

Maharashtra GST ARA order in Reserve Bank of India, in Appl. No. 117 of 2022-23.

MAHARASHTRA AUTHORITY FOR ADVANCE RULING

**GST Bhavan, Room No.107, 1st floor, B-Wing, Old Building, Mazgaon, Mumbai – 400010.
(Constituted under Section 96 of the Maharashtra Goods and Services Tax Act, 2017)**

BEFORE THE BENCH OF

(1) Shri. AJAYKUMAR V. BONDE Joint Commissioner of State Tax, (Member)

(2) Ms. PRIYA JADHAV, Joint Commissioner of Central Tax, (Member)

ARN No.	AD270223034315H
GSTIN Number, if any/ User-id	27AAIFR5286M1ZG
Legal Name of Applicant	M/s. RESERVE BANK OF INDIA
Registered Address/Address provided while obtaining user id	MAIN BUILDING, RESERVE BANK OF INDIA, 2, SHAHID BHAGAT SINGH ROAD, FORT, MAHARASHTRA, MUMBAI, 400001.
Details of application	GST-ARA, Application No. 117 Dated 09.03.2023
Concerned officer	MUMBAI-LTU-547, LTU-4

NO.GST-ARA- 117of 2022-23/2024-25/ B- 53 Mumbai, dt. 31/07/2024.

PROCEEDINGS

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra 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 Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act" respectively] by M/s. RESERVE BANK OF INDIA the applicant, seeking an advance ruling in respect of the following questions.

1. Whether the penalties, late fees/penal interest, fine of the nature, levied and collected by RBI, for contravention or violation of provisions of Law are taxable under GST (as illustrated under Category A in Para 7.4 of Annexure 1 attached to this application)?
2. Whether the penalty of the nature for non-performance or under-performance as per contractual agreement by RBI with third party vendors are taxable under GST? (as illustrated under Category B in Para 7.5 of Annexure 1 attached to this application)

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, the expression 'GST Act' would mean CGST Act and MGST Act.

1) Facts and contention of the Applicant.

1 Reserve Bank of India ('RBI' or 'the Applicant') is a statutory body constituted under the Reserve Bank of India Act 1934.

RBI is fully owned by the Government of India. RBI is the central bank of the country and provides currency management services to the public. It also acts as the regulator of the banking and financial system and performs the role of monetary policy authority. The Preamble to the RBI describes the basic functions of the Reserve Bank as:

"to regulate the issue of Bank notes and keeping of reserves with a view to securing monetary stability in India and generally to operate the currency and credit system of the country to its advantage; to have a modern monetary policy framework to meet the challenge of an increasingly complex economy, to maintain price stability while keeping in mind the objective of growth."



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1.2 Functions of RBI: The main functions of RBI are enlisted below:

1.2.1 Monetary Authority:

- Formulates, implements and monitors the monetary policy.
- Objective: maintaining price stability while keeping in mind the objective of growth.

1.2.2 Regulator and supervisor of the banking and financial system:

- Prescribes broad parameters of banking operations within which the country's banking and financial system functions.
- Objective: maintain public confidence in the system, protect depositors' interest and provide cost-effective banking services to the public.

1.2.3 Manager of Foreign Exchange

- Manages the Foreign Exchange Management Act, 1999.
- Objective: to facilitate external trade and payment and promote orderly development and maintenance of foreign exchange market in India.

1.2.4 Issuer of currency:

- Issues, exchanges and destroys currency notes as well as puts into circulation coins minted by Government of India.
- Objective: to give the public adequate quantity of supplies of currency notes and coins and in good quality.

1.2.5 Developmental role

- Performs a wide range of promotional functions to support national objectives.

1.2.6 Regulator and Supervisor of Payment and Settlement Systems:

- Introduces and upgrades safe and efficient modes of payment systems in the country to meet the requirements of the public at large.
- Objective: maintain public confidence in payment and settlement system

1.2.7 Related Functions

- Banker to the Government: performs merchant banking function for the central and the state governments; also Acts as their banker.
- Banker to banks: maintains banking accounts of all scheduled banks.

1.3 List of Acts/Regulations administered by RBI, as amended from time to time, are as under:

- 1.3.1 Reserve Bank of India Act, 1934
- 1.3.2 Government Securities Act, 2006 read with Government Securities Regulations, 2007
- 1.3.3 Banking Regulation Act, 1949.
- 1.3.4 Foreign Exchange Management Act, 1999
- 1.3.5 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (Chapter II)
- 1.3.6 Credit Information Companies (Regulation) Act, 2005
- 1.3.7 Payment and Settlement Systems Act, 2007 read with Payment and Settlement Systems Regulations, 2008
- 1.3.8 Factoring Regulation Act, 2011 Penalty, late fees/penal interest, fine of the nature levied and collected by RBI for contravention or violation of provisions of Law

1.4. Few examples of the penalties levied and collected by RBI under Category A are given below,

1.4.1 Under the RBI Act

- Imposition of Penalty on Agency Banks (Vide Circular No. DGBA. GAD. No. 2132/42.01.011/2016-17) • Penalty/Penal Interest for Non-maintenance of CRR



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and SLR by Banks/ and SLR for NBFCs (Vide Circular No. DOR.No.RET.REC.32/12.01.001/2021-22)

- Penalty for accepting fresh deposits where the company is prohibited by RBI to do so (Vide section 58G read with sub section (4A) & (5)(a) & (aa) of 58B, sub-section (1) of 45IA, 45K, 45MB of RBI Act 1934)

1.4.2 Under Government Securities Act, 2006 read with Government Securities Regulations, 2007:

- Penalty for bouncing of Subsidiary general ledger account (SGL) Forms (Vide Circular No. IDMD. DOD.17/11.01.01(B)/2010-11 dated July 14, 2010)

1.4.3 Under Banking Regulation Act, 1949

- Penalty/ Penal Interest for Non-maintenance of CRR and SLR by Banks (Vide Circular No. DOR.No.RET.REC.32/12.01.001/2021-22)
- Penalty and Penal interest on CCs/ banks (Vide Circular No. DCM (CC) No. G4/03.35.01/2022-23 dated 01 April 2022)
- Penalty and Penal interest on CCs/ banks (Vide Circular No. DCM (CC) No. G5/03.44.01/2022-23 dated 01 April 2022)
- Penalty for ATM Cash out (Vide Circular No. DCM (RMMT) No. S153/11.01.01/2021-22)
- Penalty for accepting fresh deposits where the company is prohibited by RBI to do so (Vide section 47 A(1)(a) (b) (c) read with 46(2)(3) and (4) of BR Act, 1949)

1.4.4 Foreign Exchange Management Act, 1999

- Late Submission Fees (LSF) for delayed regulatory reporting on account of External Commercial Borrowings and Trade Credits availed under FEMA, 1999 (Vide Notification no. FEMA 3(R)/2018-RB dated 17 December, 2018 as amended from time to time and Circular No. A.P. (DIR Series) Circular No. 16 dated 30 September, 2022)
- Late Submission Fees (LSF) for delayed regulatory reporting of Foreign Investments under FEMA, 1999 (Vide Notification no. FEMA. 395/2019-RB dated 17 October, 2019 and Circular No. A.P. (DIR Series) Circular No. 16 dated 30 September, 2022)

1.4.5 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (Chapter II)

- Penalty for contravention of direction of RBI (Vide Sec 30A of SARFAESI Act, 2002)

1.4.6 Credit Information Companies (Regulation) Act, 2005

- Penalty for unlawful access of credit information (Vide section 25 read with 22(2), 23(2), 23(3), and 23(4) of the CIC Act)

1.4.7 Payment and Settlement Systems Act, 2007:

- Penalty for submission of false statement or information (Vide Circular DPSS.CO.OD. No.1328/06.08.005/2019-20 dated 10 January, 2020)
- Penalty for contravention of any of the provisions of PSS Act (Vide Circular DPSS.CO.OD. No.1328/06.08.005/2019-20 dated 10 January, 2020)

1.4.8 Factoring Regulation Act, 2011

- Penalty for non-adherence of directions of RBI (Vide Section 22 read with section 6 of the FR Act)

1.5. Penalty of the nature for non-performance or under-performance as per contractual agreement with third party vendors. (Categorised as "Category B" penalties by RBI)



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1.5.1 RBI engages into contractual agreements with third party vendors to avail various services like deployment of shredding and briquetting system and currency verification and processing machines, Annual maintenance contracts etc. at their premises. As a part of such contracts, say the contract for deployment of shredder and currency machines, where such machines have a downtime or there is faulty machine, RBI recovers penalty amount from such vendors in terms of the underlying contract. Similarly, there can be various other services which RBI may avail from a vendor under a contractual agreement wherein the terms can provide for recovery or levy of penalty on or from such vendor for non-performance or under-performance of the services desired to be availed by RBI.

1.5.2 Extract of one of such contracts with a vendor M/s Giesecke and Devrient India Pvt Ltd dated 09 August, 2022, wherein the contract provides for levy of penalty on the aforementioned vendor for non-performance or under-performance as per the terms of the contract:

"Paragraph 5.2 Downtime Penalty

The systems shall not be non-functional for more than 4 hours in a week per 8-hour shift. In case of system remaining non-functional beyond 04 hours during a week on account of any breakdown due to System failure/ repairs/ settings of the CVPS, penalty will be imposed as under:

Total Downtime (hours)	Downtime Permitted (hours)	Penalty amount (Rs. / hour)
<4	4	0
4-12	4	2000
>12	4	6000

Penalty will be imposed over and above the permissible limit of 4 hours in a week and will be imposed once in every three (03) months and the same will be deducted from the payment towards AMC charges to be made once in three (03) months."

2) Statement containing Applicant's interpretation of law.

At the outset, it is reiterated that RBI is a statutory body, set up under the Act of the Parliament i.e. the Reserve Bank of India Act, 1934. As a part of its functions, RBI administers various Acts, To reiterate, it is hereby submitted that penalties, categorized under two parts, on which the subject advance ruling is being filed are as under:

Category A: Penalty, late fees/penal interest, fine of the nature levied and collected by RBI for contravention or violation of provisions of Law Category B: Penalty of the nature for non-performance or under-performance as per contractual agreement with third party vendors

2.1) Submissions with respect to penalties under Category A

2.1.1) We are providing herewith our detailed submission with regard to non-levy of GST on the penalties as enumerated under Category A viz. Penalty, late fees/penal interest, fine of the nature levied and collected by RBI for contravention or violation of provisions of Law.

In this regard, reference is invited to Circular No.178/10/2022-GST dated 03 August 2022 (Tax Research Unit) (hereinafter referred as "the CBIC Circular") issued by CBIC wherein, inter alia, clarification has been provided in respect of non-applicability of GST on penalties imposed for violation of laws and collected for breach of contract



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by discussing the scope of the entry at para 5 (e) of Schedule II of Central Goods and Services Tax Act, 2017 (hereinafter referred to as, "CGST Act").

In the circular, CBIC through the following example/s has discussed the levy of GST on penalties imposed for violation of laws:

- Imposition of penalty for violation of laws such as traffic violations, or
- Imposition of penalty for violation of pollution norms or other laws,
- Imposition of penalty by mining department of a Central or State Government or a local authority on discovering mining of excess mineral beyond the permissible limit or of mining activities in violation of the mining permit

In this regard, specific attention is invited to Para 7.4 of the CBIC Circular, whereby CBIC has made the following observation:

"Penalties imposed for violation of laws cannot be regarded as consideration charged by Government or a Local Authority for tolerating violation of laws. Laws are not framed for tolerating their violation. They stipulate penalty not for tolerating violation but for not tolerating, penalizing and deterring such violations. There is no agreement between the Government and the violator specifying that violation would be allowed or permitted against payment of fine or penalty. There cannot be such an agreement as violation of law is never a lawful object or consideration"

The stance of CBIC in respect of applicability of GST is clear vide the Circular that GST is not applicable on penalties, late fees/penal interest, fine imposed for violation of laws.

2.1.2. The penalties, late fees/penal interest, fine levied by RBI are similar to the penalties, late fees/penal interest, fine levied under various other Acts such as the CGST Act, Income Tax Act 1961 etc.

2.1.3. That is, RBI, being a statutory body administering multiple Acts, levies the penalties, late fees/penal interest, fine arising out of such legal Statutes. Consequently, the penalties are akin to the penalties arising out of other Acts such as CGST Act, Income Tax Act 1961. Hence, such penalties levied by RBI cannot by any stretch of imagination be regarded as consideration or being collected towards any outward supply.

2.1.4 The sole objective for levy of penalties, late fees/penal interest, fine is to inculcate discipline amongst the Regulatees as it acts as a deterrent for them. To demonstrate the objective behind levy of penalties, late fees/penal interest, fine, the relevant extracts from one of the circulars issued by RBI are given below:

Relevant extracts of Circular vide Folio no. DCM (CC) No. G-4/03.35.01/2022-23 dated 1 April 2022 issued by RBI (Copy of circular attached as Annexure D) reads as follows:



a. Para 5.2.3: As the intention behind the levy of penal interest/ penalty is to inculcate discipline among banks so as to ensure prompt/correct reporting, requests by banks for waiver of penal interest on grounds that delayed/wrong/non-reporting did not result in utilization of the Reserve Bank's funds or shortfall in the maintenance of CRR/SLR or that they were the result of clerical mistakes, unintentional or arithmetical errors, first time error, inexperience of staff etc., shall not be considered as valid grounds for waiver of penal interest.

b. Para 3.3 Delayed reporting where currency chests had "Net Deposit": Penal interest at the prevailing rate for delayed reporting of the instances where the currency chest had reported "net deposit" shall not be charged. However, in order to ensure proper discipline in reporting currency chest transactions, a flat penalty of ₹50,000 shall be levied on the currency chests for delayed reporting, irrespective of the value of net deposit.

2.1.5 Reference is also made to FAQs issued by Central Board of Indirect Taxes and Customs (CBIC) viz., Frequently Asked Questions on Banking, Insurance and Stock Brokers Sector [which are provided on CBIC portal www.cbic-gst.gov.in, screenshot of the portal attached as Annexure 6], whereby the following clarification is provided:

"Question 49

Would imposition of a fine or penalty for violation of a provision of law be a consideration for the activity of breaking the law, making such activity as service?

Answer

No. Fines and penalties are imposed for breaking the law by a person. They are not in the nature of a consideration for an activity and hence, would not constitute a supply of service"

2.1.6. In line with the above submission, it is additionally submitted that for penalties, late fees/penal interest, fine described under category A in Para 7.4 to Annexure 1, to attract the levy of GST, the penalties, late fees/penal interest, fine are required to qualify as a consideration against an underlying supply. For this purpose, Section 7 (scope of supply) has to be read with Section 2(31) (Consideration) of the CGST Act. Detailed submission is made regarding scope of supply and consideration under GST Laws. It is submitted that the payment of penalties, late fees/penal interest, fine to RBI cannot be treated to be in respect of, in response to, or for the inducement of, the activities carried out by RBI. That is, the penalties, late fees/penal interest, fine cannot be regarded as 'consideration' since the element of quid pro quo is missing in the transaction. Hence, GST cannot be leviable on the penalty levied by RBI on account of contravention of the referred laws.

2.1.7. In light of the Circular issued by the CBIC and the afore-stated analysis, the levy of penalties, late fees/penal interest, fine levied and collected by RBI as illustrated under Category A, being for contravention of certain legal provisions of that particular law, cannot be regarded as satisfying the definition of 'consideration' towards a supply under the GST Act and therefore, cannot be taxed under the provisions of GST Law.

2.2) Submissions with respect to penalties under Category B: -

Now we would like to present the submissions with respect to the penalties as enumerated under Category B viz. Penalty on account of non-performance or under-performance as per contractual agreement with vendors.



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2.2.1. In this regard, reiterating the submission under Para 4 of this Annexure, reference is again invited to Circular No.178/10/2022-GST dated 03 August 2022 (Tax Research Unit) issued by CBIC wherein, inter alia, clarification has been provided in respect of non-applicability of GST on penalties imposed for violation of laws and collected for breach of contract by discussing the scope of the entry at para 5 (e) of Schedule II of CGST Act. In this regard, specific reference is invited to relevant extracts of Para 7.1 of the CBIC Circular, whereby CBIC has made the following observation:

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.

The stance of CBIC in respect of applicability of GST is clear vide the aforementioned CBIC circular that GST is not applicable on liquidated damages where the amount paid is only to compensate for injury, loss or damage and such payments do not constitute consideration for a supply.

2.2.2. In the present case, the penalty collected by RBI for breach of terms of contractual agreement entered between RBI and the vendor is akin to liquidated damages as referred in CBIC Circular. Such amount 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.

2.2.3. Based on the perusal of the definition of the scope of supply as per Section 7 of CGST Act, it can be inferred that in the present case of levy of penalty arising out of breach of terms and conditions of the contract, there cannot be regarded any transfer of property in goods or flow of services and there is no consideration flowing in lieu thereof vide the contractual terms and conditions for levying the penalties. The levy of penalty is only intended to dissuade and to act as a deterrent and not towards any consideration or for the furtherance of business.

2.2.4. Here, reliance is placed on the judicial pronouncement of CESTAT, Principal Bench, New Delhi in the case of M/s South Eastern coalfields Ltd [2021 (55) GSTL 549 (Tri. - Del.)], Referred Paragraphs 27, 28, 32, and 43.

2.2.5 On the basis of above discussion, it is submitted that RBI cannot be liable to pay GST on the penalties collected for breach of the terms and conditions of the contract. Similar to aforementioned judicial pronouncement, even in the present case, the contractual agreements do not specify what precise obligation has been casted upon by RBI on the vendor to refrain from an act or tolerate an act or a situation and by no stretch of imagination can the penalty, being arising on account of breach of terms and conditions of such contractual agreement be construed as a consideration with respect to the contract.

Consequently, the penalty if any levied by RBI on account of breach of terms and conditions of contractual agreement, cannot be exigible to levy of GST.



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3) Submission of the Jurisdictional Officer:

Officer relied upon the Circular no. 178/10/2022-GST dated 03rd August 2022, content of para 7.1 to 7.1.5. and submitted its opinion as under,

“The payments received in the form of penalties, late fees/penal interest, fine of the nature, levied and collected by RBI, for contravention or violation of provisions of Law or Penalty of the nature for non-performance or under-performance as per contractual agreement by RBI with third party vendors are not taxable as such payments do not constitute consideration for a supply.” (Emphasis supplied)

4) Hearing -

Preliminary hearing in the matter was held on 30.04.2024. Mrs. Ankita Goel, C.A. Appeared, and requested for admission of the application. Jurisdictional Officer Mrs. Radha Rajiv Ugale, MUMBAI-LTU-547, LTU-4, MUMBAI-SOUTH-EAST also appeared.

The application was admitted and called for final hearing on 18.06.2024. Mrs. Ankita Goel, C.A. Appeared, and requested for admission of the application. Jurisdictional Officer Mrs. Radha Rajiv Ugale, MUMBAI-LTU-547, LTU-4, MUMBAI-SOUTH-EAST also appeared.

5) Findings, observations, discussion and decision.

5.1) Uncontroverted facts of the case are as under,

5.1.1. Reserve Bank of India (“RBI”) is a statutory body constituted under the Reserve Bank of India act, 1934. It is fully owned by the Government of India. RBI is the central bank of the country and provides currency management services to the public. It also acts as the regulator of the banking and financial system and performs the role of monetary policy authority.

5.1.2 Broadly its main functions are as under: -

Monetary Authority, Regulator and supervisor of the banking and financial system, Manager of Foreign Exchange, Issuer of currency, Developmental role, Regulator and Supervisor of Payment and Settlement Systems, Related Functions.

5.1.3 RBI administrator various Acts, Rules & regulation which are stated in para 1.3 of this order.

5.1.4 RBI, being a statutory body administering multiple Acts, levies the penalties, late fees/penal interest, fine arising out of such legal Statutes.

5.1.5 Various Penalty, late fees/penal interest, fine of the nature levied and collected by RBI for contravention or violation of provisions of Law, which are stated in para 1.4 of this order.

5.1.6 The sole objective for levy of penalties, late fees/penal interest, fine is to inculcate discipline amongst the Regulates as it acts as a deterrent for them.

In support of this statement which demonstrate the objective behind levy of penalties, late fees/penal interest, fine, the relevant extracts from one of the Circular vide Folio no. DCM (CC) No. G-4/03.35.01/2022-23 dated 1 April 2022 issued by RBI are given below:

- a. Para 5.2.3: As the intention behind the levy of penal interest/ penalty is to inculcate discipline among banks so as to ensure prompt/correct reporting, requests by banks for waiver of penal interest on grounds that delayed/wrong/non-reporting did not result in utilization of the Reserve Bank's funds or shortfall in the maintenance of CRR/SLR or that they were the result of clerical mistakes, unintentional or



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arithmetical errors, first time error, inexperience of staff etc., shall not be considered as valid grounds for waiver of penal interest.

5.1.7 RBI engages into contractual agreements with third party vendors to avail various services like deployment of shredding and briquetting system and currency verification and processing machines, Annual maintenance contracts etc. at their premises. As a part of such contracts, say the contract for deployment of shredder and currency machines, where such machines have a downtime or there is faulty machine, RBI recovers penalty amount from such vendors in terms of the underlying contract. Similarly, there can be various other services which RBI may avail from a vendor under a contractual agreement wherein the terms can provide for recovery or levy of penalty on or from such vendor for non-performance or under-performance of the services desired to be availed by RBI.

a. Extract of one of such contracts with a vendor M/s Giesecke and Devrient India Pvt Ltd dated 09 August, 2022, wherein the contract provides for levy of penalty on the aforementioned vendor for non-performance or under-performance as per the terms of the contract. Para 5.2 of the contract reads as under: -

"Para 5.2 Downtime Penalty

The systems shall not be non-functional for more than 4 hours in a week per 8-hour shift. In case of system remaining non-functional beyond 04 hours during a week on account of any breakdown due to System failure/ repairs/ settings of the CVPS, penalty will be imposed as under.

In the backdrop of these facts RBI has raised following questions:

5.2) Question no 1. Whether the penalties, late fees/penal interest, fine of the nature, levied and collected by RBI, for contravention or violation of provisions of Law are taxable under GST (as stated in para 1.4 of this order)?

5.2.1 Submission of the applicant:

RBI has relied on CBIC Circular No.178/10/2022-GST dated 03 August 2022 (Tax Research Unit) and judgment of CESTAT, Principal Bench, New Delhi in the case of M/s South Eastern coalfields Ltd [2021 (55) GSTL 549 (Tri. -Del.)], Referred Paragraphs 27, 28, 32, and 43; and FAQ issued by Central Board of indirect Taxes and Customs (CBIC) viz., frequently asked questions on banking, insurance and stock brokers sector [which are provided on CBIC portal question no. 49. RBI is of the opinion that imposition of such penalties such etc. as regulator to discipline regulates banks, non-banking financial institutes and other institutes is not a supply under GST and Tax is not leviable on such amounts.

5.2.2 Submission of Jurisdictional Officer- The Officer relied on Circular no. 178/10/2022-GST dated 03-08-2022, content of para 7.1 to 7.1.5. and submitted its opinion as under,

"The payments received in the form of penalties, late fees/penal interest, fine of the nature, levied and collected by RBI, for contravention or violation of provisions of Law or Penalty of the nature for non-performance or under-performance as per contractual agreement by RBI with third party vendors are not taxable as such payments do not constitute consideration for a supply." (Emphasis supplied)

5.2.3 Findings, observation and discussion:

We have gone through the submission made and Circular no. 178/10/2022-GST relevant portion of circular are reproduced as under: -



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"7.4 Penalty imposed for violation of laws such as traffic violations, or for violation of pollution norms or other laws are also not consideration for any supply received and are not taxable, which are also not taxable. Same is the case with fines, penalties imposed by the mining Department of a Central or State Government or a local authority on discovering mining of excess mineral beyond the permissible limit or of mining activities in violation of the mining permit. Such penalties imposed for violation of laws cannot be regarded as consideration charged by Government or a Local Authority for tolerating violation of laws. Laws are not framed for tolerating their violation. They stipulate penalty not for tolerating violation but for not tolerating, penalizing and deterring such violations. There is no agreement between the Government and the violator specifying that violation would be allowed or permitted against payment of fine or penalty. There cannot be such an agreement as violation of law is never a lawful object or consideration. The service tax education guide issued in 2012 on advent of negative list regime of services explained that fines and penalties paid for violation of provisions of law are not considerations as no service is received in lieu of payment of such fines and penalties."

Decision: - Penalty, late fees, penal interest, fine etc. levied and collected by RBI for contravention or violations of various laws administered by RBI are for the purpose of maintaining discipline and deterrence in the regulatee banks, non-banking financial institutes & other institutes. Therefore, squarely are covered by explanation given para 7.4 of the aforesaid circular and as explained in the FAQ referred above as answer to question no. 49. The principal laid down in the circular is applicable to the penalties etc. levied by RBI for contravention of provisions of law as stated in para 1.4. We are bound by the circular and hence are of the opinion that these activities are not in the nature of a consideration for an activity and hence, would not constitute a supply of service. service.

5.3 Question no.2. Whether the penalty of the nature for non-performance or under-performance as per contractual agreement by RBI with third party vendors are taxable under GST? (As stated in para 5.2 of this order)?

5.3.1 Submission of the applicant:

RBI has relied on CBIC Circular No.178/10/2022-GST dated 03 August 2022 (Tax Research Unit)-Paragraph No 7.1-Liquidated damages and judgment of CESTAT, Principal Bench, New Delhi in the case of M/s South Eastern coalfields Ltd [2021 (55) GSTL 549 (Tri. -Del.)], Referred Paragraphs 2727, 28, 32, and 43. RBI submitted that "the stance of CBIC in respect of applicability of GST is clear vide the aforementioned CBIC circular that GST is not applicable on liquidated damages where the amount paid is only to compensate for injury, loss or damage and such payments do not constitute consideration for a supply. Hence penalty in nature for non-performance or under-performance as per contractual agreement, is not supply under GST Laws.

5.2.2 Submission of Jurisdictional Officer-

The Officer relied on Circular no. 178/10/2022-GST dated 03-08-2022, content of para 7.1 to 7.1.5. and submitted its opinion as under,
"The payments received in the form of penalties, late fees/penal interest, fine of the nature, levied and collected by RBI, for contravention or violation of provisions of Law or Penalty of the nature for non-performance or under-performance as per contractual agreement by RBI with third party vendors are not taxable as such payments do not constitute consideration for a supply." (Emphasis supplied)



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5.2.3 Finding observation and discussion:

We have gone through the submission made and Circular no. 178/10/2022-GST relevant portion of circular are reproduced as under: -

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.

"7.1.4 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".

Decision: - The penalty of the nature for non-performance or under-performance as per contractual agreement by RBI with third party vendors. It is in nature of liquidated damages and the amount is paid only to compensate for injury, loss or damage suffered by the RBI due to breach of the contract. RBI is interested in getting services within stipulated time lines and not collecting penalty.

Therefore, it is squarely covered by explanation given para 7.1, and 7.14 and Examples in Para 7.1.5 of the aforesaid circular The principal laid down in the circular is applicable to these penalties in nature of liquidated damages levied by RBI on third party vendors for non-performance or under-performance as per contractual agreement. We are bound by the circular and hence are of the opinion that these



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activities are not in the nature of a consideration for an activity and hence, would not constitute a supply of service. service.

6) In view of the extensive deliberations as held hereinabove, we pass an order as follows:

ORDER

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

For reasons as discussed in the body of the order, the question is answered thus –

Question 1: Whether the penalties, late fees/penal interest, fine of the nature, levied and collected by RBI, for contravention or violation of provisions of Law are taxable under GST (as stated in Paragraph 1.4 of this order)?

Answer: - No.

Question 2: Whether the penalty of the nature for non-performance or under-performance as per contractual agreement by RBI with third party vendors are taxable under GST?

Answer: - No.



AJAYKUMAR V. BONDE
(MEMBER)

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PRIYA JADHAV
(MEMBER)

Copy to:-

1. The applicant
2. The concerned Central / State officer

Copy Submitted for information:-

1. The Commissioner of State Tax, Maharashtra State, Mumbai
2. The Pr. Chief Commissioner of Central Tax, Churchgate, Mumbai
3. The Joint commissioner of State Tax, Mahavikas for Website.

Note:-An Appeal against this advance ruling order shall be made before The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India Building, Nariman Point, Mumbai – 400021. Online facility is available on gst.gov.in for online appeal application against order passed by Advance Ruling Authority.