

M/s Maharashtra State Power Generation Company Limited

Authority for Advance Ruling — Maharashtra

NO.GST-ARA- 15/2017-18/B- 30, Mumbai

Dated **08.05.2018**

Q Questions Before the Authority

- Whether GST is applicable on Liquidated Damages in case of Type 1 i.e. Operation & Maintenance activities, Type 2 i.e. Construction of new power plants or renovation of old plants, or is applicable in both cases?
- If GST is applicable, kindly clarify whether the GST on Liquidated Damages is covered under Schedule II entry No 5(2)(e) vide HSN code 9997-Other Services rate 18% is correct or any other entry is relevant?
- Liquidated Damages is determined and imposed upon the contractor after in-depth study. In such case, what will be construed as the time of supply? Will it be the period in which delay is occurring or it is the time when decision to impose Liquidated Damages is taken?
- If some part of delay has occurred before GST roll-out and some part of delay has occurred after GST roll-out, whether GST will be applicable to the Liquidated Damages imposed for entire period of delay or to the period falling after GST roll-out? In case when GST is to be imposed for period after date of GST rollout but due to maximum capping of LD, the amount of LD is calculated at given percentage instead of being period-based, then how GST needs to be levied?
- Whether the contractor / vendor will be able to utilize the amount of LD imposed over him as Input Tax Credit subject to satisfying all other conditions?

F Facts

The applicant, a state power utility, enters into contracts with vendors for operation and maintenance as well as construction and renovation of power plants. The contracts contain clauses allowing the applicant to deduct or recover Liquidated Damages (LD) from contractors in case of delay in completing work or trial operations. The applicant sought an advance ruling on whether GST applies to such recovered LD and how the liability, rate, and time of supply ought to be computed.

H Ruling

Applicability of GST on Liquidated Damages (O&M and Construction)

GST is applicable on Liquidated Damages.

Based on the agreement between applicant and contractor.

Schedule entry, HSN code, and tax rate for Liquidated Damages

Covered under Schedule entry no. 35 of Notification no. 11/2017-CT(R) at 18% GST.

Falls under heading 9997 for taxable services.

Time of supply for Liquidated Damages	When liability of payment of LD is established upon successful completion of trial operation.	Not when the delay is actively occurring.
Applicability of GST for delay straddling pre-GST and post-GST period	Governed by Section 13(1) and Section 14 of the GST Act based on time of supply.	Applicant must refer to specific facts and Section 14.
ITC availability to the contractor on LD paid	Not answered.	The contractor/vendor is the proper person to raise this question, not the applicant.

The Authority held that **recovery of Liquidated Damages constitutes a taxable supply of service** under GST as toleration of an act or situation. Such LD is taxable at 18% under Notification No. 11/2017-Central Tax (Rate) and cannot be treated as a reduction in the contract value of the main supply. The time of supply arises when the liability to pay LD is established under the terms of the contract.

R Reasoning

The Authority reasoned that under Schedule II Para 5(e) of the CGST Act, agreeing to tolerate an act or situation constitutes a supply of service. Liquidated damages are an independent contractual liability and income for the applicant, rather than a mere reduction in the transaction value or contract price of the main project supply under Section 15(1). Thus, recovery of LD is consideration for the service of tolerating delay, classified under Heading 9997 (Sr. No. 35 of Notification No. 11/2017-CT(R)) at 18% GST. The time of supply under Section 13 is the point when the delay is established and the right to levy LD crystallizes under the agreement terms.

P Provisions Relied On

Section 13(1) of the CGST Act, 2017	Section 14 of the CGST Act, 2017
Section 15(1) of the CGST Act, 2017	Schedule II Para 5(e) of the CGST Act, 2017
Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 (Sr. No. 35, Heading 9997)	
Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017	

! For the Practitioner

Confirms that **liquidated damages or delay penalties are independent taxable supplies** of service under Schedule II Para 5(e) taxable at 18% GST, rather than price adjustments to the main contract. It establishes that time of supply crystallizes when contractual default and liability are formally determined. It leaves open the question of whether the paying contractor can claim Input Tax Credit on such liquidated damages.

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 -> mah aar 15 2017-18 b-30 maha state power.pdf

Prepared 17-10-2026.

About Patron Accounting LLP

Patron Accounting LLP is a CA and CS-led accounting and compliance firm working with businesses across India since 2019 — bookkeeping, GST, income tax, payroll, company and LLP compliance, audit and the certificates banks and regulators ask for.

Pune (HQ)

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

Delhi

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

Ahmedabad

Phoenix Tower, 1107, near Commerce Six Road, Drive In Road, Navrangp...

Mumbai

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

Gurugram

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

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