



**ADVANCE RULING NO. GUJ/GAAR/R/35/2021**

(IN APPLICATION NO. Advance Ruling/SGST&CGST/2021/AR/07)

**Date: 30-07-2021**

Name and address of the applicant	:	M/s. Rajkot Nagarik Sahakari Bank Ltd., Head Office, Arvindbhai Maniar Nagarik Sevalay, 150feet Ring Road, Nr. Raiya Circle, Rajkot.
GSTIN of the applicant	:	24AAAAR2912F1ZO
Date of application	:	3-3-21
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, vide which the question(s) raised.	:	97(2)(e)
Date of Personal Hearing	:	30-6-21
Present for the applicant	:	Shri Paresh Sheth, Advocate

**BRIEF FACTS**

The applicant M/s. Rajkot Nagarik Sahakari Bank Ltd. is multi state Schedule Co-operative bank. The State Govt. announced “Atma Nirbhar Gujarat Sahay Yojna” on 16-5-20, wherein Nagarik Sahakari Banks (including Banks registered under Multi State Cooperative Act) and credit co-operative societies were to provide loans without securities up to Rs. 1 lacs to customers charging 8% interest. Out of this 8% interest, 2% interest portion was to be paid by the customer and remaining 6% interest portion was borne by the State Government. Further based on the performance of the respective banks, they would be allowed one time incentive amount depending on the total lendings done by the Banks under the said sahay yojna.

2. The applicant has submitted that after disbursement of loan to the beneficiaries, they had forwarded the claim for incentive/subsidy through the office of District Registrar, Co-operative Society, Rajkot and after considering the said claim, the Govt. of Gujarat has sanctioned incentive to the tune of Rs. 9,24,28,936/-

3. The applicant has submitted that the subsidy received in the form of incentive cannot be considered as consideration under the provisions of Section 2 (31) of CGST Act. Section 2 (31) is reproduced as under :

*(31) —consideration in relation to the supply of goods or services or both includes—*

*(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;*

*(b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government:*

*Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply;*

4. The applicant has submitted that as per the definition of “Consideration”, it is crystal clear that the subsidy given either by the Central Govt. or State Govt. would not form a part of consideration and therefore the subsidy in the form of incentive received by them could not be chargeable to tax.

5. The applicant has submitted that the subsidy in the form of incentives received is also not covered under the definition of Scope of supply as defined under the provisions of Section 7(2) of CGST Act. Sub-section 2 of Section 7 is reproduced here under:

*(2) Notwithstanding anything contained in sub-section (1),—*

*(a) activities or transactions specified in Schedule III; or*

*(b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council,*

*shall be treated neither as a supply of goods nor a supply of services.*

6. The applicant has submitted that subsidy received in the form of incentive in view of said Sahay Yojna, on compliance generates a claim for receipt of incentive and therefore also in terms of Schedule III of CGST Act, 2017, the payment received by the petitioners would not be chargeable to GST.

7. The applicant has submitted that the word incentive represents subsidy in as much as the same is paid on the basis of loan sanctioned under “Atma Nirbhar Gujarat Sahay Yojna” dated 16.05.2020. The word incentive is not defined under CGST Act, 2017 and therefore the popular meaning as defined under various dictionary are required to be followed.

*a) Incentive as explained in the new International Webster’s Comprehensive Dictionary Published by Trident Press International 1999 edition is as follows :*

***Incentive-*** *Encouraging or impelling*

***Subsidy -*** *Pecuniary aid directly granted by Govt. to an individual or private commissarial enterprise deemed beneficial to the public.*

*Any financial assistance afforded by one individual or government to another.*

The applicant has submitted that subsidy as explained in the book, The Law Lexicon published by Lexis Nexis, 4<sup>th</sup> edition, 1<sup>st</sup> reprint 2019 is as :

***Subsidy-*** *An aid, tax or tribute granted to the king for the urgent occasions of the kingdom, to be levied on every subject of ability, according to the value of his*

*lands or goods. Money contributed by a state government, institution or person in behalf of any special object.*

8. The applicant has submitted that any payment made by either the Central Govt or State Govt. as incentive or subsidy is nothing but the subsidy paid by the Government to achieve some object is subsidy and therefore in terms of the provisions of Section 2(31) read with Section 7 (2) of CGST Act, 2017, GST would not be applicable.

9. The applicant has relied upon the ruling of Hon'ble Authority of Advance Ruling, Karnataka in the case of M/s. Rashmi Hospitality Service Pvt. Ltd. { Order No. KAR ADRG 61/2019 dated 20.09.2019} wherein it has been held that *the payment made by the govt. would not be treated as consideration and would be out of the purview of GST.*

10. The applicant vide their letter dated 13-7-21 has submitted the additional submission wherein they have reiterated most of the points which were raised and submitted during the course of personal hearing.

10.1 The applicant has submitted the interest schedule effective from 5-3-19. From the schedule it can be seen that on loan amount they are charging more than 8% interest and hence it can be concluded that the incentive subsidy has direct nexus with the interest loss to the Bank and hence even assuming for a while that the amount paid is an incentive it is in the nature of compensation of interest and as such interest earned by the Bank, from the government under the said scheme would be exempt from GST. Further, submitted that the payment given by the State Government can also be termed as additional interest on the loan amount sanctioned by the banking and financial institutions and therefore also GST would not be applicable on such amount and hence the amount paid by the Government may please be declared as exempt from the payment of GST.

10.2 The applicant has submitted that since they have opted for the scheme issued by the State Government and has also fulfilled all the conditions prescribed by the Government has created an actionable claim. The world actionable claim is defined under section 2(1) of the CGST Act and same is reproduced here under

*Section 2(1) "actionable claim" shall have the same meaning assigned to it in section 3 of the Transfer of Property Act, 1882 (4 of 1882).*

10.3 The meaning assigned under section 3 of Transfer of Property Act, 1882 is also reproduced here under:

*"actionable claim" means a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property, or to any beneficial interest in movable property not in the possession, either actual or constructive, of the claimant,*

*which the civil courts recognize as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent;*

10.4 In view of the meaning assigned under section 3 of Transfer of Property Act an actionable claim is a claim which the Civil Court recognize as ground for relief whether debt or beneficial interest existent, accruing, conditional or contingent. The applicant by way of opting for the scheme and fullfilling all the conditions prescribe under the scheme has accrued the beneficial interest which definitely a Civil Court recognizes.

10.5 In view of the said definition and the fact that the applicant has accrued the actionable claim, the one-time payment given by the State Government could not be charge to Tax and therefore the amount under consideration may be held not to be chargeable to tax.

### **Question on which Advance Ruling sought**

1. whether the incentives received under “Atma Nirbhar Gujarat Sahay Yojna” dated 16.05.2020 declared by the Gujarat Govt. could be considered as subsidy and not chargeable to tax?
2. whether the incentive received under said scheme could be considered as supply of service under the provisions of Section 7 under CGST Act?
3. whether the incentive received under said scheme if considered as supply then would it be covered under Sub Section 2 of Section 7 of CGST Act?
4. whether the incentive received under said scheme could be considered as excluded from the value of taxable supply under clause (e) of Sub Section 2 of Section 15 of CGST Act, 2017.

### **Revenue’s Submission**

11. The Revenue vide letter F. No. IV/16-20/Tech/2020-21 dated 7-5-21 has submitted as follows:

11.1 Services of extending deposits, loans or advances offered by the banks falls within the SAC code 997113 and consideration received in terms of interest are exempted by Sr. No. 27 of Notification No. 12/2017-CT (Rate) dated 28.06.2017. Therefore no question of GST liability arises on the income (consideration) earned as interest.

11.2 Further, reimbursement of part interest or subvention of such interest by the State Government is a kind of subsidy and therefore by virtue of Section 2(31) of CGST Act, 2017 such subsidy given by the State Govt. is excluded from the purview of the ‘Consideration’. As per Section 15(2)(e) of the CGST Act, 2017 such subsidy is also not included in the value of the supply made by the applicant.

### **Personal Hearing**

12. Shri Paresh Sheth, Advocate appeared for the Personal hearing through Video conferencing on 17-6-21. Shri Sheth submitted that they have received the incentives 2%/4% on the amount of loan disbursed to the beneficiary. Further, Shri Sheth appeared on 30-6-21 and reiterated the contents of the application.

## **FINDINGS:**

13. At the outset we would like to make it clear that the provisions of CGST Act, 2017 and GGST Act, 2017 are in pari materia and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the GGST Act.

14. We have carefully considered all the submissions by the applicant and revenue. The applicant sought whether 2%/4% incentive received from the State Government, which is over and above the 6% interest received by State Government under the said Sahay Yojna, attracts GST.

15. We find that the Revenue has misconstrued the Question raised by the applicant and we notice that it submitted its comments on the 6% interest amount given by State Government (out of the 8% interest charged on the loan disbursed to beneficiary). But the Question for which Ruling was sought is regarding the taxability of the incentive given by the State Government, over and above the 6% interest amount. We find that Revenue's comments are silent on the issue at hand and therefore of no further avail.

16. The applicant has submitted document dated 16-5-20 issued by the Secretary, Govt. of Gujarat which detailed said Sahay Yojana scheme launched by the State Government. The main objective of said Sahay Yojana is to provide financial assistance in the form of loan to small businessmen, skilled workers, autorickshaw owners, electricians, and barbers, etc. Under the said scheme customers received the loan amounting to Rs. 1 lacs from the co-operative Bank @ 8% interest for three years. The recipient of the loan is liable to pay interest @ 2% on the loan amount and the remaining 6% interest is paid by the Gujarat Government to the applicant.

16.1 Further, the State Government under the said scheme has given the one time incentive @2%/4% to the applicant Bank on the total loan amount disbursed and the applicant received Incentive of Rs. 9,24,28,936. The relevant Para (13) of the scheme dated 27-8-21 issued by the Deputy Secretary, Govt. of Gujarat wherein it is mentioned that Co-operative banks will receive one time incentive on the loan amount disbursed as follows:

- Up to Rs. 10 Crores --- 2%
- Rs. 10 Crores to Rs. 50 Crores --- 2.5%
- Rs. 50 Crores to Rs. 100 Crores --- 3%
- More than Rs. 100 Crores ----- 4%

16.2 The applicant has disbursed the loan amount more than Rs. 100 Crores and received 4% incentive amounting to Rs. 9,24,28,936.

17. We find that the applicant Bank has disbursed the loan of Rs. 1 lacs to customers @ 8% interest out of which customer is liable to pay interest @2% and remaining 6% interest amount is borne by the State Government. Further, the applicant received 4% as an incentive on the total loan amount disbursed to the customers, over and above the 6% interest amount paid by the Government.

18. The issue hinges on whether subject incentive amount is taxable.

### **Subject Incentive:**

18.1 We refer to applicants reference to Incentive meaning at para 7, that Incentive may be explained as Encouraging or impelling. We agree on this meaning.

18.2 Further as 'Incentive' is not defined in the GST Act, we refer to the dictionary meaning. As per Webster dictionary (<https://www.merriam-webster.com/dictionary/incentive>) *incentive* is "something that incites or has a tendency to incite to determination or action" and as per lexico dictionary meaning (<https://www.lexico.com/definition/incentive>) *incentive* is a "thing that motivates or encourages someone to do something".

18.3 We hold that the subject incentive specifically provided to the applicant is for motivation and encouragement for the applicant to undertake this specific scheme. By this incentive, the State Government is incentivising the applicant to undertake this scheme and achieve success, for the incentive is not absolute but relative depending on the performance of the applicant. As the incentive is linked to the Amount of Loan disbursed in rupees, we note that the yardstick for incentivising the applicant is based on applicants willingness and performance to achieve targets, which in subject case is the amounts of loan disbursed, the highest incentive being 4% for more than 100 Crore rupees disbursed and the minimum being 2% for upto 10 crore rupees of loan disbursed. Applicant's business performance of loan disbursement is the sole criteria for receiving subject incentive. **The said incentive @4% on the disbursed loan amount to the applicant has not lessened the burden of the customers, for the customers of the loan are still required to pay their share of 2% interest on the loan amount.** We find this incentive amount falls under the meaning of consideration and income received by the applicant. In GST law, we find no special treatment to be given to incentives given by Government. Government is treated as any other 'person' in GST law, but for relevant Notifications issued. We hold the said income of incentive 4% received by the applicant is consideration to the applicant. We are not satisfied to equate this incentive as subsidy granted by the Government. We hold that subsidy is granted in public interest, related with welfare of the public or provided to a person/business by Governments, to rationalise the cost impact directly/indirectly on the public. We find that the said incentive has no such bearing on reducing the interest burden of 2% on the customers of the applicant, but incentivising the applicant for its performance of business in said scheme.

19. The applicant relied upon the case law of Commissioner of Income tax , Madras Vs. Ponni Sugar & Chemicals Ltd. 2008(9) TMI 14- SC. The facts of the referred case was that whether the incentive subsidy received by the assessee for repayment of loan is a capital receipt not includible in the total income and Whether the assessee was entitled to exemption under Section 80 P(2)(a)(i) of the Income Tax Act, 1961 in respect of interest received from the members of the society. Whereas issue in the present case is whether incentive( 4% on loan disbursed amount) received by the applicant over and above interest amount of the loan ( 6% ) , given by the Government is liable to Tax under GST. The facts of the referred case law are different from the subject matter and not a covered case. Further, applying this case law at para 14, 15 and 16, the incentive amount received by the applicant in present case has no accompanying condition on the applicant to use it for easing the burden of the customer. The incentive received in the hands of the applicant is therefore its revenue with no strings attached.

20. The applicant cited their interest schedule and that the applicant is charging more than 8% interest and this incentive is in nature of compensation of interest loss. We have examined the cited Interest Schedule of the Bank effective from 5-3-19 and find the rate of interest marked by the applicant is for the O.D. (Overdrawn ) in Current Account and not for the 'interest on loan' amount disbursed to the customer. This submission that the applicant is charging interest more than 8% on the subject loans is misleading and we find this attempt to depict incentive amount to be treated 'interest on loan' not tenable and contrary to the said Sahay Yojna scheme laid down by the State Government.

21. The applicant opined to treat the incentive amount an actionable claim. We hold that a supply of actionable claim is neither a supply of goods nor supply of services as per Schedule III to the CGST Act. We fail to understand why the issue of actionable

claim has been dragged into the submission for neither do we find any supply of actionable claim by the applicant to any recipient in subject matter nor is there supply of actionable claim by the Government to the applicant. We do not entertain this opinion, for the consideration received by the Government in the terminology of onetime incentive cannot adorn the colour of actionable claim. This incentive given by Government is a consideration for the applicant, for the incentive amount received by the applicant is for performing the activity of performing and achieving success for said Sahay Yojna scheme. As long as the payment is made by the Government for getting something in return (i.e., as a *quid pro quo* for the subject scheme to be performed by the applicant), it has to be regarded as a consideration for that, irrespective of by what name such payment is called. In subject matter, we hold that Taxability is not extinguished or vitiated on said payment received by Government to the applicant. We stress that the issue is not taxability on 6% interest amount given by Government but on the subject incentive amount given over and above the 6% interest amount to the applicant. Further, on reading the schedule III to the Act, we find no merit to entertain subject matter to be covered at any of the 8 transactions mentioned therein.

22. The applicant has place reliance on the Advance Ruling in the case of M/s. Rashmi Hospitality Service Pvt. Ltd-Order No. KAR ADRG 61/2019 dated 20-9-19. The facts of the said referred Advance Ruling was that the State Govt. has provided the subsidy on the foods supplied by the applicant to the local people and applicant is paying GST on the price which he is receiving from the local people who eat the said food. In this case the subsidy amount is actually passed on the local people as they are the benefitted by the subsidy provided by the State Govt because local people are getting the food at lower cost. Whereas in the present case incentive amount is received by the applicant and the applicant itself is benefitted, said benefit of incentive is not shared with its customers. The incentive amount is not passed on to the customer who are getting loan. Therefore, the said referred Advance Ruling is not applicable in the present case. Further, as per Section 103 of the CGST Act, any Advance Ruling is binding on the Applicant who has sought it and on the concerned officer or the jurisdictional officer in respect of the Applicant. Accordingly, Ruling as cited above cannot be relied upon in the present case.

23. We pass the ruling.

### **R U L I N G**

We hold the subject incentive amount liable to GST. The said Incentive is not subsidy and does not merit exclusion from valuation under section 15(2)(e) CGST Act. The subject supply is covered at section 7(1)(a) CGST Act and not covered at section 7(2) CGST Act.

**(SANJAY SAXENA)**  
**Member(S)**

**(ARUN RICHARD)**  
**Member (C)**