

**WEST BENGAL APPELLATE AUTHORITY FOR ADVANCE RULING
AT 14, BELIAGHATA ROAD, KOLKATA-700015**

Before:

Mr R. Srinivasa Naik, Member
Mr Khalid Aizaz Anwar, Member

In the matter of

Appeal Case No. 04/WBAAAR/APPEAL/2026-27 dated 16.04.2026

- And -

In the matter of:

An Appeal filed under Section 100 (1) of the West Bengal Goods and Services Tax Act, 2017/ Central Goods and Services Tax Act, 2017, by M/s. KARAM CHAND THAPAR & BROS (COAL SALES) LIMITED [GSTIN: 19AABCK1281H1ZL] against the Ruling passed by the West Bengal Advance Ruling Authority vide Advance Ruling Order No. 31/WBAAR/2025-26 dated 13.02.2026.

Present for the Appellant: Mr. Vivek Jalan, FCA
Mr. Rohit Sharma, Advocate
Mr. Saurav Singhani, A/R

Present for the Respondent: None present

Matter heard on: 30.06.2026
Date of Order: 15.07.2026

At the outset we would like to make it clear that the provisions of the Central Goods and Services Tax Act, 2017 and the West Bengal Goods and Services Tax Act, 2017 (hereinafter referred to as the 'CGST Act, 2017' and the 'WBGST Act, 2017') are in pari materia and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act, 2017 would also mean reference to the corresponding similar provisions in the WBGST Act, 2017.

- 1.** This appeal has been filed by M/s. Karam Chand Thapar & Bros (Coal Sales) Limited [GSTIN: 19AABCK1281H1ZL] (hereinafter referred to as the appellant) in Form GST ARA-02 [vide Ref No. AD190426010112M] against the Ruling passed by the West Bengal Authority for Advance Ruling (hereinafter referred to as, the WBAAR) vide Order No. 31/WBAAR/2025-26 dated 13.02.2026 in respect of the application for Advance Ruling filed by him.
- 2.** The appellant entered into three agreements with THDC India Ltd (formerly known as Tehri Hydro Development Corporation Limited) in the year 1996 for execution of work for the construction of Hydro Power Plants which was completed in the year 2007/08 and the final payment was received by the applicant in the year 2011. During the execution of the work, dispute arose over the extra expenses incurred by the applicant for the project which led to several litigations. Accordingly the Arbitral Tribunal was constituted by Supreme Court and Delhi High Court for deciding all the disputes between the parties pertaining to all the three packages. Finally, in the year 2023, Awards were passed in favour of the applicant which allowed private quarry costs, costs incurred on excavation method change, cost involved in use of higher grade of cement, cost involved in relocation of infrastructure, etc incurred by the applicant. Conciliation Proceedings commenced between THDC India Ltd and the Applicant in June 2024. Accordingly, the payment is received by the applicant as per the Settlement Agreement in October 2024.
- 3.** In this context, the appellant filed an application before the WBAAR under sub section (1) of section 97 of the CGST Act and the rules made there under seeking an advance ruling in respect of following question:

 - (i) That whether claims allowed by the Arbitral Tribunal vide the Arbitration Awards be termed as supply or not?
 - (ii) That whether claims allowed by the Arbitration Tribunal vide the Arbitration Awards be termed as liquidated damages or not?
 - (iii) That whether GST would be applicable, on the claims allowed vide Arbitration Awards and payment received pursuant to Conciliation Proceedings resulting into the Settlement Agreement, both during the GST regime?

- (iv) That whether GST would be applicable for the cost of arbitration allowed vide Arbitration Award and received vide the Settlement Agreement, both during the GST regime?
- (v) If the answer to the above (iii), (iv) and /or (v) are in affirmative, then under what SAC and GST rate is the said liability to be discharged by the applicant and at what time?
- (vi) That for (iv) above, whether debit note / supplementary invoices or tax invoice need to be issued by the applicant to the contractor in order to recover and discharge the tax liability?
- (vii) That the work got executed prior to GST Regime however the claim is received during the GST Regime. Under such circumstances what is the applicability of GST on the same?

Submission of the Respondent before the WBAAR

- 4.** In their application made before the WBAAR, the respondent submitted inter alia the following:
- i. The appellant was engaged in the business inter alia of Construction, tunneling, Civil works, and other allied works pertaining to Hydro Electric Projects undertaken by THDC India Limited (hereinafter referred to as THDC) at Tehri Hydro Power Complex and other Hydro Projects under three separate contracts viz. Package-I, Package-II & Package-III.
 - ii. The Letter of Intent (LOI) for each of these Packages was issued separately to the appellant in 1995 and THDC entered into contract agreements in 1996 with the appellant separately for each of the said Packages at a value of Rs. 69,08,01,017.55, Rs. 96,81,23,502.50 and Rs. 44,95,32,487.60 respectively with complete period of 54 months, 60 months & 45 months respectively.
 - iii. After raising the Final Bills for the three separate packages in the time span of April 2010 to June 2011, THDC made the payment against the Final Bill towards work done and also the Final Bill towards Price Adjustment in 20.11.2011. However, several disputes arising between the two parties during the execution of the works, the appellant filed a claim before the Dispute Resolution Board (hereinafter referred to as DRB) as per the Clause 60 (Settlement of Disputes) of all the three Agreements.

- iv. Out of twenty disputes referred to the DRB, the DRB was able to decide only four disputes between November 2002 and 02.08.2005. Consequent to such, the appellant filed Civil Appeals before the Hon'ble Supreme Court, and the Hon'ble Supreme Court also directed that the disputes must be referred to an Arbitration Tribunal who shall decide all the claims and the counterclaims, which arise between the parties with respect to all the Packages. Accordingly, the appellant filed his claim before the Arbitration Tribunal.
- v. The Arbitration Tribunal in its order dated 01.11.2023 allowed some of the claims for all the three packages in full, some of the claims partially while some of the claims were totally disallowed for all the three packages. Summary of such claims awarded are as follows:

Sl.	Category	Claim as allowed by the Arbitral Tribunal
1	Unpaid Amounts on Extra expenditure incurred	Claim for extra expenditure incurred in purchasing Boulder, Aggregates and sand from private agencies.
2		Claim for reimbursement of monthly expenditure being incurred for operating private quarry.
3		Claim for extra expenditure incurred due to change in methodology for excavation of Control Gate Shafts.
4		Claim for payment for the differential of cost for actually using 43 grade cement in place of 33 grade of cement as per the contract specifications.
5		Claims for Reimbursement of extra expenditure incurred in shifting of residential accommodation and infrastructure facilities from Simlasu and Ranibagh to the land allotted by THDC near Koti/ Gajna.
6		Claim for Price Adjustment of extra item.
7		Claim for extra expenditure incurred due to

		change in the methodology for excavation of Compressor and Reciever room at the end wall of Machine Hall.
8		Claim for payment of coast of material for work of pre-stressed anchor blind holes and through holes
9		Claim for Extra Expenditure in back filling behind walls of TRT Exit structure at TRT Outlet.
10	Refund of excess deductions	Claim for excess recovery towards 2 % & 1.5 % rebates from RA Bill and less paid Price Adjustment.
11		Claim for reimbursing the wrongful deduction towards 0.5 % rebate from price adjustment payment.
12		Claim for certain deduction/deletion of items, from Final Bill for P-I and P-II
13	Arbitration Costs	Arbitration Costs

- vi. Subsequently, THDC filed separate applications for each of the three packages under Section 34 of the Arbitration and Conciliation Act, 1996, before the Hon'ble Delhi High Court and sought to set aside all the three final awards issued by the Arbitration Tribunal for the respective packages. Further on 17.04.2024 THDC invited the applicant to avail conciliation process to resolve the contractual disputes arising from Package I, II and III through Disputes Resolution Committee (DRC). On 25.09.2024, DRC passed its award thereby directing THDC to pay Rs 94,55,80,409.00 (i.e., 94.56 crores) within 45 days from the order. Then, finally on 24.10.2024, Settlement Agreement was signed and the payment was received by the appellant.
- vii. As per understanding of the appellant, the payment received is against the claim under arbitral award and such claim under arbitral award is merely a flow of money from the party who causes breach of the contract to the party who suffered such loss or breach as per Section 7 of the Arbitration

and Reconciliation Act, 1996 read with Section 73 of the Contract Act, 1872, section 142(2)(a), Section 142(11)(a) and Section 142(11)(b) of the CGST Act, and CBIC Circular No 178/10/2022 dated 03.08.2022. Hence, such flow of money should be considered as liquidated damages. However, apprehending that the Department may consider the payments received under arbitral awards otherwise, the appellant made an application before the WBAAR.

Submission of the Department before the WBAAR

5. The concerned officer from the revenue did not express any view on the merit of the issue raised by the applicant.

Observation of the WBAAR

6. While passing the impugned ruling, the WBAAR considered all the records of the issue as well as submissions made by the authorized representative of the respondent and observed that:
 - i. In a contract, when the parties to the agreement decide to pay a stipulated amount, if there is non-performance of the contract on the part of any of the parties, such damages are called Liquidated Damages. These damages are agreed upon by the parties concerned when they enter into the contract, i.e. before the execution of the contract itself. Further, this amount is fixed, and no changes can be made after it is signed.
 - ii. Liquidated Damages in a contract is a provision that determines the sum to be paid as damages for the party's breach. With these damages, one benefit is that there is no need to prove the actual loss. This is because the clause specifies the estimation of damages in advance. The essential characteristics of Liquidated Damages are as under:
 - a. It is a just and fair pre-estimation of the damages.
 - b. It is an estimation of the amount which the parties agree to compensate for the breach.
 - c. These damages are awarded in full irrespective of the amount of loss. Further, the courts do not have the power to increase or decrease the amount decided by the parties concerned.
 - d. The damages are mentioned in the agreement itself.

- iii. A liquidated damage clause should not be "de hors" (outside of) the contract. It is a rather contractual provision, meaning it is a part of the agreed-upon terms and conditions of the contract. Liquidated damages are meant to be a genuine pre-estimated amount of compensation for a breach of contract, and it is typically included within the contract itself. Liquidated damages clauses are essentially clauses within a contract that specify a fixed sum of money or a formula for calculating damages in the event of a breach of contract.
- iv. Section 73 of the Indian Contract Act, 1872 states that 'Compensation for loss or damage caused by breach of contract.—When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it. Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.'
- v. It is clear from the legal provision that Liquidated Damage is a compensation for a breach of contract by a party for which another party suffers any loss or damage. This compensation is included within the contract itself.
- vi. So far as Circular no. 178/10/2022- GST Dated 03.08.2022 is concerned, Clause 7.1.3 and 7.1.4 are the essence of the above circular for treatment of Liquidated Damage in the GST era. Upon analysis of such clauses, it is observed that:
 - a. Performance is the essence of any contract.
 - b. Liquidated Damages are not consideration received for tolerating the breach or non-performance of contract. Rather, they are payments for not tolerating the breach or non performance of contract.
 - c. Liquidated Damages are measure of loss and damages that the parties agree would arise due to breach of contract.
- vii. Thus, it is evident from the Circular that payment of Liquidated Damage cannot be considered as a consideration for supply and are to be considered as mere a flow of money from the party who causes breach of the contract to the party who suffers injury, loss or damage due to such breach only if the following conditions are fulfilled:

- a. The payment is made for compensating any injury, loss or damage suffered by the aggrieved party.
 - b. The injury, loss or damage has been caused due to the breach of contract by the other party.
 - c. There is no agreement, either expresses or implied, that the aggrieved party receiving the liquidated damages will refrain from or tolerate an act or do anything for the party paying the liquidated damages.
- viii. Again, Section 142(2)(a) of the CGST Act provides that when the price of any goods or services is revised upwards after the implementation of GST in pursuance of a contract entered into during the legacy tax regime, the person who provided such goods or services shall issue a supplementary invoice/debit note and such supplementary invoice/debit note shall be deemed to have been issued in respect of an outward supply made under the CGST Act. In brief, the following elements should come together for such price revision to be deemed as a supply under GST – there should be an upward price revision; and such price revision should be in pursuance of a contract entered into prior to the appointed day, i.e. 01.07.2017.
- ix. From clauses 34, 35, and 36 of the Contract Agreements which deal with “Alterations, Additions, and Omissions”, “Extra Items”, and “Price Adjustment” it is clear that the Contract Agreement contains clear and unequivocal terms governing any additional work to be done, and any adjustment in the contract price which may result from such additional work.
- x. In the light of these terms, as well as the law on Liquidated Damages and their tax treatment in GST as detailed above, its taxability under the GST regime is observed as follows:

Sl.	Nature of Claim	Observations
1	Claim for extra expenditure incurred in purchasing Boulder, Aggregates and sand from private agencies.	The award is in the nature of compensation of loss suffered by the applicant due to breach of contract by the contractee by not providing proper quarry areas.
2	Claim for reimbursement of monthly	The award is in the nature of

	expenditure being incurred for operating private quarry.	compensation.
3	Claim for extra expenditure incurred due to change in methodology for excavation of Control Gate Shafts.	The Tribunal has recorded a clear finding (vide Para 55 of order) that this Award is due to the extra work being carried out by the applicant, due to peculiar geological conditions and non-provision of equipment. This amount is a result of upward revision of prices for work carried out in the previous tax regime in pursuance of a Contract entered into prior to 01.07.2017. Thus, all the ingredients of Section 142(2)(a) of the CGST Act, 2017 are satisfied, and it has to be necessarily held that this amount is taxable under the GST statute.
4	Claim for payment for the differential of cost for actually using 43 grade cement in place of 33 grade of cement as per the contract specifications.	The applicant had to bear additional cost due to change of the quality of cement actually used in construction work. The amount allowed under this head represents the differential amount due to change in the grade of cement used. No extra or new work not envisaged in the contract itself was carried out. So there is no upward revision of contract value as such. So the amount awarded by the Arbitral Tribunal is basically compensatory in nature. Therefore, we find that the liability

		of GST does not accrue on this amount.
5	Claims for Reimbursement of extra expenditure incurred in shifting of residential accommodation and infrastructure facilities from Simlasu and Ranibagh to the land allotted by THDC near Koti/ Gajna.	The Arbitral Tribunal found that — <i>No provision of the Contract has been shown to demonstrate that in any eventuality, the infrastructure facilities once established were required to be shifted to another place during the period of the Contract.</i> /. The Tribunal has also recorded that THDC is liable to reimburse the cost of shifting of infrastructure facilities incurred by the applicant. This amount is in the nature of reimbursement of expenses incurred by the applicant due to the breach of contractual terms by THDC. Since this is awarded as a reimbursement of expenses and not for any goods/services provided and since this is of the nature of a compensatory award for breach of contract, no taxability accrues to this amount.
6	Claim for Price Adjustment of extra item.	This is extra consideration arising out of extra work and governed by the terms of Price Adjustment specified in Clause 36.0 of the Contract. In fact, the Tribunal, while recording its finding awarding the amount to the applicant, has extensively relied on Clause 35.0 and 36.0 of the Contract.

		This is an upward revision of prices in pursuance of a contract entered into prior to 01.07.2017. Since all the conditions in Section 142(2)(a) of the CGST Act, 2017 are satisfied, this amount is leviable to GST.
7	Claim for extra expenditure incurred due to change in the methodology for excavation of Compressor and Reciever room at the end wall of Machine Hall.	From the description as well as the unequivocal finding of the Tribunal, it is clear that this is nothing but extra work, which was covered under the contractual terms for which payment was not made by THDC. This is nothing but price revision made in terms of an existing contract entered into prior to 01.07.2017, and is therefore, taxable under GST.
8	Claim for payment of cost of material for work of pre-stressed anchor blind holes and through holes	This claim arises from the cost of such materials which were used by the applicant to execute this work. The Tribunal has awarded the claim based on the cost of material. This is again a case where the cost of materials required for doing extra work was claimed by the applicant. The Arbitral award has resulted in a price revision, which has ultimately resulted from the terms of the contract and was not based on any breach of contractual obligations. Since this is a price revision covered under the contractual terms, this amount is

		also leviable to tax under GST by virtue of Section 142(2)(a) of the CGST Act, 2017.
9	Claim for Extra Expenditure in back filling behind walls of TRT Exit structure at TRT Outlet.	This is nothing but a new work not envisaged in the original contract. Any amount awarded due to this should be considered as consideration for the respective new work and hence is taxable under the GST Act.
10	Claim for excess recovery towards 2 % & 1.5 % rebates from RA Bill and less paid Price Adjustment.	It is clear from a reading of the contract that the rebate is nothing but a kind of discount offered on the contract price. in order to avoid double taxation on the same amount, this amount should be not taxed in the GST regime if the same amount has suffered any kind of tax in the earlier tax regime. The Appellant in his written communication has informed that he has made all possible efforts to trace and retrieve the Sales Tax/ Service Tax returns and supporting records relating to the said projects. In absence of the proper records if the amount under question has not suffered tax in the earlier regime, it should be considered as taxable in the GST regime
11	Claim for reimbursing the wrongful deduction towards 0.5 % rebate from price adjustment payment.	Observation same as Pt. 10

12	Claim for certain deduction/deletion of items, from Final Bill for P-I and P-II	THDC had short-paid the amounts due to the applicant in their Final Bill. It is evident that the Final Bill was raised for provision of works contract services. Therefore, any additional consideration will attract the same tax treatment. Therefore, this is nothing but an upward revision of prices in pursuance of a contract entered into prior to 01.07.2017 and is therefore, taxable under GST.
13	Arbitration Costs	The arbitration as service has been provided by the Arbitration Tribunal to the applicant. The tribunal has been constituted in the pre-GST era (by an order dated 31.03.2015 by the Supreme Court of India) and it has delivered its order of arbitration in the GST era vide order dated 01.11.2023. Therefore, the service is taxable. Arbitration service will fall under Legal and Accounting services under heading no. 9982 and group no. 99821. The specific service is covered by service code no. 998215. The place of supply of such service is guided by Clause (a) of Section 12(2) of the IGST Act, 2017. So here in our case the place of supply of arbitration service will be the location of the

		applicant i.e. West Bengal. As per entry in sl. 3 of the Notification No. 13/2017 – Central Tax (rate) Dated 28.06.2017 it is taxable under Reverse Charge under the provisions of Section 9(3) of the CGST Act Notification No. 13/2017 – Central Tax (rate) Dated 28.06.2017 it is taxable under Reverse Charge under the provisions of Section 9(3) of the CGST Act and is taxable under reverse charge @ 9% CGST + 9% SGST under serial no. 20 vide Notification No. 11/2017- Central Tax (Rate) Dated 28.06.2017, as amended.
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Ruling of the WBAAR

7. Accordingly, the WBAAR, in its Order No. 31/WBAAR/2025-26 dated 13.02.2026 ruled that:

- A. The claims allowed for extra expenditure due to change in the methodology for excavation of control gate shafts, claims allowed due to payment of price adjustment on extra items, claims allowed for deduction or deletion from final bill, for extra expenditure incurred for excavation of compressors and receiver's room at the end wall of machine hall, for payment of cost of materials for work of pre-stressed anchor in the blind holes, for extra expenditure for backfilling the behind walls of TRT outlet and claims allowed as refund of rebate wrongfully recovered or deducted and rebate wrongfully deducted from price adjustment are to be considered as supply.
- B. On the other hand, the claims allowed for extra expenditure incurred in purchasing boulder, aggregates and sand from private agencies, for operating private quarries, for cost difference for actual use of higher grade of cement,

claims allowed as reimbursement of expenditure for shifting of infrastructure facility are not considered as supply.

- C. The claims allowed for extra expenditure incurred in purchasing boulder, aggregates and sand from private agencies, claims allowed for operating private quarries, claims allowed for cost difference for actual use of higher grade of cement and claims allowed as reimbursement of expenditure for shifting of infrastructure facility do not fall in any of the provisions of the contract. Except these claims the rest of the claims allowed by the Arbitration Tribunal vide the Arbitration Awards can be termed as liquidated damages.
- D. The applicant is liable to discharge tax liability on the fees paid to the arbitrators under serial no. 20 vide Notification No. 11/2017- Central Tax (Rate) Dated 28.06.2017, as amended @ 9% CGST + 9% SGST.
- E. The SAC for the services under this application is 995422, the description being “general construction services of harbours, waterways, dams, water mains and lines, irrigation and other water works”. It is covered by Entry No. 3(xii) of Notification No. 11/2017 – Central tax (Rate) Dated 28.06.2017, as amended. It is the residual entry which reads “construction services other than (i), (ia), (ib), (ic), (id), (ie), (if), (vii), (viii), (x), (xi) above” and as such it is to be taxed @ 9% CGST + 9% SGST.
- F. Debit note / supplementary invoices or tax invoice need to be issued by the applicant to the contractor in order to recover and discharge the tax liability in cases where the allowance of claim is considered as supply.
- G. Section 142(2)(a) of the CGST Act, 2017 provides that when the price of any goods or services is revised upwards after the implementation of GST in pursuance of a contract entered into during the legacy tax regime, the person who provided such goods or services shall issue a supplementary invoice/debit note and such supplementary invoice/debit note shall be deemed to have been issued in respect of an outward supply made under the CGST Act. In brief, the following elements should come together for such price revision to be deemed as a supply under GST – there should be an upward price revision; and such price revision should be in pursuance of a contract entered into prior to the appointed day, i.e. 01.07.2017.

Grounds of Appeal before the WBAAAR

8. Aggrieved by the said ruling given by the WBAAR vide Advance Ruling Order No. 31/WBAAR/2025-26 dated 13.02.2026, the appellant filed the instant appeal in Form GST ARA-02 [vide Ref No. AD190426010112M] before the West Bengal Appellate Authority for Advance Ruling (hereinafter referred to as the WBAAAR).
9. The appellant submitted the following points/grounds while preferring the instant appeal before the WBAAAR authority:
 - A. The payment received by the applicant is against the claim under arbitral award and such claim under arbitral award is merely a flow of money from the party who causes breach of the contract to the party who suffered such loss or breach. Hence, such flow of money should be considered as liquidated damages.
 - B. Appellant relies on Doctrine of separability/severability according to which, the arbitration agreement is distinct in law and in existence from the underlying substantive contract in which it is embedded. It is considered to be autonomous and juridically independent from the substantive contract. The effect of this doctrine is that the arbitration agreement will ordinarily remain valid and binding, notwithstanding the invalidity, illegality, termination or repudiation of the underlying contract. The substantive contract contains the commercial terms of the contract between the parties, which stipulate the rights and obligations of the parties whereas the arbitration clause is the agreement between the parties regarding the mode of dispute resolution.
 - C. Moreover, Section 16(1) of the Arbitration and Conciliation Act, 1996 provides that the arbitral tribunal is empowered to rule on its own jurisdiction, including any objection with respect to the existence or validity of the arbitration agreement. Section 16(1) is an inclusive provision which would comprehend all jurisdictional issues, including limitation, res judicata, etc.
 - D. Further, the doctrine of severability, allows a court to remove or "sever" the unenforceable or illegal parts of a contract while keeping the rest of the contract intact and enforceable. Section 16 gives statutory recognition to the doctrine of severability. An arbitration clause though an integral part of

the contract has an independent existence from that of the contract in which it is embedded. It is a collateral term of the contract, independent and distinct from the substantive terms. Clause (a) of Section 16(1) provides that the tribunal may consider an arbitration clause to be an agreement independent of the other terms of the contract.

- E. In conclusion, it can be stated that the arbitral award granted to the applicant is independent of the underlying contract agreement. This award, rendered by the arbitral tribunal, serves as compensation for the breach of the contract and is, in essence, a form of liquidated damages determined and awarded in accordance with the terms and provisions governing the dispute.
- F. CBIC Circular No 178/10/2022 dated 03.08.2022 has clarified on the taxability, under CGST Act 2017, of liquidated damages, and other payments in the nature of compensation, penalty and cancellation charges arising out of a breach of contract.
- G. Thus, applying the above circular in the present case, the following can be determined-
- (i) Breach of Contract- In the present case there has been a breach and/or non-performance of contract by THDC which resulted in loss or damage to the applicant.

The law provides in Section 73 of the Contract Act, 1972 that when a contract has been broken, the party which suffer by such breach is entitled to receive from the other party compensation for any loss or damage caused to him by such breach. This compensation is not by way of consideration for any other independent activity; it is just an event in the course of performance of the contract. Such compensation specified in a written contract for breach of non-performance of the contract or the parties of the contract is referred to as the liquidated damages.

- (ii) Mere flow of money- The compensation awarded to the applicant is an amount paid only to compensate for injury, loss or damage suffered by the applicant due to the breach of the contract and there is no agreement, express or implied, by the applicant receiving such compensation, to perform an activity. In such cases the compensation

is a mere flow of money from the party who causes breach of the contract (here THDC) to the party who suffers loss or damage due to such breach (here the applicant). Such compensation does not constitute consideration for supply and are not taxable.

- (iii) No Agreement to tolerate- Applying the aforementioned principles to Para 5(e) of Schedule II, a contractual relationship cannot be presumed to exist simply because there is a flow of money from one party to another. There ought to be an express or implied promise by the recipient of money to agree to do or abstain from doing something or to tolerate something in return for the money paid to him.

The Circular states that these amounts received are for not tolerating an act or situation and to deter such acts; such amounts are for preventing a breach of contract or non-performance and thus, are mere „events“ in a contract.

- (iv) Payment for non-fulfilling the terms of the contract- The compensation received by the applicant does not fall within the scope of Entry 5(e) of Schedule II to CGST Act, as no consideration passed on for any of the act mentioned therein. Further the compensation awarded to the applicant are not towards agreeing to the obligations to refrain THDC from an act, or to tolerate an act or situation of THDC, or to do an act by THDC, but solely in due compliance with the arbitral award. In other words, the applicant has not sought any obligation or refrained THDC from doing any act. The amount payable as the Arbitral Award is purely in the form of compensation payable for additional expenditure incurred in the completion of the contracts by the applicant in the pre-GST era and does not involve any additional supply or labour.

- (v) Payment is de-hors the contract- The compensation received by the applicant is merely an event in the course of performance of the agreement entered into between the applicant and the THDC and it does not represent the „object“, as such, of the contract and hence, it cannot be considered „consideration“. Thus, such compensation are received de hors agreement and hence do not constitute a consideration and hence not taxable under the GST.

- H. Therefore, it is relevant to point out that the said Circular has considered similar facts and held that liquidated damages awarded in arbitration are not liable to be taxed under GST. The said Circular is squarely applicable to the facts herein and in view of the said circular the settlement amount represents liquidated damages.
- I. Supplies were executed in pre-GST regime; hence GST provisions are not applicable with respect to money receipt on account of arbitration claim awarded in post GST scenario.
- J. In the instant case the applicant had issued Purchase Orders in the pre-GST period and all the work allocated was completed in the Pre-GST Period and the payments were also settled in the Pre-GST period itself. The Applicant and the Sub-Contractor have duly remitted VAT and Service Tax on the entire contract value. Thus, it is pertinent here that the supply/work was completed during Pre-GST period. However, though the execution of the contract was over in Pre-GST period, the Arbitration Award was announced only in the GST period. Accordingly the award/amount received under the said arbitration requires to be examined in terms of transitional provisions Section 142(11) of the CGST Act, 2017. Thus, in the instant case, as no supply has happened during the GST regime, no GST shall be payable. Further the additional payment received by way of compensation through award by Hon'ble Tribunal for Arbitration is not falling under Section 142(2)(a) and hence not chargeable to GST.
- K. 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 should not constitute "consideration" for a supply and hence are not taxable.
- L. The Contract Act 1872 defines 'Contract' as a set of promises, forming consideration for each other. 'Promise' has been defined as willingness of the 'promisor' to do or to abstain from doing anything. 'Consideration' has been defined as what the 'promisee' does or abstains from doing for the promises made to him. There must be a necessary and sufficient nexus between the supply (i.e. agreement to do or to abstain from doing something) and the consideration.
- M. Payments such as liquidated damages cannot be linked with „activity“ which are rendered for a consideration. They are rather amounts recovered

for an activity not happening as per the contract. Unless payment has been made for an „activity“ or „service“ under an arrangement entered into for such service, the payments will not constitute 'consideration' and hence such activity will not constitute "supply" within the meaning of the CGST Act.

- N. 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 Indian Contract Act, 1872 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.
- O. 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 perform an activity, 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 hence such activity will not constitute "supply" within the meaning of the CGST Act.

Personal Hearing

- 10. The personal hearing of the instant appeal was held on 30.06.2026.

Submission of the Appellant before the WBAAAR

- 11. In support of his case, the appellant inter alia has made a written submission before the WBAAAR, and also presented his case at the time of personal hearing reiterating the submissions as already stated in his grounds of appeal.

Submission of the Respondent before the WBAAAR

- 12. None was present from the respondent side at the time of personal hearing.

Further submissions made by the Appellant

13. During the course of the hearing, the WBAAAR questioned the maintainability of the Advance Ruling application itself and observed that although the application had been filed seeking a ruling on a question falling within the scope of Section 97(2)(e) and/or (g) of the CGST Act, 2017. The maintainability of the application would thus require examination in light of the provisions of Section 95(a) of the CGST Act, 2017, which defines the expression "advance ruling" as a decision provided in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant. The WBAAAR accordingly called upon the Appellant to address the issue of maintainability of the application with reference to the aforesaid statutory provisions.

14. In this context, the appellant has made an additional submission thereby stating that:

- A. The definition of "Advance Ruling" in Section 95(a) of CGST Act is wide enough to cover the present questions; the words "in relation to" expand the scope beyond a narrow interpretation of the activity as a Completed Supply. Section 97(2)(e) and 97(2)(g) separately confer jurisdiction. The Hon'ble Kerala High Court in Sutherland Mortgage Services INC. vs. Principal Commissioner [WP(C).No.32634 OF 2019(D) dated 03-02-2020], held that even "place of supply" — which is not expressly listed in any of the clauses (a) to (g) of Section 97(2) — falls within the AAR's jurisdiction because it is encompassed within Section 97(2)(e), i.e., "determination of liability to pay tax."
- B. The words "in relation to" occurring in Section 95(a) must receive a liberal and expansive construction. In Doypack Systems Pvt. Ltd. v. Union of India, [(1988) 2 SCC 299], the Hon'ble Supreme Court held that the expression "in relation to" is of the widest amplitude and encompasses all matters having a nexus with the principal subject matter. The Apex Court in case of Union of India vs. Vijay Chand Jain (AIR 1977 SC 1302), held that the words "in respect of" used in s. 3(14) means "for the provision of" and not "for the user of".
- C. Section 97(2)(e) of the CGST Act reads: "determination of liability to pay tax on any goods or services or both." The question of whether amounts received under the arbitral award and the settlement agreement attract

GST, and if so under what SAC and at what rate, is squarely a question of "determination of liability to pay tax." This question cannot be answered without first determining whether the receipt constitutes consideration for supply, which is inherently a question that relates to prospective tax payment obligations.

- D. Section 97(2)(g) of the CGST Act permits a ruling on whether a thing "done" constitutes a supply, implying that the characterization of past events is within the AAR's scope. This must be read harmoniously with Section 95(a).
- E. The Appellate Authority's jurisdiction cannot travel beyond the issues decided in the Advance Ruling to further aggrieve appellant beyond grounds raised. As per Section 101(1) of CGST/ SGST Act, AAAR can confirm, modify, or set aside AAR order, but cannot enlarge scope to further aggrieve appellant beyond grounds raised. The AAAR's powers under Section 101(1) are limited to the grounds of appeal. It cannot travel beyond the scope of the appeal, introduce new questions, or modify the ruling to further aggrieve an appellant unless the department has also filed an appeal. Section 101(1) allows the AAAR to "confirm or modify" the ruling. However, this power is constrained by the principles of natural justice and the scope of the appeal. An appellate authority cannot place the appellant in a worse position than they were before filing the appeal, unless the other party (the Revenue) has also filed an appeal or cross-objection on that specific point. If only the taxpayer has appealed, the AAAR's jurisdiction is limited to providing relief on the grounds raised by the appellant. In *Parag Vinimay Pvt. Ltd. vs Assistant Commissioner, State Tax, Bureau of Investigation, South Bengal (Head Quarters) & Ors.* [WPA4901 of 2025 dated 03-02-2026], the Hon'ble Calcutta High Court has observed that "The appellate authority has tried to upset the petitioner's case on certain grounds which were never raised against the petitioner in the notice to show cause. It is settled that any adjudicating authority whether original or appellate cannot travel beyond the confines of the notice to show cause and an order passed on grounds extraneous to the notice to show cause would become vulnerable on that score alone."

- F. The Appeal before the WBAAAR is maintainable notwithstanding that part of the transactions have occurred. The AAR Itself admitted the application and the Section 98(2) admission is a concluded statutory finding.
- G. Section 95(a) cannot be interpreted in isolation so as to render Section 97(2) otiose or redundant. In *The Institute Of Chartered Accountants vs M/s Price Waterhouse & Anr* dated 11-07-1997, the Hon'ble Supreme Court has held that "It is settled rule of interpretation that all the provisions would be read together harmoniously so as to give effect to all the provisions as a consistent whole rendering no part of the provisions as surplusage. Otherwise, by process of interpretation, a part of the provision or a clause would be rendered otiose." Further, in the case of *Commissioner of Customs (Import), Mumbai vs M/s Dilip Kumar and Company* [Civil Appeal No. 3327 of 2007 dated 30-07-2018], the Hon'ble Supreme Court of India has held that "if the words in a taxing statute (not exemption clause) are ambiguous and open to two interpretations, the benefit of interpretation is given to the subject and it does not matter if the taxpayer escapes the tax net on account of Legislatures' failure to express itself clearly".
- H. The legislative scheme of advance ruling proceedings does not restrict the jurisdiction of the authorities only to transactions yet to occur.
- I. Section 2(31) read with Section 7 of CGST Act – agreed by THDC as mentioned in the clause 11 of the Settlement Agreement, that GST, if applicable, would be borne by it, demonstrates that the "supply" u/s 7 has not concluded for GST purposes; although the settlement amount had been received, the GST amount [part of consideration as per section 2(31)] and consequential statutory compliances remained to be determined and undertaken.
- J. The Burden of Proof should not be laid on the Appellant to Produce Legacy Bills/ Tax Returns Dating Back to more than 8 years. Furthermore, in terms of Section 128(5) of the Companies Act, 2013, every company is required to preserve its books of account and relevant records only for a period of eight financial years, unless a longer period is directed under law. Accordingly, many of the original accounting and project records pertaining to the contracts executed during the period 1996–2008 are no longer statutorily required to be maintained.

Discussions and Findings

- 15.** The submissions of the appellant before the WBAAR, the observations and Ruling of the WBAAR and the submissions of the appellant before the WBAAAR having been recorded already, we now proceed to make our observations in this case.
- 16.** We have carefully considered the records of the case, the submissions advanced by the appellant, the impugned ruling passed by the WBAAR and the provisions of the CGST Act.
- 17.** Before examining the merits of the questions answered by the WBAAR, we consider it necessary to examine whether the application itself was maintainable under the scheme of Chapter XVII of the Act. It is observed that the application was admitted by the WBAAR, being of the opinion that the questions on which the advance ruling has been sought fall within the scope of clause (e) of sub-section (2) of section 97 of the GST Act. However, it appears that while admitting the application, the WBAAR did not examine the aspect towards maintainability of the application itself which goes to the very foundation of the proceedings. A question relating to the maintainability of an application can always be examined by an appellate forum, for unless the application itself is maintainable, the question of examining its merits would not arise.
- 18.** The institution of Advance Ruling under Chapter XVII is a distinct statutory mechanism conceived to provide certainty regarding the tax implications of transactions before disputes arise. It is intended to facilitate voluntary compliance by enabling an applicant to obtain clarity regarding the GST implications of a proposed transaction or a transaction in the course of being undertaken.
- 19.** Section 95(a) of the CGST Act defines an "advance ruling" as a decision provided by the Authority in relation to a supply of goods or services or both being undertaken or proposed to be undertaken by the applicant. The language employed by the Legislature is clear and significant. The jurisdiction of the Authority is thus intrinsically linked with transactions which are prospective or ongoing. Section 97 of the CGST Act specifies the categories of questions on which a ruling may be sought; however, the said provision merely identifies the subject matter of the questions and does not enlarge the jurisdictional requirement embodied in Section 95(a). Consequently, reliance placed by the applicant on Section 97(2)(g) of the CGST Act cannot obviate the necessity of

satisfying the jurisdictional condition prescribed under Section 95(a) of the CGST Act.

- 20.** The facts of the present case reveal that the contractual work stood completed prior to 01.07.2017. The disputes arising out of the contract were subsequently referred to arbitration and culminated in an arbitral award passed in the year 2023. Pursuant to the award, the applicant received the awarded amounts and thereafter furnished the relevant return in Form GSTR-3B, consciously treating the receipts as non-taxable on the ground that they represented compensation and not consideration for a supply.
- 21.** The applicant had, therefore, already examined the tax implications of the transaction, formed a definite opinion and implemented such opinion by filing the statutory return before invoking the jurisdiction of the WBAAR. The application was, in substance, not one seeking advance certainty regarding a proposed or ongoing transaction but one seeking affirmation of a tax position already adopted.
- 22.** More importantly, determination of the issues raised by the applicant necessarily requires an elaborate examination of facts. The controversy cannot be resolved merely by interpreting statutory provisions in the abstract. It requires examination of the terms of the original contract, the pleadings before the arbitral tribunal, the arbitral award, the nature of each individual claim, the evidence led by the parties, the books of account, statutory returns, relevant documents and such other records as may be necessary to determine the true character of each amount awarded.
- 23.** Such an enquiry falls squarely within the adjudicatory jurisdiction conferred upon the jurisdictional proper officer under the Act. The proper officer is vested with statutory powers to scrutinise returns, call for records, verify documents, appreciate evidence and determine the correct tax liability after following the procedure prescribed under the CGST Act.
- 24.** The jurisdiction exercised by the WBAAR is materially different. The Authority is intended to provide advance certainty and not to substitute the statutory process of adjudication in respect of completed transactions requiring detailed factual investigation. If applications of the present nature are entertained, the Authority would effectively be called upon to determine the correctness of tax positions already adopted by registered persons after completion of transactions,

thereby traversing into a field reserved by the Legislature for scrutiny, adjudication and appellate remedies under the CGST Act.

25. The distinction between the jurisdiction of the WBAAR and that of the jurisdictional proper officer is neither incidental nor procedural; it is a conscious legislative design. The former is intended to facilitate voluntary compliance by providing advance certainty, whereas the latter is entrusted with the statutory responsibility of examining completed transactions through scrutiny, enquiry and adjudication. The two jurisdictions operate in distinct fields and ought not to be interpreted in a manner that permits one to supplant the other.
26. In the facts and circumstances of the present case, therefore, we are of the considered opinion that the WBAAR ought not to have entertained the application.
27. The appellant has raised objection towards the point whether WBAAAR has the jurisdiction of to question the admissibility of the instant application for advance ruling when the WBAAR has already admitted the issue and has pronounced its ruling.
28. In this context we are to express that the Courts of Law have time and again observed that the Higher Forums have their jurisdiction in examining a question of law which is based on facts. In the case of **National Thermal Power Co. Ltd. vs. CIT [(1998) 229 ITR 383]**, the Hon'ble Supreme Court observed that *"...Under Section 254 of the Income-tax Act, the Appellate Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon **as it thinks fit**. The power of the Tribunal in dealing with appeals is thus expressed in the widest possible terms."*[emphasis added]
29. We find that similar provision has been laid down in sub-section (1) of section 101 of the CGST Act which empowers the Appellate Authority to pass an order **as it thinks fit** after giving the parties to the appeal or reference an opportunity of being heard. [emphasis added]
30. Thus, without prejudice to the above conclusion, we find ourselves unable to concur with the reasoning adopted by the Authority while answering the questions on merits.

- 31.** The Authority has proceeded on the premise that in respect of certain claims allowed by the arbitral tribunal, GST becomes payable because service tax had not been discharged under the erstwhile law and the provisions of Section 142 of the CGST Act stood attracted.
- 32.** In our considered opinion, such an approach does not correctly reflect the scheme of the transitional provisions.
- 33.** Section 142(2)(a) of the CGST Act applies where the price of goods or services supplied under a pre-GST contract is revised upwards after the appointed day. An arbitral award cannot, merely by reason of its existence, be equated with an upward revision of contractual consideration. The applicability of the provision necessarily depends upon the true nature of the claim allowed by the arbitral tribunal.
- 34.** Similarly, Section 142(11)(a) of the CGST Act is intended to obviate double taxation during the transition from the existing law to GST. The relevant statutory test is whether tax was leviable under the existing law and not whether such tax was actually paid. The mere non-payment of service tax under the erstwhile regime cannot, by itself, constitute the basis for levy of GST.
- 35.** Whether any component of the arbitral award represents consideration for additional supplies, an upward revision of contractual price, damages, compensation, reimbursement, interest or any other contractual entitlement necessarily requires detailed examination of facts and evidence. Such an exercise appropriately falls within the domain of the jurisdictional proper officer and ought not to be undertaken in proceedings under Chapter XVII.
- 36.** For the foregoing reasons, the impugned ruling of the WBAAR cannot be sustained.
- 37.** Accordingly, we pronounce our ruling as under:

Ruling:

- I. The impugned ruling of the Authority for Advance Ruling, as per Order No. 31/WBAAR/2025-26 dated 13.02.2026 cannot be sustained and we hold that, in the facts and circumstances of the present case, the application filed under Section 97 of the CGST Act ought not to have been entertained under the scheme of Chapter XVII of the Act.

- II. We clarify that we have expressed no final opinion on the taxability or otherwise of the amounts received pursuant to the arbitral award. It shall be open to the jurisdictional proper officer to examine the issue independently, on the basis of the contract, the arbitral award, the books of account, statutory returns, relevant records and all other material available on record, and to determine the tax liability, if any, strictly in accordance with law and after following the procedure prescribed under the Act, without being influenced by the observations contained in the impugned Advance Ruling.

Send a copy of this order to the Appellant and the Respondent for information.

Sd/-

(Khalid Aizaz Anwar)

Member, West Bengal Appellate
Authority for Advance Ruling

Sd/-

(R. Srinivasa Naik)

Member, West Bengal Appellate
Authority for Advance Ruling