

GIB/AP/Rashtriya Ispat/11.01.2019/AAR-262

Advance Ruling Category : Time of Supply

State : Andhra Pradesh

Order No.: GIB/AP/Rashtriya Ispat/11.01.2019/AAR-262

Name of Entry :

Rashtriya Ispat Nigam Ltd.

Date : 11-01-2019

Breif Issue :

Facts & Issue Of The Case :

M/S Rashtriya Ispat Nigam Ltd. Is a Public Sector Undertaking under the ministry of steel. They are engaged in the business of manufacturing and selling of steel products.

The applicant has sought advance ruling on the following questions:

1. Whether "Liquidated Damages" and other penalties like milestone penalties

levied on suppliers/ contractors in the nature of making good the damages for any delays in supply of service or goods in the following cases are exigible to GST or not?

- a) Supply and maintenance contracts
- b) Project construction contracts

2. Whether the GST on liquidated damages, and other penalties is covered under schedule II entry No. 5(2) (e) vide HSN code 9997 - Other services, for which the rate 18 % is relevant or any other entry is applicable?

(a) Liquidated damages are determined and imposed upon the contractor after in-depth study. In such case, what would be the time of supply? Will it be the period in which delay has occurred or it is the time when decision is taken or at the time when accounting entry for recovery is passed ?

(b) When some part of the delay in supply has occurred before the implementation of the GST and some part of delay in supply has occurred after GST came into force, whether GST will be applicable to the Liquidated damages imposed for entire period of delay or it would be applicable only to the period falling after introduction of GST?

Decision of Advance Ruling Authority :

Decision :

GST would be applicable on the Liquidated Damages.

Schedule entry No.35 of the Notification No.11/2017 -Central/State Tax (Rate) [as amended from time to time] for taxable services would cover the impugned levy of liquidated damages.

The levy of liquidated damages is , not when the delay is occurring but the liability of payment of these liquidated damages by the contractor will be established once the delay in successful execution of work is established on the part of the Contractor. This would define the time of supply.

Sub-section (1) of section 13 of the GST Act provides that the liability to pay tax on services shall arise at the time of supply. In view thereof, as discussed in the answer to the Q.2(b), the agreement clauses would have to be referred to, the section 14 of the GST Act would have to be referred to by the applicant.