Bajaj Finance Limited (printed as Legal Name of Appellant; the application was filed under Section 102 and the order refers to the Applicant interchangeably with Appellant)

Appellate Authority for Advance Ruling — Maharashtra

ORDER NO. MAH/AAAR/SS-RJ/24/2018-19 dated 24.03.2019 is the order… Dated **12.12.2019**

Q Questions Before the Authority

- Whether the penal or default interest that the applicant charges customers for delayed payment of EMIs is consideration for agreeing to tolerate an act or situation under entry 5(e) of Schedule II of the CGST Act, 2017, or is additional interest exempt under Sl. No. 27 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017.
- Whether the earlier AAAR order dated 14.03.2019 (MAH/AAAR/SS-RJ/24/2018-19), which held the penal interest taxable under entry 5(e), contains an error apparent on the face of the record that can be rectified under Section 102 in light of CBIC Circular No. CBEC-102/21/2019-GST dated 28.06.2019.

F Facts

The applicant is a non-banking financial company that lends to customers for auto loans, loans against property, personal loans and consumer durable loans, with repayment by EMI through cheque, ECS or NACH. When an EMI is paid late, the applicant levies penal interest for the days of delay, calculated at a fixed percentage of the overdue amount that generally ranges from 2% to 4% per month. The question is how that penal interest is to be treated for GST.

H Ruling

Additional or penal interest recovered from customers for delayed payment of monthly EMIs on loans extended by the applicant	****Exempt from GST** under Sl. No. 27 of Notification No. 12/2017-C.T. (Rate) dated 28.06.2017**	Rectification of the AAAR order dated 14.03.2019, which had treated the penal interest as covered by entry 5(e) of Schedule II. The Authority relied on CBIC Circular No. CBEC-102/21/2019-GST dated 28.06.2019 and on the retrospective application of beneficial circulars. The scan gives the impugned order's date as both 14.03.2019 and 24.03.2019, so the date should be checked against the full order.

The Authority rectified its earlier order dated 14.03.2019 and held that the additional or penal interest recovered by the applicant from its customers for delayed payment of loan EMIs is **exempt from GST under Sl. No. 27 of Notification No. 12/2017-C.T. (Rate) dated 28.06.2017** . It accepted that the 28.06.2019 CBIC circular treats such levies as interest, not as consideration for tolerating an act under entry 5(e), and that the circular, being clarificatory and beneficial, applies retrospectively.

R Reasoning

The applicant argued that its penal interest is interest on loans and so exempt under Sl. No. 27, which exempts services by way of extending loans in so far as the consideration is interest or discount. The Authority accepted that the CBIC circular of 28.06.2019 clarifies that such levies are interest as defined in clause 2(zk) of Notification 12/2017-CT(Rate), and so fall outside entry 5(e) of Schedule II of the CGST Act. It treated the circular as clarificatory and beneficial, so it applies retrospectively, following Suchitra Components Ltd. It therefore held that the earlier ruling was contrary to the Board's view of the law and was an error apparent on the record that could be rectified under Section 102.

P Provisions Relied On

- Section 102 of the CGST Act, 2017 and the corresponding Section 102 of the MGST Act, 2017 (rectification of advance ruling)
- Section 100 of the CGST Act, 2017 (appeal to the Appellate Authority, under which the original appeal was filed)
- Section 15(2)(d) of the CGST Act, 2017 (inclusion of interest or late fee or penalty for delayed payment in value of supply)
- Entry 5(e) of Schedule II of the CGST Act, 2017 (agreeing to the obligation to refrain from an act, or to tolerate an act or situat…
- Sl. No. 27 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 (exemption for loans where consideration is intere…
- Clause 2(zk) of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 (definition of interest)
- Section 168(1) of the CGST Act, 2017 (Board's power to issue clarifications)
- CBIC Circular No. CBEC-102/21/2019-GST dated 28.06.2019
- Suchitra Components Ltd. [2007 (208) ELT 321 (SC)] (beneficial circulars apply retrospectively)
- Hindustan Lever Ltd. [2008 (10) STR 91 (Tri.-LB)] (rectification permitted on a later Supreme Court or High Court clarification)

! For the Practitioner

A practitioner advising a lender or instalment seller can use this order, together with CBIC Circular 102/21/2019-GST, to support treating late-payment penal interest on loan EMIs as exempt interest under Sl. No. 27 rather than as taxable tolerance consideration under entry 5(e). The order is a rectification of an earlier ruling and does not itself set out a fresh analysis of the statute. It does not address penal charges that are not interest on a loan, such as service fees or charges levied by a third party, and it does not deal with the separate Case 1 mobile-phone instalment scenario in the circular, which the order does not decide.

Source

Summary prepared from the published order, which is a scanned document. It is a reading aid and not the authority: where the two differ, the order governs. Verify every provision against the original before relying on it.

Original order: www.gstcouncil.gov.in -> mah_aaar_ss-rj_24a_2018-19_12.12.2019.pdf

Prepared 15-11-2026.

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