



Dimensions – 30th Edition

Rulings under GST era:

1. M/s Rajkot Nagarik Sahakari Bank Ltd - Gujarat¹

Issues for Consideration

- Whether refundable interest free deposit received could be treated as a supply under GST and chargeable to tax in the hands of the Applicant?
- Whether the amount of ₹ 2500/- being refundable interest free deposit, which allows depositor same benefits, would attract GST?
- Whether first 10 free transactions subject to maximum of ₹ 5 Lakh allowed to the demat account holder, depositing refundable interest free deposit would attract GST?

Discussion & Ruling

Discussion:

- The Applicant, being a multi-state Schedule Co-operative Bank, also provides service for operation of demat account in addition to providing various financial and related services. The Applicant runs 3 type of schemes for the demat account holders.
- In one of the schemes, namely Rajkot Nagarik Free Scheme, the account holder gets certain free services by virtue of depositing some amount as interest free security with the Applicant.
- The Applicant contended the following to argue that amount received as refundable interest free security deposit and free services provided are not liable to GST:
 - The refundable interest free deposit received is not a consideration for allowing any benefit under the said scheme as the said amount is refundable at any time;
 - Also, the transactions under present case is not covered under Schedule I of CGST Act;

¹ Order no. GUJ/GAAR/R/9/2019 dated May 15, 2019



- None of the scheme is under similar circumstances and hence, Rule 27 of CGST Rules is also not applicable.
- The Authority observed as under:
 - Refundable interest free deposit received cannot be treated as supply;
 - However, the notional interest / monetary value of the act of providing refundable interest free deposit will be considered as consideration. The refundable interest free deposits are an additional commercial consideration to cover risk of the demat account;
 - The said services were chargeable to service tax under the erstwhile Service tax regime and GST provisions are also broadly *pari materia*;
 - The monetary value of the act of providing refundable interest free deposit is the consideration for the services provided by the applicant and can be treated as supply chargeable to GST;
 - Further, the free transactions allowed to the demat account holders are in the nature of discount and will not attract GST, provided the conditions prescribed under section 15(3) of the CGST Act are fulfilled.

Ruling:

- The monetary value of the act of providing refundable interest free deposit is the consideration for the services provided by the Applicant and therefore, the services provided by Applicant can be treated as supply and chargeable to GST.
- The amount of ₹ 2500/- will not attract the GST, but the monetary value of the act of providing the deposit will attract GST.
- The first 10 free transaction allowed to the demat account holder are in the nature of discount and will not attract GST subject to the fulfilment of the conditions prescribed under section 15(3) of the CGST Act.

**Dhruva
Comments /
Observations**

- While the transaction of providing interest free deposit and in turn receiving free services is held to be taxable, there are no comments as to on what “value” is the tax payable i.e. on intrinsic value or notional interest yield etc. Also, relevant to note sectoral FAQ which states that the services may be offered free / concessional rate considering various factors such as credit rating, customer relationship, future business potential etc. and accordingly, charges for same service may differ from customer to customer.
- In recent times, such transactions / schemes have been under the lens of the authorities and would be interesting to see how judicial interpretation evolves on this subject.



2. M/s Chennai Port Trust – Tamil Nadu²

Issue for Consideration	Whether the amount received on or after July 01, 2017 towards interest, late fee, penalty relating to the services other than continuous supply of services (CSS) rendered before July 01, 2017 are liable to GST?
Discussion & Ruling	<p>Discussion:</p> <ul style="list-style-type: none">• The Applicant is engaged in supply of port services and is functioning under administrative control and supervision of Ministry of shipping of Government of India.• The Applicant had rendered certain services during the service tax regime, raised the invoices and paid the service tax thereon. However, under the GST regime it has received interest, late fee, penalty due to the consideration being received belatedly for such services rendered.• The Applicant contended that as per their interpretation of GST law:<ul style="list-style-type: none">- No GST is payable on such interest, late fee, penalty received post July 01, 2017 which pertain to services other than CSS rendered prior to July 01, 2017;- Such amounts received, which pertain to CSS rendered prior July 01, 2017 are liable to GST under section 13(2) of the CGST Act.• The Authority after going through the various records observed as follows:<ul style="list-style-type: none">- In the present case, the invoices for the services (leasing/renting) rendered prior to July 01, 2017, were raised prior to the said date and accordingly, in terms of section 13 of the CGST Act, the time of supply of service is prior to July 01, 2017;- The Applicant has raised Rent Claim Advance (RCA) receipt, under the GST regime, in respect of the interest, late fees, penalty for the payments made belatedly. Such payment is a part of the contract for the supply of services to the port user.- The Applicant has tolerated the delayed payment of consideration which the service recipient should have paid much earlier. Such a tolerance is a separate supply under section 7(1)(a) of the CGST Act. <p>Ruling:</p> <p>The amounts received on or after July 01, 2017 towards interest, late fee, penalty relating to delayed payment of consideration for those services rendered by the Applicant before July 01, 2017, are liable to GST.</p>
Dhruva Comments / Observations	It needs to be deliberated as to whether receipts in the nature of interest / late fees would constitute a separate supply or would be regarded as part of the main supply in terms of section 15 of CGST Act. Further, the service tax law specifically excluded any interest charged for belated payment. Thus, levy of GST on such amount is highly debatable. Separately, what constitutes a toleration of an act has been a subject matter of litigation before the Advance Ruling Authorities, in particular after the omission of section 7(1)(d) of the CGST Act and insertion of section 7(1A) retrospectively w.e.f July 01, 2017.

² Order No. 35/AAR/2019 dated July 26, 2019



3. M/s Gujarat State Financial Services Ltd. - Gujarat³

Issues for Consideration

- Whether the Applicant and various State Government owned entities would be treated as 'related persons' under the GST law?
- If yes, whether GST is chargeable on notional processing fees / any other charges?

Discussion & Ruling

Discussion:

- The Applicant is a State Government owned Non-Banking Finance Company (NBFC) engaged in providing financial assistance services in the form of loan to various State Government owned entities.
- The State Government has directed all its entities to park all their surplus funds with the Applicant. Such surplus funds are provided in the form of loan to various State Government owned entities which need funds.
- The Applicant receives consideration in the form of interest for the loans given and they do not charge any processing fees or any other charges for providing financial assistance to various entities.
- The Applicant submitted the following:
 - In terms of clause (iv) of Explanation (a) to section 15 of CGST Act 2017, persons shall be deemed to be 'related persons' if any person directly or indirectly owns, controls or holds twenty-five percent or more of the outstanding voting stock or shares of both. As per the said definition, the Applicant and other State Government owned entities would be related persons;
 - They are charging interest which is exempt under GST as per Sr. no. 27 of notification no. 12/2017 - Central Tax (Rate) dated June 28, 2017 (exemption notification);
 - FAQs issued on financial services also clarifies that any charges or amounts collected over and above the interest or discount would represent taxable consideration and hence, liable to GST;
 - Further, there is no specific guideline issued by RBI to NBFC to compulsorily charge processing fees on loans provided. The Applicant is not charging any processing fees and hence, GST is not payable on the notional processing fees.
- The Authority agreed with the contention of the Applicant and observed the following:
 - The Applicant is providing loans for which only interest is charged as a consideration;
 - There is no other consideration, so even if the service is provided to related party, exemption can be claimed under the exemption notification, as this notification neither talks about related – unrelated party nor about notional consideration and hence, the question of charging GST on notional consideration does not arise.

³ Order no. GUJ/GAAR/R/10/2019 dated June 27, 2019



	<p>Ruling:</p> <ul style="list-style-type: none">• The Applicant and various State Government owned entities should be treated as related persons in terms of section 15 of the CGST Act, 2017;• Since no other consideration is involved except interest, the services provided by way of extending loans to various State Government owned entities is covered under the exemption notification.
<p>Dhruva Comments / Observations</p>	<ul style="list-style-type: none">• Under the GST law, the transaction between related parties gets covered in the definition of supply even if the said transaction is without any consideration (Entry no. 2 of schedule I of the CGST Act, 2017). The above ruling has been pronounced without discussing the said deemed supply entry.• Generally, in a lending transaction by Banks / NBFCs, the consideration collected is in the form of interest, processing / documentation charges. Thus, in the absence of such processing / documentation charges, can there be a notional attribution, when transaction is between related parties?



ADDRESSES

Mumbai

11th Floor,
One IndiaBulls Centre, Tower 2B,
841, Senapati Bapat Marg,
Elphinstone Road (West),
Mumbai 400 013
Tel: +91 22 6108 1000 / 1900

Ahmedabad

B3, 3rd Floor, Safal Profitaire,
Near Auda Garden,
Prahlanagar, Corporate Road,
Ahmedabad - 380 015
Tel: +91-79-6134 3434

Bengaluru

Prestige Terraces, 2nd Floor
Union Street, Infantry Road,
Bengaluru 560 001
Tel: +91-80-4660 2500

Delhi / NCR

101 & 102, 1st Floor, Tower 4B
DLF Corporate Park
M G Road, Gurgaon
Haryana - 122 002
Tel: +91-124-668 7000

Pune

305, Pride Gateway, Near D-Mart, Baner,
Pune - 411 045
Tel: +91-20-6730 1000

Kolkata

4th Floor, Unit No 403, Camac Square,
24 Camac Street, Kolkata
West Bengal – 700016
Tel: +91-33-66371000

Singapore

Dhruva Advisors (Singapore) Pte. Ltd.
20 Collyer Quay, #11-05
Singapore 049319
Tel: +65 9105 3645

Dubai

WTS Dhruva Consultants
U-Bora Tower 2, 11th Floor, Office 1101
Business Bay P.O. Box 127165
Dubai, UAE
Tel: + 971 56 900 5849

Bahrain

WTS Dhruva Consultants
2301, Level 23, P.O. Box No. 60570,
Harbour Tower (East), Bahrain Financial Harbour,
Kingdom of Bahrain
Tel: +973 1663 1921

New York

Dhruva Advisors USA, Inc.
340 Madison Avenue, 19th Floor, New York,
New York 10173 USA
Tel: +1-212-220-9494

Silicon Valley, USA

Dhruva Advisors USA, Inc.
5201 Great America Parkway,
Santa Clara, California 95054
Tel: +1 408 930 5063

KEY CONTACTS

Dinesh Kanabar (Mumbai)

Chief Executive Officer
dinesh.kanabar@dhruvaadvisors.com

Ritesh Kanodia (Mumbai)

ritesh.kanodia@dhruvaadvisors.com

Niraj Bagri (Mumbai)

niraj.bagri@dhruvaadvisors.com

Ranjeet Mahtani (Mumbai)

ranjeet.mahtani@dhruvaadvisors.com

Amit Bhagat (Delhi / NCR)

amit.bhagat@dhruvaadvisors.com

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