M/s. Dholera Industrial City Development Project ltd.

Authority for Advance Ruling — Gujarat

Advance Ruling No. GUJ/GAAR/R/2019/06, dated 04.03.2019 (application… Dated **04.03.2019**

Q Questions Before the Authority

- Whether the applicant can claim the benefits available to a Government Entity (reduced GST rate under Notification 11/2017-CT(Rate))?
- Whether the applicant is eligible to claim input tax credit of GST charged by its works contractors?
- Whether the applicant is liable to collect GST on amounts recovered from contractors for breach of contractual conditions (safety and health violation charges)?
- Whether the applicant is liable to collect GST on liquidated damages recovered from contractors for not achieving milestones?
- Whether the applicant is liable to collect GST on interest received for deferring the recovery of liquidated damages from contractors?

F Facts

The applicant is a special purpose company, Dholera Industrial City Development Ltd., owned 51% by the Government of Gujarat (through DSIRDA) and 49% by the Government of India (through the DMIC Trust), formed to develop the Dholera Special Investment Region. It has awarded EPC and consultancy contracts totalling about Rs 1,964.45 crore and Rs 45.83 crore, covering roads, STP, WTP, an administration building and river bunding. The contracts provide for liquidated damages at 0.05% of contract price per day of delay, and a board resolution dated 11/11/2016 deferred the imposition of such damages, with interest charged from the first day of default.

H Ruling

Whether applicant can claim benefits available to Government Entity	**Answered in affirmative**	Applicant held to be a Government Entity under the definition in Notification 11/2017-CT(Rate) dated 28.06.2017, as amended, since it is set up with 51% State and 49% Central Government participation.
Eligibility to claim ITC of GST charged by contractors	**Not decided in general terms; eligibility is to be determined case by case**	Under clause (c) of section 17(5) of the CGST Act, ITC is available only where the works contract service is an input service for further supply of works contract service. The applicant must show such further supply on a case-to-case basis.
GST on amounts recovered from contractors for breach of contractual conditions (violation charges)	**Answered in affirmative: GST is leviable**	The authority treated the charges as a supply under Schedule II, para 5(e) (agreeing to refrain from or tolerate an act), with the amount as consideration.

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

GST on amounts recovered from contractors for not achieving milestones (liquidated damages)	**Answered in affirmative: GST is leviable**	Treated as a supply under Schedule II, para 5(e), with liquidated damages as consideration. The authority said this is in consonance with the Maharashtra AAR ruling dated 08.05.2018.
GST on interest received for deferring liquidated damages	**Answered in affirmative: GST is leviable**	Interest is part of the liquidated damages, which are held taxable, so the interest is also taxable.

The authority held that the applicant is a Government Entity and can claim the benefits available to such an entity. It held that ITC on works contract services is admissible under section 17(5)(c) only where the services are an input service for further supply of works contract services, to be decided case by case. It held that violation charges, liquidated damages and interest on deferred liquidated damages are all taxable, as they are treated as consideration for a supply of services under Schedule II.

R Reasoning

On the Government Entity question, the authority applied the definition in Notification 11/2017-CT(Rate), as amended, and found that the applicant's equity was fully held by the Central and State Governments. On ITC, it applied clause (c) of section 17(5), which blocks credit on works contract services for immovable property unless they are an input service for further supply of works contract services, and left the question open pending evidence of further supply. On the three recovery questions, it treated the violation charges and liquidated damages as a supply of services under Schedule II, para 5(e), so that the amounts were consideration and taxable. It followed the Maharashtra AAR ruling for liquidated damages and treated interest on deferred damages as part of those taxable damages. The authority did not address the applicant's reliance on the interest-exemption entry in Notification 12/2017-CT(Rate).

P Provisions Relied On

- Section 17(5)(c) of the CGST Act, 2017
- Section 17(5)(d) of the CGST Act, 2017 (quoted by the applicant)
- Section 7 of the CGST Act, 2017 (definition of supply, quoted by the applicant)
- Section 2(31) of the CGST Act, 2017 (definition of consideration, quoted by the applicant)
- Section 15(1) and 15(2)(d) of the CGST Act, 2017 (value of supply, referred to by the applicant)
- Schedule II, para 5(e) of the CGST Act, 2017
- Notification 11/2017-CT(Rate) dated 28.06.2017, as amended (definition of Government Entity)
- Notification 31/2017-CT(Rate) dated 13.11.2017 (cited by the jurisdictional commissionerate)
- Notification 12/2017-CT(Rate) (cited by the applicant on interest exemption; not decided by the authority)
- Maharashtra AAR order No. GST-ARA-15/2017-18/B-30 dated 08.05.2018 (relied on for liquidated damages)

! For the Practitioner

The order helps a government-owned entity show that it qualifies as a Government Entity for the reduced-rate construction entries, and it confirms that violation charges, liquidated damages and interest on deferred damages are taxable under Schedule II, para 5(e). It is adverse to the applicant's view that such recoveries are outside the scope of supply. It does not give a clear answer on ITC, which turns on whether the applicant itself makes further supplies of works contract services, and it does not decide the interest-exemption argument under Notification 12/2017-CT(Rate). The ruling binds only the applicant.

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_0.pdf

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