

**GUJARAT AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX
A/5, RAJYA KAR BHAVAN, ASHRAM ROAD,**



ADVANCE RULING (APPEAL) NO. GUJ/GAAAR/APPEAL/2018/2
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2018/AR/2)

Date : 24.7.2018

Name and address of the applicant	:	M/s. Shreenath Polyplast Pvt. Ltd. B 1001, Mondeal Heights, Near Hotel Novotel, Opp. Karnavati Club, S.G. Highway, Ahmedabad – 380 015
GSTIN of the applicant	:	24AACCS9788C1Z3
Advance Ruling No. and Date		GUJ/GAAR/R/2018/3 dated 19.02.2018
Date of filing Appeal	:	06.04.2018
Date of Personal Hearing	:	12.7.2018
Present for the applicant	:	Shri Bhavesh S. Lakhani Shri Pravin Dhandhariya, CA
Present for the Department	:	Dr. Prasad Varwantkar, Assistant Commissioner, CGST, Division – VII (Satellite), Commissionerate - Ahmedabad – South

M/s. Shreenath Polyplast Pvt. Ltd. raised the following questions for advance ruling –

“Whether an amount charged as interest on transaction based short term loan given by the Del Credere Agent (DCA) to buyers of material is exempt from tax in terms of the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 (Serial Number 27) ?

2.1 It was submitted in the application for Advance Ruling that they are Del Credere Agent (herein after referred to as “DCA”) appointed by the supplier of goods (herein after referred to as “principal”) and has dual role, the first role is to promote the sale and take orders for goods to be supplied by the principal directly and the second role is to guarantee the principal for the payment of goods supplied. If customers fail to make payment, DCA is required to make the payment to the principal. Normally, Principal takes Bank Guarantee (BG) and / or Security Deposit against which principal assigns certain limit to the DCA in their system. Within that limit, DCA is allowed to place orders of the customers. At the end of the month, for the orders booked through such DCA and goods supplied by the principal, DCA gets the commission from principal for which DCA raises invoices on the principal along with GST.

2.2 It was further clarified that the role of the DCA is limited to order booking and ensuring payment to the principal in case of default from the customer. In the entire transaction, neither principal supplies the goods to DCA, nor does DCA supply the goods to customers. Goods are directly supplied by Principal to the customers at the price declared by the principal from time to time by charging applicable GST on the invoice. On the due date, the customer pays to principal directly for the material supplied to them. In case of any delay in payment from the customer, principal charges interest along with GST.

2.3 It was reiterated that the role of the DCA is limited to order booking and guaranteeing payment. Supply of material is directly by the principal to the customer. Any delay in supply or any quality issue, it is principal who directly compensates the customer. DCA does not buy, store or sale any material of principal to any customer and therefore there is no transaction of any purchase or sale of goods in his books.

2.4 It was submitted that in the entire transaction, the maximum interaction buyer of the material has with DCA. Due to this, on some occasions, when the buyer is not in a position to pay to principal on the due date, he approaches DCA to extend short term loan and the loan is extended by the DCA by making payment to the principal on behalf of the customer. The loan is repaid to DCA by the customer along with agreed interest. The rate of interest on such short term transaction based loan (from 10 days to 90 days) is as mutually agreed between buyer of the material and DCA. Sometimes, customer does not make payment to the DCA and gives Letter of Credit (LC) for 60 / 90 days, which DCA gets discounted with the bank. In this transaction also, interest is payable for the period until LC is discounted. For interest, DCA raises debit notes on the customers. Customer pays interest while repaying the loan amount. Such interest payments are subject to TDS in terms of Income Tax Act.

2.5 It was further submitted that normally principal does not continue supply to customer until pending bills are paid by the customer. By following above process, since customer is able to arrange finance by taking short term transaction loan from the DCA, the principal gets the payment and customer gets the un-interrupted supplies.

2.6 In respect of above commercial practice, the aforesaid question was raised for advance ruling.

3.1 It was submitted that the amount charged by DCA as interest from the buyer of the materials is not liable to tax in terms of Sr. No. 27 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017.

3.2 It was further submitted that DCA is giving the loan to the buyer and charging the interest thereon from them and accordingly it will be covered under item at serial number 27 of the table attached to the impugned Notification and therefore, no tax would become payable on the amount charged as interest.

3.3 M/s. Shreenath Polyplast Pvt. Ltd. referred to Section 15(2)(d) of the Central Goods and Services Tax Act, 2017 (herein after referred to as the 'CGST Act, 2017) and submitted that the said provision does not apply to the facts of the present matter. They

submitted that in the present case, in the commercial practice as explained earlier, DCA is not supplying any goods to the customer but it is the principal who is directly supplying the goods to the customers. Thus, interest charged by DCA from customers is not for delayed payment of consideration of any underlying supply but said interest is charged towards loan given to the customers and hence such interest will be covered under item 27 of the table attached to the impugned notification.

4. The Gujarat Authority for Advance Ruling (herein after referred to as 'the AAR'), vide Advance Ruling No. GUJ/GAAR/R/2018/3 dated 19.02.2018, ruled as follows :-

Service provided by M/s. Shreenath Polyplast Pvt. Ltd. (GSTIN 24AACCS9788C1Z3) by way of extending short term loans in so far as the consideration is represented by way of interest, is covered under Sl. No. 27 of the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 and Notification No. 12/2017-State Tax (Rate) dated 30.06.2017, and hence exempt from payment of Goods and Services Tax.

5. Aggrieved by the aforesaid ruling, the Assistant Commissioner, Central Goods and Services Tax, Division – VII (Satellite), Ahmedabad – South Commissionerate (Jurisdictional Officer) has filed the present appeal.

6. It is submitted in the grounds of appeal that the aforesaid Advance Ruling dated 19.02.2018 is based on erroneous interpretation of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 (Serial No. 27, Chapter 99 and Heading 9971) and the AAR has equated DCA in entirety to a Financial Service Provider, thereby limiting the definition and purpose of DCA solely to a financial service provider. It is also submitted that the AAR has not taken into account the provisions of Section 15(2)(d) of the CGST Act, 2017.

7.1 It is submitted that the Del Credere Agent is an 'agent' within the meaning of the term 'agent' as defined under Section 2(5) of the CGST Act, 2017. The definition of 'supplier' as per Section 2(105) of the CGST Act, 2017 has also been referred. It is submitted that the DCA is not only agent but also a guarantor of credit extended to the buyer. A single transaction of supply of goods from the principal to the client carried out/facilitated by the DCA involves two components viz. (i) facilitating the supply or receipt of goods or services or both on behalf of another; and (ii) acting as a guarantor of credit extended to the buyer for the payment of the (invoice) value by the buyer to the principal. It is submitted that the DCA functions as a guarantor of credit, whether the credit is referred to by names like funding / loan/ money, the terminology should not confuse the credit / fund extending to the buyers to pay the principal. It is submitted that a DCA is an agent and to exclude him from the definition of agent as provided under Section 2(5) of the CGST Act, 2017 and include him only a financial service provider as envisaged in the Notification No. 12/2017-Central Tax (Rate) (Serial No. 27) dated 28.06.2017 is outright erroneous interpretation of the law.

7.2 It is submitted that a DCA is given higher commission for his services vis-à-vis the commission received by other agents because of service of credit provided by a DCA as he extends guarantee of the credit to the buyer which has essential component of service in facilitating the supply of goods. Section 15(2)(d) of the CGST Act, 2017 has

been referred and it is submitted that the interest charged by the DCA for delayed payment is nothing different and exclusive, but is by reason of and in connection with the transaction of supply of goods, therefore such interest or late fee or penalty for delayed payment to the DCA is in connection with the transaction and by reason of the transaction and cannot be excluded from the value of taxable supply, in simple words, cannot escape taxability.

7.3 It is submitted that the above grounds of appeal are in consonance with the clarification given vide Para 2(iii) of Office Memorandum dated 05.09.2017 issued by the GST Policy Wing (F.No. 349/40/2017-GST).

8. It is further submitted that the applicant in the instant case is DCA who carried on the business of supply or receipt of goods or service or both on behalf of another i.e. the principal. Further, it is immaterial whether the supply of goods is directly by the principal to the customer or third party is involved i.e. in this case the applicant (DCA), in supply of material directly or indirectly for which he gets commission from the principal (supplier). He is directly involved in providing the service of booking and guaranteeing payments and fully involved in sale promotion and / or supply of goods / material and facilitate the customer by extending loan and / or directly making payment to principal (supplier) and hence DCA is nothing but a supplier acting on behalf of the supplier (principal) and therefore whatever consideration is received by the DCA acting on behalf of the supplier (principal) is consideration, represented by way of interest or discount, is not exempted and same is subjected to GST under the CGST Act, 2017 and the same required to be added in the value of supply as provided under Section 15(2)(d) of the CGST Act, 2017.

9. It is also submitted that the definition of goods and supply under Section 2(52) and 2(102) of the CGST Act, 2017 exclude money to money transactions. Loan transactions being money to money transactions are therefore not subject to GST. However, the exemption provided under Sr. No. 27 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, as amended, is applicable only to money to money transactions. Loan transactions being money to money transactions are therefore not subject to GST, and appears applicable purely to the person who is exclusively involved in supply of service by way of - (a) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card service), (b) inter-se sale or purchase of foreign currency amongst bank or authorized dealers of foreign exchange or amongst bank and such dealer, and not applicable to the agent like in this case i.e. DCA who is not involved in money to money transaction but also involved in supply of service or goods on behalf of the principal (supplier), otherwise purpose of the Government to extend the exemption to such person exclusively involved in such service i.e. extending deposits, loan or discount will be defeated.

10. In view of the aforesaid grounds of appeal, it is requested to set aside the Advance Ruling No. GUJ/GAAR/R/2018/3 dated 19.02.2018.

11. M/s. Shreenath Polyplast Pvt. Ltd. (applicant) has filed reply against the aforesaid appeal.

12.1 It is submitted that the provisions of Section 15(2)(d) of the CGST Act, 2017 are already discussed by the AAR in its Order and it has rightly and correctly been held that the interest received by the applicant is a consideration towards loan extended to the customer and such interest is not towards the payment of consideration for supply of goods by the Principal to the customers, which AAR has already observed, is a separate transaction. It is submitted that Section 15(2)(d) provides that the interest or late fee or penalty should flow to the supplier of goods as what is contemplated to be included in the taxable value is interest or late fee or penalty for delayed payment of any consideration for any supply, whereas in this case the interest does not flow to the supplier and the supplier gets his payment on time, tax is discharged.

12.2 It is submitted that in the grounds of appeal, the DCA has been considered as supplier of goods, whereas in the case on hand, the DCA is an intermediary between the principal and the customer. The role of the DCA is to receive orders for goods on behalf of the principal and take the guarantee of timely payment realization from the customer to principal. The customer makes payment directly to the principal, it will never be routed through DCA. Because of such guarantee, in the case of default in timely payment by the customer to principal, DCA has to make payment to the principal for such default on behalf of the customer. This transaction between DCA and principal is on behalf of customers. This is nothing but short term finance to customers. Of course, payment goes to principal, however, it is the finance given to the customers which DCA has to recover as he is in no way otherwise concerned with the goods supplied by the principal to the customers. Therefore, this transaction between DCA and customer has to be delinked from the transaction of sale and purchase of goods between principal and customer. This being a separate transaction, the customer is answerable to DCA and not to the principal. The short term finance so provided by DCA to the customer is not an obligatory or free at all. The consideration decided between DCA and Customers for such short term finance is interest which DCA is receiving from the customers along with the payment made on his behalf to the principal. So providing short term finance and charging interest from customer is a separate transaction and is a separate activity / service as defined in Section 2(105) of the CGST Act, 2017. Further, the definition of 'supplier' in section 2(105) does not include every agent of a supplier but only those agents that are 'acting as such' on behalf of such supplier in relation to the goods or services or both so supplied. Therefore, to be included as a 'supplier', an agent should be acting as such or, in other words, acting as a supplier. DCA does not act as a supplier at any point in time and hence cannot be treated as a supplier under the GST law. It being so, the section 15(2)(d) has no relevance as the interest so charged by the DCA for his separate service provided to the customer is not towards delayed payment for the goods supplied by the principal and therefore, it cannot form part of taxable value in terms of Section 15(2)(d) of the CGST Act, 2017.

12.3 It is submitted that the principal, i.e. supplier is receiving payment in time by this arrangement and thereby there is no delay in payment. It is further submitted that had there been no DCA, and if the customer did not have money to pay to the principal in time, he would have borrowed money from a bank and the bank would charge interest. The interest charged by the bank could not be considered towards delayed payment and could not be charged to GST by including in the taxable value of supply made by the principal. So is the case in hand.

12.4 It is submitted that the reference to Office Memorandum dated 05.09.2017 issued by the GST Policy Wing (F.No. 349/40/2017-GST Para 2(iii)) for inclusion of interest in taxable value of supply as per section 15(2)(d) is misplaced inasmuch as the said OM refers contract between the broker and client, whereas the broker referred in this OM cannot be equated with DCA. It is further submitted that the content of relevant paragraph placed on record in Review Order (grounds of appeal) is by choose and pick manner as the last line of the said paragraph has not been considered.

12.5 As regards the reference to definition of 'supplier' and 'agent' provided under Section 2(105) and 2(5) of the CGST Act, 2017 in the grounds of appeal, it is submitted that the intention of the reviewing authority is that the supplier includes agent and agent includes DCA and therefore the interest charged by the DCA shall be included in the taxable value of the supplier, is totally misplaced. It is submitted that in the case on hand, the role of the DCA is clearly defined as to procure orders and pass it on the principal and guarantee the timely payment, except this role of the DCA, the transaction between principal and customers are on principal to principal basis and therefore, DCA is not at all in any way connected with the supply by the principal to customer. Invoice for supply made by principal towards supply goes directly to customers and therefore it is 'bill to ship to' transaction and taxability under GST is vested on the supplier and not on the DCA. Attention is also invited to Section 86 of the CGST Act, 2017 pertaining to liability of agent and principal and it is submitted that DCA does not supply or receive any taxable goods on behalf of his principal, therefore, in such cases, agent or DCA are not liable to pay tax.

12.6 It is further submitted that the CGST Act, 2017 nowhere prohibit DCA to indulge in to independent activities. So DCA can perform independent activities which are performed by the DCA viz. providing short term finance to avoid default by the customers. This transaction is entirely independent than supply of goods by principal to customer.

12.7 As regards Sr. 27 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, it is submitted that in the said entry, it is not stated that such an activity should be transaction in money. Further, also charging interest on loan, advance is not considered as transaction only in money. It is submitted that the transaction only in money is not defined in the CGST Act, 2017, however, recourse can be taken to Service Tax Education Guide wherein the transaction in money is explained while clarifying explanation to definition of service as provided under Section 65B(44) of the Finance Act, 1994. It is further submitted that the ground that the services by way of 'extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card service)' is transaction in money is entirely wrong. Further, it was never stated in their application for advance ruling that their transaction is transaction in money only. In fact, applicant stated that transaction between them and customer is separate activity and is service of extending loan, advance and they are charging interest. This interest is subjected to TDS under Income Tax Act also. Therefore, this ground does not hold any water.

12.8 It is also submitted that though the present appeal is filed by the Assistant Commissioner [under Section 100(1) of the CGST Act, 2017], having jurisdiction over the assessee, it is based on the authorization issued by the Principal Commissioner, in

exercise of powers conferred under sub-section (2) of Section 107 of the CGST Act, 2017, which is erroneous. It is submitted that such review power under Section 107(2) could be exercised only in cases where the adjudicating authority have passed order and not by Authority for Advance Ruling. Accordingly, the authorization to file appeal against the decision of the AAR given under Section 107 would be void and by this reason alone, the appeal is liable to be dismissed.

13. In view of the above submissions, the applicant *inter-alia* requested to uphold the ruling passed by the Gujarat AAR and dismiss the appeal filed by the Assistant Commissioner.

14. During the personal hearing, the representative of the appellant (CGST Department) and the applicant reiterated the written submissions already made (in grounds of appeal and reply thereto) and also submitted that they would submit further written submission containing additional grounds.

15. The Appellant (CGST Department) vide letter dated 18.07.2018 countered the submissions of the applicant. The Appellant also submitted following further submissions in view of the points raised and discussed during the course of personal hearing.

16.1 As regards the submission by the applicant with respect to Section 86 of the CGST Act, 2017, it is submitted that the reviewing authority is correct and legal in finding that the DCA carries on the business of supply or receipt of goods or service or both on behalf of the another, as definition of the 'agent' does not speak about physical supply or receipt of the goods or service or both on behalf of another. The emphasis should be placed on the wording 'carries on business of supply or receipt of goods or service or both on behalf of another' i.e. in the instant case definitely, the 'principal'. Hence, the reviewing authority is on right footing as per the statutory provision provided under the CGST Act, 2017.

16.2 As regards the Para 2(iii) of the Office Memorandum, it is submitted that the last line of the said Office Memorandum is related with the institution extending loans exclusively.

16.3 With respect to review order, it is submitted that though the authorization to file appeal against the decision of advance ruling was given under Section 107(2) by the Principal Commissioner, CGST, Ahmedabad South, who is also a concerned officer, jurisdictional officer of Ahmedabad South have issued Review Order No. 01/2018-19 under sub-section (1) of Section 100 of the CGST Act, 2017 and accordingly, the Assistant Commissioner, CGST, Division – VII (Satellite), Ahmedabad being a concerned officer has filed the appeal to Appellate Authority in Form ARA-03 under Rule 106(2) of CGST Rules, 2017, which is proper and legal.

16.4 Further, with respect to the plea of applicant to consider the transaction as 'Revenue Neutral', it is submitted that this plea is not legal and tenable in the eyes of law, as the whole indirect tax administration run on the principle of credit flow and value addition. Such utilization of ITC should not be treated as 'Revenue Neutral'. Further, by the logic of 'Revenue Neutrality', almost every Business to Business transaction transfer

the credit and cannot be taken as revenue neutral as it is against the basic principal of indirect taxation.

17. The applicant M/s. Shreenath Polyplast Pvt. Ltd. also submitted additional submissions, reiterating the submissions already made by them.

FINDINGS (As per Ajay Jain) :

18. We have carefully gone through and considered the appeal and written submission filed by the CGST department, written submissions filed by the applicant, submissions made at the time of personal hearing, Advance Ruling given by the AAR and other material available on record.

19.1 The nature of transaction involved in this case, as described by the applicant, may be summed up as follows. The applicant is Del Credere Agent (DCA) appointed by the supplier of goods (principal) and has dual role, the first role is to promote the sale and take orders for goods to be supplied by the principal directly and the second role is to guarantee the principal for the payment of goods supplied. If customers fail to make payment, DCA is required to make the payment to the principal. Normally, Principal takes Bank Guarantee (BG) and / or Security Deposit against which principal assigns certain limit to the DCA in their system. Within that limit, DCA is allowed to place orders of the customers. At the end of the month, for the orders booked through such DCA and goods supplied by the principal, DCA gets the commission from principal for which DCA raises invoices on the principal along with GST. The applicant clarified that the role of the DCA is limited to order booking and ensuring payment to the principal in case of default from the customer. It is further submitted that in the entire transaction, the maximum interaction buyer of the material has with DCA. Due to this, on some occasions, when the buyer is not in a position to pay to principal on the due date, he approaches DCA to extend short term loan and the loan is extended by the DCA **by making payment to the principal on behalf of the customer**. The loan is repaid to DCA by the customer along with agreed interest. The rate of interest on such short term transaction based loan (from 10 days to 90 days) is as mutually agreed between buyer of the material and DCA. Sometimes, customer does not make payment to the DCA and gives Letter of Credit (LC) for 60 / 90 days, which DCA gets discounted with the bank. In this transaction also, interest is payable for the period until LC is discounted. For interest, DCA raises debit notes on the customers. Customer pays interest while repaying the loan amount. Such interest payments are subject to TDS in terms of Income Tax Act. It is further submitted that normally principal does not continue supply to customer until pending bills are paid by the customer. By following above process, since customer is able to arrange finance by taking short term transaction loan from the DCA, the principal gets the payment and customer gets the un-interrupted supplies.

19.2 In respect of such transactions, the applicant had requested to provide advance ruling on the question whether an amount charged as interest on transaction based short term loan given by the DCA to buyers of material is exempt from tax in terms of the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 (Sr. No. 27).

20.1 As the entire issue in this case is related to the provisions of Section 15(2)(d) of the CGST Act, 2017 and Sr. No. 27 of the Notification No. 12/2017-Central Tax (Rate)

dated 28.06.2017 and corresponding provisions / Notification under the Gujarat Goods and Services Tax Act, 2017 (herein after referred to as the ‘GGST Act, 2017’), it would be useful to reproduce the same.

20.2 The Section 15(2)(d) of the CGST Act, 2017 and the GGST Act, 2017 provides as follows :-

“15. Value of taxable supply. — (1)

(2) The value of supply shall include —

(a)

(b)

(c)

(d) interest or late fee or penalty for delayed payment of any consideration for any supply; and

(e)”

20.3 Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, as amended, provides exemption to supply of various services, as specified in column (3) of the table to the said Notification. Sl. No. 27 of the table to the said Notification provides as follows:-

TABLE

(1)	(2)	(3)	(4)	(5)
Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent.)	Condition
27	Heading 9971	Services by way of— (a) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services); (b) <i>inter se</i> sale or purchase of foreign currency amongst banks or authorised dealers of foreign exchange or amongst banks and such dealers.	Nil	Nil

21.1 While pronouncing the ruling that service provided by the applicant by way of extending short term loans, in so far as the consideration is represented by way of interest, is covered under Sl. No. 27 of the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 and Notification No. 12/2017-State Tax (Rate) dated 30.06.2017, and hence exempt from payment of Goods and Services Tax, the Authority for Advance Ruling has *inter-alia* held that the extension of loan by the applicant (DCA) to the customers is a transaction separate from the transaction of supply of goods by the principal to the customers against consideration, wherein the applicant (DCA) also gets the commission from the principal.

21.2 However, it is apparent from the arrangement of transaction of supply of goods through Del Credere Agent (applicant) that the payment of consideration to the principal (supplier of the goods) is the responsibility of the DCA inasmuch as in case of failure of making payment by the buyers of the goods, the DCA is required to make the payment to the principal. The DCA guarantees the principal for the payment of goods supplied. If the customer fails to make the payment, DCA is required to make the payment to the principal. The guaranteeing by the DCA of the payment of goods supplied by the principal is the singular most important characteristic of the DCA, which distinguishes DCA from other types of agents. Thus, the transaction of supply of goods and making of payment to the principal by the DCA are not separate transaction but are part of the same transaction.

21.3 In the submission of the applicant that 'when the buyer is not in a position to pay to principal on the due date, he approaches DCA to extend short term loan and the loan is extended by the DCA by making payment to the principal on behalf of the customer', the use of the phrase 'short term loan' appears to be misleading inasmuch as even without approach by the customer, the DCA is under obligation to make payment to the principal. Furthermore, it is an admitted fact that the DCA does not extend loan to the buyer, rather the DCA makes payment directly to the principal on behalf of buyer as per agreed terms. In fact, if the DCA is not under obligation to make payment to the principal on failure of making payment by the customer, he is not acting as DCA.

21.4 Thus, the making of payment by the DCA to the principal in case of failure to make payment by the customer is inevitable part of the contract or arrangement of supply of goods through DCA, therefore the interest earned on such activity would be chargeable to GST.

22.1 The issue of applicability of Goods and Services Tax on interest earned by a broker on temporary funding extended to clients towards pay-in obligation has been clarified vide para 2(iii) of Office Memorandum F.No. 349/40/2017-GST dated 05.09.2017 issued by the Central Board of Excise and Customs (now Central Board of Indirect Taxes and Customs), GST Policy Wing, as follows.

(iii) Issue : Applicability of GST on Interest earned by a broker on temporary funding extended to clients towards pay in obligations.

Comments : Section 15(2)(d) states that value of supply shall include interest or late fee or penalty for delayed payment of any consideration for any supply. If the facility of temporary funding extended to clients forms part of contract between the broker and client, then Interest earned on such an activity should be included under value of supply and chargeable to GST. But if this service is provided as a loan to client then, interest on such service is nil as per Notification No. 12/2017-Central Tax (Rate).

22.2 Thus, the issue has been clarified in respect of interest earned by broker under two situations. In case the facility of temporary funding extended to clients forms part of contract, then interest earned on such an activity should be included under value of

supply and chargeable to GST. But if this service is provided as a loan to client i.e. not forming part of contract but is a separate transaction, then interest on such services is covered by Notification No. 12/2012-Central Tax (Rate) (Serial No. 27).

22.3 As already discussed, the making of payment by the DCA to the principal in case of failure to make payment by the customer is inevitable part of the contract or arrangement of supply of goods through DCA, therefore the interest earned on such activity would be covered by the first situation narrated in the clarification issued vide Para 2(iii) of the Office Memorandum F.No. 349/40/2017-GST dated 05.09.2017 and would be chargeable to GST. Had the transaction to provide short term loan by DCA to customer been a separate transaction, not forming part of the contract, the same would have been covered by the second part of the clarification issued vide Para 2(iii) of the said Office Memorandum and would be covered by Serial No. 27 of Notification No. 12/2012-Central Tax (Rate). For the same reason, the interest charged by the Bank for extending loan to the customer for making payment to the principal, being separate transaction would be covered by Serial No. 27 of Notification No. 12/2012-Central Tax (Rate) and cannot be equated with the transactions through DCA in the present case.

23.1 The DCA makes payment to the principal in respect of goods supplied to the customer through him (DCA) in case of failure of making payment by the customer. Once the DCA makes the payment of goods to the principal on behalf of the customer, the DCA enters into the shoes of the principal and becomes entitled to recover the amount from the customer. Therefore, the submission of the applicant that the interest charged by DCA from customers is not for delayed payment of consideration of any underlying supply, is not found to be correct.

23.2 The obligation of the DCA to make payment to the principal on failure of the customer to make payment on due date has been termed by the applicant as 'short term loan' to the customer and it is contended that the interest charged toward such loan given to the customer will be exempted under S. No. 27 of Notification No., 12/2017-Central Tax (Rate). Though such an argument appears attractive, on close scrutiny, it becomes apparent that there is not much merit in this. In case of direct transaction between supplier and customer, where the customer does not make payment on due date but make delayed payment with interest, the supplier may contend that he has extended the 'short term loan' of equal amount to the customer on due date and interest earned thereon would be exempted under S. No. 27 of Notification No., 12/2017-Central Tax (Rate). Such an interpretation will make the said clause (d) of sub-section (2) of Section 15 *ibid* otiose.

23.3 The issue may also be looked at from another angle. In case of direct transaction between supplier and customer, where the customer makes delayed payment with interest, the amount of interest would be charged to GST. However, if the contention of the applicant is accepted, then in case of the same transaction through DCA, the customer would make delayed payment with interest to DCA, but interest would not be chargeable to GST. Such an interpretation would make the levability of GST on the interest / late fee / penalty for delayed payment of consideration by the customer dependent upon the nature of transaction i.e whether it is a direct transaction between supplier and customer or whether it is a transaction through DCA.

23.4 Therefore, the interest or late fee or penalty for delayed payment of consideration by the customer would be leviable to Goods and Service Tax.

24. The applicant has referred to the provisions of Section 86 of the CGST Act, 2017 pertaining to liability of agent and principal to pay Goods and Service Tax, which provision is not relevant for deciding the present issue.

25. The applicant has also raised an issue of authorization by the Principal Commissioner of CGST for filing appeal under wrong provisions of law. In this regard, it is observed that the appeal in the present case has been filed in prescribed Form ARA-03 under Rule 106(2) of the Central Goods and Services Tax Rules, 2017. Review Order No. 1/2018-19 as well as the forwarding letter clearly mentions that the appeal is filed under Section 100(1) of the CGST Act, 2017. Even the subject of the authorization letter refers to filing an appeal under sub-section (1) of Section 100 of CGST Act, 2017. Therefore, the present appeal does not become void merely on the ground of mention of Section 107(2) of the CGST Act, 2017 in authorization letter.

26. Accordingly, we hold that the ruling of the AAR is erroneous and requires to be set aside.

(Ajay Jain)
Member

Place : Ahmedabad

Date : 24.7.2018.

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GOODS AND SERVICES TAX
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ADVANCE RULING (APPEAL) NO. GUJ/GAAAR/APPEAL/2018/2A
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2018/AR/2)

Date : 24.7.2018

Name and address of the applicant	:	M/s. ShreenathPolyplast Pvt. Ltd. B 1001, Mondeal Heights, Near Hotel Novotel, Opp. Karnavati Club, S.G. Highway, Ahmedabad – 380 015
GSTIN of the applicant	:	24AACCS9788C1Z3
Advance Ruling No. and Date	:	GUJ/GAAR/R/2018/3 dated 19.02.2018
Date of filing Appeal	:	06.04.2018
Date of Personal Hearing	:	12.7.2018
Present for the applicant	:	ShriBhavesh S. Lakhani ShriPravinDhandhariya, CA
Present for the Department	:	Dr. Prasad Varwantkar, Assistant Commissioner, CGST, Division – VII (Satellite), Commissionerate - Ahmedabad – South

M/s. ShreenathPolyplast Pvt. Ltd. raised the following questions for advance ruling –

“Whether an amount charged as interest on transaction based short term loan given by the Del Credere Agent (DCA) to buyers of material is exempt from tax in terms of the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 (Serial Number 27) ?

2.1 It was submitted in the application for Advance Ruling that they are Del Credere Agent (herein after referred to as “DCA”) appointed by the supplier of goods (herein after referred to as “principal”) and has dual role, the first role is to promote the sale and take orders for goods to be supplied by the principal directly and the second role is to guarantee the principal for the payment of goods supplied. If customers fail to make payment, DCA is required to make the payment to the principal. Normally, Principal takes Bank Guarantee (BG) and / or Security Deposit against which principal assigns certain limit to the DCA in their system. Within that limit, DCA is allowed to place orders of the customers. At the end of the month, for the orders booked through such DCA and goods supplied by the principal, DCA gets the commission from principal for which DCA raises invoices on the principal along with GST.

2.2 It was further clarified that the role of the DCA is limited to order booking and ensuring payment to the principal in case of default from the customer. In the entire transaction, neither principal supplies the goods to DCA, nor does DCA supply the goods to customers. Goods are directly supplied by Principal to the customers at the price declared by the principal from time to time by charging applicable GST on the invoice. On the due date, the customer pays to principal directly for the material supplied to them. In case of any delay in payment from the customer, principal charges interest along with GST.

2.3 It was reiterated that the role of the DCA is limited to order booking and guaranteeing payment. Supply of material is directly by the principal to the customer. Any delay in supply or any quality issue, it is principal who directly compensates the customer. DCA does not buy, store or sale any material of principal to any customer and therefore there is no transaction of any purchase or sale of goods in his books.

2.4 It was submitted that in the entire transaction, the maximum interaction buyer of the material has with DCA. Due to this, on some occasions, when the buyer is not in a position to pay to principal on the due date, he approaches DCA to extend short term loan and the loan is extended by the DCA by making payment to the principal on behalf of the customer. The loan is repaid to DCA by the customer along with agreed interest. The rate of interest on such short term transaction based loan (from 10 days to 90 days) is as mutually agreed between buyer of the material and DCA. Sometimes, customer does not make payment to the DCA and gives Letter of Credit (LC) for 60 / 90 days, which DCA gets discounted with the bank. In this transaction also, interest is payable for the period until LC is discounted. For interest, DCA raises debit notes on the customers. Customer pays interest while repaying the loan amount. Such interest payments are subject to TDS in terms of Income Tax Act.

2.5 It was further submitted that normally principal does not continue supply to customer until pending bills are paid by the customer. By following above process, since customer is able to arrange finance by taking short term transaction loan from the DCA, the principal gets the payment and customer gets the un-interrupted supplies.

2.6 In respect of above commercial practice, the aforesaid question was raised for advance ruling.

3.1 It was submitted that the amount charged by DCA as interest from the buyer of the materials is not liable to tax in terms of Sr. No. 27 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017.

3.2 It was further submitted that DCA is giving the loan to the buyer and charging the interest thereon from them and accordingly it will be covered under item at serial number 27 of the table attached to the impugned Notification and therefore, no tax would become payable on the amount charged as interest.

3.3 M/s. ShreenathPolyplast Pvt. Ltd. referred to Section 15(2)(d) of the Central Goods and Services Tax Act, 2017 (herein after referred to as the 'CGST Act, 2017) and submitted that the said provision does not apply to the facts of the present matter. They submitted that in the present case, in the commercial practice as explained earlier, DCA is not supplying any goods to the customer but it is the principal who is directly supplying the goods to the customers. Thus, interest charged by DCA from customers is not for delayed payment of consideration of any underlying supply but said interest is charged towards loan given to the customers and hence such interest will be covered under item 27 of the table attached to the impugned notification.

4. The Gujarat Authority for Advance Ruling (herein after referred to as 'the AAR'), vide Advance Ruling No. GUJ/GAAR/R/2018/3 dated 19.02.2018, ruled as follows :-

Service provided by M/s. ShreenathPolyplast Pvt. Ltd. (GSTIN 24AACCS9788C1Z3) by way of extending short term loans in so far as the consideration is represented by way of interest, is covered under Sl. No. 27 of the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 and Notification No. 12/2017-State Tax (Rate) dated 30.06.2017, and hence exempt from payment of Goods and Services Tax.

5. Aggrieved by the aforesaid ruling, the Assistant Commissioner, Central Goods and Services Tax, Division – VII (Satellite), Ahmedabad – South Commissionerate (Jurisdictional Officer) has filed the present appeal.

6. It is submitted in the grounds of appeal that the aforesaid Advance Ruling dated 19.02.2018 is based on erroneous interpretation of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 (Serial No. 27, Chapter 99 and Heading 9971) and the AAR has equated DCA in entirety to a Financial Service Provider, thereby limiting the definition and purpose of DCA solely to a financial service provider. It is also submitted that the AAR has not taken into account the provisions of Section 15(2)(d) of the CGST Act, 2017.

7.1 It is submitted that the Del Credere Agent is an ‘agent’ within the meaning of the term ‘agent’ as defined under Section 2(5) of the CGST Act, 2017. The definition of ‘supplier’ as per Section 2(105) of the CGST Act, 2017 has also been referred. It is submitted that the DCA is not only agent but also a guarantor of credit extended to the buyer. A single transaction of supply of goods from the principal to the client carried out/ facilitated by the DCA involves two components viz. (i) facilitating the supply or receipt of goods or services or both on behalf of another; and (ii) acting as a guarantor of credit extended to the buyer for the payment of the (invoice) value by the buyer to the principal. It is submitted that the DCA functions as a guarantor of credit, whether the credit is referred to by names like funding / loan/ money, the terminology should not confuse the credit / fund extending to the buyers to pay the principal. It is submitted that a DCA is an agent and to exclude him from the definition of agent as provided under Section 2(5) of the CGST Act, 2017 and include him only a financial service provider as envisaged in the Notification No. 12/2017-Central Tax (Rate) (Serial No. 27) dated 28.06.2017 is outright erroneous interpretation of the law.

7.2 It is submitted that a DCA is given higher commission for his services vis-à-vis the commission received by other agents because of service of credit provided by a DCA as he extends guarantee of the credit to the buyer which has essential component of service in facilitating the supply of goods. Section 15(2)(d) of the CGST Act, 2017 has been referred and it is submitted that the interest charged by the DCA for delayed payment is nothing different and exclusive, but is by reason of and in connection with the transaction of supply of goods, therefore such interest or late fee or penalty for delayed payment to the DCA is in connection with the transaction and by reason of the transaction and cannot be excluded from the value of taxable supply, in simple words, cannot escape taxability.

7.3 It is submitted that the above grounds of appeal are in consonance with the clarification given vide Para 2(iii) of Office Memorandum dated 05.09.2017 issued by the GST Policy Wing (F.No. 349/40/2017-GST).

8. It is further submitted that the applicant in the instant case is DCA who carried on the business of supply or receipt of goods or service or both on behalf of another i.e. the principal. Further, it is immaterial whether the supply of goods is directly by the principal to the customer or third party is involved i.e. in this case the applicant (DCA), in supply of material directly or indirectly for which he gets commission from the principal (supplier). He is directly involved in providing the service of booking and guaranteeing payments and fully involved in sale promotion and / or supply of goods / material and facilitate the customer by extending loan and / or directly making payment to principal (supplier) and hence DCA is nothing but a supplier acting on behalf of the supplier (principal) and therefore whatever consideration is received by the DCA acting on behalf of the supplier (principal) is consideration, represented by way of interest or discount, is not exempted and same is subjected to GST under the CGST Act, 2017 and the same required to be added in the value of supply as provided under Section 15(2)(d) of the CGST Act, 2017.

9. It is also submitted that the definition of goods and supply under Section 2(52) and 2(102) of the CGST Act, 2017 exclude money to money transactions. Loan transactions being money to money transactions are therefore not subject to GST. However, the exemption provided under Sr. No. 27 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, as amended, is applicable only to money to money transactions. Loan transactions being money to money transactions are therefore not subject to GST, and appears applicable purely to the person who is exclusively involved in supply of service by way of - (a) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card service), (b) inter-se sale or purchase of foreign currency amongst bank or authorized dealers of foreign exchange or amongst bank and such dealer, and not applicable to the agent like in this case i.e. DCA who is not involved in money to money transaction but also involved in supply of service or goods on behalf of the principal (supplier), otherwise purpose of the Government to extend the exemption to such person exclusively involved in such service i.e. extending deposits, loan or discount will be defeated.

10. In view of the aforesaid grounds of appeal, it is requested to set aside the Advance Ruling No. GUJ/GAAR/R/2018/3 dated 19.02.2018.

11. M/s. ShreenathPolyplast Pvt. Ltd. (applicant) has filed reply against the aforesaid appeal.

12.1 It is submitted that the provisions of Section 15(2)(d) of the CGST Act, 2017 are already discussed by the AAR in its Order and it has rightly and correctly been held that the interest received by the applicant is a consideration towards loan extended to the customer and such interest is not towards the payment of consideration for supply of goods by the Principal to the customers, which AAR has already observed, is a separate transaction. It is submitted that Section 15(2)(d) provides that the interest or late fee or penalty should flow to the supplier of goods as what is contemplated to be included in the taxable value is interest or late fee or penalty for delayed payment of any consideration for any supply, whereas in this case the interest does not flow to the supplier and the supplier gets his payment on time, tax is discharged.

12.2 It is submitted that in the grounds of appeal, the DCA has been considered as supplier of goods, whereas in the case on hand, the DCA is an intermediary between the principal and the customer. The role of the DCA is to receive orders for goods on behalf of the principal and take the guarantee of timely payment realization from the customer to principal. The customer makes payment directly to the principal, it will never routed through DCA. Because of such guarantee, in the case of default in timely payment by the customer to principal, DCA has to make payment to the principal for such default on behalf of the customer. This transaction between DCA and principal is on behalf of customers. This is nothing but short term finance to customers. Of course, payment goes to principal, however, it is the finance given to the customers which DCA has to recover as he is in no way otherwise concerned with the goods supplied by the principal to the customers. Therefore, this transaction between DCA and customer has to be delinked from the transaction of sale and purchase of goods between principal and customer. This being separate transaction, the customer is answerable to DCA and not to the principal. The short term finance so provided by DCA to the customer is not an obligatory or free at all. The consideration decided between DCA and Customers for such short term finance is interest which DCA is receiving from the customers along with the payment made on his behalf to the principal. So providing short term finance and charging interest from customer is a separate transaction and is separate activity / service as defined in Section 2(105) of the CGST Act, 2017. Further, the definition of 'supplier' in section 2(105) does not include every agent of a supplier but only those agent that are 'acting as such' on behalf of such supplier in relation to the goods or services or both so supplied. Therefore, to be included as a 'supplier', an agent should be acting as such or, in other words, acting as a supplier. DCA do not act as supplier at any point in time and hence cannot be treated as supplier under the GST law. It being so, the section 15(2)(d) has no relevance as the interest so charged by the DCA for his separate service provided to the customer

is not towards delayed payment for the goods supplied by the principal and therefore, it cannot form part of taxable value in terms of Section 15(2)(d) of the CGST Act, 2017.

12.3 It is submitted that the principal, i.e. supplier is receiving payment in time by this arrangement and thereby there is no delay in payment. It is further submitted that had there been no DCA, and if the customer did not have money to pay to the principal in time, he would have borrowed money from bank and bank would charge interest. The interest charged by the bank could not be considered towards delayed payment and could not be charged to GST by including in the taxable value of supply made by the principal. So is the case in hand.

12.4 It is submitted that the reference to Office Memorandum dated 05.09.2017 issued by the GST Policy Wing (F.No. 349/40/2017-GST Para 2(iii)) for inclusion of interest in taxable value of supply as per section 15(2)(d) is misplaced inasmuch as the said OM refers contract between the broker and client, whereas the broker referred in this OM cannot be equated with DCA. It is further submitted that the content of relevant paragraph placed on record in Review Order (grounds of appeal) is by choose and pick manner as the last line of the said paragraph has not been considered.

12.5 As regards the reference to definition of 'supplier' and 'agent' provided under Section 2(105) and 2(5) of the CGST Act, 2017 in the grounds of appeal, it is submitted that the intention of the reviewing authority is that the supplier includes agent and agent includes DCA and therefore the interest charged by the DCA shall be included in the taxable value of the supplier, is totally misplaced. It is submitted that in the case on hand, the role of the DCA is clearly defined as to procure orders and pass it on the principal and guarantee the timely payment, except this role of the DCA, the transaction between principal and customers are on principal to principal basis and therefore, DCA is not at all in any way connected with the supply by the principal to customer. Invoice for supply made by principal towards supply goes directly to customers and therefore it is 'bill to ship to' transaction and taxability under GST is vested on the supplier and not on the DCA. Attention is also invited to Section 86 of the CGST Act, 2017 pertaining to liability of agent and principal and it is submitted that DCA does not supply or receive any taxable goods on behalf of his principal, therefore, in such cases, agent or DCA are not liable to pay tax.

12.6 It is further submitted that the CGST Act, 2017 nowhere prohibit DCA to indulge in to independent activities. So DCA can perform independent activities which are performed by the DCA viz. providing short term finance to avoid default by the customers. This transaction is entirely independent than supply of goods by principal to customer.

12.7 As regards Sr. 27 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, it is submitted that in the said entry, it is not stated that such an activity should be transaction in money. Further, also charging interest on loan, advance is not considered as transaction only in money. It is submitted that the transaction only in money is not defined in the CGST Act, 2017, however, recourse can be taken to Service Tax Education Guide wherein the transaction in money is explained while clarifying explanation to definition of service as provided under Section 65B(44) of the Finance Act, 1994. It is further submitted that the ground that the services by way of 'extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card service)' is transaction in money is entirely wrong. Further, it was never stated in their application for advance ruling that their transaction is transaction in money only. In fact, applicant stated that transaction between them and customer is separate activity and is service of extending loan, advance and they are charging interest. This interest is subjected to TDS under Income Tax Act also. Therefore, this ground does not hold any water.

12.8 It is also submitted that though the present appeal is filed by the Assistant Commissioner [under Section 100(1) of the CGST Act, 2017], having jurisdiction over the assessee, it is based on the authorization issued by the Principal Commissioner, in exercise of powers conferred under sub-section (2) of Section 107 of the CGST Act, 2017, which is erroneous. It is submitted that such review power under Section 107(2) could be exercised only in cases where the adjudicating authority have passed order and not by Authority for Advance Ruling. Accordingly, the authorization to file appeal against the decision of the AAR given under Section 107 would be void and by this reason alone, the appeal is liable to be dismissed.

13. In view of the above submissions, the applicant *inter-alia* requested to uphold the ruling passed by the Gujarat AAR and dismiss the appeal filed by the Assistant Commissioner.

14. During the personal hearing, the representative of the appellant (CGST Department) and the applicant reiterated the written submissions already made (in grounds of appeal and reply thereto) and also submitted that they would submit further written submission containing additional grounds.

15. The Appellant (CGST Department) vide letter dated 18.07.2018 countered the submissions of the applicant. The Appellant also submitted following further submissions in view of the points raised and discussed during the course of personal hearing.

16.1 As regards the submission by the applicant with respect to Section 86 of the CGST Act, 2017, it is submitted that the reviewing authority is correct and legal in finding that the DCA carries on the business of supply or receipt of goods or service or both on behalf of the another, as definition of the 'agent' does not speak about physical supply or receipt of the goods or service or both on behalf of another. The emphasis should be placed on the wording 'carries on business of supply or receipt of goods or service or both on behalf of another' i.e. in the instant case definitely, the 'principal'. Hence, the reviewing authority is on right footing as per the statutory provision provided under the CGST Act, 2017.

16.2 As regards the Para 2(iii) of the Office Memorandum, it is submitted that the last line of the said Office Memorandum is related with the institution extending loans exclusively.

16.3 With respect to review order, it is submitted that though the authorization to file appeal against the decision of advance ruling was given under Section 107(2) by the Principal Commissioner, CGST, Ahmedabad South, who is also a concerned officer, jurisdictional officer of Ahmedabad South have issued Review Order No. 01/2018-19 under sub-section (1) of Section 100 of the CGST Act, 2017 and accordingly, the Assistant Commissioner, CGST, Division – VII (Satellite), Ahmedabad being a concerned officer has filed the appeal to Appellate Authority in Form ARA-03 under Rule 106(2) of CGST Rules, 2017, which is proper and legal.

16.4 Further, with respect to the plea of applicant to consider the transaction as 'Revenue Neutral', it is submitted that this plea is not legal and tenable in the eyes of law, as the whole indirect tax administration run on the principle of credit flow and value addition. Such utilization of ITC should not be treated as 'Revenue Neutral'. Further, by the logic of 'Revenue Neutrality', almost every Business to Business transaction transfer the credit and cannot be taken as revenue neutral as it is against the basic principal of indirect taxation.

17. The applicant M/s. ShreenathPolyplast Pvt. Ltd. also submitted additional submissions, reiterating the submissions already made by them.

FINDINGS (As per Dr. P.D.Vaghela) :

In Appeal of Assistant Commissioner, CGST, Div-7 (case of M/s. Shreenath Polyplast Pvt. Ltd)

18 I have carefully gone through and considered the appeal and written submission filed by the Assistant Commissioner, CGST, Division-VII (Satellite), Ahmedabad-South, written submissions filed by the applicant, submissions made at the time of personal hearing, Advance Ruling given by the AAR and other material available on the record. I have also considered the application dated 24/07/18 of M/s. Shreenath Polyplast Pvt. Ltd for grant more time and asked to file reply immediately.

19. The Assistant Commissioner, Central Goods and Services Tax, Division – VII (Satellite), Ahmedabad – South Commissionerate (Jurisdictional Officer) has submitted before this authority that the Del Credere Agent is not only agent but also a guarantor of credit extended to the buyer (recipient). A single transaction of supply of goods from the principal to the buyer (recipient) facilitated by the DCA involves two components viz. (i) facilitating the supply or receipt of goods or services or both on behalf of another; and (ii) acting as a guarantor of credit extended to the buyer (recipient) for the payment. The first objection raised by the appellant is that a DCA is an agent and to exclude him from the definition of agent as provided under Section 2(5) of the CGST Act, 2017 and include him only a financial service provider as envisaged in the Notification No. 12/2017-Central Tax (Rate) (Serial No. 27) dated 28.06.2017 is outright erroneous interpretation of the law. It is submitted that DCA is not only involved in money to money transaction but also involved in supply of goods on behalf of the principal.

19.1 On this issue, M/s. Shreenath Polyplast Pvt. Ltd. has submitted that the role of the DCA is clearly defined as to procure orders and pass it on the principal and guarantee the timely payment, except this role of the DCA, the transaction between principal and customers (recipient) are on principal to principal basis and therefore, DCA is not at all in any way connected with the supply by the principal to customer (recipient). Invoice for supply made by principal towards supply goes directly to customers (recipient) and therefore it is 'bill to ship to' transaction and taxability under GST is vested on the supplier and not on the DCA.

20. Now, if we look at the definition of "agent" given in the Indian Contract Act, 1872 is required to be referred. As per section 182 of the Indian Contract Act, 1872, an "agent" is a person employed to do any act for another, or to represent another in dealings with third persons. The person for whom such act is done, or who is so represented, is called the "principal". As delineated in the definition, an agent can be appointed for performing any act on the behalf of the principal which may or may not have the potential for representation on behalf of the principal. So, the crucial element here is the representative character of the agent which enables him to carry out activities on behalf of the principal.

20.1 The term "agent" has been defined under sub-section (5) of section 2 of the CGST Act as follows:

"agent" means a person, including a factor, broker, commission agent, arhatia, del credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another.

20.2 The key element as emerges from the definition is that the supply or receipt of the goods or services has to be undertaken by the agent on behalf of the principal.

20.3 Further, the two limbs of any supply under GST are "consideration" and "course or furtherance of business". Where the consideration is not extant in a transaction, such transactions do not fall within the ambit of supply. But, in certain scenarios, as elucidated in Schedule I of the CGST Act, the consideration is not required to be present for treating certain activities as supply.

One such activity which has been detailed in para 3 of Schedule I (hereinafter referred to as, “**the said entry**”) is reproduced here:

3. Supply of goods—

(a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or

(b) by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.

20.4 Here also, it is worth noticing that all the activities between the principal and the agent and *vice versa* do not fall within the ambit of this entry. Firstly, the supply of services between the principal and the agent and *vice versa* are outside the ambit of this entry, and would therefore require “consideration” for regarding the same as supply and thus liable to GST. Secondly, the element identified in definition of “agent”, i.e., “**supply or receipt on behalf of the principal**” has been retained in this entry.

20.5 It may be noted that the crucial factor is how to determine whether the agent is wearing the representative hat and is supplying or receiving goods on behalf of the principal. Since in commercial world there are various factors that might influence this relationship, it would be more prudent that an objective criteria for taxation is determined keeping in mind SGST Act, to bring the principal-agent relationship within the ambit of the said entry. Thus, the key ingredient for determining relationship under GST would be whether the invoice for the further supply of goods on behalf of the principal is being issued by the agent or not. Where the invoice for further supply is being issued by the agent then any provision of goods from the principal to the agent would fall within the fold of the said entry. Similarly where the goods being procured by the agent on behalf of the principal are invoiced in the name of the agent then further provision of said goods by agent to principal would be covered by the said entry. In other words, the crucial point is whether or not the agent has the authority to pass or receive the title of goods on behalf of the principal.

20.6 In present case, DCA is not involved in supply of goods on behalf of the principal. As already stated, DCA has dual role of supplying services to the principal to promote sale and supplying services to the buyer (recipient) by extending loans or advances wherein the consideration is represented by way of interest. So far as supplying services to the principal to promote sale is concerned, DCA receives commission from principal for which he raises invoices along with GST. So far as supplying services to the buyer (recipient) by extending loans or advances wherein the consideration is represented by way of interest is concerned, it is purely money transaction between DCA and buyer (recipient).

20.7 Thus, transactions between DCA and buyers (recipient) are not supply of goods but supply of services by way of extending loans or advances i.e. transaction in money.

21. The second objection raised by the appellant is that the AAR has not taken into account the provisions of Section 15(2)(d) of the CGST Act, 2017. Section 15 (2) (d) of the CGST Act, 2017 has been referred and it is submitted before the authority that the interest charged by the DCA for delayed payment is nothing different and exclusive, but is by reason of and in connection with the transaction of supply of goods. It is further submitted by the appellant that such interest or late fee or penalty for delayed payment to the DCA is in connection with the transaction and by reason of the transaction and cannot be excluded from the value of taxable supply, in simple words, cannot escape taxability. It is also submitted that DCA is nothing but a supplier acting on behalf of the supplier (principal) and therefore whatever consideration is received by the DCA acting on behalf of the supplier (principal) is consideration, represented by way of interest or discount, is not exempted and same is subjected to GST under the CGST Act, 2017 and the same required to be added in the value of supply as provided under Section 15(2)(d) of the CGST Act, 2017.

21.1 On this issue, M/s. Shreenath Polyplast Pvt. Ltd. has submitted that Section 15(2)(d) provides that the interest or late fee or penalty should flow to the supplier of goods as what is contemplated to be included in the taxable value is interest or late fee or penalty for delayed payment of any consideration for any supply, whereas in this case the interest does not flow to the supplier and the supplier gets his payment on time, tax is discharged.

22. Section 15 (2) of the Act determines various amounts that become part of value of supply. It has relevance with respect to levy of tax under section 9 of the CGST Act. Section 15 doesn't determine taxability of transaction but it has relevance only in case where transaction of supply of goods or services is taxable.

23. In the present case, goods are supplied directly from the principal to the buyer (recipient) and in case buyer (recipient) is not in position to pay to the principal in due date, DCA extends loan to the buyer (recipient) and makes payment of such supply to the principal on behalf of the customer. The said loan is repaid by the buyer to DCA along with interest agreed between DCA and buyer (recipient). The amount of interest received by DCA on supply of services in form of loan or advances cannot be included in value of supply of goods by the principal as the following two transactions are separate (a) supply of goods from supplier (principal) to buyer (recipient) and (b) supply of service from DCA (loan giver) to buyer (recipient) by way of extending loan to buyer (recipient) with interest agreed between them.

24. The third objection raised by the appellant is that the grounds of appeal are in consonance with the clarification given vide Para 2 (iii) of Office Memorandum dated 05.09.2017 issued by the GST Policy Wing (F.No.349/40/2017-GST).

24.1 On this issue, M/s. Shreenath Polyplast Pvt. Ltd. has submitted that the reference to Office Memorandum dated 05.09.2017 issued by the GST Policy Wing (F.No. 349/40/2017-GST Para 2(iii) for inclusion of interest in taxable value of supply as per section 15(2)(d) is misplaced inasmuch as the said OM refers contract between the broker and client, whereas the broker referred in this OM cannot be equated with DCA. It is further submitted that the content of relevant paragraph placed on record in Review Order (grounds of appeal) is by choose and pick manner as the last line of the said paragraph has not been considered.

25.1 In the said OM, issue pertaining to applicability of GST on interest earned by a broker on temporary funding extended to clients towards pay in obligations was raised. It is clarified as under:

“Section 15(2)(d) states that value of supply shall include interest or late fee or penalty for delayed payment of any consideration for any supply. If the facility of temporary funding extended to clients forms part of contract between the broker and client, then Interest earned on such an activity should be included under value of supply and chargeable to GST. But if this service is provided as a loan to client then, interest on such service is nil as per Notification No. 12/2017-Central Tax (Rate).”

This seems to be internal communication of Central Board of Excise and Customs (now Central Board of Indirect Taxes and Customs). However, for the interpretation, we have to rely on the Act.

25.2 The Authority for Advance Ruling (herein after referred to as 'the AAR'), vide Advance Ruling No. GUJ/GAAR/R/2018/3 dated 19.02.2018, ruled as follows:-

“Service provided by M/s. Shreenath Polyplast Pvt. Ltd. (GSTIN 24AACCS9788C1Z3) by way of extending short term loans in so far as the consideration is represented by way of

interest, is covered under Sl. No. 27 of the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 and Notification No. 12/2017-State Tax (Rate) dated 30.06.2017, and hence exempt from payment of Goods and Services Tax”.

25.3 Thus, AAR has given the ruling on services provided by DCA by way of extending short term loans to the buyer (recipient) and not to the principal. Even if we read the above mentioned Office Memorandum, it has clarified the short term loan given by broker to the client i.e. to the principal. Therefore, the said Office Memorandum is not applicable to the present case.

26. Accordingly, I held that the appeal is requires to be dismissed.

(Dr. P.D. Vaghela)
Member

Place: Ahmedabad
Date :24.7.2018.