M/s. CHENNAI PORT TRUST

Authority for Advance Ruling — Tamil Nadu

ORDER No. 35/AAR/2019 DATED: 26.07.2019 Dated **26.07.2019**

Q Questions Before the Authority

- Whether the amounts received on or after 01.07.2017 towards interest, late fee, penalty relating to the services other than continuous supply of services (CSS) rendered by the applicant before 01.07.2017 are liable to GST?

F Facts

The applicant, a major port trust, leases and rents port space and collects lease rentals under licence or rent agreements. Where lessees pay late, it levies interest, late fee or penalty under those contracts and raises a separate Rent Claim Advice (RCA) for each such amount. The applicant says the lease invoices were raised and service tax paid under the pre-GST regime, but the belated consideration and the penal amounts were received after 01.07.2017.

H Ruling

Interest, late fee and penalty received on or after 01.07.2017 for lease/rent services (non-CSS) rendered before 01.07.2017, due to delayed payment	**Liable to GST**	The original pre-GST lease service was held outside GST because its time of supply fell before 01.07.2017. The penal amounts are a separate supply, with time of supply to be determined on the facts under section 13(2), in any event after 01.07.2017.

The Authority ruled that interest, late fee and penalty received on or after 01.07.2017 for lease or rent services rendered before 01.07.2017, arising from delayed payment, are **liable to GST** . It held that the tolerance of delayed payment is a **separate supply of service** under section 7(1)(a), and that this supply was made only after 01.07.2017 because the consideration and the RCA invoice both came after that date.

R Reasoning

The Authority held that the original leasing service was invoiced before 01.07.2017, so its time of supply under section 13(2)(a) falls in the pre-GST period and it is not taxable under GST. It then characterised the collection of interest, late fee or penalty for delayed payment as a separate supply, because the applicant agrees to tolerate the delay in return for the payment, bringing it within section 7(1)(a). It relied on the explanatory notes to the scheme of classification of services (heading 99979, sub-heading 999794, agreeing to tolerate an act) for that characterisation. Since both the consideration and the RCA invoice came after 01.07.2017, the supply was held taxable under GST.

P Provisions Relied On

Prepared as a reading aid. Where this summary and the original order differ, the order governs.

Section 1(3) of CGST Act and TNGST Act

Notification No. 9/2017 Central Tax dated 28.06.2017 (appointed 01.07.2017 as the date for sections 6 to 9, 11 to 21 and oth…

Section 13(1) and 13(2)(a) of CGST Act and TNGST Act (time of supply of services)

Section 7(1)(a) of CGST Act and TNGST Act (meaning of supply)

Explanatory Notes to the Scheme of Classification of Services, heading 99979 and sub-heading 999794 (agreeing to tolerate…

Section 98 and section 100 of CGST Act and TNGST Act (advance ruling and appeal reference)

! For the Practitioner

This order helps lessors and port authorities with pre-GST leases who receive late-payment charges after 01.07.2017, since it treats those charges as a separate, GST-taxable tolerance service. It settles that the penal amounts are taxable even where the underlying lease rent was pre-GST. It does not decide the quantum of tax or the valuation of the penal amounts, and it binds only the applicant. The state jurisdictional officer's comments on whether amounts declared under the existing law should stay under that law were not addressed in the ruling.

Source

Summary prepared from the published order, which is a scanned document. It is a reading aid and not the authority: where the two differ, the order governs. Verify every provision against the original before relying on it.

Original order: www.gstcouncil.gov.in -> tn_aar_35_2019_chennai_port_trust.pdf

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