



JUDGEMENT

Liquidated Damages for Breach of Contract or Non-Performance Are Subject to GST

In Case Of:	M/s. Transmission Corporation of Andhra Pradesh Limited
Issued By:	Andhra Pradesh (AAR)
Order No:	AAR No. 07/AP/GST/2024
Order Date:	9 th May 2024

OBSERVATIONS

- The Applicant, a licensed electricity distributor, contracted suppliers to build and maintain the transmission network in AP within a set timeframe.
- To address delays, the contracts included a penalty clause for late delivery, specified as liquidated damages under s. 74 of the Contract Act, 1972.
- The Applicant sought an Advance Ruling under s. 97 of the CGST Act and APGT on whether these liquidated damages were taxable under GST.
- The Applicant argued that these damages were not for tolerating breaches but to avoid breaches, and therefore, should not be taxable under the CGST Act.

FINDINGS

- The AAR observed that liquidated damages are pre-determined amounts specified in a contract to compensate for losses caused by a breach of contract.
- According to para 5(e) of Schedule II of the CGST Act, liquidated damages received for tolerating non-performance are considered a supply of service under s. 7(1A) and are therefore taxable.
- The ruling emphasized that there must be a direct link between the consideration and the service activity, making the agreed amount for such activities taxable under GST.
- The AAR ruled that liquidated damages, being compensation for breaches of contract, are subject to GST as they are treated as consideration for a supply of services.

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