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

ADVANCE RULING NO. GUJ/GAAR/R/2026/23
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2025/AR/31)

Date:24/ 06/2026

Name and address of the applicant	:	M/s. Pon Pure Chemical India Private Limited, 2nd Floor, 341, Sector 1A, Gandhidham, Kachchh, Gujarat-370201.
GSTIN of the applicant	:	24AACCP3026E1ZZ
Jurisdiction Office	:	Office of the Assistant Commissioner of State Tax,Unit-103,Range-25, Division-12, Gandhidham
Date of application	:	01.08.2025
Clause(s) of Section 97(2) of CGST/GGST Act, 2017, under which the question(s) raised.	:	(e) & (g)
Date of Personal Hearing	:	06.02.2026
Present for the Applicant	:	Shri Vikash Agarwal, CA

Brief facts:

M/s. Pon Pure Chemical India Private Limited, 2nd Floor, 341, Sector 1A, Gandhidham, Kachchh, Gujarat-370201 [for short–applicant'] is a company incorporated under the provisions of the Companies Act, 1956 registered under GST having GSTIN No.24AACCP3026E1ZZ.

2. The applicant has engaged various transporters for transportation of goods involving both inward and outward supplies: (i) Movement of goods from Supplier's location to location of the applicant; (ii) Movement of goods from the applicant's place of business to Customer's place of business. (iii) Movement of goods from port to location of the applicant or customer as the case may be. Further, majority of the chemicals transported by the transporters possess properties that make them susceptible to certain unavoidable losses during transportation. These inherent losses arise due to evaporation, spillage, leakage due to factors like temperature fluctuations, pressure changes, or mechanical stress during transit and weight loss due to moisture absorption or desorption, compaction, or other physical transformation during transportation. Industry practices often establish an agreed

tolerance limit for such issues. Losses within tolerance limit are anticipated and accepted and generally no recovery is made by the applicant against the agreed tolerance limit. However, losses exceeding this agreed threshold are considered breaches of contractual terms, prompting the applicant to seek compensation from transporters for the excess loss. The various circumstances under which the compensation is received from the transporters as well as the quantum of compensation are described hereunder:

S.No.	List of various circumstances	Quantum of loss or basis for compensation.
01.	Material shortage during transportation and any kind of loss in transit beyond a specific level on account of default by the transporter including tanker leakages.	Pursuant to inherent properties of various chemicals, usually a certain amount of loss is bound to occur during their transportation. However, in case of any substantial shortage or loss of materials, the actual cost of material lost in transit is received.
02.	Material quality issues on account of default by transporter	Receipt of additional job work cost for bringing back the materials to their original quality.
03.	Material color issue, tanker rust etc.	Receipt of processing or job work cost for: (i) bringing the materials to its original colour; (ii) removing rust.
04.	Damage or destruction of goods on account of default by the transporter.	The actual cost of the goods damaged or destroyed are received from the transporters.
05.	Theft of materials including pilferage.	The actual cost of the goods lost on account of theft or pilferage are received from the transporters.
06.	Any kind of failure to deliver goods at the required location at the required time.	Receipt of additional cost for alternate arrangement of transport on account of default by the transporter.
07.	Compensations for any damages suffered by the applicant on account of negligence by transporters during handling, loading or unloading of goods.	The actual cost of the goods lost, or damages suffered on account of negligence by the transporters.

The applicant submits that the claims for such defects resulting in loss on account of the transporters will be more or less equal to the cost of the materials damaged along with other ancillary costs incurred in relation to procurement of materials or manufacturing of the finished goods and that there is no formal contract or agreement between the applicant and the transporters for such compensation.

3. The applicant has further submitted that since the above mentioned circumstances are not anticipated during the transportation of goods, there is no possibility of entering into prior contract or agreements in order to safeguard any losses on account of default that may be committed by the transporters while transporting the goods. Actual losses are identified after checking the quality/quantity of the goods once they reach the Customer's/Applicant's place of business and the details of actual loss are communicated to the respective transporters on a case to case basis seeking their compensation.

4. In view of the above, the applicant seeks an advance ruling on the following question:

"Whether the amount from the transporters as a compensation for loss would be considered as a "Supply of services" by the applicant as per para 5(e) of Schedule II of Section 7 of Central Goods and Services Tax Act, 2017?"

5. Statement containing the applicant's interpretation of legislative provisions with respect to the issue is as under:

(i) The applicant engages various transporters for transportation of goods and the transporter shall be responsible for handling the goods and in case of any defaults or mistakes committed by such transporters, the company recovers damages or receives compensation from the transporters. The amount received from the transporters against the above defects in goods transported, cannot be considered as 'supply of service' under Para 5(e) of Schedule II read with Section 7 of the Central Goods and Service Tax Act, 2017 therefore, GST cannot be levied on such activity.

(ii) Firstly, it is required to analyse whether compensation received from transporters would be considered as 'Supply of Service'. In order to levy tax on any activity, the activity is required to be qualified as a 'supply' in the first place. To evaluate whether the recovery made from the transporters would tantamount to a 'supply' or not in accordance with the provisions of CGST Act, 2017, reference is made to the provisions of Section 7 of the said Act which has been reproduced below:

"(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;

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

(c) the activities specified in Schedule I, made or agreed to be made without a consideration

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

(iii) Thus the term 'Supply' includes all forms of supply (goods and/or services) and includes agreeing to supply when the supply is for a consideration and is in the course or furtherance of business. The word 'supply' is all-encompassing, subject to exceptions carved out in the relevant provisions.

(iv) The term 'consideration' has been defined in Section 2(31) of the CGST Act, 2017 which is provided below:

'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.

(v) As per the above definition, the meaning of the word consideration is very broad. It includes any payment made or to be made, whether in money or otherwise,

a) In respect of

b) In response to

c) For Inducement of supply of goods of services.

(vi) A plain reading of the aforesaid provisions under GST indicates that for a transaction to qualify as a "supply of service', there has to be an underlying activity' performed by one person for another for consideration and there has to be a service provided and a service recipient who has agreed to perform/receive specified services. The contract/agreement should involve contractual reciprocity.

(vii) Circular No.178/10/2022-GST dated 03.08.2022 clarified that liquidated damages are a mere flow of money from the party who causes breach of the contract to the party who suffers loss or damage due to such breach, that such payments do not constitute consideration for a supply and are not taxable.

(viii) The compensation received from the transporters are in the nature of liquidated damages. The term 'liquidated damages' is defined under Black's law dictionary as "An amount contractually stipulated as a reasonable estimation of factual damages to be recovered by one party if the other party breaches. If the parties to a contract have properly agreed on liquidated damages, the sum fixed is the measure of damages for a breach, whether it exceeds or falls short of the actual damages." Hence liquidated damages are nothing but a recovery made by one party if the other party breaches the contract. Further, the liquidated damages can also be a sum agreed upon whether or not it is equivalent to the actual damages.

(ix) In the present case, the applicant engages various transporters for transportation and handling of the goods. The applicant has the right to recover damages or receive compensations for defects resulting in actual loss on account of the transporters which will be more or less equal to the

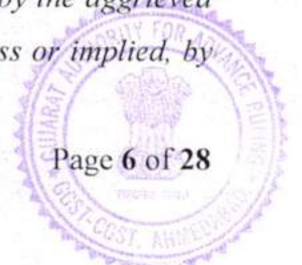
cost of materials damaged along with other ancillary costs incurred in relation to procurement of materials or manufacturing of the finished goods. Further, the compensation stems from occurrence of an event of damage caused by the transporters which is in the nature of compensation for losses incurred. Further, the intention of the parties is to avoid such breach and not to make breach. Hence, such an amount recovered could not be juxtaposed with liquidated damages.

(x) In addition, neither the applicant is carrying on any activity to receive compensation nor can there be any presumption or intention of the other party to make suffer losses to the applicant. Further, these recoveries arise on an unintentional occurrence of damages which both the parties want to avoid. Hence, there is no service/supply element, the amount received is only compensation due to loss suffered by the applicant. Hence, the compensation received from the transporters are nothing but compensation for the damages caused by the transporters for not delivering the desired quantity/quality to applicant/Customer's place and for the above reasons the compensation is nothing but a liquidated damage in the case of the applicant.

(xi) CBIC vide Circular Number 178/10/2022-GST, dated 3-8-2022(Tax Research Unit) has given clarification 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. The relevant extracts of the Circular are reproduced below: -

"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 a mere 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 .....Such payments being merely flow of money are not a consideration for any supply and are not taxable. The key in such cases is to consider whether the impugned payments constitute consideration for another independent contract envisaging tolerating an act or situation or refraining from doing any act or situation or simply doing an act. If the answer is yes, then it constitutes a 'supply' within the meaning of the Act, otherwise it is not a "supply".

7.1.6 If a payment constitutes a consideration for a supply, then it is taxable irrespective of by what name it is called; it must be remembered that a "consideration" cannot be considered de hors an agreement/contract between two persons wherein one person does something for another and that other pays the first in return. If the payment is merely an event in the course of the performance of the agreement and it does not represent the 'object', as such, of the contract then it cannot be considered 'consideration'.....

(xii) From the above, it can be inferred that in order to consider any amount as a liquidated damage, the following needs to be satisfied.

- Party which suffers such breach should be entitled to receive from the other party compensation for any loss or damage caused to him by such breach as stipulated in Section 73 of Contract Act, 1872.
- The recovery of damages should be agreed only to ensure performance and to deter non-performance, unsatisfactory performance or delayed performance and not for any other reasons i.e. recovery of damages should act as a protection against non-performance or un-satisfactory performance or a delayed performance.
- Amount paid should only be to compensate for injury, loss or damage suffered by the aggrieved party due to breach of the contract and there should not be an 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.

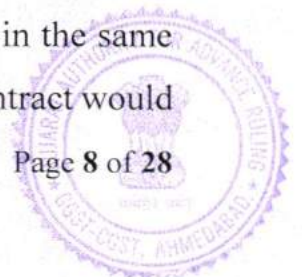
- Impugned payments should not constitute consideration for another independent contract envisaging tolerating an act or situations or refraining from doing any act or situation or simply doing an act.
- The payment received should be merely an event in the course of the performance of the agreement.

(xiii) If a payment encompasses all the above, then it can be considered as liquidated damages which is a mere flow of money and would not constitute as a consideration.

(xiv) Hence, from the above circular, it is clear that GST is not applicable on liquidated damages because the same is not covered under the scope of supply as the amount paid is only to compensate for injury, loss or damage and such payments do not constitute consideration for a supply.

(xv) In the present case, the compensations received from transporters would satisfy the definition of liquidated damages for the reasons stated above. Hence, the recoveries made from transporters is akin to liquidated damages as referred in CBIC Circular. In addition, the amount received as compensation is unconditional and based on actual loss/damage incurred and not based on any mathematical formula. The arrangement between the transporters and applicant is to deliver the goods as agreed, if there is any default in the hands of transporters, the same shall be compensated by the transporters. 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 and they are made to ensure performance or to deter non-performance, unsatisfactory performance on the part of transporters. Hence, in light of the above circular, if the compensation received is liquidated damages, the same wouldn't form part of 'consideration' as there is no reciprocity to the party paying the compensation.

(xvi) Also, leaving apart the above circular, the above compensation would not be covered under the definition of 'Consideration' since there is a difference between consideration and compensation. The principle of payment of damages is to put the aggrieved party monetarily in the same position as far as possible in which it would have been if the contract would



have been performed. The payment of damages is a condition of contract, purely compensatory in character and not a consideration for any service in the nature of forbearance or tolerating an act, hence there is a difference between consideration and compensation.

(xvii) Hence, in the present case, the amount received from the transporters are compensation and not consideration, hence the same cannot be regarded as supply since it lacks the element of consideration. Since the above recovery does not meet the definition of consideration, it does not fulfil the conditions of supply as one of the fundamental requirements for supply is the presence of consideration. In this case, as there is no consideration, it does not qualify as a supply as per Section 7 of the CGST Act, 2017.

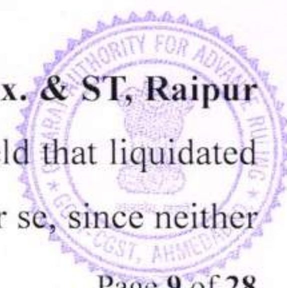
(xviii)The applicant has placed reliance on the following judgements/decisions to support their cause:

(a) Decision of **Hon'ble Bombay High Court in Bai Mamubai Trust vs. Suchitra WD/O Sadhu Koraga Shetty reported as [2019-VIL-454-BOM],** wherein it has been held that payment of royalty as compensation for unauthorized occupation of premises is to remedy the violation of a legal right, and not as payment of consideration for a supply.

(b)Case of **Amit Metaliks Limited vs. CGST 2019 (11) TMI 183 – CESTAT KOLKATA** wherein it was held that liquidated damages for non-supply of agreed quantity is an actionable claim, hence the same could not be treated as a service under Section 66(E)(e)of the Act.

(c) Case of **Steel Authority of India vs. Comm, of GST & C.Ex., Salem, 2021 (55) GSTL.34 (Tri., Chennai)** wherein it was held that liquidated damages cannot be said to be towards any service per se, since neither appellant is carrying on any activity to receive compensation nor can there be any intention of other party to breach or violate contract and suffer a loss-Service Tax not leviable under Section 65B, read with Section 66E(e) of the Finance Act, 1994-Demand, interest and penalty not sustainable.

(d)**South Eastern Coal fields ltd. Vs. Commr. Of C.Ex. & ST, Raipur – 2021 (55) GSTL.549 (Tri.-Del.)** wherein it was held that liquidated damages cannot be said to be towards any service per se, since neither



appellant is carrying on any activity to receive compensation nor can there be any intention of other party to breach or violate contract and suffer a loss........It is therefore not possible to sustain the view taken by the Principal Commissioner that penalty amount, forfeiture of earnest money deposit and liquidated damages have been received by the appellant towards 'consideration' for 'tolerating an act' leviable to service tax under Section 66E(e) of the Finance Act."

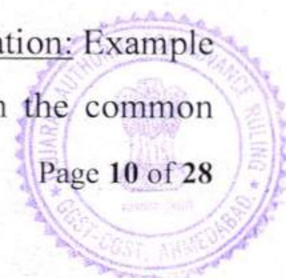
(e) Decisions in the cases of: **(i) Krishnapatnam Port Co. Ltd. Vs. Commr. Of C.Ex. & ST., Guntur 2023 (72) GSTL.259 (Tri.Hyd.) and (ii) Hon'ble Bombay High Court in the case of Bai Mamubai Trust, Vithaldas Laxmidas Bhatia, Smt. Indu Vithaldas Bhatia vs. Suchitra (109 taxmnnn.com200)=2019(31) GSTL.193 (Bom.)** on the said issue have also been relied upon.

(xix) In Circular 178/10/2022, it was clarified that, "Agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act" has been specifically declared to be a supply of service in para 5(e) of the CGST Act if it constitutes a 'supply' within the meaning of the Act. Compensations received from the transporters cannot be said to be covered under Clause 5(e) of Schedule II of the CGST Act, 2017 for the following reasons:

- Clause 5(e) of Schedule II are being divided into the following 3 sub clauses:

  (a) Agreeing to the obligation to refrain from an act: Examples would include non-compete agreements, where one party agrees not to compete with the other party in a product, service or geographical area against a consideration paid by the other party. Another example is a builder refraining from constructing more than a certain number of floors, even though permitted to do so by the municipal authorities against a compensation paid by the neighbouring housing project which wants to protect it's sunlight or an industrial unit refraining from manufacturing activity during certain hours against an agreed compensation paid by a neighbouring school, which wants to avoid noise during those hours.

  (b) Agreeing to the obligation to tolerate an act or a situation: Example is a shopkeeper allowing a hawker to operate from the common



pavement in front of his shop against a monthly payment by the hawker, or a Resident Welfare Association (RWA) tolerating the use of loudspeakers for early morning prayers by a school located in the colony subject to the school paying an agreed sum to the RWA as compensation.

(c) Agreeing to the obligation to do an act: Example is an industrial unit agreeing to install equipment for zero emissions/discharge at the behest of the RWA of a neighbouring residential complex against a consideration paid, even though the emission/discharge was within the permissible limits and there was no legal obligation upon the individual unit to do so.

(xx) It was further clarified that all the 3 activities must be under an 'agreement' or a 'contract' (whether express or implied) to fall within the ambit of the said entry i.e. one of the parties to such agreement/contract (the first party) must be under a contractual obligation to either:

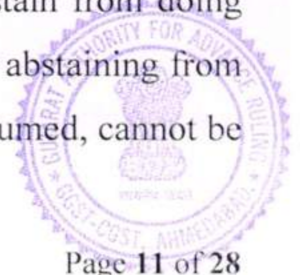
(a) Refrain from an act, or

(b) To tolerate an act or a situation or

(c) To do an act.

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

(xxii) In addition, in order to a payment being covered in the above section, there has to be an express or implied agreement; to do or abstain from doing something against payment of consideration for doing or abstaining from such act, for a taxable supply to exist and it cannot be assumed, cannot be



imagined or presumed to exist just because there is a flow of money from one party to another.

(xxiii) Liquidated damages are amounts received 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, payment made should have an independent arrangement entered into for such activity of tolerating an act.

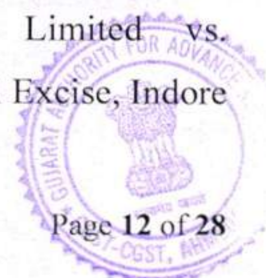
(xxiv) In the above situations, it is observed that there is a specific agreement by the service provider to agree to an obligation specified in the contract. However, in the present case, the Applicant does not enter into an agreement with the Contractor specifically to tolerate any situation or act against which a consideration is received. The Applicant receives compensations from the transporters on account of damages caused during transportation according to tolerance agreed mutually by the Applicant and transporters

(xxv) In this case, the applicant's right to receive compensatory damages becomes contingent upon the transporters damages caused and the recovery arises on event of failure on part of the transporters not delivering the actual quantity/quality and does not emanate from an obligation on the part of the applicant to tolerate an act or situation. The applicant has suffered an actual damage or loss, which cannot be equated with making a supply of taxable supply under clause 5(e) of Schedule II of the CGST Act, 2017.

(xxvi) The applicant has also relied on the following judgements/decisions to support his cause/view:

(a) Allahabad Tribunal's judgement in the case of M/s. K.N.Food Industries Pvt. Ltd. Vs. The Commissioner of CGST & Central Excise reported as [2020(1) TMI 6 CESTAT Allahabad].

(b) M.P.Audyogik Kendra Vikas Nigam (Indore) Limited vs. Commissioner, Central Goods, Service Tax and Central Excise, Indore 2022 (6) TMI 381 – CESTAT New Delhi.



(c) M/s. Jindal Steel & Power Limited vs. Principal Commissioner of CGST & Cex, Ranchi Commissionerate.

(d) M/s. Bharat Heavy Electricals Limited PSWR vs. Commissioner of Central Excise and Service Tax, Nagpur 2023 (5) TMI 11 – CESTAT Mumbai.

(xxvii) The applicant has concluded his submission by stating that considering the above provisions and facts of the case, the applicant is allowed not to pay tax on the compensation received from Transporters in the present case.

6. The applicant vide their additional submission dated 04.02.2026 has reiterated the submissions given along with their application dated 01.08.2025. The applicant has also relied on the following judgements/decisions to support their cause:

(i) JBM Ecolife Mobility Surat Pvt.Ltd., Surat vs. Surat Sitilink Ltd., (SSL), Gujarat AAR GUJ/R/2025/47 dated 03.11.2025-2025-VIL-180-AAR.

(ii) Maharashtra State Electricity Transmission Col.Ltd. (MSETCL)-Maharashtra AAR No.GST-ARA-31/2024-25/B-208, dated 28.04.2025-2025-VIL-78-AAR/2025-VIL-20-AAR (same order text).

(iii) Oil and Natural Gas Corporation Ltd.(ONGC)- Minimum Guaranteed Off-take(MGO) Charges-Tamil Nadu AAR, Advance Ruling No.37/ARA/2025, dated 24.09.2025-2025-VIL-160-AAR.

(iv) Neyveli Lignite Corporation Ltd. Vs. CCE & ST – 2021 (53) GSTL.401 (Tri-Chennai)=2021-VIL-338-CESTAT-CHE-ST.

(v) Paradip Port Trust vs. CGST & Excise-2022(62) GSTL 186 (Tri-Kolkata)-2022-VIL-176-CESTAT-KOL-ST.

(vi) Rajcomp Info Services Ltd. Vs. Principal Commissioner, CGST & C.Ex., Jaipur-I-2023 (73) GSTL 237 (Tri-Del)=2023-VIL-218-CESTAT-DEL-ST.

(vii) Madhya Pradesh Power Transmission Co.Ltd. vs. Pr.Commissioner of CGST & C.Ex., Bhopal-2023(385) ELT 152 (Tri-Del).

(viii) Repco Home Finance Ltd. Vs. CST2020-VIL-309-CESTAT-CHE-ST

7. Personal hearing was granted on 06.02.2026 wherein Shri Vikash Agarwal, C.A. appeared on behalf of the applicant and reiterated the facts & grounds as stated in the application. During the course of personal hearing, the Bench raised a query as to whether they reverse the credit on the goods which are lost in transit to which they submitted that they would be giving the reply within a week.

8. In reply to the query raised by the Bench during the course of personal hearing, the applicant, in their reply dated 17.04.2026 submitted that they have already reversed the Input Tax Credit (ITC) in respect of goods which were lost in transit, in compliance with the provisions of the GST law; that as the goods were not received at their end due to loss during transit, the corresponding ITC availed earlier was duly reversed by netting off in Table 4A(5) in the relevant return; that the supplier has issued a credit note for the value of goods lost in transit, including the applicable tax component; that the said credit note has been duly accounted for in the books and considered appropriately for GST compliance purposes, ensuring that no excess ITC is retained in respect of such goods; that under outward supplies, the applicant has also raised a credit note towards the loss of products in transit, wherever applicable, to correctly reflect the commercial impact of such loss; that the outward credit note ensures that the taxable value and tax liability are adjusted accurately in line with the actual supply effected; that ITC pertaining to goods lost in transit has been reversed in full by the applicant; that corresponding supplier credit notes have been received and accounted for, and necessary outward credit notes have been issued to reflect the loss in transit transactions correctly and that the customers also reverse input tax credit to the extent of GST charged in the credit notes. The applicant has enclosed copies of 2 contracts for transportation with two different transporters i.e. (i) between M/s. Pon Pure Chemical India Pvt. Ltd. (office located at Chennai, Tamil Nadu) & Bansidhar Transport, Gandhidham, Kutch (covering various destinations across India) and (ii) between M/s. Pon Pure Chemical India Pvt. Ltd. (office located at Chennai, Tamil Nadu) & Satya Bizcon India Pvt. Ltd. , Mumbai (covering various destinations across India). Some of the relevant extracts of the contracts are reproduced hereunder for reference:

1. That the Transporter as owners/hirers of Tankers will maintain the same in good working order during the period of contract. Tankers provided by Transporter for loading the PRODUCTS must be neat, tidy and fitted with rear/side unloading valve and all the top openings to be with sealing arrangement....

2. Timely reporting of the Tanker/s is the essence of contract. Seals of the Tankers must remain intact and should co-relate with those mentioned in challans. ***The Company shall be entitled to all such claims computable such amounts by way of liquidated damages which the parties hereto estimate as fair and reasonable and/or to rescind the contract as being discharged by non performance and/or abandoned by the Transporter and claim such damages, loss and expenses and other amounts as the Company may have suffered or may suffer on account or by reason of the Transporter/s aforesaid delay or default.***

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7. This Agreement shall remain in force for a period of two financial years (April to March is referred as Financial year) effective from 1st April 2025 to 31st March 2027. However, the Company reserves the right to terminate this contract any time before the expiry of the period of the contract without giving any reasons or notice to the Transporter.

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10. Payment of bills

a. The Company expects the bills to be submitted to the Company's office within 30 days of the date of LR along with the acknowledgement copy of LR/Consignment Note confirming safe receipt of products, tax payment receipts, etc. All freight bills to be submitted to Company's processing center (SS) at Erode within 30 days from the date of LR and if not, penalty will be charged for late submission of bills as per Company's policy in Annexure I. The Company will make payment within thirty 30 days of receipt of all documents as required by the Company.

b. Transporter shall strictly get acknowledgement on POD copy of the LR from customer if not the bills will be re-turned to the transporter.

c. The Company will deduct from any payment due to the Transporter for any claims which the Company has made for leakages, damages, shortages in transit, quality issues, third party claims etc. The Company's decision on such claim is final.

d. It is Transporter's responsibility to check all the documents such as way bills/state permits and other relevant documents before leaving the LOADING LOCATIONS where loading of PRODUCTS is getting loaded. Any fine / penalty due to the lapses on Transporter's side, has to be borne by the Transporter.

e. Transporter to follow the communication matrix as per Annexure-F for Freight approval, halting intimation and Address details where transportation bills are to be sent. In the event of halting, the Transporter has to intimate the same in an email on the same day to the company, and for claiming the halting charges, along with freight bill, the transporter shall annex the GPS report and a confirmation from the customer covering the timing and date of tanker reported. The transporter understands that in the absence of an email from the transporter as mentioned above, no halting charges will be paid to the transporter.

11. Loss in Transit:
Annexure-E
Tolerance clause:

A	***Hexane & MDC***	***0.75% and if shortage exceeds more than 1% will be deducted entire shortage.***
B	***Other Products (other than Phenol)***	***0.30% and if shortage exceeds more than 0.5% will be deducted entire shortage quantity.***
C	***Warehouse***	***Physical Weighment only (Drum unloading) will be considered in our all warehouse. Note: Physical weighment will be considered only if the drum wise weight (Drum wise weighment chart) provided by our warehouse, if not provided we will proceed as per weighbridge.***

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13. Liability of Transporter

Transporter will be liable for any loss or damage to the Company's employee, the Transporter's employees or to any third party resulting from fire, leakage, negligence, explosion, accident or any other cause in operating the said tanker/s at the time of loading, unloading and/or during transit and the transporter shall indemnify and keep indemnified the Company against any such loss or damage and shall pay to the Company such amount as the Company may be called upon by the law to pay. The Transporter shall remain at all times liable and responsible to the Company for any loss or damage caused at LOADING, LOCATIONS, UNLOADING LOCATIONS of the Company by any carelessness, negligence, inexperience by the respective employees, of any of which the Company shall be at liberty to debit any cost of repairs or loss or damage to the account of the Transporter for losses suffered directly or indirectly. This will also cover short receipts, contamination of PRODUCTS, on the-basis of a certificate issued by the Company's receiving person.

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20. Accidents to Vehicles / Trans-shipment:

a. Accidents in the course of execution of this contract should be reported by Transporter to the nearby Police Station and concern person in Logistics department of Company within 24 hours of the accident. This intimation to be followed by a detailed report from Transporter. If there is any delay, then the Company reserves the right to make claims for the cost of the entire consignment from Transporter as well as termination of the contract.

b. The Transporter will be responsible for making necessary arrangements at Transporter's own cost to salvage the PRODUCTS from the vehicle, which has met with an accident, and to arrange delivery of the PRODUCTS to a location as directed by the Company. Any expenses on account of accident as well as the cost of the damaged/contaminated PRODUCTS will be borne by the Transporter.

c. Transit Insurance of the material will be covered by the Company. However, transporter has to inform Company if any accident takes place during transit. In that case transporter has to initiate and co-ordinate with Company logistics person, to carry out insurance survey by authorized insurance surveyor appointed by Company and submit the survey report for claiming the value of PRODUCT from insurance company. The transporter understands that in case the claim on pilferage or shortage or quality deterioration is rejected by the insurance company due to Poor Quality of the tanker, Poor Packing, shortage of required documents, theft, fake Accident, negligence of transporter and/or his representative, then the entire value of the Product loss/ damaged will be deducted from the transporter's bill.

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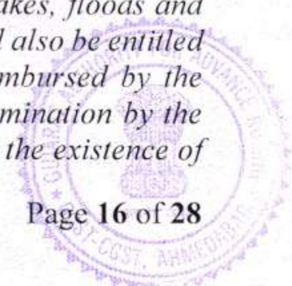
25. That the Transporter will make good to the Company any losses arising from due to negligence of Transporter or their representatives:

a. The confiscation by government or local authorities of any quantities of the product delivered to the Transporter for transportation; and
b. Loading, unloading or in transit for reasons other than the acts of God, riots or civil commotion.
c. The liability of proving that any loss or damage caused by any accident or fire resulting from the acts of God or an act or Sate i.e. due to natural calamities such as earthquakes, floods and riots, Mob violation and Looting is solely upon the Transporter. The Company will also be entitled to compute the amount of loss suffered by the Company and liable to be reimbursed by the Transporter to the Company under these provisions and the decision and determination by the Company or its authorized representative as to the reasons for such loss or as to the existence of



any acts or events such as riots, civil commotion or acts of God, shall be final and binding on the Transporter and shall not be questioned in any Court of law, or arbitration or otherwise and the Transporter hereby irrevocably authorize the Company to set off and adjust such loss or damage against the transporter's bill and in the event of shortfall therein, the Transporter shall immediately upon a certificate issued by the Company, Pay the same to the Company without demur or objection.

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34. Transporter has to adhere the safety norms of the company's LOADING AND DELIVERY LOCATIONS. Transporter has to train their drivers undergo Defensive driving training and the certificate may be provided to Company. Transporter train their drivers to follow safety rules, no usage of cell phone during the driving, smoking during the driving, consumption of alcohols during or before taking the trip shall be strictly prohibited. Transporter ensure the fitness of drivers by doing periodical medical examination to their drivers. During the night hours the tanker should not be operated from 1.00 AM to 4.00 AM for the safety reason. During this time the tanker should be halted in safe parking area. The company reserve the right to claim /charge / fine from the transporter for the violation of any conditions mentioned in this clause as per Annexure I.

Discussion and findings

9. At the outset, we would like to state that the provisions of both the CGST Act and the GGST Act are the same, except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the GGST Act.

10. We have considered the submissions made by the applicant in their application for advance ruling, the submissions made both oral and written during the course of personal hearing as well as the submissions made by them subsequent to the personal hearing. We have also considered the issue involved, the relevant facts and the applicant's submission/interpretation of law in respect of question on which the advance ruling is sought.

11. The applicant has submitted that they have engaged various transporters for transportation of goods involving both inward and outward supplies: (i) Movement of goods from Supplier's location to location of the applicant; (ii) Movement of

goods from the applicant's place of business to Customer's place of business. (iii) Movement of goods from port to location of the applicant or customer as the case may be. They have also submitted that majority of the chemicals transported by the transporters possess properties that make them susceptible to certain unavoidable losses during transportation and these inherent losses arise due to evaporation, spillage, leakage due to factors like temperature fluctuations, pressure changes, or mechanical stress during transit and weight loss due to moisture absorption or desorption, compaction, or other physical transformation during transportation; that Industry practices often establish an agreed tolerance limit for such issues and losses within tolerance limit are anticipated and accepted and generally no recovery is made by the applicant against the agreed tolerance limit. However, losses exceeding this agreed threshold are considered breaches of contractual terms, prompting the applicant to seek compensation from transporters for the excess loss. The various circumstances under which the compensation is received from the transporters as well as the quantum of compensation, as submitted by the applicant, is as under:

S.No.	List of various circumstances	Quantum of loss or basis for compensation.
01.	Material shortage during transportation and any kind of loss in transit beyond a specific level on account of default by the transporter including tanker leakages.	Pursuant to inherent properties of various chemicals, usually a certain amount of loss is bound to occur during their transportation. However, in case of any substantial shortage or loss of materials, the actual cost of material lost in transit is received.
02.	Material quality issues on account of default by transporter	Receipt of additional job work cost for bringing back the materials to their original quality.
03.	Material color issue, tanker rust etc.	Receipt of processing or job work cost for (i) bringing the materials to its original colour; (ii) removing rust.
04.	Damage or destructions of goods on account of default by the transporter.	The actual cost of the goods damaged or destroyed are received from the transporters.
05.	Theft of materials including pilferage.	The actual cost of the goods lost on account of theft or pilferage are received from the transporters.
06.	Any kind of failure to deliver goods at the required location at the required time.	Receipt of additional cost for alternate arrangement of transport on account of default by the transporter.
07.	Compensations for any damages suffered by the applicant on account of negligence by	The actual cost of the goods lost, or damages suffered on account of negligence by the transporters.

	transporters during handling, loading or unloading of goods.	

The applicant has submitted that the claims for such defects resulting in loss on account of the transporters will be more or less equal to the cost of the materials damaged along with other ancillary costs incurred in relation to procurement of materials or manufacturing of the finished goods and that there is no formal contract or agreement between the applicant and the transporters for such compensation; that since the above mentioned circumstances are not anticipated during the transportation of goods, there is no possibility of entering into prior contract or agreements in order to safeguard any losses on account of default that may be committed by the transporters while transporting the goods. After transportation of goods, the details of actual loss are communicated to the respective transporters on a case-to-case basis seeking their compensation.

12. We find that the applicant wants a ruling on "Whether the amount from the transporters as a compensation for loss would be considered as a "Supply of services" by the applicant as per para 5(e) of Schedule II of Section 7 of Central Goods and Services Tax Act, 2017."

13. We have also gone through the detailed submission of the applicant wherein they have referred to the definition of 'supply' as mentioned in Section 7 of the CGST Act, 2017, the definition of 'consideration' as defined in Section 2(31) of the said Act and explained in detail that the compensation claimed by them from the transporters under the various circumstances (as explained in Sr.No.1 to 7 of table in para 11 above) is neither supply of goods nor supply of service nor consideration. They have also referred to Circular 178/10/2022-GST dated 03.08.2022 covering clauses 7.1 to 7.1.6 which clarified that liquidated damages are a mere flow of money from the party who causes breach of the contract to the party who suffers loss or damage due to such breach, that such payments do not constitute consideration for a supply and are not taxable and that the compensation received from the transporters are in the nature of liquidated damages, hence non-taxable. They have also referred to Clause 5(e) of Schedule II of the CGST Act, 2017 in detail and explained as to why the compensation received by them from the transporters cannot be said to be covered under the said clause. They have relied upon a plethora of judgements to support their cause.

14. Although the applicant has submitted that there is no formal contract or agreement between the applicant and the transporters for compensation to be paid by the transporters to the applicant, we find that there is a contract for transportation between the applicant and the transporters wherein a general reference is found to have been made with regard to the compensation claimed by the applicant. Relevant extracts of the said contract have been reproduced in para-10 above. Clause-2 of the said contract states that the Company shall be entitled to all such claims computable by way of liquidated damages which the parties hereto estimate as fair and reasonable and/or to rescind the contract as being discharged by non-performance and/or abandoned by the Transporter and claim such damages, loss and expenses and other amounts as the Company may have suffered or may suffer on account or by reason of the Transporter/s aforesaid delay or default. Clause 10(c) states that the company will deduct from any payment due to the Transporter for any claims which the Company has made for leakages, damages, shortages in transit, quality issues, third party claims etc. Clause 11 refers to the loss in transit wherein the amount to be claimed as damages is mentioned in Annexure-E. Clause-13 mentions that the Transporter will be liable for any loss or damage to the Company's employees, the Transporter's employees or to any third party resulting from fire, leakage, negligence, explosion, accident or any other cause in operating the said tanker/s at the time of loading, unloading and/or during transit and the transporter shall indemnify and keep indemnified the Company against any such loss or damage and shall pay to the Company such amount as the Company may be called upon by the law to pay. The Transporter shall remain at all times liable and responsible to the Company for any loss or damage caused at loading, locations, unloading locations of the Company by any carelessness, negligence, inexperience by the respective employees, of any of which the Company shall be at liberty to debit any cost of repairs or loss or damage to the account of the Transporter for losses suffered directly or indirectly. This will also cover short receipts, contamination of PRODUCTS, on the-basis of a certificate issued by the Company's receiving person. Further, we also find that the details given in the table in para 11 above (as listed from Sr.No.1 to 7 in table) amply describes the circumstances under which the compensation is to be paid by the transporters. The applicant has also submitted that the claims for such defects resulting in loss on account of the transporters will be more or less equal to the cost of the materials damaged along with other ancillary costs incurred in relation to procurement of materials or manufacturing of the finished goods and after

transportation of goods, the details of actual loss are communicated to the respective transporters on a case to case basis seeking their compensation.

15. We find that as per Black's Law Dictionary *Liquidated Damages* is "the cash component agreed to by a signed, written contract for breach of contract, payable to the aggrieved party". Thus, liquidated damages are a recovery made by one party from the other party, if the other party breaches the contract. Although the applicant has submitted that there is no formal contract or agreement between the applicant and the transporters for compensation to be paid by the transporters to the applicant, we find that there is a contract for transportation between the applicant and the transporters wherein a general reference is found to have been made with regard to the compensation claimed by the applicant and relevant extracts of the said contract are reproduced in para-10 above. Further, perusal of the various circumstances under which the compensation is to be paid by the transporters (as discussed in the table in para 11 above) indicates that they are in the nature of liquidated damages as they are a pre-agreed fixed sum of money payable for breach of the contract. The applicant has also explained that since the circumstances (as mentioned in table in para 11 above) are not generally anticipated during the transportation of goods, there is no possibility of entering into prior contract or agreement in order to safeguard any losses on account of default that may be committed by the transporters while transporting the goods. We also find that CBIC has issued Circular Number 178/10/2022-GST, dated 3-8-2022, clarifying the GST applicability on liquidated damages, compensation and penalty arising out of breach of contract. The relevant paragraphs are reproduced below: -

"Liquidated Damages

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

7.1.1 It is common for the parties entering into a contract, to specify in the contract itself, the compensation that would be payable in the event of the

breach of the contract. Such compensation specified in a written contract for breach of non-performance of the contract or parties of the contract is referred to as liquidated damages. Black's Law Dictionary defines 'Liquidated Damages' as cash compensation agreed to by a signed, written contract for breach of contract, payable to the aggrieved party.

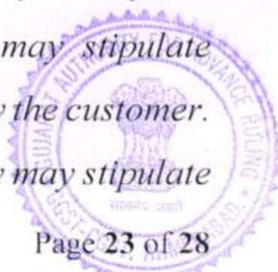
7.1.2 Section 74 of the Contract Act, 1972 provides that when a contract is broken, if a sum has been named or a penalty stipulated in the contract as the amount or penalty to be paid in case of breach, the aggrieved party shall be entitled to receive reasonable compensation not exceeding the amount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

7.1.3 It is argued that performance is the essence of a contract. Liquidated damages cannot be said to be a consideration received for tolerating the breach or non-performance of contract. They are rather payments for not tolerating the breach of contract. Payment of liquidated damages is stipulated in a contract to ensure performance and to deter non-performance, unsatisfactory performance or delayed performance. Liquidated damages are a measure of loss and damage that the parties agree would arise due to breach of contract. They do not act as a remedy for the breach of contract. They do not restitute the aggrieved person. It is further argued that a contract is entered into for execution and not for its breach. The liquidated damages or penalty are not the desired outcome of the contract. By accepting the liquidated damages, the party aggrieved by breach of contract cannot be said to have permitted or tolerated the deviation or non-fulfilment of the promise by the other party.

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

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

7.1.6 If a payment constitutes a consideration for a supply, then it is taxable irrespective of by what name it is called; it must be remembered that a "consideration" cannot be considered de hors an agreement/contract between two persons wherein one person does something for another and that other pays the first in return. If the payment is merely an event in the course of the performance of the agreement and it does not represent the 'object', as such, of the contract then it cannot be considered 'consideration'. For example, a contract may provide that payment by the recipient of goods or services shall be made before a certain date and failure to make payment by the due date shall attract late fee or penalty. A contract for transport of passengers may stipulate that the ticket amount shall be partly or wholly forfeited if the passenger does not show up. A contract for package tour may stipulate forfeiture of security deposit in the event of cancellation of tour by the customer. Similarly, a contract for lease of movable or immovable property may stipulate

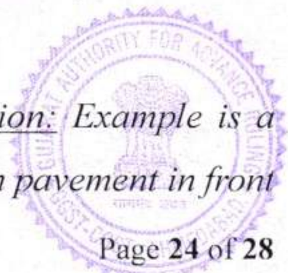


that the lessee shall not terminate the lease before a certain period and if he does so he will have to pay certain amount as early termination fee or penalty. Some banks similarly charge pre- payment penalty if the borrower wishes to repay the loan before the maturity of the loan period. Such amounts paid for acceptance of late payment, early termination of lease or for pre-payment of loan or the amounts forfeited on cancellation of service by the customer as contemplated by the contract as part of commercial terms agreed to by the parties, constitute consideration for the supply of a facility, namely, of acceptance of late payment, early termination of a lease agreement, of pre-payment of loan and of making arrangements for the intended supply by the tour operator respectively. Therefore, such payments, even though they may be referred to as fine or penalty, are actually payments that amount to consideration for supply, and are subject to GST, in cases where such supply is taxable. Since these supplies are ancillary to the principal supply for which the contract is signed, they shall be eligible to be assessed as the principal supply, as discussed in detail in the later paragraphs. Naturally, such payments will not be taxable if the principal supply is exempt.

15.1 Further, para-2a of the aforementioned circular states that the description "agreeing to the obligation to refrain from an act OR to tolerate an act or a situation OR to do an act' covered in para 5(e) of Schedule-II of CGST Act, 2017 was intended to cover the services as described below:

(a) *Agreeing to the obligation to refrain from an act:* *Examples would include non-compete agreements, where one party agrees not to compete with the other party in a product, service or geographical area against a consideration paid by the other party. Another example is a builder refraining from constructing more than a certain number of floors, even though permitted to do so by the municipal authorities against a compensation paid by the neighbouring housing project which wants to protect it's sunlight, or an industrial unit refraining from manufacturing activity during certain hours against an agreed compensation paid by a neighbouring school, which wants to avoid noise during those hours.*

(b) *Agreeing to the obligation to tolerate an act or a situation:* *Example is a shopkeeper allowing a hawker to operate from the common pavement in front*



of his shop against a monthly payment by the hawker, or a Resident Welfare Association (RWA) tolerating the use of loudspeakers for early morning prayers by a school located in the colony subject to the school paying an agreed sum to the RWA as compensation.

(c) Agreeing to the obligation to do an act: Example is an industrial unit agreeing to install equipment for zero emissions/discharge at the behest of the RWA of a neighbouring residential complex against a consideration paid, even though the emission/discharge was within the permissible limits and there was no legal obligation upon the individual unit to do so.

16. As per the above Circular, where the amount paid as damages, is an amount paid only to compensate for injury, loss or damage suffered by the aggrieved party due to breach of the contract and there is no agreement express or implied, by the aggrieved party receiving the liquidated damages, to refrain from or tolerate an act or to do anything for the party paying the liquidated damages, in such cases liquidated damages are a mere flow of money from the party who causes breach of the contract to the party who suffers loss or damage due to such breach. The law itself 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. Further, such payments do not constitute consideration for a supply and are not taxable. The applicant in their submission have enlisted the various circumstances under which the compensation is received from the transporters as well as the quantum of loss or basis for compensation (listed from Sr.No.1 to 7 in table in para 11 above) and we would like to highlight a few of them i.e. (i) In case of material quality issues on account of default by transporter, compensation would be the additional job work cost for bringing back the materials to their original quality, (ii) In case of material color issue, tanker rust etc., compensation would be the processing or job work cost for bringing the materials to it's original color and for removing rust. (iii) In case of damage or destruction of goods on account of default by the transporter, the compensation would be the actual cost of the goods damaged or destroyed, (iv) In case of theft of materials including pilferage, the compensation would be the actual cost of the goods lost on account of theft or pilferage. On going through the same, we do not find anything therein which shows that the applicant is tolerating an act

of the transporters by recovering the damages/compensation from the transporters. The various circumstances under which the compensation is claimed/received from the transporters reveals that it is only a compensation for the injury, loss or damage suffered by the applicant and payment of such compensation amount does not constitute consideration for a supply.

17. We also find that in similar situations in the case of *Re:GSPC* ([2025] 172 taxmann.com 325), the Gujarat Appellate Authority for Advance Ruling had held that the settlement fees on termination of the contract is a consequence of breach of Production sharing Contract and not taxable. Further, Gujarat Authority of Advance Ruling vide Order No.GUJ/GAAR/R/2025/47 dated 03.11.2025 in the case of JBM Ecolife Mobility Surat Pvt. Ltd. held that where amounts are paid merely to compensate for loss due to breach and there is no agreement by Surat Sitilink Ltd. (SSL) to tolerate an act or do anything in return for such payment, these are liquidated damages not constituting consideration for a supply, hence not taxable. In *Re: Achampet Solar (P) Ltd*, ([2023]148 TAXMANN.COM 222 (AAAR-Telangana)), the Telangana Appellate Authority for Advance Ruling held that the recovery of liquidated damages for delay in the construction of solar power project is not taxable in view of CBIC's Circular No. 178/10/2022-GST, dated 3-8-2022. In *Southern Eastern Coal Fields Vs CCE* ([2021] 124 taxmann.com 174 (New Delhi-CESTAT)), the Tribunal while dealing with Section 66E(e) of the Finance Act, which dealt with *'tolerating an act'*, held as under:-

> '*27. It is trite that an agreement has to be read as a whole so as to gather the intention of the parties. The intention of the appellant and the parties was for supply of coal; for supply of goods; and for availing various types of services. The consideration contemplated under the agreements was for such supply of coal, materials or for availing various types of services. The intention of the parties certainly was not for flouting the terms of the agreement so that the penal clauses get attracted. The penal clauses are in the nature of providing a safeguard to the commercial interest of the appellant and it cannot, by any stretch of imagination, be said that recovering any sum by invoking the penalty clauses is the reason behind the execution of the contract for an agreed consideration. It is not the intention of the appellant to impose any penalty upon the other party nor is it the intention of the other party to get penalized.*'

18. We find that CBIC vide Circular No. 245/02/2025-GST dated 28.01.2025 has also clarified on the applicability of penal charges. Though the clarification is in respect of penal charges levied by Regulated Entities like banks and non-financial

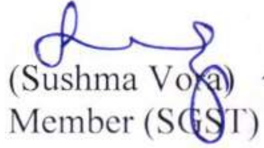
companies for noncompliance with the loan terms to inculcate a sense of credit discipline, we feel that the same would equally apply in the instant case also. As can be seen, the compensation charges are claimed from the transporters for inherent losses arising due to various breaches of the contractual terms (as detailed in table in para-11 above) for which applicant seeks compensation from transporters for the excess loss. Further, liquidated damages cannot be said to be a consideration received for tolerating the breach or non-performance of contract but are rather payments for not tolerating the breach of contract. We find that payment of liquidated damages is stipulated in a contract to ensure performance and to deter non-performance, unsatisfactory performance or delayed performance and liquidated damages are a measure of loss and damage that the parties agree would arise due to breach of contract. Further, the liquidated damages or penalty are not the desired outcome of the contract and 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. We find that these compensations are charges claimed from the transporters for the various circumstances (as detailed in table in para 11 above) which resulted in losses to the applicant in terms of material shortage, material quality losses, material color issue & tanker rust etc., damage or destruction of goods, theft of materials, failure to deliver goods at the required location at the required time, damage suffered by the applicant on account of negligence by transporters during handling, loading or unloading of goods etc. We, therefore, find and hold that these compensations are liquidated damages payable by the transporters to the applicant for various material defects, breaches and non-performance of the obligations as per the contractual terms. We also hold that these compensations do not constitute a consideration for supply, are non-taxable as they do not get covered within the ambit of 'supply of services' and do not fall under the ambit of any of the various types of services described in para 15.1(a) to (c) above.

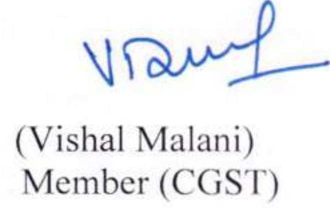
19. In view of the above, we rule as under: -

RULING

Q.1 "Whether the amount from the transporters as a compensation for loss would be considered as a "Supply of services" by the applicant as per para 5(e) of Schedule II of Section 7 of Central Goods and Services Tax Act, 2017?"

A.1 No, for the reasons discussed in the aforesaid paras.


(Sushma Vora)
Member (SGST)


(Vishal Malani)
Member (CGST)

Place: Ahmedabad
Date: 24/06/2026

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