

**PUNJAB AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICE TAX, BHUPINDRA ROAD PATIALA
147001, PUNJAB**

ORDER NO. AAR/GST/PB/42,

DATED: 28.10.2022

(An Appeal against this order lies with the Appellate Authority in terms of Section 99 and Section 100 of the CGST Act, 2017 and Section 99 and Section 100 of the PGST Act, 2017 within a period of thirty days from the date of communication of this order.)

Present:

1. Ms. Varinder Kaur, Additional Commissioner of Central Tax (Central Tax)
2. Mr. Viraj Shyamkarn Tidke, Additional Commissioner of State Tax-1 (State Tax).

1. DETAILS OF THE APPELLANT: -

GSTIN	03AAFCP5120Q1ZC
Legal Name	M/s Punjab State Power Corporation Limited
Trade Name	M/s Punjab State Power Corporation Limited, PSEB Head Office, The Mall, Patiala, Punjab- 147001
Details of application	AAR/GST/PB/42, dated 01.03.2021
Issue(s) on which advance ruling is sought	Whether the prepayment premium to be charged by PFC, New Delhi for prepayment of loans is taxable under CGST Act, 2017?
Personal hearing date(s)	(i) 18.02.2022 & (ii) 05.08.2022
Hearing attended by	(i) Sanjeev Kumar, Accounts Officer (ii) Sanjeev Kumar, A.O. & Puneet A.A.O.
Order Date	28.10.2022

2. BRIEF FACTS OF THE CASE: -

- (1) M/s Punjab State Power Corporation Limited, PSEB Head Office, The Mall, Patiala, Punjab-147001 (PSPCL) is a Punjab Government undertaking engaged in the generation, transmission and distribution of electricity (GST Registration No.03AAFCP5120Q1ZC) which is exempt under GST Act, vide Notification No. 12/2017-Central Tax (Rate) dated 28 June, 2017 (Tariff heading 9969).



- (2) The PSPCL availed a working capital term loan of Rs. 2000 Crore from Power Finance Corporation Limited ("PFC" in short) a Financial Institution @11.40% -11.65% during the Financial Year 2015-16. PSPCL has now decided to prepay this loan of PFC due to their higher rate of interest. PFC raised the demand of prepayment premium of Rs.16,85,71,429/- inclusive of GST @ 18%.
- (3) The PSPCL had submitted an application for advance ruling in form GST ARA-01 dated 01.03.2021 seeking to know Whether the prepayment premium to be charged by PFC, New Delhi for prepayment of loans is taxable under CGST Act, 2017?

2. Proceedings Under Section 98 of CGST/PGST Act:

In this regard personal hearings were conducted on 18.02.2022 and 05.08.2022 before the Advance Ruling Authority, Punjab. During proceedings on 18.02.2022, Mr. Sanjeev Kumar, Accounts Officer of PSPCL appeared on behalf of the applicant and submitted his written submission on the matter. On 05.08.2022, Mr. Sanjeev Kumar Accounts officer along-with Mr. Punnet Assistant Account Officer appeared and submitted additional documents on the matter i.e. circular no. 178/10/2022-GST dated 3rd August, 2022 of Department of Revenue (Tax Research Unit).

3. QUESTION(S) ON WHICH ADVANCE RULING IS SOUGHT: Whether the prepayment premium to be charged by PFC, New Delhi for prepayment of loans is taxable under GST Act, 2017?

4. ELIGIBILITY OF THE APPLICATION FOR ADVANCE RULING

The Section 97(2) of the Central Goods and Services Tax Act, 2017, read with Section 97(2) of the Punjab Goods and Services Tax Act, 2017, provides for the issues on which advance ruling can be sought.

97(2) The question on which advance ruling is sought under this Act, shall be in respect of,-

- (a) Classification of any goods or services or both;*
- (b) Applicability of a notification issued under the provisions of this Act;*
- (c) Determination of time and value of supply of goods or services or both;*
- (d) Admissibility of input tax credit of tax paid or deemed to have been paid;*
- (e) Determination of the liability to pay tax on any goods or services or both;*
- (f) Whether applicant is required to be registered;*
- (g) whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.*

It is observed that the query of the applicant in para III falls under the ambit of Section 97(2) of the CGST Act, 2017, read with Section 97(2) of the PGST Act, 2017. Hence, the application of the applicant is eligible for a ruling by the Punjab State Advance Ruling Authority.

5. SUBMISSIONS BY THE APPLICANT: -

The applicant has made the following submissions at the time of hearing of advance ruling application: -

Formation of PSPCL and its functions

1. Punjab State Electricity Board (PSEB) was a statutory body formed on 01 February 1959 under the Electricity Supply Act, 1948. Subsequently vide Notification No. 1/9/08 EB(PR)196, dated 16 April 2010, Govt. of Punjab unbundled Punjab State Electricity Board (PSEB) into two companies.
 - a. Punjab State Power Corporation Ltd. (POWERCOM)-[Applicant]
 - b. Punjab State Transmission Corporation Ltd. (TRANSCO)
2. The Applicant, i.e., M/s Punjab State Power Corporation Limited ("PSPCL") is a Punjab Government undertaking engaged in generation, transmission and distribution of electricity. Applicant is registered under Goods and Services Tax (GST") vide registration number 03AAFCP5120Q1ZC.

Background of transaction for which advance ruling is sought

PSPCL has availed a working capital term loan of Rs. 2000 crore from Power Finance Corporation Limited (PFC) a Financial Institution @11.40% -11.65% during the FY 2015-16. Now PSPCL has decided to prepay this loan of PFC due to their higher rate of interest. PFC has raised the demand of prepayment premium of Rs. 16,85,71,429 inclusive of GST @18%.

3. Extracts of the sanction letter of loan of lender (PFC) dated 29.01.2016 re-produced verbatim as under

As per clause no. 5 of terms & conditions of Sanction letter of PFC dated 29.01.2016, PFC will charge prepayment premium in case of prepayment of loan by PSPCL.

"5. PRE-PAYMENT OF LOAN

5.1 The Borrower may prepay the outstanding principal amount of the loan only after obtaining the prior written approval from the Corporation which will

be at the sole discretion of the Corporation. The approval for prepayment may be granted subject to such conditions as the Corporation may deem fit including prepayment premium,"

Questions seeking Advance Ruling

Whether the prepayment premium to be charged by PFC, New Delhi for prepayment of loan is taxable under CGST Act 2017?

Submission:

Government of India, Ministry of Finance, Department of Revenue (Tax Research Unit) vide Point no. 7.1.6 of GST Circular No. 178/10/2022-GST dated 03.08.2022 (Copy enclosed) has clarified that amounts paid for pre-payment of loan as contemplated by the contract as part of commercial terms agreed to by the parties, constitute consideration for the supply of a facility, namely pre-payment of loan. Therefore, such payment, even though may be referred to as fine or penalty, is actually a payment that amounts to consideration for supply, and is subject to GST, in cases where such supply is taxable. Since these supplies are ancillary to the principal supply for which the contract is signed, they shall be eligible to be assessed as the principal supply.

In the present case, it is submitted that principal supply is granting loan by PFC, New Delhi which is exempted vide Serial no. 27 of notification no. 12/2017 Central Tax (Rate) dated 28.06.2017 (reproduced below). Accordingly, ancillary supply of pre-payment charges or premium is exempted from GST.
Serial no. 27 of notification no. 12/2017 Central Tax (Rate) dated 28.06.2017

Serial No.	Tariff Heading	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) inter se sale or purchase of foreign currency amongst banks or authorised dealers of foreign exchange or amongst banks and such dealers.	NIL	NIL

Therefore, it is submitted that GST on Pre-Payment charges/premium levied by PFC on prepayment of loan is exempted from GST in accordance with ibid provisions.

6. SUBMISSIONS BY THE JURISDICTIONAL AUTHORITY: -

ACST, Patiala has submitted written reply on behalf of the department.

Applicant is engaged in generation, transmission and distribution of electric energy and having both taxable and exempted outward supplies. PSPCL has availed a working capital term loan of Rs. 2000 Crore from Power Finance Corporation Limited (PFC) a Financial Institution at 11.0 and 11.65% during the FY 2015-16. As per the application, Now the PSPCL has decided to prepay this loan of PFC due to their higher rate of interest. PFC has raised the demand of prepayment premium of Rs. 16,85,71,429/ inclusive of GST at 18%. Thus the PSPCL has sought an advance ruling on whether the prepayment premium to be charged by PFC, New Delhi for prepayment of loans is taxable under CGST Act 2017.

As per the notification no. 11/2017-NTRAL Tax(Rate) dated 28th June, 2017 and Notification No27/2018-Central Tax (Rate) dated 31 December 2018, financial and related services are taxable at 18% rate of tax.

7. DISCUSSIONS AND FINDINGS: -

1. The submissions made by the applicant in his advance ruling application, additional submissions and the submissions made at the time of personal hearings held on 18.02.2022 and 05.08.2022 have been carefully examined and analysed.

2. The applicant, i.e., M/s Punjab State Power Corporation Limited ("PSPCL" in short) is a Punjab Government undertaking engaged in generation, transmission and distribution of electricity and is registered under Goods and Service Tax under registration No.03AAFCP5120Q1ZC. Transmission or distribution of electricity is exempt under GST Act, vide notification No.12/2017 dated 28th June, 2017 (Tariff heading 9969). The PSPCL availed a working capital term loan of Rs. 2000 Crore from Power Finance Corporation Limited ("PFC" in short) a Financial Institution @11.40% -11.65% during the Financial Year 2015-16. PSPCL has now decided to prepay this loan of PFC due to their higher rate of interest. PFC raised the demand of prepayment premium of Rs.16,85,71,429/- inclusive of GST @ 18%.

3. In the light of the above, the applicant, in the present application had submitted an application for advance ruling in form GST ARA-01 dated 22.02.2019 seeking to know the following issue: -

(i) Whether the prepayment premium to be charged by PFC, New Delhi for prepayment of loans is taxable under CGST Act, 2017?

4. We, find that the Central Board of Indirect Taxes and Customs (CBIC) has issued two Circulars - one Circular No.102/21/2019-GST dated 28.06.2019 clarifying the *"issue of applicability of additional/penal interest"* and other Circular No.178/10/2022-GST dated 03.08.2022 regarding *"GST applicability of liquidation damages, compensation and penalty arising out of breach of contract or other provisions of law"*.

5. The Circular No.102/21/2019-GST dated 28.06.2019 clarifies doubts regarding admissibility of GST on **additional / penal interest** on the overdue loan i.e. whether it would be exempt from GST in terms of Sl. No. 27 of notification No. 12/2017-Central Tax (Rate) dated 28th June 2017 or such penal interest would be treated as consideration for liquidated damages [amounting to a separate taxable supply of services under GST covered under entry 5(e) of Schedule II of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the CGST Act) i.e. "agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act"]. The circular makes it amply clear that the transaction of levy of additional / penal interest does not fall within the ambit of entry 5(e) of Schedule II of the CGST Act i.e. "agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act", as this levy of additional / penal interest satisfies the definition of "interest" as contained in notification No. 12/2017- Central Tax (Rate) dated 28.06.2017.

6. On the other hand, the Circular No.102/21/2019-GST dated 28.06.2019 in para 7.1.6. has analysed the situation where some banks charge pre-payment penalty if the borrower wishes to repay the loan before the maturity of the loan period and clarified that, such amounts paid for acceptance of late payment, early termination of lease or for pre-payment of loan or the amounts forfeited on cancellation of service by the customer as contemplated by the contract as part of commercial terms agreed to by the parties, constitute consideration for the supply of a facility, namely, of acceptance of late payment, early termination of a lease agreement, of prepayment of loan. Therefore, such payments, even though they may be referred to as fine or penalty, are actually payments that amount to consideration for supply, and are subject to GST, in cases where such supply is taxable. Since these supplies are ancillary to the principal supply for which the contract is signed, they shall be eligible to be assessed as the principal supply. Naturally, such payments will not be taxable if the principal supply is exempt.

7. Further, it is imperative here to reproduce the sub-clause (d) of sub-section (2) of Section 15 of the CGST, Act which reads as under: -

"Section 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)
- (3)
- (4)
- (5) *....."*

The clause essentially stipulates that the interest or late fee or the penalty for delayed payment are also consideration and shall be a part of the value of supply.

8. In the present case of the applicant the applicant has simply stated that the PFC has raised the demand of prepayment premium of Rs.16,85,71,429/-. It is not clear as to whether the prepayment premium includes "additional/penal interest" or "pre-payment penalty". As the "additional/penal interest" is in the nature of Interest whereas the "pre-payment penalty" is in the nature of fine/penalty.

9. In the event of the prepayment premium includes "additional/penal interest", then as clarified in para 6 of the Circular No. 102/21/2019-GST dated 28.06.2019, the transaction of levy of additional / penal interest does not fall within the ambit of entry 5(e) of Schedule II of the CGST Act i.e. "agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act", as this levy of additional / penal interest satisfies the definition of "interest" as contained in notification No. 12/2017- Central Tax (Rate) dated 28.06.2017. Further, para 4 of the said circular clarifies that in terms of Sl. No. 27 of notification No. 12/2017- Central Tax (Rate) dated the 28.06.2017 "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)" is exempted. Hence, in case the consideration is represented by penal interest for prepayment of loan amount the same shall be exempted from payment of GST in terms of Sl. No. 27 of notification No. 12/2017- Central Tax (Rate) dated the 28.06.2017.

10. However, in the event of the prepayment premium includes "pre-payment penalty", the Circular No.102/21/2019-GST dated 28.06.2019 in para 7.1.6. has clarified that such payments, even though they may be

referred to as fine or penalty, are actually payments that amount to consideration for supply, and are subject to GST, in cases where such supply is taxable. The circular goes on to clarify that since these supplies are ancillary to the principal supply for which the contract is signed, they shall be eligible to be assessed as the principal supply and that, such payments will not be taxable if the principal supply is exempt. Hence, in this scenario where prepayment penalty is paid for pre-payment of loan, the same will be subject to GST only if the principal supply is taxable. The principal supply is the services by way of extending loan which is exempt from GST under GST Act, vide Notification No. 12/2017-Central Tax (Rate) dated 28 June, 2017 (Tariff heading 9969). Therefore, as the principal supply is exempt from GST, the pre-payment penalty if any shall also be exempt from payment of GST.


11. Hence, it can be seen that, in both the conditions i.e. whether the prepayment premium includes "additional/penal interest" or "pre-payment penalty", there shall not be any GST on the prepayment premium to be charged by PFC, New Delhi for pre-payment of loan under CGST Act, 2017.

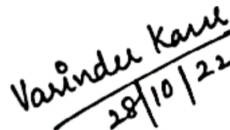
12. In view of the forgoing discussions, we rule as under:-

RULING

- (i) **Whether the prepayment premium to be charged by PFC, New Delhi for prepayment of loans is taxable under CGST Act, 2017?**

The answer is a clear NO.


28.10.22
Viraj Shayamkarn Tidke
Member, SGST


28/10/22
Varinder Kaur
Member, CGST

Through Regd. Post

To

M/s Punjab State Power Corporation Limited,
PSEB Head Office, The Mall,
Patiala, Punjab-147001

No.PB/AAR/2022/171-176

Dated: 31/10/2022

Copy to: -

1. The Special Secretary, Goods and Service Tax Council, 5th floor, Tower-II, Jeevan Bharti Bldg., Connaught Place, New Delhi w.r.t. F. No. 193/Advance Ruling/ GSTC/2017 dated 01.05.2018.

2. The Commissioner of State Taxes, Punjab.
3. The Pr. Commissioner, CGST, Ludhiana, GST Bhawan, Rishi Nagar, Ludhiana.
4. The Assistant Commissioner of State Tax, Patiala.
5. The Assistant Commissioner, CGST Division, Patiala.