



PMC Cell – MM

## Oil and Natural Gas Corporation Ltd

Corporate Materials Management

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**Circular No. 45-cum- Integrated MM Manual Amendment No. 78, BL Amendment No.  
BL/01/136, BL/02/110 & BL/03/55**

No: DLI/CORP-MM/2022/13(117)GST/ 1038050

Dated: 10.10.2022

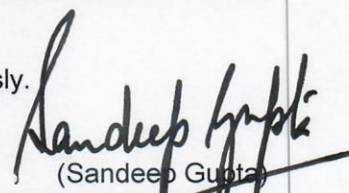
**Sub: Applicability of GST on Forfeiture/Encashment of EMD/SD, Liquidated Damages & Penalties under ONGC Contracts for Supply of Goods or Services (including LSTK Contracts).**

Reference is invited to this Office Circular No. 37/2017 dated 24.08.2017, wherein subsequent to introduction of GST Law, tender conditions for ONGC tenders were issued.

Reference is also invited to Circular No. DLH/Indirect Tax/Circular/2022-23/05/49 dated 16.09.2022, vide which Corporate Indirect Taxation Dept. has informed that CBIC vide its Circular No. 178/10/2022-GST dated 03.08.2022, has issued a detailed clarification on applicability of GST on Liquidated Damages (LD), Compensation and Penalty arising out of breach of contract for Supply of Goods or Services. Based on the above clarification issued by CBIC, Corporate Indirect Taxation Dept. has issued guidelines for applicability of GST under various scenarios. (Copy attached for ready reference)

In accordance with the above, relevant provisions of Integrated MM Manual and Standard tender conditions in Booklet No. ONGC/MM/01, ONGC/MM/02, ONGC/MM/03 & Standard tender conditions for Service contracts stands modified as per Annexure-1 to 5. Wherever required, similar modifications may be carried out at work-centre level in the tender conditions for LSTK Contracts also in respect of LD/Penalty for breach of contractual conditions. Suitable modifications may be carried out for other scenarios mentioned in the aforesaid Circular issued by Corporate Indirect Taxation Department, as applicable.

All concerned are advised to follow the above guidelines meticulously.

  
(Sandeep Gupta)  
ED-Chief MM Services

Distribution: (Through ONGC's intranet website 'reports.ongc.co.in').

**All concerned may download the circular from the site. Hard copies are not distributed separately.**



## Statement showing existing vis-à-vis modified provisions of Integrated MM Manual.

Clause No.	Existing Provision	Modified provisions	Remarks
8.1.2.2.4. (ii)	<p>.....</p> <p>The validity of PBG shall be obtained for 60 days beyond delivery period/completion period. In case PBG is required to be valid for additional period (including warranty period), the same can be done with the approval of CPA, while inviting tender.</p> <p><u>The GST as applicable on forfeiture shall be borne by ONGC.</u></p>	<p>.....</p> <p>The validity of PBG shall be obtained for 60 days beyond delivery period/completion period. In case PBG is required to be valid for additional period (including warranty period), the same can be done with the approval of CPA, while inviting tender.</p> <p>Deleted</p>	Underlined portion deleted
16.5.4.d	<p>Invoking/forfeiting of Bid Security / EMD</p> <p>Approval of Level-1 executive will be obtained for invoking / forfeiting the Bid Security / Bank Guarantee(s) including for EPC level cases.</p> <p><u>The GST as applicable on forfeiture of Bid Security (EMD) shall be borne by ONGC.</u></p> <p>In charge MM to monitor compliance of release of EMD and security deposits to bidders.</p> <p>In case of requirement of any extension of Bid Security/ EMD, the same should be taken up at least 10 days prior to expiry of Bank Guarantee.</p>	<p>Invoking/forfeiting of Bid Security / EMD</p> <p>Approval of Level-1 executive will be obtained for invoking / forfeiting the Bid Security / Bank Guarantee(s) including for EPC level cases.</p> <p>Deleted</p> <p>In charge MM to monitor compliance of release of EMD and security deposits to bidders.</p> <p>In case of requirement of any extension of Bid Security/ EMD, the same should be taken up at least 10 days prior to expiry of Bank Guarantee.</p>	Underlined portion deleted
16.6.5.f	<p>Invoking of Bank Guarantee / reversal of invocation of PBG or refunding the amount of forfeited PBG:</p> <p>Prior approval of Level-1 executive will be obtained for invoking / forfeiting the PBG) including EPC level cases. The head of associate finance will be informed</p>	<p>Invoking of Bank Guarantee / reversal of invocation of PBG or refunding the amount of forfeited PBG:</p> <p>Prior approval of Level-1 executive will be obtained for invoking / forfeiting the PBG) including EPC level cases. The head of associate finance will be informed</p>	Underlined portion deleted

	<p>to invoke the bank guarantee. For Reversal of invocation of PBG or refund of the forfeited PBG/SD approval of the L-1 Executive shall be required.</p> <p><u>The GST as applicable on forfeiture of Security Deposit/Performance Bank Guarantee (PBG) shall be borne by ONGC.</u></p> <p>.....</p>	<p>to invoke the bank guarantee. For Reversal of invocation of PBG or refund of the forfeited PBG/SD approval of the L-1 Executive shall be required.</p> <p>Deleted.</p> <p>.....</p>	
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**Annexure-2**

**Statement showing existing vis-à-vis modified provisions of Standard Booklet No. ONGC/MM/01.  
Instructions to Bidders (Annexure-I & Annexure-II)**

<b>Clause No.</b>	<b>Existing Provision</b>	<b>Modified provisions</b>	<b>Remarks</b>
<b>25.8.d of Annexure-I</b>	(Applicable for tenders above Rs. 1 crore) If the Bidder has been disqualified from the tender process prior to the award of contract according to the provisions under Section 3 of Integrity Pact. ONGC shall be entitled to demand and recover from bidder Liquidated damages amount <b>plus</b> GST thereon, by forfeiting the EMD/ Bid security (Bid Bond) as per section 4 of Integrity Pact.	(Applicable for tenders above Rs. 1 crore) If the Bidder has been disqualified from the tender process prior to the award of contract according to the provisions under Section 3 of Integrity Pact. ONGC shall be entitled to demand and recover from bidder Liquidated damages amount thereon, by forfeiting the EMD/ Bid security (Bid Bond) as per section 4 of Integrity Pact.	Underlined portion deleted
<b>13.(d) of Annexure-II</b>	<u>The applicable GST on the LD shall have to be borne by the contractor. Accordingly, the liquidated damages shall be recovered from the contractor along with applicable GST.</u>	Deleted.	Underlined portion deleted

**Annexure-3**

**Statement showing existing vis-à-vis modified provisions of Standard Booklet No. ONGC/MM/02.  
Instructions to Bidders (Annexure-I & Annexure-II)**

<b>Clause No.</b>	<b>Existing Provision</b>	<b>Modified provisions</b>	<b>Remarks</b>
<b>23.8.d of Annexure-I</b>	(Applicable for tenders above Rs. 1 crore) If the Bidder has been disqualified from the tender process prior to the award of contract according to the provisions under Section 3 of Integrity Pact. ONGC shall be entitled to demand and recover from bidder Liquidated damages amount <u>plus GST</u> thereon, by forfeiting the EMD/ Bid security (Bid Bond) as per section 4 of Integrity Pact.	(Applicable for tenders above Rs. 1 crore) If the Bidder has been disqualified from the tender process prior to the award of contract according to the provisions under Section 3 of Integrity Pact. ONGC shall be entitled to demand and recover from bidder Liquidated damages amount thereon, by forfeiting the EMD/ Bid security (Bid Bond) as per section 4 of Integrity Pact.	Underlined portion deleted
<b>12.d of Annexure-II</b>	<u>The applicable GST on the LD shall have to be borne by the contractor. Accordingly, the liquidated damages shall be recovered from the contractor along with applicable GST.</u>	Deleted.	Underlined portion deleted



**Annexure-4**

**Statement showing existing vis-à-vis modified provisions of Standard Booklet No. ONGC/MM/03.  
General Contract Conditions (Annexure-II)**


<b>Clause No.</b>	<b>Existing Provision</b>	<b>Modified provisions</b>	<b>Remarks</b>
1.4(vii)	<u>The applicable GST on the LD shall have to be borne by the contractor. Accordingly, the liquidated damages shall be recovered from the contractor along with applicable GST.</u>	Deleted.	Underlined portion deleted

**Annexure-5**

**Statement showing existing vis-à-vis modified provisions of standard tender /contract conditions for Service Contracts.  
Instructions to Bidders (Annexure-I & Annexure-II)**

<b>Clause No.</b>	<b>Existing Provision</b>	<b>Modified provisions</b>	<b>Remarks</b>
17.7.d of Annexure-I	(Applicable for tenders above Rs. 1 crore) If the Bidder has been disqualified from the tender process prior to the award of contract according to the provisions under Section 3 of Integrity Pact. ONGC shall be entitled to demand and recover from bidder Liquidated damages amount <u>plus GST</u> thereon, by forfeiting the EMD/ Bid security (Bid Bond) as per section 4 of Integrity Pact.	(Applicable for tenders above Rs. 1 crore) If the Bidder has been disqualified from the tender process prior to the award of contract according to the provisions under Section 3 of Integrity Pact. ONGC shall be entitled to demand and recover from bidder Liquidated damages amount thereon, by forfeiting the EMD/ Bid security (Bid Bond) as per section 4 of Integrity Pact.	Underlined portion deleted
19.f of Annexure-II	<u>The applicable GST on the LD shall have to be borne by the contractor. Accordingly, the liquidated damages shall be recovered from the contractor along with applicable GST.</u>	Deleted.	Underlined portion deleted



	<b>OIL AND NATURAL GAS CORPORATION LTD.</b> <b>OFFICE OF GM (F&amp;A)- HEAD INDIRECT TAXES</b> <b>CORPORATE INDIRECT TAX DEPARTMENT</b> <b>3<sup>rd</sup> Floor, Tower-A, Zone-II, Plot No. 5A, Nelson Mandela Road, Vasant Kunj,</b> <b>New Delhi- 110070</b>	
	DLH/Indirect Tax/Circular/2022-23/05/49	Date:16.09.2022
<b>From</b>	: GM (F&A)– Head Corporate Tax (Direct & Indirect), ONGC, New Delhi	
<b>To</b>	: Key Executives at Assets/Basins/Plants/Services/Institutes Finance Heads of Assets/Basins /Plants/Services /Institutes/ICE Head ICE, ONGC, New Delhi <i>Through ONGC Reports</i>	
<b>CC</b>	: ED- Chief Corporate Finance, ONGC, New Delhi CEA to Director (Finance), ONGC, New Delhi	
<b>Sub</b>	: <b>Applicability of GST on LD &amp; Penalties under ONGC Contracts</b>	

- Reference is made to our Circular No. DLH/Indirect Tax/Circular/26/2019-20/03 dated 05.08.2019 on applicability of GST on LD, PBG and SD. This Circular, *inter-alia*, covers the 'Time of Supply' exhaustively in respect of LDs kept as deposit, pending decision (consensus/arbitration/court order) on right to recovery.

Now, CBIC vide its Circular No. 178/10/2022-GST dated 03.08.2022, has issued a detailed clarification on applicability of GST on Liquidated Damages (LD), Compensation and Penalty arising out of breach of contract etc.

- In view of the said CBIC Circular, the applicability of GST on various LDs and Penalties levied by ONGC under its contract has been examined and summarized under various scenarios as under:

**(a) Forfeiture/Encashment of EMD/SD/PBG/BG:**

In order to protect the interest of ONGC, there are various clauses under which the bidder/contractor is required to submit/furnish Earnest Money Deposit (EMD)/ Security Deposit (SD)/ Performance Bank Guarantee (PBG)/ Bank Guarantee (BG). On non-compliance of the tender/contract conditions etc., such EMD/SD/PBG/BG are encashed.

In this regard, it may be noted that the encashment of such EMD/SD/PBG/BG would be treated as merely a transaction in money and the same would not attract GST. Further, the forfeiture of such amount by ONGC due to non-fulfilment/violation of contractual obligation by the Contractor would also not attract GST.



**(b) LD for Delay in Supply of Goods/Mobilization of Manpower or Equipment/Acknowledging Purchase Order/Deployment of Rigs with or without Extension of the Contract:**

In such scenario, if the contractor does not mobilize the resources or refuses to execute the contract awarded to it, ONGC levies LD with or without extension of the contract. In case of levy of LD with extension of contract, it may be noted that requirement for extension is merely a condition of the contract and does not give rise to an independent agreement.

In terms of the CBIC Circular, such LD being merely a compensation for breach of contractual obligation, would not be treated as consideration. Accordingly, such LD would not attract GST.

**(c) Penalty for Non-Compliance of Contractual/Tender Conditions or for Mis-use of ONGC's Premises, Equipment or Facilities etc.:**

In such scenario, the contract stipulates for levy of specified penalties due to non-compliance of contract conditions such as non-deployment of specified numbers of manpower or other resources to attract per-day or per-person penalty or the penalty for mis-use of ONGC's premises, equipment, facilities or for non-wearing of prescribed uniforms etc. This scenario may also cover a case where EMD/SD is forfeited as a penalty due to non-compliance of the tender conditions.

In terms of the CBIC Circular, such penalty is merely an 'event' in the course of performance of the agreement and therefore, such penalty would not attract GST.

**(d) Recovery of Notice-Pay from Employees:**

In such scenario, recovery is made from the employees who fail to serve ONGC for minimum specified periods or who joins another employment post-retirement without obtaining permission from ONGC.

In terms of CBIC Circular, such recovery would not be treated as consideration and accordingly same would not attract GST.

**3. Loss-in Hole (LIH):**

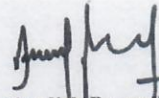
The relevant clause of the contract considers LD for loss of the contractor's equipment or damage to the contractor's equipment inside ONGC's well during petroleum operations, for reasons other than gross negligence by the contractor. In such case, the manner of calculation of amount payable to the Contractor itself shows that intention is clearly to enable the Contractor to repair the damaged equipment or to replace the lost equipment. Accordingly, such payment on account of LIH being a compensation in nature would not be treated as consideration towards any supply. Therefore, payment by ONGC to the contractor towards LIH being an event to the contract, would not attract GST.

**4. Take or Pay Obligation (ToPO)/Minimum Guaranteed Off-take (MGO):**

Reference is made to our earlier Circular No. DLH/Indirect Tax/Circular/09/2017-18 dated 29.11.2017 on applicability of GST on Take or Pay Obligation/MGO. As per extant practice, the claim for MGO deficient quantity is made periodically and same is kept as deposit in the books of accounts. As per contractual terms, such deposit is subject to appropriation/forfeiture towards ToPO/MGO, if the buyer does not take the minimum guaranteed quantity of the goods.

In this regard, it is pertinent to mention that such appropriation towards ToPO/MGO after the end of the year/contract period, can not be said to be attributable to the 'sale of goods' as there is no 'title transfer in goods' for such amount. Further, since such charges are to ensure the certainty of receipt of minimum revenue to ONGC, same would be in the nature of alternate performance of the contract and would attract GST. Therefore, the existing practice of charging GST on ToPO/MGO would continue in terms of our said Circular dated 29.11.2017 as 'Supply of Services' under HSN-999794 (agreeing to tolerate an act).

5. This is for necessary compliance, as applicable.

  
(Jagdish Prasad) 16/09/22