M/s. Dholera Industrial City Development Project ltd.

Authority for Advance Ruling — Gujarat

Advance Ruling No. GUJ/GAAR/R/2019/06 (in Application No. Advance R… Dated **04.03.2019**

Q Questions Before the Authority

- Whether the applicant can claim the benefits available to a Government Entity (reduced GST rate on construction services under the notification).
- Whether the applicant is eligible to claim input tax credit (ITC) of GST charged by its works contractors.
- Whether the applicant is liable to collect GST on amounts recovered from contractors for breach of conditions specified in the contract (safety and health violation charges).
- Whether the applicant is liable to collect GST on amounts recovered from contractors for not achieving a project milestone (liquidated damages).
- Whether the applicant is liable to collect GST on interest received for deferring the recovery of liquidated damages.

F Facts

The applicant is a special purpose company formed by the Government of Gujarat (51%, through DSIRDA) and the Government of India (49%, through the DMIC Trust) to develop the Dholera Special Investment Region. It has awarded EPC contracts for roads, sewage and water treatment plants, administrative buildings and river bunding, and consultancy contracts. The contracts carry safety-violation charges, liquidated damages for missed milestones, and a board-approved deferral of liquidated damages with interest charged on the deferred amount.

H Ruling

Q1: Benefits available to a Government Entity	****Affirmative** (applicant can claim the benefits)**	Applicant held to be a Government Entity under the notification definition, as it is fully constituted by Central and State Government shareholding.
Q2: ITC on GST charged by contractors	****Not decided in general**; eligibility to be determined case by case**	Turns on clause (c) of Section 17(5) of the CGST Act: ITC is available only where the service is an input service for a further supply of works contract service made by the applicant.
Q3: GST on amounts recovered for breach of contract conditions (violation charges)	****Taxable** (GST to be collected)**	Treated as a supply of services under Schedule II, para 5(e), with the charges treated as consideration.
Q4: GST on amounts recovered for not achieving milestone (liquidated damages)	****Taxable** (GST to be collected)**	Same reasoning under Schedule II, para 5(e). The authority relied on the Maharashtra AAR ruling in the Maharashtra State Power Generation Co. case as consistent.

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

Q5: GST on interest received for deferring liquidated damages	****Taxable** (GST to be collected)**	Interest is treated as part of the liquidated damages, which are already held taxable under Q4.

The authority held that the applicant is covered by the definition of Government Entity. ITC on works contract services depends on a case-by-case finding that the services are an input service for a further supply of works contract service. Violation charges, liquidated damages for milestone non-achievement, and interest on deferred liquidated damages are all liable to GST.

R Reasoning

On Q1 the authority applied the definition of Government Entity in Notification 11/2017-Central Tax (Rate) dated 28.06.2017, as amended, and held that a company fully constituted by Central and State Government shareholding meets it. On Q2 it applied clause (c) of Section 17(5) of the CGST Act and left the answer open pending a case-by-case check of onward supply. On Q3 to Q5 it applied clause (e) of para 5 of Schedule II, treating an agreement to refrain from an act, tolerate an act, or do an act as a supply of services, and treated the amounts payable by contractors as consideration. The commissionerate's unjust-enrichment observation appears in its opinion, not in the authority's own findings. The applicant's argument that these amounts are not a supply under Section 7 and Section 2(31) was not accepted in terms.

P Provisions Relied On

Notification 11/2017-Central Tax (Rate) dated 28.06.2017, as amended (definition of Government Entity)

Section 17(5)(c) of the CGST Act, 2017

Schedule II, para 5(e), CGST Act, 2017

Section 7 and Section 2(31) of the CGST Act, 2017 (cited in the application)

Notification 31/2017-Central Tax (Rate) dated 13.11.2017 (cited in the commissionerate's opinion)

Maharashtra AAR order No. GST-ARA-15/2017-18/B-30 dated 08.05.2018 (cited as consistent)

! For the Practitioner

The order helps government-owned development companies claim Government Entity status, and it settles that liquidated damages, violation charges and interest on deferred damages are taxable when recovered from works contractors under Schedule II para 5(e). It does not settle ITC on works contracts, which is left to a case-by-case test of whether the services feed a further works contract supply. The ruling binds only the applicant, and the reasoning on Q3 to Q5 is brief.

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 -> guj_aar_06-2019_dholera_04.03.2019.pdf

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