

THE MAHARASHTRA APPELLATE AUTHORITY FOR ADVANCE RULING FOR GOODS AND SERVICES TAX
(constituted under Section 99 of the Maharashtra Goods and Services Tax Act, 2017)

ORDER NO. MAH/AAAR/SS-RJ/24A/2018-19

Date- 12.12.2019

BEFORE THE BENCH OF

(1) Smt. Sungita Sharma, MEMBER

(2) Shri Rajiv Jalota, MEMBER

GSTIN Number	27AABCB1518L1ZS
Legal Name of Appellant	Bajaj Finance Limited
Registered Address	3rd Floor, Panchshil Tech Park, Viman Nagar, Pune-411 014.
Details of appeal	Appeal No. MAH/GST-AAAR-24/2018-19 dated 14.12.2018 against Advance Ruling No. GST-ARA-22/2018-19/B-85 dated 06.08.2018
Jurisdictional Officer	State Tax Officer (VAT-C-707) Pune
Details of the AAAR order sought to be amended under Section 102 of the CGST Act, 2017	ORDER NO. MAH/AAAR/SS-RJ/24/2018-19 dated 24.03.2019

PROCEEDINGS

(under Section 102 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

- A.** At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the MGST Act.
- B.** In the present case, appeal had been filed under Section 100 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act"] by Bajaj Finance Limited



(herein after referred to as the "Appellant" or Applicant interchangeably) against the Advance Ruling No. GST-ARA-22/2018-19/B-85 dated 06.08.2018, which was disposed of vide AAAR Order No. MAH/AAAR/SS-RJ/24/2018-19 dated 24.03.2019. However, the Appellant has filed the present application, under section 102 of the CGST Act, 2017 on 13.09.2019 for the rectification of the order dated 14.03.2019, issued by AAAR.

- C. The issue involved in the aforesaid appeal relates to the question as to whether the penal interest charged by the Applicants, which is in the nature of interest on loans, from its customers is in the nature of tolerating an act in terms of entry 5(e) of Schedule II of the CGST Act, 2017 or whether the same is in the nature of additional interest and is exempt vide Serial No. 27 of the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017.

BRIEF FACTS OF THE CASE

1. The Appellant is a non-banking financial company and is *inter alia* engaged in providing various types of loans to the customers such as auto loans, loans against the property, personal loans, consumer durable goods loans, etc.
2. The Appellant, *inter alia*, enters into agreements with borrowers/customers for providing loans to them. The loan agreements provide for repayment of the outstanding dues/Equated Monthly Installments (EMI) through cheque/ Electronic Clearing System ('ECS')/ National Automated Clearing House ('NACH') or any other electronic or clearing mandate. The illustrative copies of loan agreement entered into between the Appellant and the customers have been enclosed with the Appeal.
3. The installment of a loan is computed taking into consideration the amount of loan, rate of interest, duration for a loan etc. Generally, EMI paid by the customer is a fixed amount paid at a specified date. EMI includes the amount of interest and the principal amount.
4. In case of delay in repayment of EMI by the customers, the Appellant collects penal/default interest (hereinafter referred to as '**penal interest**') as an additional interest for the number of days of delay as per terms of the agreements executed with the customers. The penal interest is calculated at a fixed percentage on the overdue loan amounts of the customer. The percentage of penal interest varies from



customer to customer, and generally ranges between 2% to 4% per month depending on the product.

5. The Applicants had contended that the amount charged in the nature of penal interest from its customers consideration received through the way of additional interest and the same would squarely fall under the exemption granted vide Serial No. 27 of the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017.
6. This Hon'ble Authority vide Final Order MAH/AAAR/SS-RJ/24/2018-19 dated 14.03.2019 rejected the appeal filed by the Applicants and held that the consideration received by the Applicants is for tolerating the act of its customers and would be covered by the entry 5(e) of Schedule II of the CGST Act, 2017.
7. The present application for rectification of mistake in the order passed by this Hon'ble Authority has been filed on the following grounds:

GROUND FOR RECTIFICATION OF MISTAKE

8. The Applicants in its appeal before this Hon'ble Authority had made various submissions stating that the additional interest charged from its customers would fall under the exemption granted vide Serial No. 27 of the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017.
9. The submissions made by the Applicants in their appeal as well as during the time of the hearing is summarized below for reference:
 - (i) The Applicants are only engaged in the business of lending/financing to customers, and the amount charged as penal interest is nothing, but interest on loans, which is exempt from GST.
 - (ii) In any case, penal interest is liable to be included in the value of main supply under Section 15(2)(d) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as 'CGST Act'), and therefore, any treatment given to the main supply shall be given to the penal interest, and hence, shall be exempt from GST.
 - (iii) In any case, the penal interest charged by the Applicants is in the nature of penalty or liquidated damages for breach of contract, which does not amount to consideration for any contract, and therefore, there cannot be any supply of service.



(iv) Penal Interest charged by the Applicants for the breach of contract by the customer, is not covered under the ambit of Deemed Services under clause (e) of Entry 5 of Schedule II to the CGST Act.

(v) Even internationally, the damages for breach of contract were not taxed.

10. This Hon'ble Authority after considering the above submissions had concluded that the consideration received by the Applicants is for tolerating the act of its customers and would be covered by the entry 5(e) of Schedule II of the CGST Act, 2017. In this regard, the Applicants pray this Hon'ble Authority to re-consider the aforesaid submissions of the Applicants and allow the present appeal.

11. It is humbly submitted that the Central Government vide its Circular No. CBEC-102/21/2019-GST dated 28.06.2019 has issued certain clarifications in respect of the issue as involved in the present appeal. Vide the above circular, it has been 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 CGST Act, 2017 as such levies are in the nature of "interest" as covered by the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017. The relevant portion of the said circular is reproduced below for reference:

"Various representations have been received 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 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"]. In order to ensure uniformity in the implementation of the provisions of the law, the Board, in exercise of its powers conferred by section 168 (1) of the CGST Act, hereby issues the following clarification. 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.

4. 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 utilized;".

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 CGST 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 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 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.*

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 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. 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 notification No. 12/2017- Central Tax (Rate) dated 28.06.2017, and accordingly will not be exempt.

7. It is requested that suitable trade notices may be issued to publicize the contents of this circular"

12. The Applicants submit that the present circular issued by the Central Government is merely clarificatory in nature and the same should not be considered as a new fact or information. The Applicants are filing the present application to bring to the notice of this Hon'ble Authority and seek the rectification of the mistake which is apparent



- from the face of the records available before this Hon'ble Authority. The mistake committed in the Present Ruling passed by this Hon'ble Authority is apparent in light of the circular dated 28.06.2019.
13. It is humbly submitted that the circular dated 28.06.2019 does not bring any new fact or information to light. The circular dated 28.06.2019 merely clarifies the way in which the provisions relating to the present issue should be interpreted. The circular dated 28.06.2019 in fact relies upon the very legal provisions, in light of which the Present Ruling has been passed by this Hon'ble Authority. However, the interpretation as adopted by this Hon'ble Authority is contrary to the Circular dated 28.06.2019 and therefore, the Present Ruling passed by this Hon'ble Authority deserves to be re-considered and rectify the mistakes which are apparent from the face of record.
14. This Hon'ble Authority has held that the penal interest charged by the Applicants from its customers is the very activity of tolerating act or situation of delay in payment of EMI and therefore the same is covered under clause 5 (e) of the Schedule II of the CGST Act, 2017. However, the Circular dated 28.06.2019 has clarified that clause 5(e) of the Schedule II of the CGST Act, 2017 is not applicable in the cases of additional/penal interest, since the same would be covered by the definition of interest as contained under the Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017. The above-referred circular, being clarificatory in nature and having beneficial impact for the assessee has to applied retrospectively. Reliance in this regard is placed upon the decision of the Hon'ble Supreme Court in the case of **Suchitra Components Ltd. [2007 (208) ELT 321 (SC)]** wherein it was held that beneficial circulars have to be applied retrospectively.
15. Therefore, the Circular dated 28.06.2019 would have a retrospective effect. It is humbly submitted that wherever a circular/notification is applied with retrospective effect, it has to be deemed that that same was existing at the time of dispute as well. Further, in any case, the present circular merely clarifies the interpretation of the provisions, which have not been changed since the time of the Present Ruling of this Hon'ble Authority.
16. The Applicant also submits that the present circular has substantiated the true meaning of law and how it should have been interpreted. The present Ruling being



contrary to the true meaning of law and its interpretation is a mistake apparent from the face of record and the same should be rectified. In this regard, the Applicants submit that the Five Member Larger Bench of the Hon'ble CESTAT in the case of Hindustan Lever Ltd. [2008 (10) STR 91 (Tri.- LB)], had concluded that a subsequent decision of the Hon'ble Supreme Court or any High Court clarifying the true position of the law warrants the re-consideration of an issue and a rectification of mistake application can be filed, provided the same has been filed within the prescribed time limits. The relevant portions of the above decision are reproduced below for reference:

"8. The High Court of Madras in V. Guard Industries Ltd. while considering a similar question in a case where rectification application was made after the judgment of the Supreme Court in Shanuga Traders etc. v. State of Tamil Nadu and Others reported in 114 STC 1, and dealing with the contention that it was not open to the assessee to seek such rectification by placing reliance on a judgment of the Supreme Court rendered subsequent to the assessment, held in paragraph 13 of the judgment that, notwithstanding what may have been done by any authority below the Supreme Court, when the Supreme Court pronounces on the true position of law any decision rendered by any other authority contrary to that, is required to be regarded as an error which is apparent on the record and rectification of such an error within the period permissible under the law and in accordance with the provisions of the statute was clearly required to be effected. Thus, our task is very simple, and we, in view of the decision of the Gujarat High Court in RPG Life Sciences Ltd. (supra) and the decision of the Madras High Court in V. Guard Industries Ltd. (supra), declare that the Larger Bench decision in Gujarat State Fertilizers and Chemicals reported in 2000(122) E.L. T. 232(Tribunal - LB) stands overruled. The reference is answered accordingly. "

17. In light of the above decision, it is humbly submitted that the Circular dated 28.06.2019 simply clarifies and states the true meaning of the legal provisions involved in the present appeal. Further, it is a well settled principle that Circulars are binding on Departmental authorities. Therefore, the binding circular of the Department clarifying the true meaning of the legal provisions involved in the



present case deserves to be considered and the present Ruling should be rectified in light of the same.

18. For the aforesaid reasons, it is respectfully submitted that the Present Ruling passed by the Hon'ble Appellate Authority suffers from ex facie errors which are apparent from the facts on record of the case and the same need to be rectified. It is therefore, respectfully prayed that the aforesaid mistakes in the Present Ruling may kindly be rectified.

Personal Hearing

19. A personal Hearing in the matter was conducted on **09.12.2019**, wherein Shri Jaydeep Sachdeva, Advocate, appeared on behalf of the Appellant, and reiterated their written submissions filed before us. The aforesaid hearing was also attended by Shri H.G. Kotale, Deputy Commissioner of State Tax and the Jurisdictional Officer in the present matter.

Discussion and Findings

20. Heard both the parties. We also perused the application filed under section 102 of the CGST Act, 2017 for the rectification of error in the impugned AAAR order. The applicant, vide their application, have submitted that the impugned AAAR order dated 14.03.2019 needed to be rectified owing to the presence of error, which is apparent from the face of record, as the said impugned ruling is contrary to the Circular No. CBEC- 102/21/2019-GST dated 28.06.2019 issued by the CBIC, which clarifies 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, 2017, whereas vide the impugned AAAR order, it was held that Additional/Penal Interest charged by the Applicant from their customer for the delayed payment of EMI would fall under the ambit of entry 5(e) of the Schedule II to the CGST Act, 2017, and hence would be subject to GST.
21. The Applicant further argued that since the aforesaid Departmental Circular is merely clarificatory in nature, and therefore the legal provisions in this regard remain the same. As such no new facts or information have emerged. Since the interpretation drawn in the impugned ruling is contrary to that of the above said Circular issued by the Board, and therefore, the same can be said to be the error apparent from the



face of the record, which warrants rectification in terms of provision of section 102 of the CGST Act, 2017.

22. The Applicant have also argued that the beneficial Circulars/Notification issued by the Government have the retrospective effect. As such, they argued that the aforesaid Circular would be deemed to be existing even at the time of passing the ruling. Thus, basis this deeming provision, they argued that the impugned ruling, which is contrary to the clarification issued vide the aforesaid Board's Circular, deserves to be rectified. In this regard, they have also placed reliance upon the decision of the Hon'ble Supreme Court in the case of **Suchitra Components Ltd. [2007 (208) ELT 321 (SC)]** wherein it was held that beneficial circulars have to be applied retrospectively.
23. On perusal of the above contentions made by the Applicant, it is conceded that the Ruling made in the impugned AAAR Order is contrary to the interpretation of the legal provision as envisaged by the Board, and since the said Board Circular is beneficial in nature, the same needed to be applied retrospectively in keeping with the Hon'ble Apex Court Judgment, relied upon by the Applicant.
24. In view of the above, we intend to rectify the impugned AAAR Order dated 14.03.2019, and pass the following order:

ORDER

We, hereby, hold that the additional/Penal interest recovered by the Applicant from their customers against the delayed payment of monthly instalments of the loan extended to such customers, would be exempt from GST in terms of Sl. 27 of the Notification No. 12/2017-C.T. (Rate) dated 28.06.2017.


(RAJIV JALOTA)

MEMBER




(SUNGITA SHARMA)

MEMBER

- Copy to-
1. The Appellant
 2. The AAR, Maharashtra
 3. The Pr. Chief Commissioner, CGST and C.Ex., Mumbai
 4. The Commissioner of State Tax, Maharashtra
 5. The Jurisdictional Officer
 6. The Web Manager, WWW.GSTCOUNCIL.GOV.IN
 7. Office copy.