M/s. CHENNAI PORT TRUST

Authority for Advance Ruling — Tamil Nadu

ORDER No.44/AAR/2019 DATED:26.09.2019 Dated **26.09.2019**

Q Questions Before the Authority

- When can the time of supply be considered to occur for continuous supply of services in the nature of renting immovable properties to Government, Government Agencies and Court, where the license has expired and is not in force but the licensee continues in possession and occupation of the immovable properties?
- When can the time of supply be considered to occur for continuous supply of services in the nature of renting immovable properties to Government, Government Agencies and Court, where the license is in force but the licensee does not pay the periodical license fee as provided in the license agreement?
- When can the time of supply be considered to occur for continuous supply of services in the nature of renting immovable properties to Government, Government Agencies and Court, where the license is in force but the licensee pays a portion of the agreed license fee under the expired license agreement?

F Facts

The applicant, a major port, leases its rentable land and buildings to Government bodies and agencies such as Customs, Postal, Meteorological, Police, Coast Guard and the Madras High Court, usually for periods from 11 months up to 30 years. Many leases expire without renewal, yet the licensees stay on, and the applicant issues reminder letters or Rent Claim Advices (RCAs) for monthly fees under the expired agreements rather than formal tax invoices. Arrears are sometimes waived or reduced years later after high-level decisions.

H Ruling

Expired license, licensee still in possession (Q i)	**Time of supply under Section 13(2)(a): earlier of RCA issue date and date of receipt of payment, where the contract provides for continued supply after expiry. Where there is no such provision, Section 13(2)(a) if RCA is issued within 30 days after the recurrent period, otherwise Section 13(2)(b).**	The RCA is treated as a tax invoice under Section 31 because it carries the particulars required in Rule 46. The 30-day test applies only where the contract has no continuation clause.

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

License in force, periodic fee not paid or partly paid (Q ii)	**Invoice or RCA issued before the due date: Section 13(2)(a), date of issue of invoice or RCA. Invoice issued after the due date: Section 13(2)(b), end of the recurrent period specified in the agreement.**	Where payment is received, the earlier of the issue date and the date of receipt of payment applies under Section 13(2)(a) or (b).

The authority ruled that where the contract itself provides for continued supply after expiry, the RCA is issued within the Section 31(5) period and time of supply is the earlier of RCA issue and receipt of payment under **Section 13(2)(a)** . Where no such provision exists, an RCA issued within thirty days after the end of the recurrent period falls under Section 13(2)(a), but one issued later attracts **Section 13(2)(b)** , which fixes the date of provision of service. For a live lease where the fee is unpaid or partly paid, an invoice issued before the due date gives time of supply under Section 13(2)(a), and an invoice issued after the due date falls under Section 13(2)(b).

R Reasoning

The authority held that renting immovable property is a supply of services under Section 7(1)(d) read with Schedule II, paragraph 5(a), and that a lease running beyond three months with periodic payments is a continuous supply of services under Section 2(33). Whether the supply remains continuous after expiry depends on whether the contract provides for continued supply; without such a provision, the authority said no contract subsists for that purpose, though renting still continues as a supply. The time of supply was then fixed by applying Section 13(2)(a) and (b) together with the invoice timing rules in Section 31(2) and 31(5), and the Rule 47 thirty-day limit. The authority did not expressly take up the State officer's view that breach of contract removes the continuous-supply definition and requires invoicing regardless.

P Provisions Relied On

- Section 7(1)(d) of CGST/TNGST Act
- Schedule II, paragraph 5(a) (renting of immovable property)
- Section 2(33) (continuous supply of services)
- Section 13(1), 13(2)(a), 13(2)(b) and 13(2)(c) (time of supply of services)
- Section 31(2) and 31(5)(a), (b) and (c) (tax invoice for continuous supply)
- Rule 46 (contents of tax invoice)
- Rule 47 (thirty-day limit for issuing tax invoice)
- Section 97(2) (scope of advance ruling)
- Section 100(1) (appeal to State Appellate Authority, mentioned in the note)

! For the Practitioner

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Port authorities and other public lessors with expired or partly paid leases can use the order to see how to fix time of supply and when an RCA counts as an invoice. The ruling is conditional on the contract's terms, so the existence of a continuation clause decides which route applies. It does not decide whether tax is payable on amounts that are disputed, waived or never received, and it does not address the State officer's breach-of-contract objection. The third question is discussed in paragraph 8.6 but is not separately stated in the operative RULING section, so the reader should check that part of the full order.

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 44 2019 cpt 26.09.2019.pdf

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