

Commissionerate of CT and GST, Odisha (At Cuttack)
(Finance Department, Government of Odisha)

No. 9024 /CT
POL-41/1/2017 - Policy

Dated 10/7 /2019

To,

Heads of all CT & GST Territorial Ranges

Heads of all CT & GST Enforcement Ranges & Units

Heads of all CT & GST Territorial Circles & AUs

CIRCULAR

Subject: Clarification regarding applicability of GST on additional / penal Interest – reg.

Madam/Sir,

Various representations have been received by the CBIC from the trade and industry regarding applicability of GST on delayed payment charges in case of late payment of Equated Monthly Instalments (EMI). An EMI is a fixed amount paid by a borrower to a lender at a specified date every calendar month. EMIs are used to pay off both interest and principal every month, so that over a specified period, the loan is fully paid off along with interest. In cases where the EMI is not paid at the scheduled time, there is a levy of additional / penal interest on account of delay in payment of EMI.

2. Doubts have been raised regarding the applicability 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 Finance Department Notification issued vide SRO No. 306/2017 dated 29th 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 Odisha Goods and Services Tax Act, 2017 (hereinafter referred to as the OGST 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"]. In order to ensure uniformity in the implementation of the provisions of the law, the undersigned, in exercise of his powers conferred by section 168 (1) of the OGST Act, hereby issues the following clarification.

3. 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 instalments, 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.

4. As per the provisions of sub-clause (d) of sub-section (2) of section 15 of the OGST 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 Finance Department Notification issued vide SRO No. 306/2017 dated 29th June 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 Finance Department Notification issued vide SRO No. 306/2017 dated 29th 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;"*.

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

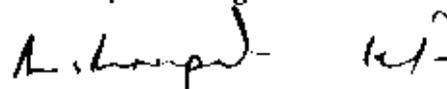
- Case 1: As per the provisions of sub-clause (d) of sub-section (2) of section 15 of the OGST Act, the amount of penal interest is to be included in the value of supply. The transaction between X and Y is for supply of taxable goods i.e. mobile phone. Accordingly, the penal interest would be taxable 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 Finance Department Notification issued vide SRO No. 306/2017 dated 29th June 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 Finance Department Notification issued vide SRO No. 306/2017 dated 29th June 2017. The value of supply of mobile by X to Y would be Rs. 40,000/- for the purpose of levy of GST.

6. It is further clarified that the transaction of levy of additional / penal interest does not fall within the ambit of entry 5(e) of Schedule II of the OGST 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 Finance Department Notification issued vide SRO No. 306/2017 dated 29th June 2017. It is further clarified that any service fee/charge or any other charges that are levied by M/s ABC Ltd. in respect of the transaction related to extending deposits, loans or advances does not qualify to be interest as defined in Finance Department Notification issued vide SRO No. 306/2017 dated 29th June 2017, and accordingly will not be exempt.

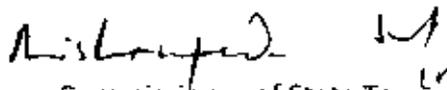
7. It is requested that this circular may be widely publicised among trade and industries.

8. Difficulty, if any, in the implementation of this circular may be brought to the notice of the undersigned.


(Bishnupatta Sethi, I.A.S)
Commissioner of State Tax
Odisha, Cuttack

Memo No 9025 /C.T Dated 10/7 /2019

Copy to Additional Secretary in charge of CT-1 Branch, Government of Odisha, Finance Department for information with reference to CBIC Circular No.102/21/2019-GST dated 28/06/2019.


Commissioner of State Tax
Odisha, Cuttack