

Appellate Authority for Advance Ruling for Goods and Service Tax,

Uttar Pradesh

(Constituted under Section 99 of the Uttar Pradesh Goods and Service Tax Act, 2017)

Order No. 06/AAAR/18 / 4/2019

Dated: 18/4/2019

Before the Bench of:-

Shri Rajeev Tandon, Member

Smt. Amrita Soni, Member

GSTIN Number	09AAACI8129B1ZS
Legal name of the Applicant	M/s. SPFL Securities Ltd., Kanpur
Trade Name of the Applicant	M/s. SPFL Securities Ltd., Kanpur
Registered address/Address provided while obtaining user ID	15/63- M, SPFL House, Civil Lines, Kanpur - 208001
Order of Advance Ruling Against which the appeal is filled	Order No.18 dated 14.12.2018 by the Authority of Advance Ruling, Uttar Pradesh

*Received by hand
18/04/19*

**(Proceedings under Section 101 of the Central Goods and Service Tax Act, 2017
and Uttar Pradesh Goods and Service Tax Act, 2017)**

The present appeal has been filed under Section 100 of the Central Goods and Service Tax Act and Uttar Pradesh Goods and Service Tax Act, 2017 (hereinafter referred to as “the CGST Act and UPGST Act”) by M/s. SPFL Securities Ltd., 15/63- M, SPFL House, Civil Lines, Kanpur - 208001 (hereinafter referred to as the “Applicant”) against the Advance Ruling Order No.18 dated 14.12.2018 by the Authority for Advance Ruling, Uttar Pradesh.

At the outset, we would like to make it clear that the provisions of both the CGST Act and the UPGST 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 UPGST Act.

Brief Facts of the Case

1) M/s SPFL Securities Limited 15/63-M, SPFL House, Civil Lines, Kanpur, Uttar Pradesh, 208001 (here in after called the applicant) is a registered assessee under GST having GSTN: 09AABCS2452CIZP.

2) The applicant is engaged primarily in the business of providing service of stock broking i.e. purchasing and selling of shares on behalf of the clients on exchange platform by virtue of being a recognized BSE/NSE appointed stock broker.

3) The Applicant submitted application for Advance Ruling dated 20.10.2018, with a issue:- Taxability on Delayed Payment Charges on reimbursement of amount by client to Applicant, where client failed to pay amount paid to Stock Exchanges for purchase of securities with T+1 (trading day plus one day) under SEBI Regulation norms and deducted by Stock Exchanges from Applicant Account being purchase consideration of securities which are neither goods nor service under GST.

4) Applicant was granted hearing on 13.12.2018, Mr. Prakhar Gupta C.A., Authorized representatives appeared for hearing.

5) After going through the submissions of applicant and the Jurisdictional office, Authority for Advance Ruling ruled as under:-

'Applicant is liable to pay GST on the Delayed payment of charges which are overdue from the client towards trading of securities and reimbursed to them.'

6) Being aggrieved with the Order no. 18 dated 14.12.2018, M/s. SPFL Securities Ltd., 15/63- M, SPFL House, Civil Lines, Kanpur - 208001 filed appeal application, submitted the grounds of appeal as Annexure- '2'. The grounds for appeal were as under:-

a) Updated FAQ on Banking, Insurance, stock issued by CBIC:- The Appellant submits that the Department has failed to appreciate the most important fact of the case, which if considered will turn the whole balance of convenience in favour of the Appellant. The impugned Ruling has failed to consider the S. No. 80 of FAQ on Banking, Insurance, stock issued by CBIC, The said S. No. has clearly mentioned that :-

S.No.	Question	Answer
80	Is GST leviable on interest/ delayed payment charges charged to clients for debit settlement obligations/margin trading facility?	Any interest/ delayed payment charges charged for delay in payment of brokerage amount/ settlement obligations/ margin trading facility shall not be leviable to GST since settlement obligations/ margin trading facilities are transactions which are in the nature of extending loans or advance

		and are covered by entry No. 27 of notification no. 12/22017 Central Tax (Rate) dated 28 June, 2017. (Amended as on 27.12.2018)
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Reference is invited to the entry No. 27 of notification No. 12/2017 Central Tax (Rate) dated 28th June, 2017 which is regarding the exempted Service under GST Act. The relevant Para is being reproduced below herewith:-

S. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (Percent.)	Condition
27	Heading 9971	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); (b) Inter se sale or purchase of foreign currency amongst banks	Nil	Nil

		or authorized dealers of foreign exchange or amongst banks and such dealers.		
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b) Ruling of the Rajasthan AAAR:- In the case of Madhya Pradesh Poorv Kshetra Vidyut Vitaran Company Ltd. AAR in the said case ruled vide Order No. 19/2018 dated 22.11.2018:- In this ruling, it has been ruled that *GST shall not be applicable on Delayed Payment charges as the same cannot be treated as separate service and same shall be included in the value of initial supply to which such charges relate and the portion of Delayed payment surcharge attributable supply will be exempted.*

7. Applicant was granted personal hearing on 27.03.2019,

Personal Hearing

Mr Prakhar Gupta. CA represented the firm M/s SPFL Securities Ltd., Kanpur.

Mr. Prakhar Gupta, CA submitted that the issue relates to late payment charge towards amount remaining unfulfilled within (T+1) norms provided by stock exchange. Their contention has been that the said charges are not on the account of stock broking activity on which due tax liability is discharged, in fact it is on amount remaining un-fulfilled (short paid) at the time of initial purchase of stock between stock broker and client within the stipulated time i.e., (T+1). His contentions have been since the transaction between him and his client is outside GST. Therefore, if the principal is out of GST there can be any tax levied on any further interest or delayed payment charge. He also invited reference towards FAQ no. 80, dated 26.12.2018 issued by CBIC which according to them specifically pertain to this matter. He also produced copy of the Advance Ruling in the case of M.P. AAR in a related case of exempted supply of M/s Madhya Pradesh Kshetra Vidyut Vitaran

Company Ltd., (Order no. 19/2018 dated 22.11.2018). He also drew attention to the definition of exempted supply and non taxable supply in CGST Act.

Discussion and Findings

8) We observe that the issues placed before the Appellate Authority for advance ruling; whether GST is payable on delayed payment charges collected by Appellant if a client makes delay (i.e. beyond T+1 statutory time limit for payment as per SEBI Regulations) in reimbursing the expense (being purchase consideration of the securities bought for client and already collected from Appellant by Stock Exchange with T+1 time limit) to the Appellant and the Appellant charges a certain amount on delay of such reimbursement of expense, for securities purchased from the client.

9) Mechanism of the Securities Market can be understood from the input provided by the National Stock Exchange (NSE) & Bombay Stock Exchange (BSE). In the Securities Market, clients desirous of trading with the stock Broker(s) are required to initially pay margin money either in cash or in the form of collateral security such as shares. On the basis of the available margin, the clients are allowed to sell and purchase securities on the Exchange through the broker. Payments to Stock Exchange, for such purchase of securities, where payment are not made by clients for purchase of securities of the stock exchange (within T+1 i.e. trade day plus one day) as per SEBI regulations, stock exchange debits account of the Broker against said purchases. Failing which the business of brokers stands shut by stock exchange under its regulations by closing trading terminal of the stock broker.

10) Clients reimburse said amount to broker with charge for delayed payment. In this case, any amount which is overdue from the client towards trading or on account of any other reason to the broker will be charged from the client at the rate of 18 % P.A.

11) The nature of the delayed payment charges are being summarized below for understanding its taxability under the GST law:-

Where the client makes delay (i.e. beyond T+1 statutory time limit for payment as per SEBI regulations) in reimbursing the expense (being purchase

consideration of the securities bought for client and already collected from stock broker by stock exchange with T+1 time limit) to the broker and broker charges amount on delay of such reimbursement of expense, for securities purchased from the client.

It is purely a deferment of liability only which arose since the payment was not made within the stipulated period of time by the client to the Stock Exchange for purchase of Securities.

12) Therefore, since the service of buying and selling of securities which is exempted under GST, as per the definitions of 'goods' and 'services' under the Section 2(52) and 2(102) of CGST Act, 2017, which provides as under:

Section 2(52):- *'goods' means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be served before supply or under a contract of supply;*

Section 2(102):- *'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 corresponding delayed payment charges which are also linked to the above service of trading of securities should also stand exempt under GST.

13) Another point raised by the Appellant is regarding the FAQ on the Banking, Insurance, Stock amended by the CBIC on 27.12.2018, needs to be taken into consideration, which clarified that the GST shall not be applicable on delayed payment charges.

"Q. 80) Is GST leviable on interest/ delayed payment charges charged to clients for debit for settlement obligations/ margin trading facility?

Ans) Any interest/ delayed payment charges charged for delay in payment of brokerage amount/ settlement obligations/ margin trading facility shall not be leviable to GST since settlement obligations/ margin trading facilities are transactions which are in the nature of extending loans or advances and are covered by entry No. 27 of notification No.12/2017- Central Tax (Rate) dated 28th June, 2017." (Underlined portion added on 27.12.2018)

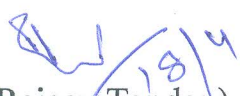
It is pertinent to mention that this amendment was brought after the Ruling in this case was given by the Authority of Advance Ruling, Uttar Pradesh, vide Order No.18 dated 14.12.2018.

Thus in light of the above, we pass the order as:-

Ruling

In view of the foregoing discussion and findings we hereby modify the Ruling No.18 dated 14.12.2018 of the Authority on Advance Ruling to the extent that-

'Applicant is not liable to pay GST on the delayed payment charges on reimbursement of amount by client to Applicant, where client failed to pay amount paid to Stock Exchange for purchase of securities with T+1 (trading day plus one day) under SEBI Regulation norms and deducted by Stock Exchange from Applicant account being purchase consideration of securities which are neither goods nor services under GST.'


(Shri Rajeev Tandon)
Member for AAAR
CGST


(Smt. Amrita Soni)
Member for AAAR
SGST

To,

M/s. SPFL Securities Ltd., Kanpur
15/63- M, SPFL House, Civil Lines,
Kanpur - 208001

APPELLATE AUTHORITY FOR ADVANCE RULING –UTTAR PRADESH

Order No. 06

Date: 18/4/19

Copy to –

1. The Joint Commissioner, CGST & Central Excise, Lucknow, Member, Authority for Advance Ruling.
2. The Joint Commissioner (Law), Commercial Tax, Uttar Pradesh, Member, Authority for Advance Ruling.
3. The Joint Commissioner, CGST & Central Excise, Kanpur.
4. Through the Additional Commissioner, Grade – I, Commercial Tax, Kanpur to jurisdictional tax assessing officers.