

AUTHORITY FOR ADVANCE RULING – MADHYA PRADESH**Goods and Service Tax****O/o THE COMMISSIONER, COMMERCIAL TAX,****MOTI BUNGALOW,****MAHATMA GANDHI MARG, INDORE (M.P.) - 452007****e-mail : aar@mptax.mp.gov.in Phone : 0731- 2437315 fax. no. : 0731-2536229****PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING**
U/S,98 OF THE GOODS AND SERVICES TAX ACT ,2017**Members Present**

1. Rajiv Agrawal
Additional Commissioner,
Office of the Commissioner,CGST and Central Excise, Indore

2. Manoj Kumar Choubey
Joint Commissioner,
Office of the Joint Commissioner of Commercial Tax, Indore Division-1

GSTIN Number. If any/User-id	23AAACI4380E1ZZ
Name and address of the applicant	M/s. INDO THAI SECURITIES LIMITED PU4 , Capital Tower ,INDORE , Scheme No 54 ,452010
Clause(s) of section 97(2) of CGST/SGST Act, 2017 under which the question(s) raised	a) classification of any goods or services or both; b) applicability of a notification issued under the provisions of this Act; e) determination of the liability to pay tax on any goods or services or both
Present on behalf of applicant	Shree <i>Sunil P. Jain CA.</i>
Case Number	<i>12/2019</i>
Order dated	<i>25/06/2019</i>
Order Number	<i>08/2019</i>

PROCEEDINGS

(Under sub-section (4) of Section 98 of Central Goods and Service Tax Act,
2017 and the Madhya Pradesh Goods & Service Tax Act, 2017)



1. The present application has been filed u/s 97 of the Central Goods & Services Tax Act, 2017 and MP Goods & Services Tax Act, 2017 (hereinafter also referred to as CGST Act and SGST Act respectively) by M/s. INDO THAI SECURITIES LIMITED (hereinafter referred to as the Applicant), registered under the Goods & Services Tax.
2. The provisions of the CGST Act and MP GST Act are identical, except for certain provisions. Therefore, unless a specific mention of the dissimilar provision is made, a reference to the CGST Act would also mean a reference to the same provision under the MP GST Act. Further, henceforth, for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST or MP GST Act would be mentioned as being under the GST Act.

3. BRIEF FACTS OF THE CASE:

Applicant is a registered stock broker dealing in purchase/sale of securities for and on behalf of its clients and charges brokerage for its activities.

4. QUESTIONS RAISED BEFORE THE AUTHORITY:-

The following questions have been posted before the Authority in the application:-

Applicant charges interest from customers for delayed payment. The amount on which interest is charged consists of two components – cost of securities and brokerage. Interest charged on cost of securities is exempt under notification no. 12/2017 Central Tax(Rate) dated 28-06-2017 as amended. Then what will be the tax liability on such interest charged from customers?

5. RECORD OF PERSONAL HEARING:

- 5.1. Shree Sunil P Jain, CA of the applicant for personal hearing the submissions already made in the application. The Applicant states that –
- 5.2. Indo Thai Securities Limited is a public limited company. It is NSE/BSE Broker. It acquires/sells securities to and on behalf of clients and charges brokerage for its activities. Securities are neither goods nor services under GST law. But brokerage is basically facilitating or arranging transaction in securities and thus service under section 2(102) of CGST Act 2017
- 5.3. When company acquires securities for clients, total due amount is amount towards cost of securities and brokerage on such transaction (eg. Brokerage is 0.50% and security purchased is worth Rs.100 then total due is Rs.100.50). If payment is not received in time interest is charged on such due amount.
- 5.4. Question is about GST on interest charged/ late payment charges on such due amount.
- 5.5. Legal Position a) Under section 15(2)(d) interest on late fee or penalty for delayed payment of any consideration for any supply, forms part of value b) In accordance with Notification No. 12/2017(Rate) of Central Tax dated 28/06/2017 as amended interest is exempted as per sr. no. 27 (relevant extract of notification enclosed).
- 5.6. It is ample clear that in mentioned above transaction Rs.100 is not supply and Rs.0.50 being brokerage is supply, hence any interest towards brokerage shall only constitute supply {Section 15(2)(d)} and interest of other loan/advance is exempted as explained in Point 4(b) above.



5.7. However such transaction is in ordinary course of trade, thus constitutes composite supply under section 2(30) of CGST Act, 2017 and principal supply constituted therein is towards outstanding of securities, thus whole supply will be treated supply of principal supply in accordance with section 8 of CGST Act 2017. Thus wholly exempted.

6. DISCUSSIONS AND FINDINGS:

The matter has been brought to us for seeking advance ruling on the matter that the Indo Thai Securities Limited dealing in purchase and sales of securities for and on behalf of their clients and charging Brokerage there on. The applicant acquires securities for and on behalf of its customers and recovers its dues. The dues are mainly consist of two components i.e. amount due towards the security and the brokerage. However sometimes clients delayed the payment and on such delay an additional amount is charged which is termed as Interest/Late fee/ Penalty.

Advance ruling is sought on the matter whether there is any Tax Liability on such additional amount (termed as Interest) charged on delayed payment?

There are three issues on which advance ruling is Sought:-

1. Classification of any goods or services or both.
2. Applicability of a Notification issued under the provision of this act.
3. Determination of the liability to pay tax on goods or services or both.

1. Classification:-

The question is regarding the Classification of additional amount termed as interest is being charged on the delayed payment from customers.

Sec 15 (2) The value of supply shall include—

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

It is clear from the simple reading of 15(2)(d) that the interest, late fee or penalty charged from customer shall be added to the transaction value and hence shall be taxable at the rate at which such goods/ services are taxable or in other words the classification of interest, late fee or penalty cannot be different from the classification of goods or services.

Here in the given case applicant is stock broker engaged in the activity of purchase and sales of securities for & on behalf of it's customers and the consideration is being charged in the form of brokerage as a fixed percentage of transaction value. Having regard to the trade parlance it is also clear that stock broker gives a reasonable time to its customer to



make the payment however if the customer do not make the payment within the stipulated time then an additional amount is being charged it may be termed as different names i.e. Interest, Late fee or Penalty.

Stock broker recovered amount from its customer is having two components i.e. Brokerage and the amount of security purchased by it. In case of delay in payment interest, late fee or penalty is charged on entire amount due including the amount of security. As far as classification of interest, Late fee or penalty is concern it shall be same as nature of principal service. The classification of interest, late fee or penalty cannot be different from the principal supplies. In this case the principal supply is stock broking services for which the consideration is charged in the form of brokerage.

The additional amount being charged on delayed payment termed as Interest, late fee or penalty on the amount of brokerage and the amount of securities cannot be bifurcated as such additional payment do not have its own classification, It is taking colour from original supply i.e. supply of stock broking services.

Moreover this view is also confirmed by the explanation inserted to sec 2(102) of CGST Act 2017 w.e.f 01st February 2019.

Section 2(102) of CGST Act: Definition of "Services"

"services" means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.

Explanation.- For the removal of doubts, it is hereby clarified that the expression "services" includes facilitating or arranging transactions in securities.

The explanation to the sec 2(102) has been inserted from 01st February 2019 onwards to clarify that the definition of services includes facilitating or arranging transaction in securities.

Further Section 8 of CGST Act 2017 deals with composite supply -

Sec 8 - Composite supply means a supply is comprising two or more goods/services, which are naturally bundled and supplied in with each other in the ordinary course of business, one of which is a principal supply.

In this case stock broking service is the principal supply and all other ancillary supplies shall take colors from the principal supply itself and it shall be classified as principal supplies i.e. Stock Broking Services.

2. Applicability of Notification No. 12/2017.

Applicant's contention is, on the delay of payment, the additional amount is charged is interest in nature. To qualify the amount as interest, there must be some specific percentage to be charged on daily / monthly or some periodic basis. However as per



information gathered from the industry the additional amount charged from the customer by the share brokers on delay of payment is not on specific percentage basis. Hence the amount charged cannot be qualified as interest.

Here it is necessary to differentiate between the Interest, late fee and Penalty. Interest: interest is charged to compensate for late payment etc. Interest is charged to compensate for time value of money. Interest is charged at the specified percentage and cannot be fixed.

Late Fee: Late fee is generally charges as fixed amount on a daily basis depending on the [period of delay.

Penalty: Penalty is levied for somthing wrong you have done or what you should have done but could not do so. Penalty can be in absolute as well as in percentage terms.

Hence the additional amount being charged on delayed payment is in the nature of penalty which is being charged for the payments which the customer has to make within the stipulated time but failed to do so.

Here the entry no 27 of Notification no 12 / 2017 of CGST exempt the services by the way of extending deposits, loans or advances in so far as the consideration is represent by way of interest or discount (other than interest involved in credit card services).

Further This Matter has been discussed in detail in the Circular No. 102/21/2019-GST issued on 28th June 2019, the relevant extracts are being produces here :-

Generally, following two transaction options involving EMI are prevalent in the trade:-

Case – 1: X sells a mobile phone to Y. The cost of mobile phone is Rs 40,000/-. However, X gives Y an option to pay in installments, Rs 11,000/- every month before 10th day of the following month, over next four months (Rs 11,000/- *4 = Rs. 44,000/-). Further, as per the contract, if there is any delay in payment by Y beyond the scheduled date, Y would be liable to pay additional / penal interest amounting to Rs. 500/- per month for the delay. In some instances, X is charging Y Rs. 40,000/- for the mobile and is separately issuing another invoice for providing the services of extending loans to Y, the consideration for which is the interest of 2.5% per month and an additional / penal interest amounting to Rs. 500/- per month for each delay in payment.

Case – 2: X sells a mobile phone to Y. The cost of mobile phone is Rs 40,000/-. Y has the option to avail a loan at interest of 2.5% per month for purchasing the mobile from M/s ABC Ltd. The terms of the loan from M/s ABC Ltd. allows Y a period of four



months to repay the loan and an additional / penal interest @ 1.25% per month for any delay in payment.

As per the provisions of sub-clause (d) of sub-section (2) of section 15 of the CGST Act, the value of supply shall include "interest or late fee or penalty for delayed payment of any consideration for any supply". Further 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. Further, as per clause 2 (zk) of the notification No. 12/2017- Central Tax (Rate) dated the 28th June, 2017, "interest" means interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) but does not include any service fee or other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilised;".

Accordingly, based on the above provisions, the applicability of GST in both cases listed in para 3 above would be as follows:

Case 1: As per the provisions of sub-clause (d) of sub-section (2) of section 15 of the CGST Act, the amount of penal interest is to be included in the value of supply transaction between X and Y is for supply of taxable goods i.e. mobile phone. Accordingly, **the penal interest would be taxable** as it would be included in the value of the mobile, irrespective of the manner of invoicing.

Case 2: The additional / penal interest is charged for a transaction between Y and M/s ABC Ltd., and the same is getting covered under Sl. No. 27 of notification No. 12/2017- Central Tax (Rate) dated 28.06.2017. Accordingly, in this case the 'penal interest' charged thereon on a transaction between Y and M/s ABC Ltd. would not be subject to GST, as the same would not be covered under notification No. 12/2017- Central Tax (Rate) dated 28.06.2017. The value of supply of mobile by X to Y would be Rs. 40,000/- for the purpose of levy of GST.

In the matter mentioned above, having regard to the nature of transaction it cannot be said that the share broker has extended any deposit, loans or advances to its clients hence the additional amount being charged cannot be treated as interest hence the exemption granted under entry no 27 of notification no 12/2017 is not applicable on the transaction on which advance ruling is sought.

3. Determination of Tax Liability

As discussed in point no 1 above, the additional amount being charged in delay of payment by whatever named called should be classified as principal supply and the classification of the same cannot differ from the original supply. Hence the additional amount charged on delayed payment shall be taxed as per original supply i. e. supply of Stock broking services.



Moreover the applicability of Notification No. 12/2017 has been discussed in point No 2 Above hence the additional amount being charged cannot be termed as interest and the exemption vide entry no 27 of such notification cannot be applied on the same.

7. RULING

(Under section 98 of Central Goods and Services Tax Act, 2017 and the Madhya Pradesh Goods and Services Tax Act, 2017)

7.1. In this case stock broking service is the principal supply and all other ancillary supplies shall take colors from the principal supply itself and it shall be classified as principal supplies i.e. Stock Broking Services.

7.2. In respect of the question raised by the applicant we hold that the applicability of Notification No. 12/2017 has been discussed in point No 2 Above hence the additional amount being charged cannot be termed as interest and the exemption vide entry no 27 of such notification cannot be applied on the same.

7.3. This ruling is valid subject to the provisions under section 103(2) until and unless declared void under Section 104(1) of the GST Act.



RAJIV AGRAWAL
(MEMBER)

Copy to:- No. 12/2019/A.A.R/R-28/19

1. Applicant
2. The Chief Commissioner, CGST & Central Excise, Bhopal Zone, Bhopal
3. The Commissioner(SGST) Indore
4. The Commissioner, CGST & Central Excise, Indore
5. The Concerned Officer
6. The Jurisdictional Officer – State/Central



MANOJ KUMAR CHOUBEY
(MEMBER)

INDORE dt. 25/06/2019

