreed to by the parties, constitute consideration for the supply of a facility, namely, of acceptance of late payment, early termination of a lease agreement, of prepayment of loan and of making arrangements for the intended supply by the tour operator respectively. 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.

<u>Late payment surcharge or fee</u>

Para 9. The facility of accepting late payments with interest or late payment fee, fine or penalty is a facility granted by supplier naturally bundled with the main supply. It is not uncommon or unnatural for customers to sometimes miss the last date of payment of electricity, water, telecommunication services etc. Almost all service providers across the world provide the facility of accepting late payments with late fine or penalty. Even if this service is described as a service of tolerating the act of late payment, it is an ancillary supply naturally bundled and supplied in conjunction with the principal supply, and therefore should be assessed as the principal supply. Since it is ancillary to and naturally bundled with the principal supply such as of electricity, water, telecommunication, cooking gas, insurance etc. it should be assessed at the same rate as the principal supply. However, the same cannot be said of cheque dishonor fine or penalty as discussed in the preceding paragraphs.

Para 11.5 However, as discussed above, forfeiture of earnest money by a seller in case of breach of 'an agreement to sell' an immovable property by the buyer or such forfeiture by Government or local authority in the event of a successful bidder failing to act after winning the bid for allotment of natural resources, is a mere flow of money, as the buyer or the successful bidder does not get anything in return for such forfeiture of earnest money. Forfeiture of earnest money is stipulated in such cases not as a consideration for tolerating the breach of contract but as a compensation for the losses suffered and as a penalty for discouraging the non-serious buyers or bidders. Such payments being merely flow of money are not a consideration for any supply and are not taxable.

Perusal of the above clauses of the above circular will reveal the situation, conditions and legal premises when the consideration for tolerating a breach of contract becomes taxable under GST.

In view of the above prescriptions in the circular the nature of transaction which took place between the applicant and his sub-contractor is briefed as follows:

1. The applicant has not fulfilled his promise to award the total work to the sub-contractor as stipulated in their work order.

2. There is a breach of contract by the applicant on which he has paid liquidated damages by way of out of court settlement.

3. By accepting the liquidated damages the sub-contractor cannot be said to have permitted or tolerated the deviation on non-fulfillment of the promise.

4. It is not taxable if the liquidated damages are paid only to compensate injury or loss of damage suffered by the aggrieved party due to breach of the contract.

5. Against the Arbitral Award, the Applicant preferred an appeal u/s.34 of Section 34 of the Arbitration and Conciliation Act, 1996, before the Principal Special Court in the Cadre of District Judge for Trial and Disposal of Commercial Disputes at Hyderabad, in

C.O.P.No.93/2022, seeking set aside the impugned Award 27.05.2022. While the pendency of the appeal, both parties came to an amicable settlement to settle the entire award amount at Rs.38,56,91,204/-.

6. Taxability of the amicable settlement made by the parties to settle the entire award amount at Rs.38,56,91,204/- should be assessed as if that was done as per the award by the Hon'ble Tribunal for Arbitration as the mutual settlement between parties was done only based on the award by the Hon'ble Tribunal as stated by the applicant.

9.9 Hence, it appears that flow of consideration in the instant case fall under para-7.1.3 and para-7.1.4 of circular No.178/10/2022, dated: 03-08-2022, therefore such consideration as stipulated in the said circular are not taxable as there is no supply of service under entry-5(e) of Schedule-II of the CGST Act, 2017.

9.10 Notwithstanding anything stated above, the authority has also observed that the applicant had issued Purchase Orders in the pre-GST period and all the work allocated was completed in the Pre-GST Period and the payments were also settled to DGAL in the Pre-GST period itself. The Applicant and the Sub-Contractor have duly remitted VAT and Service Tax on the entire contract value. Thus it is pertinent here that the supply/work was completed during Pre-GST period. However though the execution of the contract was over in Pre-GST period, the Arbitration Award was announced only in the GST period. Accordingly the award/amount received under the said arbitration is also examined in terms of transitional provisions provided under CGST Act, 2017..

9.11 The relevant provisions are as follows:-

Section 142(10): Save as otherwise provided in this Chapter, the goods or services or both supplied on or after the appointed day in pursuance of a contract entered into prior to the appointed day shall be liable to tax under the provisions of this Act.

Section 142(11)
(a) notwithstanding anything contained in section 12, no tax shall be payable on goods under this Act to the extent the tax was leviable on the said goods under the Value Added Tax Act of the State;

(b) notwithstanding anything contained in section 13, no tax shall be payable on services under this Act to the extent the tax was leviable on the said services under Chapter V of the Finance Act, 1994 (32 of 1994);

(c) where tax was paid on any supply both under the Value Added Tax Act and under Chapter V of the Finance Act, 1994 (32 of 1994), tax shall be leviable under this Act and the taxable person shall be entitled to take credit of value added tax or service tax paid under the existing law to the extent of supplies made after the appointed day and such credit shall be calculated in such manner as may be prescribed.

Section 142(2)(a): where, in pursuance of a contract entered into prior to the appointed day, the price of any goods or services or both is revised upwards on or after the appointed day, the registered person who had removed or provided such goods or services or both shall issue to the recipient a supplementary invoice or debit note, containing such particulars as may be prescribed, within thirty days of such price revision and for the purposes of this Act such supplementary invoice or debit note shall be deemed to have been issued in respect of an outward supply made under this Act;

9.12 In view of the above facts and provisions of the Act we summarize as follows:

In light of Section 142(10), though the contract is entered prior to GST regime, if the goods or services or both are supplied during GST regime, then the tax under GST laws is applicable. In the present case, it is observed that no supply has happened during the GST regime.

This brings us to the provisions of Section 142(11)(b) and Section 142(11)(c). Section 142(11)(b) states that, notwithstanding anything contained in Section 13, no tax is required to be paid under the CGST Act, to the extent that the tax was leviable on the said services under the provisions of service tax law. Section 142(11)(c) states that, where any tax was paid on a supply both under VAT and service tax law, tax shall be leviable under the provisions of CGST Act to the extent of supplies made after the appointed day and the taxable person is entitled to take credit of taxes that were paid under the earlier regime.

On a combined reading of Section 142(10), Section 142(11)(b) and Section 142(11)(c), the following scenarios are evident:

- If the service is already leviable under the provisions of service tax law, then there cannot be any tax under the provisions of CGST Act to such an extent, notwithstanding anything contained in Section 13, that is time of supply for services.
- However, if a transaction is subjected to both VAT and service tax, let us say, a works contract service, then there will be a tax to the extent of supplies made under the GST regime, though the contract is entered prior to the GST regime. If the taxpayer has paid tax on such supplies (that are yet to be provided and provided in GST regime), he can claim the credit of such taxes.
- As to the receipt of the award amount during GST regime, would create any issue under the provisions of CGST Act is to be now analysed. This also, in our view, should not create any issues, especially, when the provisions of Section 142(11)(b) use the expression 'notwithstanding anything contained in Section 13'. In other words, the receipt of payment may have created any issue in other situations, since the receipt also triggers the time of supply (that is time when tax is to be paid). However, since the provisions of Section 142(11)(b) in clear terms state that there cannot be any tax under the provisions of CGST Act, notwithstanding anything contained in Section 13, the receipt alone cannot trigger any tax under CGST Act.
- As per Section 142(2)(a) of CGST/TGST Act'2017 "where, in pursuance of a contract entered into prior to the appointed day, the price of any goods or services or both is revised upwards on or after the appointed day, the registered person who had removed or provided such goods or services or both shall issue to the recipient a supplementary invoice or debit note, containing such particulars as may be prescribed,

within thirty days of such price revision and for the purposes of this Act such supplementary invoice or debit note shall be deemed to have been issued in respect of an outward supply made under this Act;" Therefore GST is applicable on the additional consideration given after 1/7/2017 if the same happens due to upward revision of price as allowed in the contract agreement between the contracting parties. But there was no upward revision of price in the present issue where the supplier/claimant had to obtain the additional payment by way of compensation through award by Hon'ble Tribunal for Arbitration.

- Interest has to be assessed at the same rate as the principal supply as per the provisions of Section 15 of CGST/TGST Act'2017. Section 15 of CGST/TGST Act'2017 states that value of supply shall include 'interest or late fee or penalty for delayed payment of any consideration for any supply.' There is no GST on the interest of 13% p.a., awarded by Hon'ble Tribunal for Arbitration Award as the principal supply itself is not taxable for the reasons discussed supra.

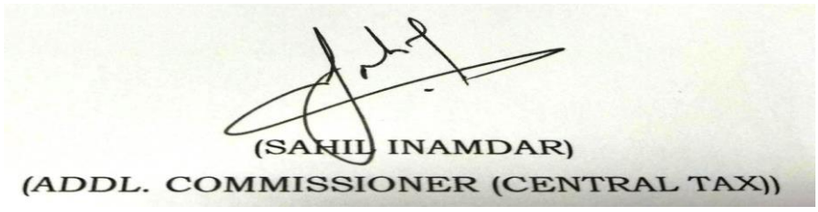
10. Thus in view of above discussion on transitional provisions it is clear that in the instant case, as no supply has happened during the GST regime as per *Section 142(10)* of the act ibid no GST shall be payable. Further the additional payment received by way of compensation through award by Hon'ble Tribunal for Arbitration is not falling under *Section 142(2)(a)* and hence not chargeable to GST.

11. Thus in view of clarification issued vide CBIC circular No.178/10/2022, dated 03-08-2022 and in terms of the transitional provisions discussed supra,

12. <u>In view of the foregoing, the ruling is given by Central Member as under:</u>

	Questions	**Ruling**
1.	Whether the contract completed during the Pre-GST period and the consequential demand based on the completed contract can be brought to assessment under GST Act, 2017?	No. In view of the clarification issued vide CBIC circular No.178/10/2022, dated: 03-08-2022 and in terms of the transitional provisions under CGST ACT, 2017 discussed supra.
2.	Whether the liquidated damages, without any supply of materials and labor be assessed to GST under GST Act, 2017?	No. In view of the clarification issued vide CBIC circular No.178/10/2022, dated: 03-08-2022 and in terms of the transitional provisions under CGST ACT, 2017 discussed supra.
3.	The mutually agreed and settled amount, based on arbitral award, in the nature of compensation, payable for delay in completion of the contract and agreed to be payable by the Applicant to DGAL without any supply of goods or services, is liable to be taxed under GST?	No. Please see the discussion above
4.	Whether DGAL is eligible to claim ITC on the GST amount if any levied on the mutually agreed arbitral award amount received from the Applicant?	Does not arise

5. Whether there is any taxability under GST on Interest payable on the liquidated damages?	No. There is no GST on the interest of 13% p.a., awarded by Hon'ble Tribunal for Arbitration Award as the principal supply itself is not taxable for the reasons discussed supra.



From the above, the Authority for Advance Ruling concurred in the Ruling and has discussed it independently

[under Section 100 (1) of the CGST/TGST Act, 2017, any person aggrieved by this order can prefer an appeal before the Telangana State Appellate Authority for Advance Ruling, Hyderabad, within 30 days from the date of receipt of this order]

To
M/s. TPSC (India) Private Limited,
A-1 Module, D-Quadrant, 2nd Floor,
Cyber Towers, HITEC City, Madhapur,
Hyderabad, Telangana – 505 081.

Copy submitted to :
1. The Commissioner (State Tax) for information.
2. The Commissioner (Central Tax), Rangareddy Commissionerate, Posnett Bhavan, Tilak Road, Abids, Hyderabad - 500 001.

Copy to:
3. The Superintendent (Central Tax) Kondapur Range.
4. The Assistant Commissioner (ST) Madhapur –I Circle.