M/s Goa Industrial Development Corporation

Authority for Advance Ruling — Goa

Advance Ruling No. GOA/GAAR/01 of 2019-20/1875 Dated **17.10.2019**

Q Questions Before the Authority

- Is an obligation to refrain from an Act, or to tolerate an Act or a situation, treated as supply of goods or services under Schedule II to Section 7 of the CGST/GGST Act, 2017?

F Facts

The applicant, a Government of Goa undertaking, leased about 38.4 lakh square metres of land to seven parties for a Special Economic Zone, which was not developed because of local protest. The deposits taken from the parties were refunded on the Supreme Court's direction, with interest at 8.25%, after the Cabinet approved GIDC taking back the land and refunding the amounts. The applicant asked whether the amount returned with interest is a supply, in effect whether the compensation is consideration for an obligation to tolerate a situation.

H Ruling

Whether an obligation to refrain from an act, or to tolerate an act or situation, is a supply (Schedule II, para 5(e))	**Yes. Treated as a supply of services; the compensation paid attracts tax liability**	Ruling is confined to the compensation paid on the refund of the SEZ deposits. The order does not say how the tax is to be computed or whether any exemption applies.

The authority held that the compensation paid by GIDC **qualifies as 'supply' under clause 5(e) of Schedule II** and therefore attracts tax liability. The applicant's agreement to vacate the parties' claim was treated as an act within the scope of that clause, so the original amount paid back with compensation is a supply of services.

R Reasoning

The authority read Section 7(1) to find that a supply covers activities for consideration in the course of business, and that clause (d) read with Schedule II classifies activities as goods or services. It noted that Schedule II, para 5(e), expressly treats agreeing to an obligation to refrain from an act, or to tolerate an act or a situation, as a supply of services. It then found that the applicant had agreed to do an act of vacating the parties' claim, for which consideration was paid, so the returned amount with compensation was a supply of services. Section 9 was cited as the charging provision for tax on supplies.

P Provisions Relied On

Section 7(1)(a), (c) and (d) of the CGST Act, 2017	Section 7(2) and Section 7(3) of the CGST Act, 2017
Section 9 of the GST Act (charge of tax on supply)	Schedule I to Section 7 (referred to in the order)

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

Schedule II to Section 7, paragraph 5(e) (agreeing to obligation to refrain from an act, or to tolerate an act or situation)

Sections 96, 97 and 98 of the Goa GST Act, 2017 (advance ruling framework, as cited in the order)

! For the Practitioner

The ruling is useful for any party agreeing to refrain from acting or to tolerate a situation for consideration, since it treats that agreement as a supply of services under Schedule II, para 5(e). It also shows that a refund with interest tied to such an arrangement can be taxable. It is a single-applicant ruling on the SEZ land-refund facts and is not binding on other taxpayers. It does not decide the valuation of such supplies, the rate of tax, or whether a refund of deposit alone, without an agreed obligation, would be a supply.

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 -> goa aar 01 2019-20 23.10.2019 gidc.pdf

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Pune (HQ)
RTC Silver, B4-708, Sai Satyam Park, Wagholi, Pune, Maharashtra 412207

Mumbai
104, Rajshila Building, 597 J.S.S. Road, Marine Lines, Mumbai 400002

Delhi
3rd Floor, B-6/154-155, Sector 5, Rohini, Delhi 110085

Gurugram
Pioneer Urban Square, B109, Golf Course Ext Road, Sector 62, Gurugram…

Ahmedabad
Phoenix Tower, 1107, near Commerce Six Road, Drive In Road, Navrangp…

Talk to us: +91 94594 56700 | sales@patronaccounting.com | patronaccounting.com