Bajaj Finance Limited (Appellant; appeal No. MAH/GST-AAAR-25/2018-19 dated 14.12.2018 against Advance Ruling No. GST-ARA-22/2018-19/B-85 dated 06.08.2018)

Appellate Authority for Advance Ruling — Maharashtra

ORDER No. MAH/AAAR/SS-RJ/25/2018-19, Date 14.03.2019 Dated **14.03.2019**

Q Questions Before the Authority

- Whether the Bounce Charges collected by the Appellant should be treated as a supply under the GST regime?

F Facts

The appellant is a non-banking finance company that lends auto loans, loans against property, personal loans and consumer durable loans, with EMIs payable by cheque, ECS or NACH. Where a cheque or electronic mandate is dishonoured, the loan agreement allows the appellant to levy a fixed 'bounce charge' (for example Rs. 350 per default) on the defaulting borrower only. The appellant treats these charges as liquidated damages or penalty for breach of contract, not as consideration for a supply, and sought an advance ruling on taxability.

H Ruling

Whether bounce charges collected on dishonour of cheque, ECS or NACH are a supply under GST	****Taxable.** Bounce charges attract GST as a supply of services; the AAR ruling is upheld.**	The order has no separate Q and A RULING section. This row reflects the operative order and the single question on appeal. The Authority reached this through Section 7(1)(a) read with Entry 5(e) of Schedule II, and it did not accept the Section 15(2)(d) and exemption arguments.

The Appellate Authority held that bounce charges recovered from borrowers on dishonour of repayment instruments due to insufficient funds will attract GST. It upheld the Advance Ruling Authority's order, treating the charges as consideration for the appellant's tolerance of the borrower's default under Entry 5(e) of Schedule II. The bounce charges were also held not to be covered by the GST exemption for interest on loans.

R Reasoning

The Authority read Entry 5(e) of Schedule II, 'to tolerate an act or a situation', as a separate limb not qualified by the prefix 'agreeing to the obligation', relying on the semicolon and 'or' structure. It found that the loan agreement's bounce-charge clause shows the appellant agreeing to tolerate the default in return for a fixed sum, which is consideration under Section 2(31)(b) as the monetary value of a forbearance. It rejected the appellant's reliance on Sections 73 and 74 of the Contract Act and on Australian and other foreign rulings as not binding. It also held that the Section 15(2)(d) value-inclusion argument failed, because the bounce charges are not 'interest' within the Notification 12/2017-Central Tax (Rate) exemption at Heading 9971, as the notification's own definition of interest excludes other charges on borrowed money.

Prepared as a reading aid. Where this summary and the original order differ, the order governs.

P Provisions Relied On

Section 7(1)(a), (c) and (d) of the CGST Act, 2017, and the corresponding MGST provisions

Entry 5(e) of Schedule II to the CGST Act, 2017

Section 2(31) of the CGST Act, 2017 (definition of consideration)

Section 15(2)(d) of the CGST Act, 2017

Section 9(1) of the CGST Act, 2017

Section 100 and Section 101 of the CGST Act, 2017 (appellate proceedings)

Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, Heading 9971 entry (a), and clause 2(zk) definition of 'interest'

Sections 73 and 74 of the Indian Contract Act, 1872 (cited by the appellant)

! For the Practitioner

This order is a state appellate ruling that bounce charges on dishonoured EMI instruments are taxable under Entry 5(e) as tolerance of a default, and it sets out a reasoned rejection of the liquidated-damages and interest-exemption arguments. A practitioner advising NBFCs or lenders on bounce charges will find it directly adverse and should check whether it has been challenged or superseded. It does not decide the valuation of such charges in detail, nor whether the same reasoning applies where no tolerance is recorded in the loan agreement.

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_25_2018-19.pdf

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