

**GUJARAT AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX
D/5, RAJYA KAR BHAVAN, ASHRAM ROAD,
AHMEDABAD – 380 009.**



ADVANCE RULING NO. GUJ/GAAR/R/2025/47
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2025/AR/11)

Date: 03/11/2025

Name and address of the applicant	:	M/s. JBM Ecolife Mobility Surat Private Ltd. Plot No.-70, BRTS Bus Depot and Workshop, TP Scheme No-48, Opp Unn-Bhasthan Urban Health Centre, Bhasthan, Surat
GSTIN of the applicant	:	24AAFCJ4549P1Z1
Jurisdiction Office	:	Office of the Assistant Commissioner of State Tax, Unit-63, Range-16, Division-7, Surat.
Date of application	:	24.03.2025
Clause(s) of Section 97(2) of CGST/IGST Act, 2017, under which the question(s) raised.	:	(c)
Date of Personal Hearing	:	24.09.2025
Present for the applicant	:	(1)Shri Atul Gupta,CA (2)Shri Kavish Goyal, CA

Brief facts:

M/s. JBM Ecolife Mobility Surat Private Ltd., Plot No.-70, BRTS Bus Depot, and Workshop, TP Scheme No-48, Opp Unn-Bhasthan Urban Health Centre, Bhasthan, Surat [for short – ‘applicant’] is registered under GST and their GSTIN is 24AAFCJ4549P1Z1.

2. The applicant has stated that they are engaged in providing mobility solutions, particularly for public transportation and operates as a concessionaire for projects like the procurement, operation and maintenance of electric buses for city routes.

3. The Convergence Energy Services Limited (CESL for short) invited bids for the project namely ‘Request for Proposal Selection of bus operator for procurement, operation and maintenance of 5690 Electric buses (E-buses for short) and development of allied electric and civil infrastructure on Gross Cost Contracting (GCC) under the National E-Bus Program (NEBP)-Phase-I. This project for supply, operation and maintenance of 5690 e-buses was invited on a cumulative basis for pan India. M/s JBM Ecolife Mobility Private Ltd took part in



the bid and was declared as a successful bidder. They were awarded the project for the city of Surat for 150 Nos BRTS AC Electric Buses vide LOA dtd. 24.07.2023. The said project was awarded by CESL to M/s JBM Ecolife Mobility Private Ltd on behalf of Surat Municipal Corporation (SMC for short).

4. M/s JBM Ecolife Mobility Private Ltd., being the successful bidder, incorporated the Applicant as a Special Purpose Vehicle (SPV for short) and requested CESL and SMC to accept the applicant as the entity which shall undertake and perform the execution of the project as awarded to M/s JBM Ecolife Mobility Private Ltd. A Concession Agreement dtd. 21.08.2023 was thereafter entered into between the Applicant and SMC for Supply, Operation and Maintenance of E-buses, subject to the terms and conditions set forth in the Concession Agreement. However, subsequently, the project under consideration was transferred to M/s Sitilink Limited (SSL. for short) for O & M purpose by SMC and therefore, a Tripartite Agreement dtd. 05.04.2024 was executed between the applicant, SMC and SSL and all the roles and responsibility of the said project pertaining to SMC were shifted to SSL in the same manner as defined in the Request for Proposal and the LOA.

5. In view of the above factual background, the engagement is between the applicant and SSL and the terms of the said engagement needs to be determined in accordance with RFP, LOA and the Concession agreement. As per the terms and conditions of the Concession Agreement entered into by the applicant and SMC and subsequently transferred to SSL, the applicant is liable to pay an agreed sum in the form of damages (hereinafter referred to as '**liquidated damages**' or '**compensation**') to the SSL, in case of any material default or breach of the agreement or failure to perform the obligations under the Concession Agreement. The material defect, breach or failure may include, but are not limited to, failure to operate and maintain the buses by the applicant, breach of any operational infraction, non-rectification of defects in buses, breach by the applicant of any of its obligations under the Concessional Agreement or on account of any defect or deficiency in the provisions of goods and services by the applicant etc.

6. The relevant extracts of the Concession Agreement for the purpose of this Advance Ruling application are reproduced below: -



ARTICLE-1-DEFINITIONS AND INTERPRETATION

1.1

1.2 Interpretation

1.2.1 In this agreement, unless the context otherwise requires

(y) the damages payable by either Party to the other of them, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the 'Damages'); and

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2.1 Scope of the Agreement

The scope of the Agreement ('The Scope of the Agreement') shall mean and include, during the contract period:

(a) design, manufacture, procurement and supply of buses conforming to the Specifications and Standards set forth in Schedule-B (the 'Buses') and in accordance with the provisions of this Agreement;

(b) Operation and Maintenance of Buses in accordance with the provisions of this Agreement;

(c) Develop, Equity, Operate and Maintain the Maintenance Depots n the Depot Sites specified in Schedule-A, in accordance with the provisions of this Agreement.

(d) Procurement and installation of the Charging Infrastructure at the Maintenance Depots for charging of the Buses.

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9.2 Appropriation of Performance Security

The Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate, from time to time and as many times as required by the Authority, from the Performance Security such amounts as may be due to it under this Agreement, including in respect of any Damages payable by the Operator for a failure to perform its obligations under this Agreement, for an operator for a failure to perform its obligations under this Agreement, for an Operator Default or for failure to meet any Condition Precedent, in accordance with the terms of this Agreement.

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Article-16

OPERATION OF BUSES

16.1 Operation of Buses

16.1.1 The Operator shall make available and Operate and Maintain the Buses in accordance with the provisions of this Agreement, including without limitation, the Deployment Plan, and shall comply with the operation and maintenance requirements as provided in Schedule-I of this agreement.

16.1.2 The operator shall be fully responsible for ensuring the safety and security of the Buses at all times, including during operations and while the Buses are at the Maintenance depots. In the event the operator fails to ensure the security of the buses and there is any theft of or damage to the bus or any component of the bus including but not limited to any component, spare parts, hardware, software, instruments etc., the operator shall, as soon as is reasonably practical, repair or replace, as the case may be, such bus or bus component, spare parts, hardware, software, instruments etc of the same or equivalent quality and specification, after giving prior written notice to the Authority.

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17.4 Maintenance Requirements

The operator shall procure that at all times during the contract period, each and every bus conforms to the maintenance requirements set forth in Schedule-I (the 'Operation and Maintenance Requirements')

17.5 Damages for breach of Maintenance Obligations

17.5.1 In the event that the operator fails to repair or rectify any defect or deficiency in a bus, as set forth in the Maintenance requirements and within the period specified therein, it shall be entitled to recover damages, to be calculated and paid for each day of delay until the breach is cured, at the rate of 5% (five per cent) of the Performance Security per bus. Recovery of such



damages shall be without prejudice to the rights of the Authority under this agreement, including the right of termination thereof.

17.5.2 The Damages set forth in Clause 17.5.1 may be assessed and specified forthwith by the Authority, provided that the authority may in its discretion, demand a smaller sum as Damages, if in its opinion, the breach has been cured promptly and the Operator is otherwise in compliance with its Maintenance Obligations. The Operator shall pay such Damages forthwith and, in the event, that it contests such Damages, the Dispute Resolution Procedure shall apply.

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20.8 Operational Infractions

20.8.1 The Operator Shall Operate and Maintain the Buses so as to minimise the occurrence of any of the Operational Infractions. An Operational Infraction may be identified by the Authority (or the Authority's Representative) either through inspections of the Buses and Maintenance Depots, User complaints or review of the data generated from the ITS.

20.8.2 The Operator agrees that upon the occurrence of any Operational Infraction, it shall pay to the Authority Damages of an amount corresponding to the breach of such Operational Infraction as set out in Schedule-T. In the event of any repeated Operational Infractions, the rate of Damages payable by the Operator shall increase in accordance with the provisions of Schedule- T.

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ARTICLE-30

COMPENSATION FOR BREACH OF AGREEMENT

30.1 Compensation for default by the Operator

In the event of the Operator being in material default or breach of this Agreement, it shall pay to the Authority by way of compensation, all direct costs suffered or incurred by the Authority as a consequence of such material default or breach, within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof: provided that no compensation shall be payable under this Clause 30.1 for any default or breach in respect of which Damages are expressly specified and payable under this Agreement.

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SCHEDULE-1
(See Clause 16.1.1 & 17.4)
OPERATION AND MAINTENANCE REQUIREMENTS

Bus repair and maintenance generally calls for following activities amongst others at varying intervals / periodicity / Km operated by each bus, requirements varying with bus make, model, etc.:

- (a) Daily washing and cleaning of buses*
- (b) Periodic inspections and rectifications as required.*
- (c) Preventive Maintenance as prescribed by Bus Manufacturer in form of 'maintenance schedules' at certain time intervals /Km plied-such maintenance generally varies with period various sub-systems of a Bus. As an example, periodicity of some such maintenance schedules and main activities therein are illustrated as under:*
 - (i) Daily maintenance fuel, oils / lubricants, coolant, air pressure, air inflation, loose fasteners, fitments etc. - check, top up, tighten, as required.*
 - (ii) Monthly/bi-monthly-[*/[*] Km operation-All activities of earlier schedules of battery, motor, Tyre condition necessary for corrective/preventive actions, etc.*
 - (iii) Quarterly- [*] Km operation All activities of earlier schedules and brake system maintenance including but not limited to inspection, servicing, brake lining change / replacement, servicing of other brake system items, greasing etc.; vehicle electrical, lighting, alignment, etc.*
 - (iv) Six monthly-[*/] Km - All activities of above schedules, and activities related to steering, axles, transmission, tyres, drive line, etc.*
 - (v) Yearly- [*] Km- All above activities and full checking /inspection of bus chassis, bus bodies and their fitments, and taking necessary corrective/preventive actions.*
 - (vi) Bi-annual/annual - Certification of road worthiness of buses -Initial periodicity being after two years for up to certain age then annually.*
 - (vii) Replacement of in-use bus aggregates at about Mean Time Between Failures (MTBF) to prevent failures and consequent costs and inconvenience.*
- (d) Running repairs upon Driver complaints/ report etc.*
- (e) Break down repairs on-site of Bus failures*
- (f) Towing of failed Bus to a depot workshop and repairing the bus failures*
- (g) Accidental vehicles towing and or repairs*



(h) Preparation of buses periodic roadworthiness certification which includes all types of denting bodies / bus body items and operational functionality of chassis items and the buses as a whole.

(i) Bus body and related items repairs/replacements etc. on the basis of periodic inspections / crew reports / general presentation aspects/operational problems reported by commuters any other stake holders, etc.

(l) Major repairs/calibrations of bus aggregates such as battery, motor, rear axle etc. (K) Replacement of failed aggregates with new/serviceable ones.

(k) Removal, dismantling, repairing, assembling and re-fitting of Tyres and rims to buses.

(l) Repair, replacement of electrical, electronic, ITS, lighting, etc. items, subsystems etc.

(m) Removal, replacement of items failing due to operational wear and tear, such as brake and clutch lining, etc.

(n) Repair / replacement of seats, upholstery; cleaning, dusting and washing upholstery.

(o) Denting/painting of buses as per requirement.

(p) Reconditioning of Bus aggregates such as battery, motor, axles, steering system, electrical, etc.

(q) Retrieval of spare parts during/for above processes.

(r) Repair and re-treading of Tyres /repair of tubes.

(s) Major accidental repair of buses including chassis, bus body and related items

(t) Acquisition, storage, inventory management, distribution, scrapping and disposal of spares/items/materials/vehicles etc.

(u) Any other activity related to the operation and maintenance of buses.

(v) Infrastructure and other requirements for repair and maintenance functions of Bus-

(t) Bus depot duly equipped with requisite Plat and equipment, machinery, tools, jigs and fixtures etc.

(ii) Other facilities as under:

(A) Washing facilities complete with washing machine, water storage and treatment facilities, etc.

(B) Charging infrastructure

(C) Service pits/ramps etc

(D) Painting facilities,



(E) Welding-electric arc and oxy-acetylene gas based.

(F) Tyre repair facilities

(G) Air compressor and air inflation facilities

(H) Utilities, administrative, accounts, stores and other related facilities

(I) Breakdown van/recovery/towing vehicle etc.

(iii) Control Centre facilities duly equipped with microprocessors, communications and other related facilities

(iv) Trained staff for various trades and shifts of work

(v) Documents, schedules, manuals etc for maintenance activities; specifications of spares etc.

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Annex-I

Penalty

Bus Operation-Penalty shall be applied per incident

Sr. No	Incidents	Penalty (In Rs.)
1	Operator not responding to directions sent by Authority	100
2	Driver Not stopping at Station designated as per Operating Plan unless authorized by Authority	100
3	Driver Stopping at Station not designated as per Operating Plan unless authorized by Authority	100
4	Use of electronic equipment like Radio or Music system unless authorized by Authority	500
5	Use of Cell phone by Driver while driving	1,000
6	Driver not wearing clean Uniform as Approved by Authority	100
7	Driver in drunken state	3000
8	Misbehaviour by driver with Authority officials	1000



9	<i>Causing accident due to irresponsible driving</i>	3000
10	<i>Driving above speed limit set by Authority</i>	2000
11	<i>Deliberate non adherence of the schedule timings</i>	500
12	<i>Driver committing fatal accident</i>	10,000 (Operator should change the driver before next working day)
13	<i>Insurance Policy not in force</i>	10000 (Liable for termination of agreement)
14	<i>Damage to the any vehicle tracking equipment or any Intelligent Transit Management System installed by Authority/Operator</i>	2000
15	<i>Non availability of Bus as per schedule i.e. 95% availability in both the shifts</i>	3,000 (per Bus per shift)

The Authority may add Incidents and Deficiencies as and when required with notice to the Operator.

These penalties will be revised @5% after every two years

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Penalty for defects in Buses not rectified even after giving notice for 24 hours

<i>Sr. No</i>	<i>Incidents</i>	<i>Penalty (In Rs.)</i>
<i>1</i>	<i>Defective or malfunctioning headlights, rear lights, brake light, turning indicators and parking lights, broken mirrors at the time of Bus Operations</i>	<i>500</i>
<i>2</i>	<i>Fire Extinguisher missing or beyond expiry date</i>	<i>500</i>
<i>3</i>	<i>Broken/Loose/Missing Passenger Seat</i>	<i>500</i>
<i>4</i>	<i>Loose or missing handrails, roof grab rails and/or with Sharp edges</i>	<i>200</i>
<i>5</i>	<i>Visible dents more than 6" beyond 1 week on the bus exterior</i>	<i>200</i>
<i>6</i>	<i>Malfunctioning/ Broken Light in the passenger compartment</i>	<i>200</i>
<i>7</i>	<i>Placing any decorative article/religious statue or symbol or political symbol inside or outside the Bus without the Bus without prior approval of the Authority</i>	<i>200</i>

The Authority may add Incidents and Deficiencies as and when required with notice to the Operator. These penalties will be revised @ 5% after every two years.

7. Accordingly, in view and as per the agreed terms of the Concession Agreement, the SSI has claimed liquidated damages from the Applicant, payable against various material defaults, breaches or failures on the part of the Applicant to perform the obligations under the Concession Agreement.

8. The Applicant has, therefore, sought an Advance Ruling on the following question of law: -



(1) Whether the GST is payable on the liquidated damages paid by the Applicant to SSL for various material defaults, breaches or non-performance of the obligation as per the terms and conditions of the Concession Agreement, under the provisions of GST law?

(2) If the answer to above question is in affirmative, what shall be the applicable rate of GST thereupon and the corresponding Service Accounting Code (SAC)?

(3) If the answer to question no. 1 is in affirmative, whether the applicant is eligible to avail ITC of the GST so paid to SSL on liquidated damages?

9. The Applicant's Interpretation of law is as under: -

(a) Under the GST Regime, in order to determine the taxability of any activity, the foremost test is whether such activity is covered under the definition of supply given under Section 7 of the Act and one has to satisfy that liquidated damages in itself is a supply.

(b) The foremost condition is that there must be a flow of goods or service, which is not satisfied in this case, as the liquidated damages paid by the applicant to SSL are in the nature of compensation/penalty for damages caused to SSL due to breach of contract or non-performance of the obligation of the Concession Agreement by the Applicant.

(c) It is a well-established principal of law that GST is not leviable on compensation paid towards any damage/loss caused to anything/property or to the other party. There is no positive act of supply of services between the parties and there is no agreement between the parties to cause loss or damage by breaching the terms and conditions of an agreement for a consideration.

(d) CBIC has issued Circular No. 178/10/2022-GST dtd. 03.08.2022, clarifying the applicability of taxes on liquidated damages, compensation and penalty arising out of breach of contract etc. This circular has categorically clarified that liquidated damages on account of breach of terms of contract are not subject to tax and such payments do not constitute consideration for a supply and thus not taxable.

(e) Reference is also drawn to CBIC Circular No. 245/02/2025-GST dtd. 28.01.2025, wherein it has been clarified that penal charges levied by banks and NBFCs are not subject to GST.



(f) SMC had inserted damage clause in the Concession Agreement in order to recover the loss or damage caused to SMC due to breach in conditions, like non-maintenance of buses by the Applicant, driver causing accident during the operation of the bus, damage caused to the bus due to any reason, operational infractions etc. These charges are not being paid by the Applicant to the SSL. owing to any supply received from SSL. SSL cannot be said to tolerate or intentionally allow the breaches of the conditions of agreement by the applicant. No recipient of any service would ever allow intentional loss or damage to be caused to him in lieu of a compensation or penalty from the other party.

(g) Reliance is placed on the following decisions

- (i) Re: M/s GSPC (JPDA) Ltd [Guj/GAAAR/APPEAL/2025/02 dtd. 22.01.2025]
- (ii) Re: M/s Achampet Solar Private Limited [Order-in-Appeal No. AAAR/10/2022 dtd. 19.10.2022]
- (iii) Re: Rites Limited [(2023) 3 Centax 205 (AAR-GST-Haryana)]
- (iv) South Eastern Coalfields Ltd Vs CCE, Raipur [2021 (55) GSTL 549 (Tri-Del)]
- (v) M/s Neyveli Lignite Corporation Limited [2021(530 GSTL 401 (Tri-Chennai)]
- (vi) M/s M.P. Poorva Kshetra Vidyut Vitran Co Ltd [2021]126 taxmann.com 182
- (vii) Bharti Cutler Hammer Ltd Vs CCE, New Delhi-1998(99) ELT 436 (Tri)
- (viii) Religare Securities Ltd. Vs CST, New Delhi -2014 (36) STR 937

10. Personal hearing was granted on 24.09.2025 wherein Shri Atul Gupta and Shri Kavish Goyal, Chartered Accountants appeared on behalf of the applicant and reiterated the facts & grounds as stated in the application.

Discussion and findings

11. 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.



12. We have considered the submissions made by the applicant in their application for advance ruling as well as the submissions made both oral and written 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.

13. We find that a Request for Proposal for Selection of Bus Operator for procurement, operation and maintenance of 5690 Electric buses under the National E-Bus Program (NEBP)-Phase-I dtd. 21.09.2022 (RFP) was invited by Convergence Energy Services Limited (CESL), which was ultimately awarded to M/s JBM Ecolife Mobility Private Ltd for the city of Surat. This project was for 150 E-buses and was awarded vide LoA dtd. 24.07.2023 by CESL to M/s JBM Ecolife Mobility Private Ltd. on behalf of Surat Municipal Corporation (SMC). M/s JBM Ecolife Mobility Private Ltd. incorporated the applicant as a Special Purpose Vehicle to undertake and perform the execution of the project awarded to M/s JBM Ecolife Mobility Private Ltd. A Concession Agreement dtd. 21.08.2023 was entered into by the applicant and SMC. The project was transferred to M/s Surat Sitilink Limited (SSL) for O & M purposes by SMC under a tripartite agreement dtd. 05.08.2024 executed between the applicant, SSL and SMC. Thus, finally the engagement is between the applicant and SSL. and the terms of the arrangement needs to be determined in accordance with the RFP, LoA and the Concession Agreement.

14. We find that the applicant wants a ruling as to whether GST is payable on the liquidated damages paid in the form of Compensation by the Applicant to SSL, for various material defaults, breaches or failures on the part of the applicant to perform the obligations under the Concession Agreement.

15. Before going into the issue on merits, we find that the person liable to pay GST on liquidated charges (if payable) would be SSL, as it is the entity which would be tolerating the Act. The definition of Advance ruling as per Clause (a) of Section 95 of the Act, is as under:-

"Advance ruling" means a decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100 or of Section 101C in



relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant.

Thus, as per the above definition, an advance ruling is a decision provided by the Authority or Appellate authority in relation to the supply of goods or service under taken or proposed to be under taken by the applicant. In other words, the applicant seeking Advance Ruling should be one who supplies the goods or services, which is not the case in this matter. Therefore, we have to first decide whether the Applicant has any *locus standi* to file such an Application.

15.1 We find that a similar issue came up before the West Bengal Authority for Advance Ruling in the case of *Anmol Industries* and the Authority held that the applicant i.e M/s Anmol Industries, being the recipient of services has no locus standi to file an application before the Authority. M/s Anmol Industries approached the High Court of Calcutta and the Division Bench of the High Court in an intra court appeal [2023 (75) G.S.T.L. 46 (Cal.) / (2023) 6 Centax 6 (Cal.)] held that the definition of 'applicant' under Section 95(c) of CGST Act, 2017 is quite broad and includes any person registered or desirous of obtaining registration under Act *ibid*. Further, the Appellants were registered under Act and therefore met said criterion. The matter was, thereafter, remanded to the West Bengal Authority for Advance Ruling to decide the application on merits. We find that the applicant is also registered under GST. Therefore, in view of the said judgement of the High Court, we hold that the Applicant is eligible to file an application for Advance Ruling on the questions, as mentioned *supra*, raised by the Applicant. We now move on to the merits of the case.

16. On going through the Concession Agreement dtd. 21.08.2023 entered into between the SMC and the applicant, we find that the circumstances in which the various liquidated damages are to be paid by the applicant is mentioned in Article 17.5, 20.8 and 30.1, which has already been reproduced earlier in this order. We also find that as per the Interpretation Clause 1.2.1 (y), the damages payable by the party, which are set forth in the Agreement, are the genuine pre-estimated loss and damage likely to be suffered and incurred by the party entitled to receive the same. We also find that the Scope of the Agreement is to design, manufacture, procure and supply the buses as per the specifications specified; operation and maintenance of buses. Develop, equip, operate and maintain the Depot sites as specified in Schedule-A and



procurement and installation of the charging Infrastructure at the maintenance Depots for charging the buses. For all these aspects, the Agreement lays down certain obligations to be fulfilled by the Applicant and also lays down damages in case the Applicant fails to perform its obligations.

17. Article 4.1.3 sets out the Conditions Precedent to be satisfied by the Applicant and Article 4.4 lays down the damages to be paid by the Applicant in case of delay. The damages to be paid will be an amount calculated at the rate of 0.1% of the Performance Security for each day's delay until the Conditions Precedent are fulfilled, subject to a maximum amount equal to the Bid Security. Article 5 lists the various obligations of the Applicant, which apart from listing out the general obligations, also contains other obligations relating to the Project Agreements, Change in Ownership, employment of foreign nationals, employment of personnel, Advertising and Branding of Buses, risk or loss or damage to the bus, obligations relating to information, relating to aesthetic quality, relating to noise control, facilities for physically challenged and elderly persons and relating to charging infrastructure. Article 9 deals with Performance security according to which the Applicant shall for the performance of its obligations, till the expiry of the Contract period, provide to SMC an irrevocable and unconditional guarantee from a bank for a sum equivalent to Rs. 6.36 crores. Article 9.2 provides that the SMC will be entitled to encash and appropriate, from time to time and as many times as required by the SMC from the Performance Security, such amounts as may be due to it under the Agreement, including in respect of any Damages payable by the applicant for failure to perform its obligations under the agreement. Article 13 deals with Procurement of Buses. Article 13.9 provides that if the Applicant is unable to procure any bus or its procurement is delayed by a period exceeding 60 days from the scheduled date of procurement, the applicant shall pay damages at the rate of 0.1 % of the Performance security for each day of delay. Article 14 deals with the Entry into Commercial Service of the Bus. As per Article 14.1.5, prior to Entry, if during the Inspection of the bus, any minor defects and deficiencies are noticed and if they are not rectified within 30 days from the date of receipt of the report, the applicant shall pay damages at the rate of 1% of the Performance security for each day of delay. As per Article 14.2.2, for delay in the Commercial Operation Date (COD), the applicant shall pay damages at the rate of 0.1 % of the Performance security for each day of delay until COD is achieved. Article 16 deals with the Operation of Buses. The specific details of the operation and maintenance requirements are

provided in Schedule-I of the agreement, which has already been reproduced in Para 6, supra. The details of the penalty that would be imposed on the applicant, for various violations in the operation of buses is listed in Annexure-I. Article 17 deals with maintenance of buses and Article 17.4 deals with the maintenance requirements set forth in Schedule-I, which has also been reproduced in Para 6, supra. Article 17.5 deals with damages for breach of Maintenance Obligations, which in the event that the applicant fails to repair or rectify within the period specified therein, they would be liable for Damages at the rate of 5% of the Performance security per bus. Article 20 deals with Key Performance Indicators and Article 20.2 deals with Reliability of the Buses. As per Article 20.2.4, in case the Reliability of the bus, as calculated by a specific formula, is more than 1 (the assured liability), damages at the rate of 1 % of the Performance security would be payable. Further, as per Article 20.3.5, for every 1% reduction in the Availability as compared to the Guaranteed Availability, damages at the rate of 5% of Monthly fees would be leviable. As per Article 20.4.5, damages would be payable for a failure to achieve the Guaranteed Start Punctuality or the Guaranteed Arrival Punctuality. Similarly, there are damages for a failure to achieve the Guaranteed Trip Frequency. General safety of the fleet is measured in terms of the number of accidents per 1 lakh kilometres. As per Article 20.6.4, if this is not followed, damages at the rate of 1% of the Performance security has to be paid. Similar damages are also payable for Operational Infractions (Article 20.8.1).

18. We find that apart from the damages mentioned above, Article 30 deals with the compensation for breach of the agreement, according to which in the event of the applicant being in material default or breach of the Agreement, all direct costs suffered or incurred by the Authority as a consequence of such material default or breach shall be paid. We also find that the Applicant has also listed the Penalties which are payable for each infraction and deficiencies during the operation of buses, which range from Rs. 100 to Rs.10,000 depending upon the infraction, which has also been reproduced in Para 6 supra.

19. We find that as per Black's Law Dictionary *Liquidated Damages* is the cash component agreed to by a signed, written contract for breach of contract, payable to the aggrieved party. A perusal of the various Articles of the Contract, which has been discussed in the foregoing paras, show that they are in the nature of liquidated damages as they are a pre-agreed fixed sum of money payable for breach of the contract. We also find that CBIC has issued Circular Number 178/10/2022-GST,



dated 3-8-2022, clarifying the GST applicability on liquidated damages, compensation and penalty arising out of breach of contract. The relevant paragraphs are reproduced below: -

“Liquidated Damages

7.1 Breach or non-performance of contract by one party results in loss and damages to the other party. Therefore, the law provides in Section 73 of the Contract Act, 1972 that when a contract has been broken, the party which suffers by such breach is entitled to receive from the other party compensation for any loss or damage caused to him by such breach. The compensation is not by way of consideration for any other independent activity; it is just an event in the course of performance of that contract.

7.1.1 It is common for the parties entering into a contract, to specify in the contract itself, the compensation that would be payable in the event of the breach of the contract. Such compensation specified in a written contract for breach of non-performance of the contract or parties of the contract is referred to as liquidated damages. Black's Law Dictionary defines 'Liquidated Damages' as cash compensation agreed to by a signed, written contract for breach of contract, payable to the aggrieved party.

7.1.2 Section 74 of the Contract Act, 1972 provides that when a contract is broken, if a sum has been named or a penalty stipulated in the contract as the amount or penalty to be paid in case of breach, the aggrieved party shall be entitled to receive reasonable compensation not exceeding the amount so named or the penalty so stipulated.

7.1.3 It is argued that performance is the essence of a contract. Liquidated damages cannot be said to be a consideration received for tolerating the breach or non-performance of contract. They are rather payments for not tolerating the breach of contract. Payment of liquidated damages is stipulated in a contract to ensure performance and to deter non-performance, unsatisfactory performance or delayed performance. Liquidated damages are a measure of loss and damage that the parties agree would arise due to breach of contract. They do not act as a remedy for the breach of contract. They do not restitute the aggrieved person. It is further argued that a contract is entered into for

execution and not for its breach. The liquidated damages or penalty are not the desired outcome of the contract. By accepting the liquidated damages, the party aggrieved by breach of contract cannot be said to have permitted or tolerated the deviation or non-fulfilment of the promise by the other party.

7.1.4 In this background a reasonable view that can be taken with regard to taxability of liquidated damages is that where the amount paid as 'liquidated damages' is an amount paid only to compensate for injury, loss or damage suffered by the aggrieved party due to breach of the contract and there is no agreement, express or implied, by the aggrieved party receiving the liquidated damages, to refrain from or tolerate an act or to do anything for the party paying the liquidated damages, in such cases liquidated damages are mere a flow of money from the party who causes breach of the contract to the party who suffers loss or damage due to such breach. Such payments do not constitute consideration for a supply and are not taxable.

7.1.5 Examples of such cases are damages resulting from damage to property, negligence, piracy, unauthorized use of trade name, copyright, etc. Other examples that may be covered here are the penalty stipulated in a contract for delayed construction of houses. It is a penalty paid by the builder to the buyers to compensate them for the loss that they suffer due to such delayed construction and not for getting anything in return from the buyers. Similarly, forfeiture of earnest money by a seller in case of breach of 'an agreement to sell' an immovable property by the buyer or by Government or local authority in the event of a successful bidder failing to act after winning the bid, for allotment of natural resources, is a mere flow of money, as the buyer or the successful bidder does not get anything in return for such forfeiture of earnest money. Forfeiture of Earnest money is stipulated in such cases not as a consideration for tolerating the breach of contract but as a compensation for the losses suffered and as a penalty for discouraging the non-serious buyers or bidders. Such payments being merely flow of money are not a consideration for any supply and are not taxable. The key in such cases is to consider whether the impugned payments constitute consideration for another independent contract envisaging tolerating an act or situation or refraining from doing any act or situation or simply doing an act. If the answer is yes, then it constitutes a 'supply' within the meaning of the Act, otherwise it is not a "supply".



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.

20. As per the above Circular, where the amount paid as damages, is an amount paid only to compensate for injury, loss or damage suffered by the aggrieved party due to breach of the contract and there is no agreement express or implied, by the



aggrieved party receiving the liquidated damages, to refrain from or tolerate an act or to do anything for the party paying the liquidated damages, in such cases liquidated damages are mere a flow of money from the party who causes breach of the contract to the party who suffers loss or damage due to such breach. Such payments do not constitute consideration for a supply and are not taxable. We do not find anything in the Concession Agreement entered into by the Appellant and the SMC which show that SMC is tolerating an act of the Appellant by recovering the damages from the applicant. All the Articles in the agreement reveal that it is only a compensation for the injury, loss or damage suffered by the SMC for the breach of the conditions mentioned in the contract be it the delay in procurement of buses or the violation of the terms in the operation and maintenance of buses. The damages payable by the party, has also been interpreted in the Concession Agreement vide Interpretation Clause 1.2.1 (y) as the genuine pre-estimated loss and damage likely to be suffered and incurred by the party entitled to receive the same. Therefore, we hold that the liquidated damages payable by the Applicant to SSL for various material defects, breaches or non-performance of the obligations as per the terms and conditions of the Concession Agreement are not taxable.

21. We also find that in similar situations in the case of *Re:GSPC* ([2025] 172 taxmann.com 325), the Gujarat Appellate Authority for Advance Ruling had held that the settlement fees on termination of the contract is a consequence of breach of Production sharing Contract and not taxable. In *Re: Achampet Solar (P) Ltd*, ([2023]148 TAXMANN.COM 222 (AAAR-Telangana)), the Telangana Appellate Authority for Advance Ruling held that the recovery of liquidated damages for delay in the construction of solar power project is not taxable in view of CBIC's Circular No. 178/10/2022-GST, dated 3-8-2022. In *Southern Eastern Coal Fields Vs CCE* ([2021] 124 taxmann.com 174 (New Delhi-CESTAT)), the Tribunal while dealing with Section 66E(c) of the Finance Act, which dealt with 'tolerating an act', held as under:-

'27. It is trite that an agreement has to be read as a whole so as to gather the intention of the parties. The intention of the appellant and the parties was for supply of coal; for supply of goods; and for availing various types of services. The consideration contemplated under the agreements was for such supply of coal, materials or for availing various types of services. The intention of the parties certainly was not for flouting the terms of the agreement so that the penal clauses get attracted. The penal clauses are in



the nature of providing a safeguard to the commercial interest of the appellant and it cannot, by any stretch of imagination, be said that recovering any sum by invoking the penalty clauses is the reason behind the execution of the contract for an agreed consideration. It is not the intention of the appellant to impose any penalty upon the other party nor is it the intention of the other party to get penalized.'

22. We find that CBIC vide Circular No. 245/02/2025-GST dtd. 28.01.2025 has also clarified on the applicability of penal charges. Though the clarification is in respect of penal charges levied by Regulated Entities like banks and non-financial companies for noncompliance with the loan terms to inculcate a sense of credit discipline, we feel that the same would equally apply in the instant case also. As can be seen the penal charges are levied on the Applicant for maintaining a discipline in the operation and maintenance of vehicles. Therefore, these charges are for the breach of the Agreement, wherein the Applicant is expected to design, manufacture, procure and supply the buses confirming to the specification and standards set forth in Schedule-B of the Agreement; operate and maintain the buses in accordance with the provisions of the Agreement; develop, equip, operate and maintain the Maintenance depots and procurement and installation of the charging infrastructure at the Maintenance depots.

23. In view of the above, we rule as under: -

RULING

Q.1 Whether the GST is payable on the liquidated damages paid by the Applicant to SSL for various material defaults, breaches or non-performance of the obligation as per the terms and conditions of the Concession Agreement, under the provisions of GST law?

A.1 No, for the reasons mentioned aforesaid.

Q.2 If the answer to above question is in affirmative, what shall be the applicable rate of GST thereupon and the corresponding Service Accounting Code (SAC)?

A.2 Not required to be answered in view of Ans 1.




Q.3 If the answer to question no. 1 is in affirmative, whether the applicant is eligible to avail ITC of the GST so paid to SSL on liquidated damages?

A.3 Not required to be answered in view of Ans 1.


(Sushma Vora)
Member (SGST)

Place: Ahmedabad
Date: 03.11.2025




(Vishal Malani)
Member (CGST)