

AUTHORITY FOR ADVANCE RULING, TAMIL NADU
No.207, 2nd FLOOR, PAPJM BUILDING, No.1, GREAMS ROAD,
CHENNAI 600 006.

ORDER UNDER SECTION 98(4) OF THE CGST ACT, 2017 AND
UNDER SECTION 98(4) OF THE TNGST ACT, 2017

Members present:

Shri C. Thiyagarajan, I.R.S., Additional Commissioner/Member (CGST), Office of the Commissioner of GST and Central Excise, Audit I Commissionerate, Chennai - 600 101.	Shri B. Suseel Kumar, B.E., MBA., Joint Commissioner/Member (SGST), Authority for Advance Ruling, Tamil Nadu, Chennai - 600 006.
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Advance Ruling No. 37/ARA/2025, dated 24.09.2025

- 1. Any appeal against this Advance Ruling order shall lie before the Tamil Nadu State Appellate Authority for Advance Ruling, Chennai under Sub-Section (1) of Section 100 of CGST Act 2017/TNGST Act 2017, within 30 days from the date on which the ruling sought to be appealed is communicated.*
- 2. In terms of Section 103(1) of the Act, Advance Ruling pronounced by the Authority under Chapter XVII of the Act shall be binding only-*
 - (a) On the applicant who had sought it in respect of any matter referred to in sub-section (2) Section 97 for advance ruling.*
 - (b) On the concerned officer or the Jurisdictional Officer in respect of the applicant.*
- 3. In terms of Section 103(2) of the Act, this Advance Ruling shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.*
- 4. Advance Ruling obtained by the applicant by fraud or suppression of material facts or misrepresentation of facts, shall render such ruling to be void ab initio in accordance with Section 104 of the Act.*
- 5. The provisions of both the Central Goods and Services Tax Act and the Tamil Nadu Goods and Services Tax Act (herein referred to as the Act) are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Services Tax Act would also mean a reference to the same provisions under the Tamil Nadu Goods and Services Tax Act.*

GSTIN Number, if any/User id	33AAACO1598A1ZU
Legal Name of Applicant	M/s. OIL AND NATURAL GAS CORPORATION LIMITED
Trade Name of Applicant	M/s. OIL AND NATURAL GAS CORPORATION LIMITED
Registered Address/ Address provided while obtaining User id	Floor : 6-11, 17/9, CMDA Tower-1, Gandhi Irwin Road, Egmore, Chennai – 600 008.
Details of Application	AAR Application No. 01/2025/ARA received from the applicant on 02.01.2025.
Jurisdictional Officer	State – Division – Large Taxpayers Unit, Zone - LTU-Deputy Commissioner-3 Circle- LTU -Deputy Commissioner-3 Centre – Chennai North Commissionerate Division – Egmore Range – Range-III
Nature of activity (s) (proposed/present) in respect of which advance ruling sought for A. Category B. Description (in brief)	<p>Factory/ Manufacturing</p> <p>Limited Company in manufacturing, buying and selling of Oil & Natural Gas.</p> <p>(i) The Applicant is engaged in the manufacture and supply of crude oil and natural gas, which are supplied through pipelines located at delivery points across India. In the State of Tamil Nadu, the Applicant is registered vide GSTIN 33AAACO1598A1ZU, through which the present Application is being filed.</p> <p>(ii) The Applicant Company has entered into a Pan India Gas Sales and Transportation Agreement dated 02.07 dated 02.07.2021 with GAIL. Vide the said Agreement, the Applicant Company has agreed to sell and deliver, APM and Non-APM Natural Gas produced from Government nominated fields, to GAIL, as per terms and conditions agreed therein. The applicant provide a tentative Annual Production Quantity of applicant's APM and Non-APM Gas to the buyer. Based on that M/s. GAIL shall pay the Seller, the price for the actual quantity of gas off taken or Quarterly Minimum Guaranteed Off-take charges on quarterly basis, which amount is equal to 90% of the adjusted Quarterly</p>

	<p>Contract Quantity on basis of the Daily Contract Quantity, at the delivery points.</p> <p>(iii) Presently, in terms of Section 9(2) of the CGST Act, supply of natural gas is not subject to levy of GST. On the said sale, pre-GST levies i.e., VAT or CST, as the case may be are applicable.</p> <p>(iv) Further, in case, GAIL fails to off-take 90% of the agreed contracted quantity under GSTA dated 02.07.2021, Minimum Guaranteed Off-take (MGO) charges are imposed by the Applicant on GAIL.</p> <p>(v) In other words, GAIL shall take or pay for at least 90% of the Adjusted Annual Contract Quantity to the Applicant. The said quarterly charges would be adjusted on an annual basis, based on the Adjusted Annual Contract Quantity and excess if any, shall be refunded to GAIL.</p> <p>(vi) However, in case where GAIL does not uplift the agreed quantity of natural gas, the Minimum Guaranteed Off-take charges are determined and adjusted by the Applicant, on an annual basis.</p>
Issues on which advance ruling required	(i) 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.
Question(s) on which advance ruling is required	(i) Whether, in the facts and circumstances of the case, GST is leviable on the Minimum Guaranteed Off-take (MGO) Charges imposed on M/s. GAIL (India) Limited for short-lifting Natural Gas from the contracted quantity i.e., Adjusted Annual Contract Quantity under the Gas Sales and Transportation Agreement(GSTA) dated 02.07.2021.

M/s. Oil and Natural Gas Corporation Limited is engaged in the manufacture and supply of crude oil and natural gas, which are supplied through pipelines located at delivery points across India. In the State of Tamil Nadu, the Applicant is registered vide GSTIN 33AAACO1598A1ZU, through which the present Application is being filed.

2. FACTS OF THE CASE:

2.1 The Applicant is a Maharatna Public Sector Enterprise, under the administrative control of the Ministry of Petroleum and Natural Gas and is engaged in the supply of crude oil and natural gas. They have their establishments across onshore and offshore locations in India, where petroleum operations are carried out, to produce natural gas, for onward sale to various downstream customers in India. The Delivery points in Tamilnadu are mainly from 1) Narimanam 2) Madanam 3) Kuthalam 4) Ramnad 5) Nannilam 6) Adikyamangalam 7) Kamalapuram. The said natural gas is sold and delivered to customers by the Applicant, through pipelines located at various delivery points across India.

2.2 The Applicant has entered into a Pan India Gas Sales and Transportation Agreement (GSTA) dated 02.07.2021 with GAIL and vide the said Agreement, the Applicant Company has agreed to sell and deliver, APM (Administered Price Mechanism) and Non-APM Natural Gas produced from Government nominated fields, to GAIL, as per terms and conditions agreed therein. As per the terms of the agreement,

(i) The Seller shall sell and deliver, natural gas to the Buyer at delivery points, where the title of gas shall pass from the Seller to the Buyer.

(ii) Subject to the availability of natural gas and Seller's ability to supply gas to the Buyer, the Seller shall sell and deliver gas to the Buyer at the delivery points, on fall back basis.

(iii) The Seller shall provide a tentative Annual Production Quantity ("APQ") for each successive financial year, not later than 90 days prior to the end of the previous financial year a tentative annual quantity of the APM and Non-APM Gas at each point, based on Seller's production plan for the remaining period.

(iv) Presently, in terms of Section 9(2) of the CGST Act, supply of natural gas is not subject to levy of GST. On the said sale, pre-GST levies i.e., VAT or CST, as the case may be are applicable.

(v) GAIL shall pay to the Applicant, the price for the actual quantity of gas off taken. Further, in case, GAIL fails to off-take 90% of the agreed contracted quantity under GSTA, Minimum Guaranteed Off-take (MGO) charges are imposed by the Applicant on GAIL. In other words, GAIL shall take or pay for at least 90% of the Adjusted Annual Contract Quantity to the Applicant.

(vi) In this connection, the Applicant, on a quarterly basis, collects Quarterly Minimum Guaranteed Off-take charges i.e., 90% of the Adjusted Quarterly Contract Quantity, determined on basis of the Daily Contract Quantity. The said quarterly charges would be adjusted on an annual basis, based on the Adjusted Annual Contract Quantity and excess if any, shall be refunded to GAIL.

(vii) The applicant further informed that the amount of Quarterly Minimum Guaranteed Off-take charges, received from GAIL by the Applicant are treated as 'deposit' in the books of the Applicant. At the end of the financial year, Annual Minimum Guaranteed Off-take charges are calculated based on the Adjusted Annual Contract Quantity.

(viii) For APM and Non-APM gas supplies, the Adjusted Annual Contract Quantity shall be determined separately and in determining the Adjusted Annual Contract Quantity for any Financial Year, certain deductions are made. After making deductions, the Minimum Guaranteed Off-take charges would be 90% of the Adjusted Annual Contract Quantity for APM and Non APM Gas.

(ix) The applicant states that "minimum take or pay" or "minimum guaranteed off-take charges" are a common practice in the oil & gas industry. The Applicant makes provisions for producing natural gas, from different sources, keeping in mind the quantities committed to be purchased by GAIL or any Buyer in terms of the Agreement entered.

(x) However, if GAIL/the Buyer, fails to fulfil its commitment to off-take the agreed quantity, the Applicant imposes "minimum take or pay" or "minimum

guaranteed off-take charges”, for breach of contract and to restitute loss (if any) incurred by the Applicant, on off-take of lower quantity of natural gas.

(xi) The present Application seeking advance ruling relates to GST implications on the imposition of Minimum Guaranteed Off-take charges by the Applicant on GAIL.

3. Applicants Interpretation of Law:

(a) The Applicant claims that the Minimum Guaranteed Off-take charges imposed for short- lifting from the Adjusted Annual Contract Quantity, is in the nature of ‘liquidated damages’ received as compensation for breach of contract and do not qualify as ‘consideration’ received for any supply effected and that no GST is leviable on the said amount collected from GAIL in connection with the same.

(b) In terms of Section 9 of the CGST Act, the taxable event is the supply of goods or services or both. The said Section levies tax on all supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under Section 15 and at such rates, as notified by the Government.

(c) Section 7 of the CGST Act defines the term ‘supply’ and as per the inclusive definition, supply includes all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business.

(d) The term ‘goods’ has been defined under Section 2(52) to mean every kind of movable property, other than money and securities, whereas Section 2(102) defines the term ‘service’ in an expansive manner to mean anything other than goods. Thus, the Applicant submits that, for an activity to qualify as a supply under GST, the following conditions must be cumulatively satisfied,

(i) There should be an activity resulting in supply of goods/ services or both, undertaken by one person for another.

(ii) The said activity should be in return for a consideration.

(iii) The said activity should be undertaken in the course or furtherance of business.

(e) The Applicant submits that, for a transaction between unrelated parties, to qualify as a supply, an activity has to be positively done for the benefit of another person for a consideration. In this regard, the applicant have referred cases relating to Australia and New Zeland, Britain and South Africa wherein in the context of GST/VAT have held that a supply occurs when there is a positive act on the part of the supplier.

(f) Further, the Applicant submits that GST is a contract-based levy, since the supply emanates from a contract that is entered between the parties to the said transaction. Therefore, a contractual supply is the essence for levy of GST. Hence, the provision of a supply, has to be seen qua the contract entered between the parties.

(g) In the above background, the term Supplier has been defined under Section 2(105) to mean the person supplying goods or services, whereas the term Recipient has been defined under Section 2(93) of the CGST Act, where consideration is payable, to mean the person who is liable to pay the said consideration. Hence, the term 'consideration' in relation to supply of goods/services has been defined under Section 2(31) of the CGST in an inclusive manner. As per the said definition, consideration means any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person.

(h) Citing Section 2(d) of the Indian Contracts Act, 1872 the meaning of the term 'consideration', can be inferred that it is something of value received by the promisee as inducement of the promise. It is a benefit which must be bargained for between the parties and is essential reason for a party entering into a contract. In order to constitute a consideration for an activity, there has to be a nexus between the activity rendered and the consideration charged.

(i) The applicant cited the case of larger bench in *Bhayana Builders Private Limited v. Commissioner of Service Tax*, [2013] 32 STR 49 (New Delhi - CESTAT), where it was observed that under Section 67 of the Finance Act, 1994 any consideration whether monetary or otherwise should have flown or should flow from the service recipient to the service provider and should accrue to the benefit of the latter. The said decision has been affirmed by Hon'ble Supreme

Court in *Commissioner of Service Tax v Bhayana Builders (P) Ltd* 2018 (10) GSTL 118 SC.

(j) Further, the Larger Bench of the Hon'ble CESTAT Chennai in *CST v. Repco Home Finance limited*, 2020-VIL-309-CESTAT- CHE-ST, at para 27 stated the difference between consideration and condition of contract. It held that certain conditions contained in the contract cannot be seen in the light of consideration for the contract and merely because the service recipient has to fulfil such conditions would not mean that this value would form part of the value of the taxable services that are provided. Further, the Hon'ble Tribunal had categorically held that the consideration should flow at the desire of the promisor and that if the consideration is not at the desire of the promisor, it ceases to be a consideration.

(k) The applicant summarised that the term 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 and an amount will partake the character of consideration only if the amount is contractually agreed to be provided by a person in exchange for a service and such amount has a nexus with a service rendered. Thus, if there is no contractual reciprocity with respect to consideration, the same would not amount to an activity for a consideration which is an important ingredient as per the definition of supply.

(l) Placing reliance on Indian Contract Act, 1872 the applicant claimed that the liquidated damages are in the nature of penalty or compensation liable to be paid by one party to the other as a result of breach of contract and not in the nature of consideration towards any supply. Consideration should flow at the desire of the promisor. If it is not at the desire of the promisor, it ceases to be a consideration. The parties entering into contract would not desire for breach of contractual obligations. Therefore, any payment made pursuant to said breach will not partake the character of consideration and the said amount will not be taxable, as consideration received towards a supply.

(m) Therefore, the Applicant is of the *bona fide* understanding that no GST is leviable on the Minimum Guaranteed Off-take charges imposed by the Applicant on GAIL as there is no supply rendered in exchange for the

Minimum Guaranteed Off-take charges and the said charges is only in the nature of compensation paid for breach of contract.

(n) They have placed reliance on following case laws which was decided on Service Tax provisions.

(i) *Southeastern Coalfields Limited vs. CCE [2020-VIL-559-CESTAT-DEL-ST]*,

(ii) *Amit Metaliks Limited v. Commissioner of CGST, 2019 (11) TMI 183- CESTAT Kolkata,*

(iii) *Pradip Port Trust v. CCE, Bhubaneswar, 2022 (62) GSTL 186 (Tri-Kol),*

(iv) *K.N. Food Industries Pvt Ltd vs Commissioner of CGST & Central Excise, Kanpur 2019-VIL-731 CESTAT,*

(v) *M.P. Poorva Kshetra Vidyut Vitran Co. Ltd. vs. Principal Commissioner CGST and Central Excise Bhopal [2021 (2) TMI 821 – CESTAT New Delhi]*

(o) Accordingly, the Applicant is of the *bona fide* understanding that no GST is leviable on the Minimum Guaranteed Off-take charges imposed by the Applicant on GAIL. Minimum Guaranteed Off-take charges do not qualify as consideration received for agreeing to the obligation to tolerate an act or situation in terms of Para 5(e) to Schedule II of the CGST Act.

(p) The applicant citing the provisions of Section 7(1A) along with para 5(e) of Schedule-II of the Act, explained that the term 'agreeing to the obligation' indicates that a party agrees to an obligation at the desire of the other party. In other words, the obliging party agrees to tolerate the acts of the party for whom the obligation is agreed to have been tolerated, at the behest of the obligating party.

(q) Therefore, the Applicant submits that only where agreeing to the obligation to tolerate an act constitutes a 'supply' in terms of Section 7(1), it shall be treated as a supply of service under GST i.e., the above activity of 'toleration' must be performed in return for consideration for the activity to get covered under the said clause.

(r) The applicant placed reliance on Circular No. 178/10/2022-GST dated 03.08.2022 Applicant submits that the term 'activity of agreeing' involves an element of contractual relationship wherein one person doing an activity does so at the desire of the person for whom the activity is done in exchange of a

consideration. An activity done without such a relationship i.e., without the express or implied contractual reciprocity would not lead to an 'agreement'.

(s) In view of the above, the Applicant submits that Minimum Guaranteed Off-take charges do not qualify as consideration received for agreeing to the obligation to tolerate an act or situation in terms of Para 5(e) to Schedule II of the CGST Act and no GST is leviable on the said amounts imposed on GAIL.

4. PERSONAL HEARING

4.1 Ms. Nimrah Ali, Advocate & Authorised Representatives (AR) of the applicant along with others as listed above, appeared for the personal hearing as scheduled. The AR reiterated the submissions made in their application for advance ruling. AR further informed that the 90% of the Adjusted Annual contract quantity is being collected as MGO from GAIL on a quarterly basis which is adjusted at the end of the financial year and excess if any shall be refunded to GAIL. AR informed that the MGO charges is treated as 'deposit' in the books of the applicant and at the end of the financial year this MGO charges imposed on GAIL, failing to fulfil the commitment, is accounted as 'Other Income' in their books of accounts.

4.2 The members requested AR to furnish proof for the accounting being done on MGO charges collected and its break-up for at least any two financial years for which the applicant has submitted the same vide email dated 01-08-2025.

DISCUSSION AND FINDINGS

5.1 We have carefully considered the submissions made by the applicant in the advance ruling application, the additional submissions made during the personal hearing held on 24.07.2025 and the documents furnished by them subsequently through mail. We have considered the issues involved on the clarification sought by the applicant.

5.2 The applicant submits that they are imposing and collecting 'Minimum Guarantee Off-take (MGO) Charges from M/s. GAIL if they fail to off- take-90% of the agreed contracted quantity, on quarterly basis, which at the end of the financial year would be adjusted on an annual basis, based on the Adjusted Annual Contract Quantity and excess if any, shall be refunded to GAIL as per the Gas Sales and Transportation Agreement (GSTA) entered between them.

5.3 The issue here to be decided is

(a) Whether the amount charged and collected as MGO towards non-performance of the conditions of the contract would fall under the definition of 'consideration' defined under Section 2(31) of the Act, 2017;

(b) Whether the act of amount charged and collected is towards 'tolerating an act'; and

(c) Whether the activity would constitute 'supply' under the Act.

6. As per Section 2(31) of the Act, "consideration" is defined as

(31) "consideration" in relation to the supply of goods or services or both includes-

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

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

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

7. Section 7 of the Act defines the expression 'supply' as,

*** Section 7. Scope of supply. -**

(1) For the purposes of this Act, the expression - "supply" includes-

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

¹[(aa) the activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration.

Explanation .-For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another;]

(b) import of services for a consideration whether or not in the course or furtherance of business; ²[and]

(c) the activities specified in Schedule I, made or agreed to be made without a consideration; ³[***]

(d) ⁴[***].

⁵[(1A) where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.]

(2) Notwithstanding anything contained in sub-section (1),-

(a) activities or transactions specified in Schedule III; or

(b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council,

shall be treated neither as a supply of goods nor a supply of services.

(3) Subject to the provisions of ⁶[sub-sections (1), (1A) and (2)], the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as -

(a) a supply of goods and not as a supply of services; or

(b) a supply of services and not as a supply of goods.

8. Schedule-II of the Act, specifies certain 'activities are transactions to be treated as supply of goods or supply of services'. Clause 5(e) which is relevant is reproduced below.

5. Supply of Services

The following shall be treated as supply of services, namely:-

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

9. During Service tax regime, '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.

10. 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. As per the Contract Act, 'Contract' is defined 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*".

11. Thus, 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.

12. Close perusal of the entry at serial 5(e) of Schedule II would reveal that it comprises of 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.

13. 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.

14. 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. 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 another person (the second person) if the first person was under an obligation to do so and then performed accordingly.

15. Breach or non-performance of contract by one party results in loss and damages to the other party. Section 73 of the Indian Contract Act, 1972 provides 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. 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.

16. Section 74 of the Indian 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.

17. The dictionary meaning for 'Liquidated Damages' is "*cash compensation agreed to by a signed, written contract for breach of contract, payable to the aggrieved party.*"

18. The Gas Sales and Transportation Agreement (GSTA) entered into with GAIL by the applicant is for execution and performance of the contract. The intended purpose of the contract is only for execution of the agreement and not for its breach. MGO charges/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. Imposition of MGO charges/liquidated damages stipulated in the contract is 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 which would arise due to breach of contract. They do not act as a remedy for the breach of contract. Therefore, MGO charges/liquidated damages is nothing but a penalty imposed and not the desired outcome of the contract. By charging and accepting the MGO charges/liquidated damages, the applicant aggrieved by breach of contract cannot be said to have permitted or tolerated the deviation or non-fulfilment of the promise by GAIL.

19. We are of the view that the amount of MGO charges which is paid as 'liquidated damages' is an amount paid only to compensate for injury, loss or damage suffered by the applicant due to breach of contract and shall not be construed as the activity of refraining from or tolerating an act or to do anything. In this case, MGO Charges are merely a flow of money from GAIL who causes breach of the contract to the applicant who suffers loss or damage due to such breach. The activity of the applicant would not fall within the scope of supply under Section 7(1A) of the Act, read with serial No. 5(e) of Schedule-II of the Act. Accordingly, such payments do not constitute consideration for a supply and are not taxable.

20. The point to be considered is whether the impugned payments constitute consideration for tolerating an act or situation or refraining from doing any act or situation or simply doing an act. From the foregoing discussions, since the MGO charges for failure to off-take required quantity as agreed, does not constitute 'supply' within the meaning of the Act, the amount shall not be treated as 'consideration'.

21. 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'.

22. The contract between the applicant and GAIL primarily is for sale and purchase of Natural gas and the principal supply of the applicant is Natural gas. The payment of amount towards the non-performance is mere flow of money and shall not be treated as consideration. MGO charges are not collected as a consideration and there is no such separate contract entered into by the applicant with GAIL. Thus, MGO charges are not collected towards any supply of service in terms of serial No. 5(e) of Schedule-II to the CGSTTNGST Act, 2017. But it is the penalty imposed for breach of contract which is in the nature of condition to GSTA and not consideration. Further, the product supplied by the applicant is natural gas which is subjected to Central Excise duty and VAT and it is out of the purview of GST. Naturally, such payments will not be taxable if the principal supply is exempt.


23. To obviate this confusion, CBIC came up with *Circular No. 189/10/2022-GST dated 03-08-2022* has clarified that liquidated damages for breach of contract is not a consideration for tolerating an act and hence not a supply.

24. In view of the detailed discussions supra, we rule as under: -

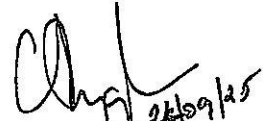
RULING

Whether in the facts and circumstances of the case, GST is leviable on the Minimum Guaranteed Off-take (MGO) charges imposed on M/s. GAIL(India) Limited for short-lifting Natural Gas from the contracted quantities, i.e Adjusted Annual Contract quantity under the Gas Sales and Transportation Agreement dated 02-07-2021.

With the facts and circumstances of the case and in line with the CBIC's Circular No. 178/10/2022-GST (F. No. 190354/176/2022-TRU) dated 3rd August, 2022, Minimum Guaranteed Off-take (MGO) Charges is in the nature of Liquidated Damages and therefore is not liable to GST.


(B. Suseel Kumar)
Member (SGST)




(C. Thiyagarajan)
Member (CGST)

To

M/s. OIL AND NATURAL GAS CORPORATION LIMITED

GSTIN: 33AAACO1598A1ZU

Floor: 6-11, 17/9, CMDA Tower-1,
Gandhi Irwin Road, Egmore,
Chennai – 600 008.

(By RPAD)

Copy submitted to

1. The Principal Chief Commissioner of GST and Central Excise,
26/1, Uthamar Mahatma Gandhi Road,
Nungambakkam, Chennai 600 034.
2. The Commissioner of Commercial Taxes,
2nd Floor, Ezhilagam, Chepauk, Chennai 600 005.
3. The Commissioner of GST and Central Excise,
Chennai North Commissionerate,
GST Bhavan, 26/1, M.G. Road,
Nungambakkam, Chennai 600 034.

Copy to

1. The Deputy Commissioner (ST) - III
Large Taxpayers Unit,
4th Floor, Integrated Building for Commercial Taxes and
Registration Department,
Chennai – 600 035.
2. Master File / Stock File – A1