

**[2019] 108 taxmann.com 484 (AAR - TAMILNADU)/[2019] 28 GSTL 504 (AAR - TAMILNADU)[26-07-2019]**

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**GST : Where applicant leases/rents port space and collects lease rentals and in cases of belated payment/default collects late-fee/penal interest as stipulated in contracts, amounts received on or after 1-7-2017 towards interest, late fee penalty relating to services of lease/rent, due to delayed payment of consideration for those services rendered by applicant before 1-7-2017, are liable to GST**

**[2019] 108 taxmann.com 484 (AAR - TAMILNADU)**

**AUTHORITY FOR ADVANCE RULINGS, TAMILNADU**

**Chennai Port Trust, *In re*\***

**MS. MANASA GANGOTRI KATA AND THIRU KURINJI SELVAAN V.S., MEMBER**

**ORDER NO. 35/AAR/2019**

**JULY 26, 2019**

**Section 13, read with section 7, of the Central Goods and Services Tax Act, 2017/Section 13, read with section 7, of the Tamil Nadu Goods and Services Tax Act, 2017 - Supply - Time of supply of services - Applicant is engaged in supply of port services - Applicant leases/rents port spaces and collects lease rentals - Applicant as per contracts collects lease rental charges and in cases of belated payment/default collects late-fee/penal interest as stipulated in contracts in GST regime - Whether since amount was received after 1-7-2017 and separate invoices Rent Claim Advance (RCA) receipt are raised by applicant, time of supply would be after 1-7-2017 and, hence, this supply is liable to GST - Held, yes - Whether thus, amounts received on or after 1-7-2017 towards interest, late fee penalty relating to services of lease/rent, due to delayed payment of consideration for those services rendered by applicant before 1-7-2017, are liable to GST - Held, yes [Paras 8.3 and 9][In favour of revenue]**

**(NR)**

**FACTS**

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The applicant is engaged in supply of port services and incidental supply of goods like disposal of discarded assets. It is seeking advance ruling on the question as to whether the amount received on or after 1-7-2017 towards interest, late fee penalty relating to the

services other than continuous supply of services (CSS) rendered by the applicant before 1-7-2017 are liable to GST.

The applicant are notified as a major port by the Central Government under section 3(8) of Indian Ports Act, 1908, read with section 2(m) of Major Port Trusts Act, 1963 vide Notification No. GST (E), dated 1-2-1975. The affairs of the applicant are administered by a Board constituted by the Central Government from time to time as per the provisions of Major Port Trusts Act, 1963. The applicant is functioning under the administrative control and supervision of Ministry of Shipping of Government of India.

## **HELD**

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The authorized representative of the applicant vide their letter dated 26-10-2018 has furnished the Rent Claim Advance(RCA) receipt raised/issued by the applicant claiming penalty on port users with respect of the belated receipt of license fee/lease rent pertaining to the period prior to 1-7-2017. On perusal of the RCA, a note is appended on the RCAs which state that 'Penal interest will be charged for the total amount from the due date till the date of payment as per SoR'. Further, the description on the RCA reads as 'Penal interest along with GST towards delayed remittance now adjusted', 'Encroach penalty for OSD MG 248.50 SQM for Sept 2018'. It is further seen from the note in file that IOC has been allotted space on lease basis inside the custom bond area and IOC has an outstanding due of Rs. 4,50,96,863 towards penal interest and penalty + GST towards rentals. The penal interest/penalty are due from January 2014, October 2016, October 2017. The applicant, on the interpretation of law in respect of the question raised, has stated that the amounts received on or after 1-7-2017 towards interest, late fee, penalty relating to these services provided before introduction of GST *i.e.* 1-7-2017 are not liable to GST as the same are covered under Service Tax. [Para 7]

From the statement of facts furnished by the applicant, it is seen that the question relates to the services rendered by the applicant in Pre-GST regime, *i.e.*, during service tax regime of taxation. It is found that the applicant leases/rents the port space and collects lease rentals. The applicant as per the license/rent agreement/contracts collect lease rental charges and in cases of belated payment/default, late-fee/penal interest as stipulated in the contracts are collected by them, for which a separate invoice (RCA) is raised. It is stated that the invoices have been raised during the service tax regime and service tax paid but the applicant has received interest, late fee, penalty in the current period, *i.e.*, under GST regime of taxation as the consideration was received belatedly. [Para 8.1]

As per the provisions of section 13 of CGST and TNGST Act come into effect from 1-7-2017. From 1-7-2017 onwards, the liability to pay GST on supply of services is determined by the time of supply in section 13. In the instant case, the applicant has stated that the invoices for the supply of services have been issued before 1-7-2017 but the payment of the consideration was received late *i.e.*, after the issue of invoice. Hence, the date of issue of invoice which is earlier is the time of supply as per section 13(2)(a) of CGST and TNGST Act. In Instant case the time of supply would be before 1-7-2017 and accordingly the supply of original service of leasing/renting is not covered under GST. [Para 8.2]

In the instant case, the applicant has collected an amount as interest/late fee/penalty for the delayed payment of consideration for the original service. This amount was received after 1-7-2017 and separate invoices Rent Claim Advance (RCA) receipt are raised by the applicant. There is a payment of a separate consideration for this tolerance of delayed payment of lease/rent. This payment is a part of the contract for supply of services of the applicant to the port user in the course of their business. It can be said that as the applicant has tolerated the delayed payment of consideration of lease/rent which the recipients should have paid much before. Therefore, this tolerance on the part of the applicant for the delayed payment of lease/rent by collecting an interest/late fee/penalty is a separate supply of service as covered under section 7(1)(a).

Therefore, this service is squarely covered under the classification scheme of the services. Further, the consideration for this was received and the invoice (RCA) raised both only after 1-7-2017. Accordingly, the time of supply for this supply will be determined by section 13(2) depending on the facts in each case. In any case, it would be after 1-7-2017 and hence, this supply is liable to GST. [Para 8.3]

Thus, the amounts received on or after 1-7-2017 towards interest, late fee penalty relating to the services of lease/rent, due to delayed payment of consideration for those services rendered by the applicant before 1-7-2017, are liable to GST. [Para 9]

## **ORDER**

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**Note : Any Appeal against the Advance Ruling order shall be filed before the Tamil Nadu State Appellate Authority for Advance Ruling, Chennai under Sub-section (1) of Section 100 of CGST ACT/TNGST Act 2017 within 30 days from the date on which the ruling sought to be appealed against is communicated.**

**At the outset, we would like to make it clear that the provisions of both the Central Goods and Service Tax Act and the Tamil Nadu Goods and Service Tax Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Service Tax Act would also mean a reference to the same provisions under the Tamil Nadu Goods and Service Tax Act.**

M/s. Chennai Port Trust , No.1, Rajaji Salai, Chennai-600001, (hereinafter called the Applicant) is engaged in supply of port services and incidental supply of goods like disposal of discarded assets. They are registered under GST with GSTIN 33AAALC0025B1Z9. They have preferred an Application seeking Advance Ruling on the following question :

Whether the amount received on or after 01.07.2017 towards interest, late fee penalty relating to the services other than continuous supply of services(CSS) rendered by the applicant before 01.07.2017 are liable to GST? The Applicant has submitted the copy of application in Form GST ARA - 01 and also submitted the copy of Challans evidencing payment of Application Fees of Rs. 5,000 per application - each under Sub-rule (1) of Rule 104 of CGST Rules 2017 and SGST Rules 2017.

**2.** The Applicant has stated that they are engaged in supply of port services and incidental supply of goods like disposal of discarded assets. They are notified as a major port by the Central Government under Section 3(8) of Indian Ports Act 1908 read with Section 2(m) of Major Port Trusts Act, 1963 vide notification No. GST(E) dt 01.02.1975. The affairs of the applicant are administered by a Board constituted by the Central Government from time to time as per the provisions of Major Port Trusts Act, 1963. The applicant is functioning under the administrative control and supervision of Ministry of shipping of Government of India.

**3.** The applicant, has stated that there are quite a few cases where they have raised invoices during Service Tax regime and paid the service tax as per the then existed POT rules, but they are receiving interest, late fee, penalty in the GST regime for the reason that consideration for such services are received belatedly. The question raised in the advance ruling application is to determine whether GST is payable in respect of the receipt of interest, late fee, penalty by the applicant. The applicant has stated that their interpretation of law is that the amounts received on or after 01.07.2017 towards interest, late fee penalty relating to the services other than Continuous Supply of Services(CSS) rendered before 01.07.2017 are not liable to GST; and the amounts received on or after 01.07.2017 towards interest, late fee penalty relating to CSS rendered by them before 01.07.2017 are liable to GST as per the Time of Supply as provided in section 13(6) of the GST Act.

**4.1** The Applicant was granted personal hearing on 24.09.2018. The applicant represented through authorized representative. The submissions during the hearing are as under:

The documents for receiving interest, late fee/penalty which are raised separately will be furnished

They stated that they will submit the relevant documents in two weeks and also requested for further hearing.

**4.2** The applicant through their authorized representative furnished the following documents on 26.10.2018. The details of the documents furnished are as under:

Rent Claim Advice cum receipt 05&07/2018/08/2404 dated 16.08.2018 raised on Chennai Petroleum Corporation Limited ; Rent Claim Advice 05/2018/10/2418 dated 06/10/2018 raised on Om Freight Forwarder Pvt Ltd issued by the applicant for claiming of penalty on port users with respect to the belated receipt of license fee/lease rent dues from them. Where the license fee/lease rent pertains to period prior to 01.7.2017.

**5.1** As requested by the applicant and on account of change in the SGST Member of the authority, another personal hearing was extended on 22.02.2019. The applicant undertook to submit details of invoices raised, payments received for the provision of services to decide on time of supply in 2 weeks. The State jurisdictional officer appeared and submitted written comments on the ARA.

**5.2** The applicant vide their letter dated 21.05.2019, furnished the following documents: Rent Claim Advice cum receipt 05/2019/02/2436 dated 28.03.2019 raised on Indian Oil Corporation Ltd(IOCL) , Documents for adjustment of wharfage refunds towards lease outstanding dues pertaining to IOCL and relevant Journal Voucher .

**6.** The remarks of the State Jurisdictional Officer on the questions raised by the applicant in the ARA application are detailed below:

The applicant has not stated whether such late fee, interest are levied before 01.07.2017 and such penalty and late fee are reported under the existing law. Had the applicant declared such late fee and penalty under the existing law such receipts have to be dealt under the existing law even though payments were received after 01.07.2017 even though the tenancy agreement is continuous and the term continuous supply of service is effective from 01.07.2017 and the penalty and late fee were levied under the existing law.

**7.** We have carefully considered the submissions made by the applicant in the advance ruling application, the additional submissions made during the personal hearings and the comments furnished by the State Jurisdictional Officer. The authorized representative of the applicant vide their letter dated 26.10.2018 has furnished the Rent Claim Advance(RCA) Receipt raised/issued by the applicant claiming penalty on port users with respect of the belated receipt of license fee/lease rent pertaining to the period prior to 01.07.2017. On perusal of the RCA, a Note is appended on the RCAs which state that 'Penal Interest will be charged for the total amount from the due date till the date of payment as per SoR'. Further, the description on the RCA reads as 'Penal interest along with GST towards delayed remittance now adjusted', 'Encroach penalty for OSD MG 248.50 SQM for Sept 2018'. It is further seen from the note in file GI/Oil/IOC/2017/TC, that IOC has been allotted space on lease basis inside the custom bond area and IOC has an outstanding due of Rs. 4,50,96,863/- towards penal interest and penalty + GST towards rentals. The penal interest/penalty are due from January 2014, October 2016, October 2017. The applicant, on the interpretation of law in respect of the question raised, has stated that the amounts received on or after 01.07.2017 towards interest, late fee, penalty relating to these services provided before introduction of GST *i.e.*, 01.07.2017 are not liable to GST as the same are covered under Service Tax.

**8.1** From the statement of facts furnished by the applicant, it is seen that the question relates to the services rendered by the applicant in Pre-GST regime, *i.e.*, during service tax regime of taxation. We find that the applicant leases/rents the port space and collects lease rentals. The applicant as per the license/rent agreement/contracts collect lease rental charges and in cases of belated payment/default, late-fee/penal interest as stipulated in the contracts are collected by them, for which a separate invoice (RCA) is raised. It is stated that the invoices have been raised during the service tax regime and service tax paid but the applicant has received interest, late fee, penalty in the current period, *i.e.*, under GST regime of taxation as the consideration was received belatedly.

**8.2** The provisions of CGST Act and TNGST Act apply to supplies made after the Acts have been notified as per Section 1 (3) of CGST and TNGST Act—

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Notification NO 9/2017 Central Tax dt 28.06.2017 states:

the Central Government hereby appoints the 1st day of July, 2017, as the date on which the provisions of sections 6 to 9, 11 to 21, 31 to 41, 42 except the proviso to sub-section (9) of

section 42, 43 except the proviso to sub\_section (9) of section 43, 44 to 50, 53 to 138, 140 to 145, 147 to 163, 165 to 174 of the said Act, shall come into force.

Section 13 of CGST and TNGST Act specifies:

13. (1) the liability to pay tax on services shall arise at the time of supply, as determined in accordance with the provisions of this section.

(2) The time of supply of services shall be the earliest of the following dates, namely:—

- (a) the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under sub-section (2) of section 31 or the date of receipt of payment, whichever is earlier; or
- (b) the date of provision of service, if the invoice is not issued within the period prescribed under sub-section (2) of section 31 or the date of receipt of payment, whichever is earlier; or
- (c) the date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or clause (b) do not apply:

As per the above the provisions of Section 13 of CGST and TNGST Act come into effect from 1st July 2017. From 1st July 2017 onwards, the liability to pay GST on supply of services is determined by the time of supply in Section 13. In the instant case, the applicant has stated that the invoices for the supply of services have been issued before 1st July 2017 but the payment of the consideration was received late *i.e.*, after the issue of invoice. Hence, the date of issue of invoice which is earlier is the time of supply as per Section 13(2) (a) of CGST and TNGST Act. In this case the time of supply would be before 1st July 2017 and accordingly the supply of original service of leasing/renting is not covered under GST.

**8.3** Section 7 of CGST and TNGST Act states:

7. (1) for the purposes of this Act, the expression "supply" includes— (a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

In the instant case, the applicant has collected an amount as interest/late fee/penalty for the delayed payment of consideration for the original service. This amount was received after 1st July 2017 and separate invoices Rent Claim Advance (RCA) Receipt are raised by the applicant. There is a payment of a separate consideration for this tolerance of delayed payment of lease/rent. This payment is a part of the contract for supply of services of the applicant to the port user in the course of their business. It can be said that as the applicant has tolerated the delayed payment of consideration of lease/rent which the recipients should have paid much before. Therefore, this tolerance on the part of the applicant for the delayed payment of lease/rent by collecting an interest/late fee/penalty is a separate supply of service as covered under Section 7(1) (a) of the Acts.

Explanatory Notes to the Scheme of classification of services states

99979 Other miscellaneous services

999794 Agreeing to tolerate an act

Therefore, this service is squarely covered under the classification scheme of the services. Further, the consideration for this was received and the invoice (RCA) raised both only after 1st July 2017. Accordingly, the time of supply for this supply will be determined by Section 13(2) depending on the facts in each case. In any case, it would be after 1st July 2017 and hence, this supply is liable to GST.

**9.** In view of the foregoing, we rule as under:

#### RULING

The amounts received on or after 01.07.2017 towards interest, late fee penalty relating to the services of lease/rent, due to delayed payment of consideration for those services rendered by the applicant before 01.07.2017, are liable to GST.

SHRUTI

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\*In favour of revenue.