


GUJARAT AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX D/5, RAJYA KAR BHAVAN, ASHRAM ROAD, AHMEDABAD – 380 009.	
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ADVANCE RULING NO. GUJ/GAAR/R/2025/23
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2024/AR/26)

Date: 26/06/2025

Name and address of the applicant	:	M/s. Shoft Shipyard P Ltd., 5,7,8,9,11,12,13,19,21 & 21, Off Bharuch Dahaj Road, Kaladhara Road, Bharuch, Gujarat 392 130.
GSTIN of the applicant	:	24AAHCS6554M1ZV
Jurisdiction Office	:	Center Commissionerate – Vadodara - II Division – VII, Bharuch Range - IV
Date of application	:	23/09/2024
Clause(s) of Section 97(2) of CGST/GGST Act, 2017, under which the question(s) raised.	:	(e), (f)
Date of Personal Hearing	:	8.4.2025 and 22.5.2025
Present for the applicant	:	Shri M.P.S. Sengar, Shri Rajesh Desai, Shri Sudhir Chavan and Ms. Pranati Prabhu

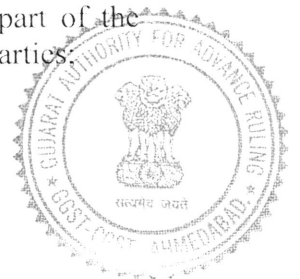
Brief facts:

M/s. Shoft Shipyard P Ltd., 5,7,8,9,11,12,13,19,21 & 21, Off Bharuch Dahaj Road, Kaladhara Road, Bharuch, Gujarat 392 130 [for short – ‘applicant’] is registered under GST and their GSTIN is 24AAHCS6554M1ZV.

2. The applicant in his application has stated as follows:

- the applicant, received a work order no. 703002 dated 21.5.2009, from GSL¹ for construction of **Hull of Ship** and **Towing**;
- GSL discharged all the payments to the applicant except payment in respect of one invoice dated 20.5.2010, involving an amount of Rs. 1.39 crore;
- central excise duty was exempt on construction of hull of ship while service tax involved on the towing charges was paid by the applicant;
- GSL, held back the amount of Rs. 1.39 crores on account of losses which they claimed to have been incurred due to mistake on the part of the applicant, in respect of some other contract between the said parties.

¹ Goa Shipyard Ltd



- the applicant had written off the said amount [to be received from M/s. GSL] in his books of account, in the FY 2012-13;
- consequently in 2014, the applicant, initiated arbitration proceedings through Arbitration case No. 3/2004. The said proceedings culminated vide award dated 29.9.2017, wherein the arbitrator held that the amount of Rs. 1.39 crore, was payable to the applicant by GSL along with interest. The arbitrator further awarded Rs. 1.75 as arbitration costs to the applicant;
- GSL, contested the award before the Hon'ble High Court, which directed them to deposit the principal amount in September 2019 and bank guarantee for the interest component and arbitration cost awarded by the arbitrator;
- **the applicant received the principal amount in March 2020 and the interest and the arbitration cost in the year 2024; though the interest paid is upto September 2019, the interest beyond this period is to be received in the future;**
- the applicant did not pay any tax on the amount received since the work in respect of which the amount was received was completed in pre-GST era.

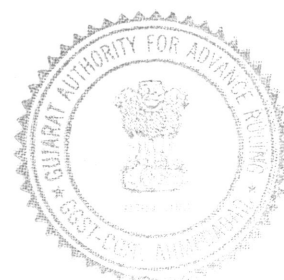
3. The applicant further stated as follows:

- interest received Rs. 1,17,93,803/- & cost of arbitration received is Rs. 1,75,000/;
- supply has taken place in pre-GST regime; the goods in the instant matter was cleared in 2009;
- invoice was raised in pre-GST regime;
- central excise on construction of hull of ship was exempted vide notification No. 63/1995 while service tax involved on towing charges has already been paid;
- in terms of section 12 of CGST Act, 2017, liability to pay tax arises at the time of supply; that there was no supply under GST since it had already taken place in pre-GST regime;
- the removal having happened in pre-GST regime, the addition in value of supply by way of interest for delayed payment in terms of section 12(6) does not pertain to value of supply under GST;
- **that section 12 is not applicable to the principal amount;**
- that section 142(10) is of no relevance since goods were cleared prior to introduction of GST regime;
- section 142(11)(a) applies to transaction leviable to VAT while 142(11)(b) applies to transaction liable to ST; that both clauses start with a non-obstante clause; that they override sections 12 and 13, respectively; that if any transaction is leviable to VAT/ST, GST cannot be levied on the same; that the material portion of the transaction is covered u/s 142(11)(a) & the service portion is covered u/s 142(11)(b);
- that they like to rely on the case of National Tobacco Co Ltd², Vazir Sultan Tobacco Ltd³;
- that since bill/invoice was raised in the pre-GST regime, in terms of section 13(2), *ibid*, no GST is applicable irrespective of whether the payment is received under GST;
- **that there was no contract or agreement with GSL for claiming damages or penalties for delayed payment;**
- the amount awarded is not for provision of additional supply of goods or receipt of damages for breach of contract; that it is not an amount payable on account of damages for breach of contract or consideration for toleration of an act;
- that they would like to rely on the ruling of Continental Engineering Corporation⁴;

² 1978 (2) ELT 416 (SC)

³ 1996 (83) ELT 3 (SC)

⁴ Ruling dated 8.10.2011



- that the cost of arbitration of Rs. 1.75 lacs is awarded u/s 31A of the Arbitration Act, 1996; that it does not represent supply of goods/services;
- that the contract explicitly does not contain any clause for penalty or compensation for delay in payments.

4. In view of the foregoing, the applicant has raised the following questions seeking a ruling, viz

[i] Whether in the facts & circumstances of the case, applicant is liable to pay GST on the “interest awarded under arbitration” & “costs awarded under arbitration” as received by the applicant?

[ii] If the answer to question No. 1 is affirmative, kindly clarify whether any supply is involved & what will be the time of determination of such supply involved, if any, and the rate of tax applicable thereon?

5. Personal hearing was granted on 8.4.2025 wherein Shri Shri M.P.S. Sengar, Shri Rajesh Desai, Shri Sudhir Chavan and Shri S.K.K.Krishnan appeared on behalf of the applicant and reiterated the facts as stated in the application.

5.1 In pursuance to the transfer of Member (Centre), fresh personal hearing was held on 22.5.2025, wherein Shri M.P.S. Sengar, Shri Rajesh Desai, Ms. Pranati Prabhu and Shri Sudhir Chavan, appeared on behalf of the applicant and reiterated the submission. It was further stated that interest is pertaining to supply which is already done and is covered under Continental ruling of AAR & that as far as arbitration cost is concerned, in terms of the circular no. 178 no GST is payable. They also relied upon the appellate order of GAAAR in the case of GSPC⁵.

Revenue’s submission:

6. Assistant Commissioner, CGST, Division-VII, Bharuch, Vadodara-II Commissionerate, vide their letter No. V/Misc/Corr./30-02/Div-VII/BRH/2021-22, dated 24.12.2024 submitted the following comments viz:

a) ***The payment of interest due to delay in payment of the contract:***

- *that arbitration as service was supplied independently after the introduction of GST i.e. the Tribunal rendered its orders on 25-09-2017 and therefore this supply is liable to tax on reverse charge basis under GST;*

⁵ Appellate Order no. GUJ/GAAAR/Appeal/2025/02dated 22.1.2025



- *that as per section 15(2)(d) of the CGST Act, 2017, amount received by way of interest or late fee or penalty for delayed payment of any consideration for any supply is includable in the value of such supply;*
- *that the time of supply of such amount is determined by the provisions laid down under section 12(6) or 13(6) which says that the time of supply to the extent it relates to an addition in the value of supply by way of interest, late fee or penalty for delayed payment of any consideration shall be the date on which the supplier receives such addition in value;*
- *that as per the analysis made hereinabove, the arbitral award received as interest for delayed payments is taxable under GST Law since the amount is received only during the GST regime.*

b) Costs awarded under Arbitration:

- *that as per Entry No. 3 of Notification No. 13/2017- Central Tax (Rate) dated 28th June, 2017 as amended from time to time, services supplied by an arbitral tribunal to a business entity is liable to tax under Reverse Charge Mechanism (RCM) and the business entity located in the taxable territory is liable to pay tax on the said supply.*
- *that the consideration received by arbitral Tribunal is taxable on reverse charge basis under CGST and SGST Act @9% each and the service tariff code is 998215*

Discussion and findings

7. At the outset, we would like to state that the provisions of both the CGST Act and the GGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the GGST Act.

8. We have considered the submissions made by the applicant in their application for advance ruling as well as the submissions made during the course of personal hearing. We have also considered the issue involved, the relevant facts & the applicant's submission/interpretation of law in respect of question on which the advance ruling is sought.

9. Before advertng to the submissions made by the applicant, we would like to reproduce the relevant provisions for ease of reference:

• CENTRAL GOODS AND SERVICES TAX, 2019

Section 12. Time of Supply of Goods .-



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

(2) The time of supply of goods shall be the earlier of the following dates, namely:-

(a) the date of issue of invoice by the supplier or the last date on which he is required, under ¹[****] section 31, to issue the invoice with respect to the supply; or

(b) the date on which the supplier receives the payment with respect to the supply:

Provided that where the supplier of taxable goods receives an amount up to one thousand rupees in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice in respect of such excess amount.

Explanation 1.- For the purposes of clauses (a) and (b), "supply" shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment.

Explanation 2.- For the purposes of clause (b), "the date on which the supplier receives the payment" shall be the date on which the payment is entered in his books of account or the date on which the payment is credited to his bank account, whichever is earlier.

(3) In case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earliest of the following dates, namely:-

(a) the date of the receipt of goods; or

(b) the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or

(c) the date immediately following thirty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier:

Provided that where it is not possible to determine the time of supply under clause (a) or clause (b) or clause (c), the time of supply shall be the date of entry in the books of account of the recipient of supply.

(4) In case of supply of vouchers by a supplier, the time of supply shall be-

(a) the date of issue of voucher, if the supply is identifiable at that point; or

(b) the date of redemption of voucher, in all other cases.

(5) Where it is not possible to determine the time of supply under the provisions of sub-section (2) or sub-section (3) or sub-section (4), the time of supply shall-

(a) in a case where a periodical return has to be filed, be the date on which such return is to be filed; or

(b) in any other case, be the date on which the tax is paid.

(6) The time of supply to the extent it relates to an addition in the value of supply by way of interest, late fee or penalty for delayed payment of any consideration shall be the date on which the supplier receives such addition in value.

Section 13. Time of Supply of Services.-

(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 ¹[****] 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 ¹[****] 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

Provided that where the supplier of taxable service receives an amount up to one thousand rupees in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice relating to such excess amount.

Explanation .-For the purposes of clauses (a) and (b)-

(i) the supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment;

(ii) "the date of receipt of payment" shall be the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier.

(3) In case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earlier of the following dates, namely:-

(a) the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or

(b) the date immediately following sixty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof²[by the supplier, in cases where invoice is required to be issued by the supplier; or]:

³[(c) the date of issue of invoice by the recipient, in cases where invoice is to be issued by the recipient:]

Provided that where it is not possible to determine the time of supply under clause (a) or clause (b) ³[or clause (c)], the time of supply shall be the date of entry in the books of account of the recipient of supply:

Provided further that in case of supply by associated enterprises, where the supplier of service is located outside India, the time of supply shall be the date of entry in the books of account of the recipient of supply or the date of payment, whichever is earlier.

(4) In case of supply of vouchers by a supplier, the time of supply shall be-

(a) the date of issue of voucher, if the supply is identifiable at that point; or

(b) the date of redemption of voucher, in all other cases.

(5) Where it is not possible to determine the time of supply under the provisions of sub-section (2) or sub-section (3) or sub-section (4), the time of supply shall-

(a) in a case where a periodical return has to be filed, be the date on which such return is to be filed; or

(b) in any other case, be the date on which the tax is paid.

(6) The time of supply to the extent it relates to an addition in the value of supply by way of interest, late fee or penalty for delayed payment of any consideration shall be the date on which the supplier receives such addition in value.

Section 142. Miscellaneous transitional provisions.-

(10) Save as otherwise provided in this Chapter, the goods or services or both supplied on or after the appointed day in pursuance of a contract entered into prior to the appointed day shall be liable to tax under the provisions of this Act.

(11) (a) notwithstanding anything contained in section 12, no tax shall be payable on goods under this Act to the extent the tax was leviable on the said goods under the Value Added Tax Act of the State;

(b) notwithstanding anything contained in section 13, no tax shall be payable on services under this Act to the extent the tax was leviable on the said services under Chapter V of the Finance Act, 1994 (32 of 1994);

(c) where tax was paid on any supply both under the Value Added Tax Act and under Chapter V of the Finance Act, 1994 (32 of 1994), tax shall be leviable under this Act and the taxable person shall be entitled to take credit of value added tax or service tax paid under the existing law to the extent of supplies made after the appointed day and such credit shall be calculated in such manner as may be prescribed.

10. The primary question posed before the Authority is whether the GST is payable on the 'interest awarded under Arbitration' and 'costs awarded under



Arbitration' received by the applicant. The facts are already mentioned in paragraph above & hence is not being repeated.

11. The applicant's averment is that no GST is payable on the interest of Rs. 1,17,93,803/- and the cost of Rs. 1,75,000/- awarded via arbitration since the matter pertains to legacy period; that central excise duty on construction of 'Hull of Ship' was exempted; that service tax on 'towing' has already been paid by the applicant; that the supply has taken before the implementation of GST and the invoice has also been raised in the legacy period; that sections 12(6) & 13(6) of the CGST Act, 2017 is not applicable.

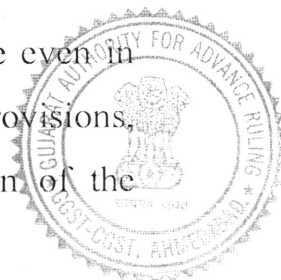
12. The applicant has stated that they have discharged the service tax. The applicant had in-fact written off the amount of Rs. 1.39 crore in his books of accounts. However, consequent to the applicant opting for arbitration proceedings, they were awarded the disputed amount, interest thereon and the arbitration cost.

13. We are mindful of the fact the amount of interest received is on account of a commercial dispute. It is in this background that we proceed forward to examine the claim of the applicant that sections 12(6) or 13(6) of the CGST Act, 2017 are not applicable in this case.

14. As per section 12 of the CGST Act, 2017, the time of supply, in respect of **goods** is earlier of the date of issue of invoice or the date on which the supplier receives the payment. The invoice in this case has already been issued. So, in this case there is no supply under GST owing to the fact that, the manufacture, clearance, sale and the date of invoice having taken place pre-GST. This being so, the applicability of section 12(6) does not arise.

15. Section 13 of the CGST Act, 2017, deals with time of supply in respect of **service**. As is already mentioned, the invoice having been issued before the advent of GST, there is no supply under GST, & likewise, section 13(6) would not apply.

16. The applicant has further stated that no GST is applicable even in terms of section 142(10), 142(11)(a) and (b). On going through the provisions, which is already reproduced *supra*, we agree with the contention of the

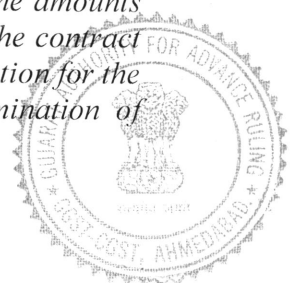


applicant more so since the material portion and service portion of the transactions are leviable to VAT & Service Tax consequent to which no tax is payable under GST.

17. Now, as far as the award of Rs. 1.75 lacs as **arbitration cost** is concerned, the applicant states that it has been granted under section 31A of the of the Arbitration Act, 1996. The applicant has further stated that the compensation is awarded for delayed payment of the agreed consideration though there was no contract for payment of penalty or damages in the event or delay in payment. The applicant has further stated that the arbitration cost is not even covered under Clause 5(e) of the Schedule II of the CGST Act, 2017. The averment raised is that the goods/service were taxable during pre-GST regime; that the amount awarded is not for provision of additional supply of goods or receipt of damages for breach of contract; that the interest is in respect of the amount withheld by Goa Shipyard Ltd; that it is not an amount payable on account of damages for breach of contract or a consideration for toleration of an act; that there was no contract or agreement between the parties for claiming damages or penalty for delayed payment.

18. We agree with the contention of the applicant. Circular No. 178/10/2022-GST dated 3.8.2022, [relied upon by the applicant], specifically states that

7.1.6 If a payment constitutes a consideration for a supply, then it is taxable irrespective of by what name it is called; it must be remembered that a "consideration" cannot be considered de hors an agreement/contract between two persons wherein one person does something for another and that other pays the first in return. If the payment is merely an event in the course of the performance of the agreement and it does not represent the 'object', as such, of the contract then it cannot be considered 'consideration'. For example, a contract may provide that payment by the recipient of goods or services shall be made before a certain date and failure to make payment by the due date shall attract late fee or penalty. A contract for transport of passengers may stipulate that the ticket amount shall be partly or wholly forfeited if the passenger does not show up. A contract for package tour may stipulate forfeiture of security deposit in the event of cancellation of tour by the customer. Similarly, a contract for lease of movable or immovable property may stipulate that the lessee shall not terminate the lease before a certain period and if he does so he will have to pay certain amount as early termination fee or penalty. Some banks similarly charge pre-payment penalty if the borrower wishes to repay the loan before the maturity of the loan period. Such amounts paid for acceptance of late payment, early termination of lease or for pre-payment of loan or the amounts forfeited on cancellation of service by the customer as contemplated by the contract as part of commercial terms agreed to by the parties, constitute consideration for the supply of a facility, namely, of acceptance of late payment, early termination of



a lease agreement, of pre-payment of loan and of making arrangements for the intended supply by the tour operator respectively. Therefore, such payments, even though they may be referred to as fine or penalty, are actually payments that amount to consideration for supply, and are subject to GST, in cases where such supply is taxable. Since these supplies are ancillary to the principal supply for which the contract is signed, they shall be eligible to be assessed as the principal supply, as discussed in detail in the later paragraphs. Naturally, such payments will not be taxable if the principal supply is exempt.


In the present case, since we have already held that the transactions pertain to pre-GST period, the question of the amounts falling under the ambit of GST in terms of clause 5(e) of Schedule II does not arise. Even otherwise, the work contract dated 21.5.2009 does not contain any penalty or compensation clause for delay in payments made by GSL and further there is no clause for recovery of interest on delayed payment.


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

RULING

[i] The applicant is not liable to pay GST on the “interest awarded under arbitration” & “costs awarded under arbitration”, received by them in terms of paragraph 16 to 18 and 20.

[ii] Not applicable, since the answer to question No. 1 is in negative.


(Kamal Shukla)
Member (SGST)


(Vishal Malani)
Member (CGST)

Place: Ahmedabad
Date: 26.06.2025

