

**GOA AUTHORITY FOR ADVANCE RULING**

[Constituted under Section 96 of the Goa Goods and Services Tax Act, 2017 (Goa Act 4 of 2017) read with Rule 103 of the Goa Goods and Services Tax Rules, 2017]

**BEFORE THE BENCH OF**

Shri. Vishant S. N. Gaunekar, Additional Commissioner of SGST, Goa.  
Smt. Lakshmi Radhakrishnan, Joint Commissioner of CGST, Goa.

**Advance Ruling No.** GOA/GAAR/02 of 2024-25/ **2589**

Name of the Applicant	<b>Rajendra S. Bakhale</b>
Address	<b>Karma Heights, 2<sup>nd</sup> Floor, Mundvel, Vaddem, Vasco, South Goa. 403802</b>
GSTIN	<b>Unregistered Person (URP)</b>
Date of Application	<b>09.09.2024</b>
Under Section 97(2) of the CGST/GGST Act, 2017 under which question raised	<p><b>1. Whether the Compensation received by the Applicant basis the order passed by the Arbitrator qualifies as “Actionable claims” falling under Schedule III of the CGST Act?</b></p> <p><b>2. If not qualified as “Actionable claims” what is the time of supply?</b></p>
Dates of Hearing	<b>08.04.2025 &amp; 28.07.2025</b>
Persons Present for Hearing	<b>Shri Amruth Rao, Ld. Chartered Accountant for the Applicant.</b>

## **PROCEEDINGS**

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Goa Goods and Services Tax Act, 2017)

The present application has been filed under Section 97 of the Central Goods and Services Tax Act, 2017 and the Goa Goods and Services Tax Act, 2017 (hereinafter referred to as the '**SGST Act**' and '**CGST Act**') by the applicant **Shri. Rajendra Bakhale, Karma Heights, 2<sup>nd</sup> Floor, Mundvel, Vaddem, Vasco, South Goa - 403802** seeking an Advance Ruling in respect of the following questions:

- Determination of time and value of supply of goods or services or both.
- Whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.

## **BRIEF FACTS**

### **Applicants Background:**

Shri. Rajendra Bakhale, Karma Heights, 2<sup>nd</sup> Floor, Mundvel, Vaddem, Vasco, South Goa - 403802, is an unregistered person under GST and does not hold GSTIN. The Applicant is in possession of a dockyard named "UNDIR BANDORA DOCK" in respect of which the applicant is seeking through the advance ruling for the purpose of determination of the following question.

### **CLARIFICATION REQUIRED ON THE BELOW POINTS:**

The applicant has sought advance ruling on the below points in advance ruling application.

1. Whether the Compensation received by the Applicant basis the order passed by the Arbitrator qualifies as "Actionable claims" falling under

Schedule III of the CGST Act?

2. If not qualified as “Actionable claims” what is the time of supply?

### **INTERPRETATION OF LAW AND/OR FACTS BY APPLICANT**

We, Rajendra Bakhale, are a registered taxpayer under GST and my registration number is 302400000054ARH. The applicant is in possession of a dockyard named “UNDIR BANDORA DOCK” located at Bandora, Ponda, Goa. The applicant had vide a Memorandum of Understanding dated 22<sup>nd</sup> February, 2018 granted the use of the dockyard for construction/building boats to Mr John Fernandes for a period of 60 months from 22<sup>nd</sup> February 2018 to 31<sup>st</sup> January, 2023.

Among other disputes, one of the dispute was illegal possession of the dockyard despite termination of the contract under various clauses of the MOU. Basis the MOU the applicant filed a claim with the District Court in 2020. The District Court referred the matter to an Arbitrator for resolution as per the terms of the MOU. The arbitrator heard the matter and vide order dated 16.09.2022 accepted the claim of the Applicant and ordered the Licencee to pay the Applicant Rs. 170.25 lakhs as compensation for illegal possession of the dockyard. The compensation of Rs. 170.25 lakhs was towards the following.

1. Rs. 19.65 lakhs (Rs. 36.15 lakhs less Rs. 16.50 lakhs paid earlier in installments) for the period of non-payment of dues from 01.02.2018 till 31.12.2019
2. Rs. 150.60 lakhs for illegal possession of the dockyard from the date of termination i.e. 01.01.2020 till the date of filing the claim application @ Rs 15,000 per day.

The Licensee thereafter has filed an Appeal against the order on 05.12.2022 at the Commercial Court, Ponda, Goa. Pending the decision of the Commercial

Court the Applicant filed an application for execution of the arbitrator's order at the commercial Court.

The licensee thereafter on 06.05.2024 has without prejudice to his rights given a cheque of Rs. 25 lakhs to the applicant. The Applicant has encashed the cheque on 10.05.2024.

### **PERSONAL HEARING**

The personal hearings were held on 11.10.2024; 09.07.2025; 22/07/2025 and 28/07/2025.

Shri Amruth Rao, Ld. Chartered Accountant duly authorized representative of the applicant appeared during personal hearing before this authority and reiterated the points deliberated in written submissions made along with application.

Further on being questioned about why the applicant has not obtained regular registration under GST, the A. R. responded that the applicant has not crossed the turnover threshold for compulsory registration in any of the previous financial years and therefore the taxpayer has not obtained regular registration under GST. The A. R. orally stated that he assures to obtain compulsory registration under GST as soon as the turnover threshold limit is reached by the applicant.

### **FINDINGS AND DISCUSSIONS**

In the present matter of the applicant Shri. Rajendra Shrinivas Bakhale is in possession of dockyard named "UNDIR BANDORA DOCK" located at Bandora, Ponda, Goa. The applicant has produced copy of Memorandum of Understanding (MoU) made on 22<sup>nd</sup> February 2018 between the applicant and one Mr. John Fernandes. The said memorandum of understanding is for granting the use of dockyard for construction /building boats for a monthly consideration of Rs. 1,

50, 000. As per the said MoU, the applicant has granted the use of said dock for the period of 60 months with effect from 22<sup>nd</sup> February 2018 till 31<sup>st</sup> January 2023.

Further, as per para 4 of the said MoU, said Mr. John Fernandes was required to handover the peaceful, vacant possession of the said dock to the applicant after the expiry of the period stipulated in the MoU. Further, as per said para, the failure to handover the peaceful possession to the applicant was to be treated as illegal occupation of the said dock and Rs. 15, 000 per day was payable to the applicant. From the copy of the Final Arbitral Award dated 24<sup>th</sup> October 2024 placed on record by the applicant, it appears that the above mentioned MoU was terminated by the notice dated 18/12/2019 with effect of 31/12/2019 (due from June 2018 to December 2019).

Additionally, as per an Interim Order of the Tribunal dated 16/09/2022, the respondent was directed to pay Rs. 170.25 lakhs to applicant. Further, the respondent was directed to stop use and occupation of the dock and vacate the same on or before 15/10/2022.

As per the Final Arbitral Award dated 24<sup>th</sup> October 2024, the respondent was directed to vacate dock and handover its possession to the applicant and pay Rs. 15, 000/- per day from 1<sup>st</sup> January 2020 till the dock is vacated in addition of Rs. 29, 15, 000/-.

In this matter, it would be proposer to take note of a Circular No. 178/10/2022-GST dated 3<sup>rd</sup> August 2022 relating to the subject 'GST applicability on liquidated damage, compensation and penalty as arising out of breach of contract or other provisions of law'.

The relevant extract of said Circular which are relevant to this issue are reproduced herein below for ready reference.

“4. In Service Tax law, ‘Service’ was defined as any activity carried out by a person for another for consideration. As discussed in service tax education guide, the concept ‘activity for a consideration’ involves an element of contractual relationship wherein the person doing an activity does so at the desire of the person for whom the activity is done in exchange for a consideration. An activity done without such a relationship i.e., without the express or implied contractual reciprocity of a consideration would not be an ‘activity for consideration’. The element of contractual relationship, where one supplies goods or services at the desire of another, is an essential element of supply.

5. The description of the declared service in question, namely, agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act in para 5 (e) of Schedule II of CGST Act is strikingly similar to the definition of contract in the Contract Act, 1872. The Contract Act defines ‘Contract’ as a set of promises, forming consideration for each other. ‘Promise’ has been defined as willingness of the ‘promisor’ to do or to abstain from doing anything. ‘Consideration’ has been defined in the Contract Act as what the ‘promisee’ does or abstains from doing for the promises made to him.

6. This goes to show that the service of agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act is nothing but a contractual agreement. A contract to do something or to abstain from doing something cannot be said to have taken place unless there are two parties, one of which expressly or impliedly agrees to do or abstain from doing something and the other agrees to pay consideration to the first party for doing or abstaining from such an act. There must be a necessary and sufficient nexus between the supply (i.e. agreement to do or to abstain from doing something) and the consideration.

6.1 A perusal of the entry at serial 5(e) of Schedule II would reveal that it comprises the aforementioned three different sets of activities viz. (a) the

obligation to refrain from an act, (b) obligation to tolerate an act or a situation and (c) obligation to do an act. All the three activities must be under an "agreement" or a "contract" (whether express or implied) to fall within the ambit of the said entry. In other words, one of the parties to such agreement/contract (the first party) must be under a contractual obligation to either (a) refrain from an act, or (b) to tolerate an act or a situation or (c) to do an act. Further some "consideration" must flow in return from the other party to this contract/agreement (the second party) to the first party for such (a) refraining or (b) tolerating or (c) doing. Such contractual arrangement must be an independent arrangement in its own right. Such arrangement or agreement can take the form of an independent stand-alone contract or may form part of another contract. Thus, a person (the first person) can be said to be making a supply by way of refraining from doing something or tolerating some act or situation to Circular No. 178/10/2022-GST another person (the second person) if the first person was under an obligation to do so and then performed accordingly.

**Agreement to do or refrain from an act should not be presumed to exist**

7. There has to be an express or implied agreement; oral or written, to do or abstain from doing something against payment of consideration for doing or abstaining from such act, for a taxable supply to exist. An agreement to do an act or abstain from doing an act or to tolerate an act or a situation cannot be imagined or presumed to exist just because there is a flow of money from one party to another. Unless there is an express or implied promise by the recipient of money to agree to do or abstain from doing something in return for the money paid to him, it cannot be assumed that such payment was for doing an act or for refraining from an act or for tolerating an act or situation. Payments such as liquidated damages for breach of contract, penalties under the mining act for excess stock found with the mining company, forfeiture of salary or payment of amount as per the employment bond for leaving the employment before

*the minimum agreed period, penalty for cheque dishonour, etc. are not a consideration for tolerating an act or situation. They are rather amounts recovered for not tolerating an act or situation and to deter such acts; such amounts are for preventing breach of contract or non-performance and are thus mere 'events' in a contract. Further, such amounts do not constitute payment (or consideration) for tolerating an act, because there cannot be any contract: (a) for breach thereof, or (b) for holding more stock than permitted under the mining contract, or (c) for leaving the employment before the agreed minimum period or (d) for doing something leading to the dishonour of a cheque. As has already been stated, unless payment has been made for an independent activity of tolerating an act under an independent arrangement entered into for such activity of tolerating an act, such payments will not constitute 'consideration' and hence such activities will not constitute "supply" within the meaning of the Act. Taxability of these transactions is discussed in greater detail in the following paragraphs.*

### **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 reconstitute 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".

In present case, the applicant in its written submissions dated 16/07/2025 has relied on a decision by the Honourable Supreme Court of India in the matter of M/s. Infrastructure Leasing and Financial Services Ltd. V/s. HDFC Bank Ltd. & Others {Civil Appellate jurisdiction, Civil Appeal no. (5)4708 of 2022}.

The Applicant has also placed reliance on the Judgement in the case of State of Bihar V/s. Maharajadhiraja Sir Kameshwar Singh {952 SCR 889,910}. As per the said Judgements, it is held that arrears of rent is an actionable claim.

The GST law assigns the meaning to “actionable claims” as defined u/s. 3 of the Transfer of Property Act, 1882.

The Transfer of Property Act, 1882 defines Actionable Claims as-

*‘A claim to any other debt secured by mortgage of immovable property or by hypothecation or pledge of movable property not in the possession, either actual or constructive, of the claimant, which the civil court recognize as affording grams of relief, whether such debt or beneficial interest be existent, accruing, conditioner or contingent.’*

Further, the GST Law defines ‘specified actionable claims’ under section 2 (102A) of the GST law. The extract of the same are reproduced as under.

## **Section 2 - definitions**

*‘(102A) “specified actionable claim” means the actionable claim involved in or by way of-*

- (i) Betting*
- (ii) Casinos*
- (iii) Gambling*
- (iv) Horse racing*
- (v) Lottery or*
- (vi) Online money gambling’*

Further, the Schedule III appended to the GST law regarding 'activities or transaction which shall be treated neither as supply of goods or a supply of services' states at serial no. 6 that actionable claims other than specified actionable claims shall not be supply under GST.

The stand of the applicant that amount receivable by him under the Arbitral award is not covered by Entry 5(e) of Schedule II appended to GST law is found to be proper and is accepted as per Circular no. 178/10/2022-GST dated 3<sup>rd</sup> August 2022.

In the present matter, the Arbitrator has awarded the applicant a sum of Rs. 29, 15, 000/- along with Rs. 15, 000/- per day from 01/01/2020 till dock is vacated. From the above discussion and as per the settled view by Honourable Courts that rent receivable / unrealized rent / Arrears of rent are actionable claims. This is further clarified vide Circular No. 178/10/2022-GST dated 3<sup>rd</sup> August 2022.

In view of above facts and for above recorded reasons, this Authority finds that the Arbitral Award by the Arbitrator is on account of arrears of rent and damages for unauthorized use of dock despite of termination of lease/leave and license.

Thus, the money receivable is treated as an actionable claim and since it is not covered under the definition of 'specified actionable claims' as laid down u/s. 2(102A) of GST Law, the same is not a supply under GST.

Therefore, the amount awarded to the applicant vide final Arbitral Award dated 24<sup>th</sup> October 2024 shall be treated as an actionable claim and since is not covered under definition of 'specified actionable claims' as laid down u/s. 2(102A) of GST Law is not taxable under GST.

This decision is based on whatever decisions and documents are placed on record

by the applicant and subject to the final decision of the Hon'ble Civil Court where presently the matter is sub-judice.

**RULING**

**ADVANCE RULING UNDER SECTION 98 OF THE CGST/ GGST  
ACT, 2017.**

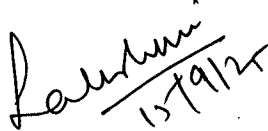
The ruling so sought by the applicant is accordingly answered as under.

- 1. Whether the Compensation received by the Applicant basis the order passed by the Arbitrator qualifies as "Actionable claims" falling under Schedule III of the CGST Act?**

Yes, the amount received by the Applicant on the basis the Arbitral Award passed by the Arbitrator qualifies as "Actionable claims" falling under Schedule III of the CGST and Goa GST Acts.

- 2. If not qualified as "Actionable claims" what is the time of supply?**

In view of above ruling this is not applicable.

  
15/09/25

(Lakshmi Radhakrishnan)

CGST Member

Dated: - 15/09/2025

Place: - Panaji, Goa

To,

**Shri. Rajendra S. Bakhale,**

**Karma Heights, 2<sup>nd</sup> Floor, Mundvel, Vaddem, Vasco, South Goa. 403802.**

  
15/09/2025

(Vishant S. N. Gaunekar)

SGST Member

Copy to:-

1. The Commissioner of State GST, Altinho, Panaji, Goa;
2. The Commissioner of Central GST, Patto Plaza, Panaji, Goa;
3. The Dy. Commissioner of State Tax, Vasco Ward, Vasco-da-Gama;
4. The State Tax Officer, Vasco Ward, Vasco-Da-Gama, Goa;
5. The Superintendent of CGST, Vasco Range, Margao, Goa;
6. Office File;
7. Guard File.

