भारत सरकार GOVERNMENT OF INDIA
वित्त मंत्रालय MINISTRY OF FINANCE
राजस्व विभाग DEPARTMENT OF REVENUE
केन्द्रीय अप्रत्यक्ष कर और सीमा शुल्क बोर्ड
CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS
प्रधान आयुक्त का कार्यालय
OFFICE OF THE PRINCIPAL COMMISSIONER
केन्द्रीय कर एवं केन्द्रीय उत्पाद शुल्क
CENTRAL TAX & CENTRAL EXCISE
कोच्चि,KOCHI
केन्द्रीय राजस्व भवन, CENTRAL REVENUE BUILDING
आई. एस. प्रेस रोड, कोच्चि, I.S. PRESS ROAD, KOCHI-682 018
E-mail: cexcochi@nic.in Fax: 0484-2390608 Phone: 0484-2390404

NATION TAX MARKET

प.सं./C.No. IV/16/87/2019-Tech दिनांक /Date: .08.2019

व्यापार सुविधा सं./ Trade Facility No: 02/2019 केन्द्रीय कर / Central Tax

विषय : अतिरिक्त / दंड ब्याज-जीएसटी की प्रासंगिकता के संबंध में स्पष्टीकरण

Subject: Clarification regarding applicability of GST on additional / penal interest-Reg.

संदर्भ: परिपत्र संख्या 102/21/2019-जीएसटी दिनांक 28 जून 2019 और शुद्धिपत्र दिनांक 15 जुलाई 2019

Ref: Circular No.102/21/2019-GST dated 28th June 2019 and Corrigendum dated15th July 2019.

Kind attention is invited Board's Circular No.102/21/2019-GST dated 28th June 2019 and Corrigendum dated15th July 2019 on the above mentioned subject. 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 Installments (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.

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 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 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 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.

8. Difficulty, if any, in the implementation of this circular may be brought to the notice of the Board immediately. Hindi version follows.

के.आर. उदय भास्कर
K.R. Uday Bhaskar
प्रधान आयुक्त / Principal Commissioner

सेवा में / To,

कोचिन आयुक्तालय की प्रेषण सूची के अनुसार
As per DL-I & II of Cochin Commissionerate

प्रति प्रस्तुत है /Copy Submitted to:

मुख्य आयुक्त कार्यालय **The Chief Commissioner's Office.**