

**GUJARAT AUTHORITY FOR ADVANCE RULING  
GOODS AND SERVICES TAX  
A/5, RAJYA KAR BHAVAN, ASHRAM ROAD,**



ADVANCE RULING NO. GUJ/GAAR/R/2019/06  
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2018/AR/14 & 35)

Date: 04.03.2019

Name and address of the applicant	:	M/s. Dholera Industrial City Development Project Ltd. Block No.-1/2, Udhyog Bhavan, 6 <sup>th</sup> Floor, Sector-11, Gandhinagar.
GSTIN of the applicant	:	24AAFCD5844D1ZW
Date of application	:	31.03.2018
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(b) Applicability of a notification issued under the provisions of this Act; (d) Admissibility of input tax credit of tax paid or deemed to have been paid; (e) Determination of the liability to pay tax on any goods or services or both;
Date of Personal Hearing	:	30.8.2018
Present for the applicant	:	CA Amish Khandhar (Consultant)

**2.** There are following questions as per the additional submission dated 12.07.2018 wherein advance ruling is sought by the applicant, M/s. Dholera Industrial City Development Project Ltd. :

- 1.** Whether applicant can claim benefits available to Government Entity?
- 2.** Whether applicant is eligible to claim ITC of GST charged by contractors?
- 3.** Whether applicant is liable to collect GST on amount recovered from contractors on account of breach of conditions specified in the contract.
- 4.** Whether applicant is liable to collect GST on amount recovered from contractors on account of not achieving milestone ?
- 5.** Whether applicant is liable to collect GST on interest amount received for deferring the liquidated damages recovered from contractors?

3. The Applicant has submitted in annexure A of the application, the brief about the company as under :

### **Delhi Mumbai Industrial Corridor**

Government of India has envisaged development of Delhi Mumbai Industrial Corridor ((DMIC) along the alignment of proposed Multi-modal High Axe Load Western Dedicated Freight Corridor (DFC) between Delhi and Mumbai. Further, Delhi Mumbai Industrial Corridor Development Corporation Limited (DMICDC), a special purpose company, was incorporated to establish, promote and facilitate development of the DMIC Project.

### **Dholera Special Investment Region (DSIR)**

Dholera Special Investment Region (DSIR) will be Greenfield Industrial City planned and located approximately 100 KM south of Ahmedabad. The project as envisaged will be the first initiative from DMICDC to create a linear zone of industrial clusters and nodes to be developed in the influence area of Western Dedicated Freight Corridor (DFC). As a new city by 2030, Dholera will cater to a population of 2 million and an employment base of over 8,50,000. This project is considered as dream project of our Prime Minister Shri Narendra bhai Modi.

Government of Gujarat has been proactive in creating suitable legislative framework for formation of a Special Investment Region Act 2009. Under the act, a Regional Development Authority for DSIR has been established in the year 2010. The Dholera Special Investment Region Development Authority (DSIRDA) has the responsibility of planning and development of DSIR and will encompass function of administering government land within DSIR.

### **Dholera Industrial City Development Limited (DICDL)**

For the development of Dholera SIR, the Government of India (through DMIC Trust) and the Government of Gujarat (through DSIRDA) formed a Special Purpose Vehicle (SPV) called 'Dholera Industrial City Development Ltd.' (DICDL) on Jan 28, 2016. The SPV is made up of a 51% stake of the Government of Gujarat through DSIRDA and a 49% stake of Government of India through DMIC Trust.

Dholera Industrial City Development Limited ('DICDL' or 'Company') is a company registered under Companies Act, 2013 having participation by State Government and Central

Government by way of equity in the ratio of 51 percent and 49 percent respectively.

### **Planning and Development of Dholera Special Investment Region (DSIR)**

DSIR has been planned over an extensive area of land measuring approximately 920 Sq. Km. and encompassing 22 villages of Dholera Taluka in the Ahmedabad District. This node is strategically located between the industrial cities of Ahmedabad, Vadodara, Rajkot, Surat and Bhavnagar urban agglomerations. DMIDC, with support of Government of Gujarat, plans to create an economically and socially balanced new-age city with world class infrastructure and highest quality-of-life standards and sustainability in the urban form.

#### **Town Planning Schemes in DSIR**

Government of Gujarat and DSIRDA has adopted the mechanism of town planning schemes (TP) to ensure delivery of serviced land that can benefit the local population and the private sector. TP Schemes are being implemented under the Gujarat Town Planning and Urban Development Act, 1976 (GTPUD). Broadly the TP mechanism is a means of land pooling for provision of infrastructure. Under TP schemes, 50% of an individual's land holding is aggregated for physical and social infrastructure, and 50% is returned as serviced land. The 50% land aggregated for infrastructure is used for roads, physical infrastructure, social infrastructure and other facilities and amenities. The land which will be used for common infrastructure is known as 'public purpose' land.

In accordance with GTPUD, for the development of Dholera Industrial City, DICDL has awarded Engineering, Procurement and Construction Contract and it has also awarded certain consultancy contracts as under:

EPC CONTRACTS			CONSULTANCY CONTRACTS		
Sr. No.	Name of the Contractor	Value of Contract	Sr. No.	Name of the Consultant	Value of Contract
1	Cube Construction	72.31 Cr	1	AECOM India Private	-
2	Jugalkishor Ramkishan	14.19 Cr	2	Yooshin Engineering	25.43 Cr
3	Larsen & Toubro Ltd -	1,734.04 Cr	3	Stup Consultants Private	14.37 Cr
4	Larsen & Toubro Ltd -	53.91 Cr	4	Vyas Giannetti Creative	1.64 Cr
5	SPML Infra Limited -	90.00 Cr	5	Multi Media Consultants	2.40 Cr
			6	HCP Design, Planning &	1.99 Cr
	TOTAL	1964.45		TOTAL	45.83

Applicant has interpreted the questions raised in the application as per annexure B of application as follows :

As stated in ARA-01, of their submission in respect of the questions raised by applicant in point no.14 and the additional submission dated 12.07.2018, is discussed by applicant below :

❖ **Part-A: Applicant is covered within the definition of Government Identity**

General rate of GST on taxable services is 18%; however, there are several benefits of reduced rate available to a government entity by virtue of relevant notifications issued by Government. Notification no. 11/2017-CT (Rate) dated 28.06.2017 provides that certain construction activity undertaken for Central Government, State Government, Union Territory, Local Authority, Governmental Authority or Government Entity will attract GST @ 12%.

Hence, in order to assess whether applicant is eligible to receive such benefits that a Government Entity is entitled to, the applicant is required to assess the definition of Government Entity as given under Notification 11/2017-Central Tax (Rate) dated 28.06.2017:

*"An authority or a board or any other body including a society, trust, corporation, i) set up by an Act of Parliament or State Legislature; or ii) established by any Government, with 90 percent or more participation by way of equity or control, to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority."*

As per the above definition, Government Entity means any body or corporation

- (1) established by any Government;*
- (2) with 90% or more participation by way of equity or control;*
- (3) to carry out a function entrusted by the Government.*

Further, as per Memorandum of Association (MoA) of applicant, it is understood that out of total shares of 264.13 Crore, Mr. Alkeshkumar Sharma who is CEO of DMIC i.e. Delhi Mumbai Industrial Corridor holds 129.42 Crore shares and Mr. Jai Prakash Shivahare who is nominee of DSIRDA i.e. Dholera Special Investment Regional Development Authority holds 134.71 Crore shares.

It is to be noted that Mr. Alkeshkumar Sharma who is authorized Central Government representative holds 49% shares. Besides this, Mr. Jai Prakash Shivahare who is authorized State Government representative holds 51% shares. Copy of the shareholding pattern published in MoA is attached herewith for reference and marked as '**Annexure – C**' of the application.

As per above discussed brief about the company, flow chart and shareholding pattern of applicant discussed above, it is deduced that applicant is formed by Government of Gujarat along with Government of India with a single object to develop Industrial City in Dholera Special Investment Region and Government is having 100% control by way of holding of equity in the company.

Applicant's view and understanding:

Hence, in applicant's considered view, applicant is very well covered under the definition of "Government Entity" and it is eligible for benefits that are available to Government Entity under notification no 11/2017-CTR dated 28-06-2017.

❖ Part-B: Applicant can very well avail the Input Tax Credit (ITC) of the Tax paid on the aforesaid contracts:

Summary of GST rate applicable on EPC contracts awarded by the applicant:

EPC CONTRACTS			
Sr. No.	Name of the Contractor	Value of Contract	Applicable rate of GST
1	Cube Construction Engineering Ltd. – ABCD	72.31 Cr	12%
2	Larsen & Toubro Ltd. – STP	53.91 Cr	12%
3	SPML Infra Limited – WTP	90.00 Cr	12%
4	Larsen & Toubro Ltd. – R&B	1,734.04 Cr	12%
5	Jugalkishor Ramkishan Agrawal Infra. Pvt Ltd. – River Bunding	14.19 Cr	12%
	TOTAL	1964.45 Cr	

Under GST law, taxpayer can claim ITC on inputs and input services used for business purpose. The definition of input and input services becomes very wide. The said definitions are stated u/s 2(59) & (60) of CGST Act, 2017 and the extract of the same is reproduced below:

*"input" means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business;*

*"input service" means any service used or intended to be used by a*

*supplier in the course or furtherance of business;*

Now, applicant has availed the construction, commissioning, installation, repairs, maintenance service from the various contractors stated in Part-B above. The said services are availed by applicant in course or furtherance of business.

Now, the activity clause stated in MoU of applicant is reproduced below:

*To carry on the business of planning, development, operations and management of integrated industrial township including industrial townships, residential townships, vocational training centers, leisure parks, conventional centers and development of other infrastructure facilities and to act as technical consultants and advisors in all matters relating to integrated industrial township development. Further, to undertake, identify, formulate, design, develop, structure, engage in project development, project financing, project monitoring, establishment, strengthening, up gradation, repair, rehabilitation, improvement operation, construction, maintenance, management and implementation of the integrated industrial township for the Dholera Special Investment Region, Gujarat, whether whole of the project or any components, and its support facilities to further the aforementioned objectives amongst others to conceive, identify, formulate, initiate, promote, aid, design, establish, operate, manage, construct, erect, maintain, regulate, rehabilitate, repair, improve and participate and develop this project and to finance and/or arrange for financing of the above activities and collecting, retaining and appropriating tariffs, charges, tolls, fees, prices, rents and all types of revenues, cess, user development fee (including internal as well as external development charges), accept receivables towards dues, investments, returns, servicing/ repayments of debts or capital etc. and to carry out any other project development and implantation activities as may be necessary, and incidental for implementation of the Project. And for these purposes to procure, implement, operate and maintain schemes, project(s), programmes, concessions and other contractual arrangements on a commercial format, in public private sector partnership mode or otherwise, for the provision and development of projects related to power generation, transmission and distribution, water treatment and supply, waste management, sewage treatment, sanitation, roads, transportation, logistics parks, exhibition cum convention centers, street lighting, city gas supply along with supporting amenities that will essentially include residential clusters, educational clusters, research, commercial, recreation, offices & administration uses and to further the aforementioned objectives. Also to carry out all kinds of business of developers, promoters, consultants, designers, manufacturers, processors, assemblers, agents, system designers, dealers, contractors, builders, engineers, distributors, marketing, materials, personnel, planning, management, dealers for erection and commissioning of all types of infrastructure and all other works, facilities, services, systems, methods, erections and things of any description whatsoever as the Company thinks proper for facilitating, developing, establishing and improving the project.*

Based on the aforesaid detailed scope of activity includes construction service as well.

Now, Sec: 17(5) of CGST Act, 2017 provides the list of blocked credit where the service recipient can't avail the credit of Tax paid on input service. Relevant extract of clause (c) and (d) of Section 17(5) of CGST Act, 2017 is reproduced below:

*(c) works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;*

*(d) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.*

Applicant's view and understanding:

As per applicants's understanding of Section 17 (5) of CGST Act, it is submitted that if service recipient i.e. the applicant is also in the same line of business [provider of works contract services] then, only credit of the Tax paid on works contract service will be available. Furthermore, as per clause (d), ITC of goods or services received by taxable person is eligible only if such goods or services are received for construction of an immovable property.

In the instant case, applicant will also get itself engaged in same line of business and the said fact is clearly stated in object clause of MoU. Formation of Applicant is done by Governments [Central as well as State] for the sole purpose of development of entire Dholera City. And for such development of city, the applicant will engage itself in construction of various commercial as well as residential complexes. Such complexes will be sold to the person intending to be part of Dholera Industrial City. For development of entire city, certain basic infrastructure facility like roads and administration building are required to be developed. Further, Dholera being a industrial city, major Sewage Treatment Plant and Water treatment plant are also basic necessity for smooth operations of entire city.

Various contracts awarded to the contractor is for developing infrastructure facilities in the entire city and as per MoU, applicant is getting these infrastructure facilities developed so that further development of commercial and residential complex can be undertaken by the applicant.

Hence, it is can be said that the services received by applicant from above mentioned contractor is for further development of the Dholera City and such development will be undertaken by applicant in future after the basic infrastructure facilities are in place. Therefore, it is submitted that applicant can very well avail the ITC of Tax paid on composite works contract service availed from contractors stated in Part B.

Applicant is entered with Cube Construction Engineering Limited is for Design and Construction of Administration and Business Center of Dholera for design and construction of Administration and Business Centre of Dholera (ABCD) Building, maintenance of project and fulfillment of other obligation. Administrative & Business Centre for Dholera (ABCD Building) is envisaged to function as a centre for administering & overseeing the development works of DSIR. DSIRDA and by DICDL along with other stakeholders being local development authority will pursue administrative, manage and monitor the developmental activities of DSIR. It is cleared that above building is used for administration activity of applicant and so that applicant can very well avail the ITC of service received from cube construction limited.

Applicant is in the business of developing the township and for which it is going to provide the service of construct, erect, maintain, regulate, rehabilitate, repair, improve and development of township. Here the contract entered with Larsen and Toubro Ltd is for Road building and Sewage treatment plant. Road building is most necessary and basic requirement for development of any township. Sewage treatment plant is for the process of removing contaminants from wastewater, primarily from household and industrial sewage. Physical, chemical, and biological processes are used to remove contaminants and produce treated wastewater (or treated effluent) that is safer for the township. So from the above explanation it is clearly deduced that service received from Larsen and Toubro limited is eligible for the availment of ITC by applicant.

Similarly, contract entered with SPML Infra Limited is for design, engineering, supply, erection and testing of water treatment plant on turnkey basis. Water treatment is any process that improves the quality of water to make it more acceptable for a specific end-use. The end use may be drinking, industrial water supply, irrigation, river flow maintenance, water recreation or many other uses, including being safely returned to the township. Hence, it is deduced that it would also be an input for the maintenance of township. It is cleared from the explanation that applicant is very well eligible to avail the ITC of service received from SPML Infra Limited.

Contract entered with Jugalkishor Ramkishan Agrawal Infra. Pvt Ltd is for Adhiya river bunding. The Adhiya river (Tributary of sukhbhadar river) originates at village Cher and meets the Sukhbhadar river near village Khoon. Adhiya river and Sukhbhadar river do not have well defined banks and also pass through flat topography so flood water spills over the area and slowly flows into sea. Hence, for development and safety of township water flow of river must required to be controlled. River bunding project is necessary input for the expansion of Dholera project and according to that we are eligible to avail the ITC of works contract service received from Jugalkishor Ramkishan Agrawal Infra. Pvt Ltd.

Applicant's view on taxability on amount collected from contractors on account of violation charges, liquidation damages and interest on liquidation damages are as follows :



As per the agreement with various contractors, applicant aims to build an image of the best safety conscious practice in DSIR construction and operation undertaken by contractors. An unsafe act or conduct in the construction site may result into an illness, injury, property damage or worst, loss of life. The contractor is expected to take safety very seriously and shall keep the construction site safe at all the times. The Employer shall practice zero tolerance towards unsafe behavior by any parties on the construction site.

There is table provided in the agreement indicates the safety, health and environment violation (unsafe act / unsafe condition) and charges to be recovered from contractors. Copy of sample agreement where the said violation charges are mentioned is attached herewith and marked as

Now, the question comes whether said violation charges which are adjusted from the payment of the contractors is liable to GST or not. It is noted that said violation charges are not collected separately by the applicant; however the same is adjusted from the payments made to contractors.

To check the GST applicability, we need to refer the definition of supply and confirm that whether the aforesaid transaction entered by applicant falls under supply or not. The word 'supply' has been expressed u/s 7 of CGST Act, 2017. Relevant extract of the said Section is reproduced below:

*"supply" includes 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**;*

Now, as per section 2(31) of CGST Act, 2017

*"consideration" in relation to the supply of goods or services or both includes--*

*(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;*

*(b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government:*

*Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply;*

From the above legal proposition it is deduced that to treat as 'supply' following conditions must be fulfilled:

- i. There should be an activity i.e. sale, barter, transfer etc.*
- ii. Consideration must be received to service provider.*
- iii. The said activity must be made by person in course of furtherance of business.*

Now, the word activity has not defined in GST law. Normally, an activity would include an act done, a work done, a deed done, an operation carried out, execution of an act, provision of a facility etc. Where applicant receives the violation charges from contractors there is no activity done by both the parties. Means there is no activity undertaken by contractor while paying violation charges and hence first condition has not fulfilled.

Further, there is no 'quid pro quo' i.e. something in return received by contractors. The payment made by contractor doesn't fall within the definition of 'consideration' and hence second condition has also not fulfilled.

As per Sec: 15 of CGST Act, 2017, interest or late fee or penalty for delayed payment of any consideration for any supply received shall be included in the transaction value of supply. However, the said violation charges are not in the form of penalty for delayed payment and hence need not to include in the value of supply of services provided by contractors.

In nutshell, the aforesaid transaction undertaken between applicant and contractors is not covered under definition of 'supply' and hence no GST shall be leviable on the amount received by applicant from various contractors in relation to violation charges related to safety and health of workers.

Applicant has entered into contracts with various contractors on a turnkey basis for construction of Road and buildings, water treatment plants, sewage treatment plants, admin building and many future projects. As per the contract the milestone and time of completion are well defined and where there is delay in completion of a particular stage as defined under contract then there is a separate clause for Liquidated Damages which is described in detail as under:

- (1) In the event that the contractor fails to achieve any project milestone or the scheduled completion date within a period of 30 days from the date set forth in schedule-J, Contractor shall pay damages to the employer of a sum calculated at the rate of 0.05% of the contract price for delay of each day reckoned from the date specified in schedule-J and until such project milestone is achieved or the works are completed; provided that if the period for any or all project milestones or the scheduled completion date is extended in accordance with the provisions of this agreement,*
- (2) The dates set forth in schedule-J shall deemed to be modified accordingly and provision of this agreement shall apply as if schedule-J has been amended as above;*
- (3) In the event the works completed within or before scheduled*

*completion date including any time extension, applicable for that work or section, damages paid under this clause 10.3.2 shall be refunded by employer to the contractor but without any interest thereon. (ANNEXURE-E of the application)*

Hence, as per the above contract clause on Liquidated Damages, it can be deduced as under:

(1) In case of delay in achieving milestone by the contractor, contractor is liable to pay damages @ 0.05% of the contract price for delay days.

(2) However, where the work is completed within or before scheduled completion date then damages paid by contractor will be refunded back to the contractor.

This situation can be understood by way of following illustration wherein the contract value is Rs. 100 Crore.

For E.g. Milestones are defined as under:

1<sup>st</sup> Stage of Completion : 10% of work to be done upto 31<sup>st</sup> March 2018

2<sup>nd</sup> Stage of Completion : further 10% of work to be done upto 30<sup>th</sup> June 2018

So on and so forth.

Hence, in example specified above, the contractor is required to complete 20% of total project by 30<sup>th</sup> June 2018.

(a) Now, say, the contractor could not complete 10% of work till 31<sup>st</sup> March 2018 and contractor could manage to finish 10% of work on 10<sup>th</sup> April 2018. Delaying the project by 10 days.

In this Scenario, although damages of Rs. 5,00,000/- per day is required to be paid by contractor to the applicant [Rs. 100 Crore \* 0.05% = Rs. 5,00,000/-].

Contractor will be liable to pay Rs. 50,00,000/- [Rs. 5,00,000/- \* 10 Days]

(b) Now, the contractor was able to accelerate and finish 20% of work till 30<sup>th</sup> June 2018.

Hence, 20% of work was completed within given milestone. According to the contractual terms, applicant will have to refund back the amount of Rs. 50,00,000/-.

There is one more clause in para no 10.3.2, the agreement with regards to the damages which is reproduced as under:

*"For the avoidance of doubt, it is agreed that recovery of Damages under this clause 10.3.2 shall be without prejudice to the rights of the Employer under this Agreement including the right of Termination thereof."*

As per the above clause, the applicant reserves the right to terminate the right to recover the damages from contractors. It is further submitted that board of directors of the applicant in board meeting held on 11/11/2016 resolved that in event of 78% excessive rainfall during this period, the board after deliberation decided to defer the imposition of such damages but it is clarified that interest on such deferment will be charged and levied from 1<sup>st</sup> day of default.

In the case of applicant there is contingency occurred for the payment of LD charges. It is clear from the extract of contract clause that LD would be charge on non-achievement of milestone but if in future milestone achieved and project gets well in time then applicant is required to refund the amount of LD.

Accordingly, applicant has been entered with an arrangement that they were defer the receipt of LD, means they are not going to charge the LD from contractors and they will wait for them until they achieve their next milestone. Additionally, for this arrangement, they will charge the interest amount from the contractors for the period occurred between two milestone.

As per section 15(1) of CGST Act,2017

*The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.*

In the case of applicant, there is not any supply involved as there is not any amount deducted from RA Bill and Tax invoice has also not been issued by applicant for receiving any amount towards the damages due to not achieving the milestone.

Hence, it is very well clear that there is not any supply involved in the above transaction.

Ruling by Maharashtra Authority for Advance Ruling in case of Maharashtra State Power Generation Company Limited

Recently Maharashtra Authority for Advance Ruling has issued an order dated 08.05.2018 regarding GST applicability on liquidated damages in case of construction of new power plants or renovation of old plants. Bench has issued an order that GST would be applicable on liquidated damages.

Following are the facts of case decided in Maharashtra Authority for Advance Ruling:

1. The contractor shall strictly adhere to the project

completion schedule to achieve the trial operation of the units by specified time period. In case the contractor fails to achieve successful completion of Trial operation within specified time period as per the project completion schedule due to delay in his part, then the owner shall levy liquidated damages.

2. If the contractor fails to achieve the trial operation of the unit within the time period specified in the project completion schedule due to reasons attributable to him then the owner shall levy liquidated damages on the contractor @ 1.2% of the contract price for erection, testing and commissioning along with applicable price variation per week of delay or part subject to maximum 10% of contract value.

It is submitted that there is difference in facts of the case of applicant as compared with the fact of the case stated in the Maharashtra Authority for Advance Ruling and the case of applicant.

As per the illustration discussed above, the applicant is contractually obligated to refund the amount of damages collected in event of the contractor achieving the milestone subsequently.

The applicant has been entered with the clause of liquidated damages for delayed completion of contracts by various contractors. The contractors shall construct the project works in accordance with the project completion schedule set forth in schedule-J of the agreement. In the event that the contractor fails to achieve any project milestone or the scheduled completion date within a period of 30 days from the date set forth in schedule-J, unless such failure has occurred due to force majeure or for reasons solely attributable to the employer, it shall pay damages to the employer of a sum calculated at the rate of 0.05% of the contract price for delay of each day reckoned from the date specified in schedule-J and until such project milestone is achieved or the works are completed; provided that if the period for any or all project milestones or the scheduled completion date is extended in accordance with the provisions of this agreement, the dates set forth in schedule-J shall be deemed to be modified accordingly and provision of this agreement shall apply as if schedule-J has been amended as above; provided further that in the event the works completed within or before scheduled completion date including any time extension, applicable for that work or section, damages paid under this clause 10.3.2 shall be refunded by employer to the contractor but without any interest thereon.

As the outcome of Board Meeting of applicant dated 11/11/2016, it was resolved to defer the liquidated damages payable by the contractor, however the interest at the applicable rate due to delay in the achievement of 1<sup>st</sup> milestone will be recovered from the contractors as provided for in the contract.

There is specific clause that if the next milestone will be achieved in time then applicant is required to refund the amount of liquidated damages collected. As this is contingent obligation of contractor, instead of receiving and refunding the amount of

damages applicant is just charging the interest on that amount. This arrangement is just for time value of money.

Clause of liquidated damages extracted from the agreement and Board Meeting resolution has been provided in ANNEXURE-E and ANNEXURE-F, of the application, respectively.

As explanation provided in the Part D, amount recovered from contractors for not achieving milestone is not a supply as per section 15(1) of CGST Act,2017. As the transaction of damages is not falling within the definition of supply, Section 15(2)(d) will also not apply regarding inclusion of interest amount in the value of supply.

So it is very well clear that as the charges for late achieving milestone is not an supply, interest on such supply is also not an supply.

On other hand interest income is clearly exempted from the GST law. According to notification no 12/2017 Central Tax (Rate)

*Services by way of—*

*(a) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services);*

*"interest" means interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) but does not include any service fee or other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilised;*

Above arrangement entered by an applicant is just like advance credit given to the contractors and for that amount applicant is charging interest thereon. It is just an amount which is receivable by applicant for the period starting from 1<sup>st</sup> milestone to the end of next milestone but the applicant is not receiving the amount from contractors but charging the interest on that much of amount which they are differing.

Hence, from the above it is very much clear that this is just an interest income on granting the use of money to the contractors and it is clearly exempt from the GST as per the above clarification. So as per the above explanations interest income on that charges is clearly exempt from GST Law.

Applicant has concluded in the following table:

<b>Part</b>	<b>Question</b>	<b>Applicant's View</b>
<b>A</b>	Whether applicant is covered within definition of "Government Entity"?	Yes, the applicant is covered within the definition of 'Government entity'.
<b>B</b>	Whether applicant is eligible to claim ITC of GST charged by contractors?	Yes, applicant is eligible to claim ITC on Tax paid for works contract service availed from various contractors.
<b>C</b>	Whether violation charges collected from contractors is liable to GST or not?	No, as the said transaction doesn't fall within the ambit of 'supply' and hence no GST shall be leviable on the said payment.
<b>D</b>	Whether applicant is liable to collect GST on liquidated damages recovered from contractors on account of not achieving milestone?	No, as the said transaction doesn't fall within the ambit of 'supply' and hence no GST shall be leviable on the said payment.
<b>E</b>	Whether applicant is liable to collect GST on interest amount received for liquidated damages recovered from contractors for not achieving milestone?	<ul style="list-style-type: none"> <li>• No, as the main transaction doesn't fall within the ambit of 'supply' and hence no GST shall be leviable on the interest received on that charges.</li> <li>• No, as the interest is clearly exempt from GST Law.</li> </ul>

4. The application was sent to the jurisdictional CGST commissionerate for its opinion. They have, *inter alia* opined, vide their letter dtd. 30.05.2018 as follows:

(a) Whether applicant is covered within definition of 'Government Entity'?

For the development of Dholera Special Industrial Region, Dholera Industrial City Development Ltd. has been formed by the Government of India (51% stake of the State Government and 49% stake of the Government of India). Government Entity has been defined in Notification No.31/2017-Central Tax (Rate) dated 13.11.2017, which reads as:-

*"Government Entity" means an authority or a board or any other body including a society, trust, corporation, i) set up by an Act of Parliament or State Legislature; or ii) established by any Government, with 90 per cent. or more participation by way of equity or control, to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority."*

From the Government of Gujarat, Industries & Mines Department's letter dated 02.12.2015 (attached as Annexure-C of the application), it is clear that the State Government has formed a Company under the name "Dholera Industrial Township Development Limited" as a wholly owned government Company with (51%) equity contribution of Government of Gujarat in the form of land and (49%) Central Government through Delhi-Mumbai Industrial Corridor (DMIC) Project Implementation Trust Fund as a Project Development Agency for Dholera Special Investment Region. From the above definition, it appears that the applicant is a Government entity.

(b) Whether applicant is eligible to claim ITC of GST charged by contractors?

Clause (c) of Section-17(5) of CGST Act, 2017 provides the eligibility of input tax credit in case of works contract service where it is an input service for further supply of works contract service. Considering the extent of business of construction & erection, maintenance, repair to be conducted by the applicant, the eligibility for input tax credit can only be decided after ensuring that the further supply of works contract service is made by the applicant on a case to case basis.

(c) Whether applicant is liable to collect GST on amount recovered from contractors on account of breach of conditions specified in the contract?

The applicant has contended that they would adjust the violation charges against the payable amount to the contractor. The applicant can reduce his tax liability only if the contractor has reduced the input tax credit claimed by the same amount. Thus, it follows that the principle of unjust enrichment or reduction in output tax liability of the applicant will not be allowed if the incidence of tax has been passed on to another person.



## **5. Discussion and findings:**

Following are the questions submitted by the applicant for advance ruling:

- (i) Whether applicant can claim benefits available to Government Entity?
- (ii) Whether applicant is eligible to claim ITC of GST charged by contractors?
- (iii) Whether applicant is liable to collect GST on amount recovered from contractors on account of breach of conditions specified in the contract.
- (iv) Whether applicant is liable to collect GST on amount recovered from contractors on account of not achieving milestone ?
- (v) Whether applicant is liable to collect GST on interest amount received for deferring the liquidated damages recovered from contractors?

Now we take up the queries for discussion one by one as follows:

- (i) Whether applicant can claim benefits available to Government Entity?

Government entity has been defined in Notification No.11/2017-Central Tax (rate) dated 28.06.2017, as amended, which reads as below:-

*"Government Entity" means an authority or a board or any other body including a society, trust, corporation, i) set up by an Act or Parliament or State Legislature,; or ii) established by any Government, with 90 per cent. or more participation by way of equity or control, to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority."*

Since the applicant is constituted by the participation share of 51% of State Government and 49% of Central Government, hence being, fully constituted by the share of Government, the applicant is covered under the definition of "Government Entity"

- (ii) Whether applicant is eligible to claim ITC of GST charged by contractors?:

Clause (c) of Section 17(5) of CGST Act, 2017 provides the eligibility of input tax credit in case of works contract service where it is an input service for further supply of works contract service. Considering the extent of business of construction & erection, maintenance, repair to be conducted by the applicant, the eligibility of input tax credit can only be decided after ensuring that the further supply of works contract service is made by the applicant on a case to case basis.

(iii) Whether applicant is liable to collect GST on amount recovered from contractors on account of breach of conditions specified in the contract ? :

We find that Clause (e) of Para 5 of Schedule II of the Central Goods and Services Tax Act, 2017 provides that the following activity be treated a supply of services:

*"(e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act;"*

As per the above provision, the transaction shall be treated as supply of services. Moreover, as violation charges are payable by the contractors, the same are required to be treated as consideration. Therefore, this transaction is liable to GST.

(iv) Whether applicant is liable to collect GST on amount recovered from contractors on account of not achieving milestone ?

We find that Clause (e) of Para 5 of Schedule II of the Central Goods and Services Tax Act, 2017 provides the following activity to be treated a supply of services:

*"(e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act; and"*

As per the above provision, the transaction shall be treated as supply of services. Moreover, liquidated damages are payable by the contractors, therefore, the same are to be treated as consideration. Therefore, this transaction is liable to GST.

The Advance Ruling of Maharashtra Advance Ruling Authority in the case of Maharashtra State Power Generation Co. Ltd. No.GST-ARA-15/2017-18/B-30 Dated 8/5/2018 is also in consonance with the present ruling.

(v) Whether applicant is liable to collect GST on interest amount received for deferring the liquidated damages recovered from contractors?:

We find that, as ruled above, liquidated damages are liable to tax and interest on liquidated damages is a part of liquidated damages, therefore the interest is also liable to tax.

6. In view of the above, in respect of application of M/s. Dholera Industrial City Development Project Ltd., we rule as under:

**RULING**

Question-1: Whether applicant can claim benefits available to Government Entity?

Ans: Answered in affirmative.

Question-2: Whether applicant is eligible to claim ITC of GST charged by contractors?

Ans: Clause (c) of Section-17(5) of CGST Act, 2017 and GGST Act, 2017 provides the eligibility of input tax credit in case of works contract service where it is an input service for further supply of works contract service. Considering the extent of business of construction & erection, maintenance, repair to be conducted by the applicant, the eligibility for input tax credit can only be decided after ensuring that the further supply of works contract service is made by the applicant on a case to case basis.

Question-3: Whether applicant is liable to collect GST on amount recovered from contractors on account of breach of conditions specified in the contract.

Ans: Answered in affirmative.

Question-4 : Whether applicant is liable to collect GST on amount recovered from contractors on account of not achieving milestone ?

Ans: Answered in affirmative.

Question-5 : Whether applicant is liable to collect GST on interest amount received for deferring the liquidated damages recovered from contractors?

Ans: Answered in affirmative.

**(R.B. Mankodi)**  
Member

**(G.C. Jain)**  
Member

Place: Ahmedabad  
Date: 04.03.2019.