

M/s. North American Coal Corporation India Private limited

Authority for Advance Ruling — Maharashtra

NO.GST-ARA- 07/2018-19/B- 63

Dated 11.07.2018

Q Questions Before the Authority

- Whether liquidated damages that may be awarded to the Applicant by the International Chamber of Commerce ("ICC") qualifies as a 'supply' under the Goods and Services Tax ("GST") law, thereby attracting the levy of GST?
- If the answer to Question No. 1 is in the affirmative, what should be the time of supply, that is to say, the point of time in which NACC's liability to pay GST arises?
- If the answer to Question No. 1 is in the affirmative, what should be the value of supply on which GST is payable, that is to say, whether the Applicant is liable to pay GST on amount of liquidated damages claimed and awarded to the Applicant under the arbitral award or the amount which is actually received by the Applicant after conclusion of the matter before the final Appellate authority?

F Facts

The applicant entered into an Association Agreement to provide technical consultancy and operations support for a power project. Following non-payment of invoices by the service recipient, the applicant terminated the agreement under contractual default clauses and claimed liquidated damages and reimbursement of expenses. The dispute was referred to international arbitration before the International Chamber of Commerce (ICC) in London, prompting the applicant to seek an advance ruling on the taxability of any arbitral award or damages received.

H Ruling

Taxability of liquidated damages awarded by ICC	Affirmative	Qualifies as a supply of service under Section 7(1) read with Schedule II Entry 5(e) as agreeing to tolerate an act.
Time of supply for liquidated damages	Determined as per Section 13 of the CGST Act	Liability arises after the arbitration award is pronounced by the ICC tribunal.
Value of supply for liquidated damages	Actual amount of damages received	Based on the actual liquidated damages cum consideration awarded and received from the defaulting party.

The Authority held that liquidated damages or compensation awarded by the ICC for default or breach of contract qualify as consideration for **tolerating an act or situation**, making it a taxable supply of service under Section 7(1) read with Schedule II Entry 5(e) of the CGST Act. The time of supply is to be determined under Section 13 of the CGST Act after the arbitral award is pronounced by the tribunal. The value of supply will be the **actual amount of damages received** by the applicant pursuant to the award.

R Reasoning

The Authority examined the contractual terms (Articles VI, VIII, and XII of the agreement) and concluded that the contract explicitly foresaw default, termination, and payment of damages. It reasoned that the agreement created a mutual understanding to foresee and **tolerate an act of default** for monetary consideration. Consequently, compensation or liquidated damages paid upon breach or termination fall directly within the scope of Entry 5(e) of Schedule II of the CGST Act ('agreeing to the obligation to refrain from an act, or to tolerate an act or a situation').

P Provisions Relied On

Section 7(1) of the CGST Act, 2017

Section 9(1) of the CGST Act, 2017

Section 13 of the CGST Act, 2017

Section 15 of the CGST Act, 2017

Schedule II Entry 5(e) of the CGST Act, 2017

! For the Practitioner

This order reflects the early stance of advance ruling authorities treating liquidated damages for contract breach as a taxable supply of service under the rubric of **agreeing to tolerate an act**. Tax practitioners should note that this positional interpretation was subsequently countermanded by CBIC Circular No. 178/10/2022-GST, which clarified that breach of contract damages are not consideration for tolerating an act unless there is a specific independent agreement to tolerate.

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 -> maha-gst-ara-07-b-63 dt. 11.07.18 naccipl.pdf

Prepared 20-10-2026.

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