



**BEFORE THE AUTHORITY FOR ADVANCE RULING - ANDHRA PRADESH  
Goods and Service Tax**

D. No. 5-56, Block-B, R.K. Spring Valley Apartments, Eedupugallu, Vijayawada-521151

Present:

1. Sri. D. Ramesh, Additional Commissioner of State Tax (Member)
2. Sri. M. Sreekanth, Joint Commissioner of Central Tax (Member)

**AAR No.13/AP/GST/2020 dated:05-05-2020**

1	Name and address of the applicant	M/s. Ushabala Chits Private Limited, Flat No. 25-2-12-2, Usha Bala Complex, John Street, Narasimharao Pet, Eluru- 534006, West Godavari District, Andhra Pradesh.
2	GSTIN	37AAACU3570G1ZC
3	Date of filing of Form GSTARA-01	06.1.2020
4	Date of Personal Hearing	05.02.2020
5	Represented by	Shri. R.Narasimha Murthy
6	Jurisdictional Authority - State	Assistant Commissioner (ST), Eluru Circle, Eluru Division.
7	Clause(s) of section 97(2) of CGST/SGST Act, 2017 under which the question(s) raised	(g) Whether any particular thing done by the applicant with respect to any goods and/or services or both amounts to or results in a supply of goods and/or services or both within the meaning of that term.

**ORDER**

**(under sub-section (4) of section 98 of Central Goods And  
Service Tax Act, 2017 and under sub- section (4) of Section 98  
of Andhra Pradesh Goods and Services Tax Act, 2017)**

1. The present application has been filed under Section 97 of the Central Goods & Services Tax Act, 2017 and Andhra Pradesh Goods & Services (hereinafter referred to as CGST Act and APGST Act respectively) by M/s UshaBala Chits Private Limited, 25-2-12-2, Usha Bala Complex, John Street, Narasimharao Pet, Eluru. A.P. (herein after referred to as applicant), registered under the Goods & Services Tax.



2. The provisions of the CGST Act and APGST Act are identical, except for certain provisions. Therefore, unless a specific mention of the dissimilar provision is made, a reference to the CGST Act would also mean a reference to the same provision under the APGST Act. Further henceforth, for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST or AP GST Act would be mentioned as being under the GST Act.

### **3. Brief Facts of the Case:**

The applicant is a company engaged in conducting chit auctions for the past 36 years and is one of the longest standing organisations. They register the members and conduct auction in respect of each chit each month. The member winning the auction will collect the prize money from the company. The company will be collecting subscriptions from members by dividing the prize money with number of members. The applicant is collecting the foreman commission @5% from the amount to be distributed to the member taking the prize money. The GST is paid on the foreman commission @12%. The foreman is responsible for registering the members, collection of money from the members, conduct of auctions and other related matters.

The applicant is responsible to pay the prize money by due date to the winner of auction. Therefore, collection of amount from members is mandatory for payment of prize money to the winner by due date. However, many a time, the subscribers fail to deposit subscriptions by the specified date. In such scenario, the applicant is borrowing the money from banks by payment of interest and making payment to the prized subscribers. In order to maintain discipline in payment and also to cover the interest cost, the applicant charges interest/penalty by whatever name called, from the members paying the subscriptions belatedly and the interest is dependent upon the period of delay from specified date to actual date of payment. The interest /penalty has no element of services except that it is in an auction in money inasmuch as it is collected as a part of subscription for delay.

The applicant had filed an application in form GST ARA-01, dt.06.01.2020, paying the prescribed amount of fee for seeking Advance Ruling.

### **4. Questions Raised Before the Authority**

The applicant raised the following questions and requested to pass ruling on the following issues.



- 1) Whether the interest/penalty collected for delay in payment of monthly subscription by the members forms a supply under GST?
- 2) If the said interest/penalty is a supply, what is the classification and rate of duty applicable on the said supply?

On Verification of basic information of the applicant, it is observed that the applicant falls under State jurisdiction, i.e. Assistant Commissioner (ST), Eluru Circle, Eluru Division. Accordingly, the application has been forwarded to the jurisdictional officers and a copy marked to the Central tax authorities to offer their remarks as per the Sec. 98(1) of CGST /APGST Act 2017.

In response, remarks are received from the jurisdictional officer concerned stating that there are no proceedings lying pending or passed relating to the applicant on the issue, for which the Advance Ruling sought by the applicant.

### **5. Applicant's Interpretation of law and facts:**

**A.** The applicant submits that the interest/penalty by whatever name it is called, collected from the subscribers for delay in the payment of subscription amount cannot be treated as supply. In this connection, attention is invited to Sl.no.6 to Schedule III to APGST Act,2017, which defines Actionable claims to be neither supply of goods nor supply of services. Since the prize money being paid to the winning subscriber is actionable claim, it is not a supply within the meaning of APGST Act, 2017. Even the Notification No.11/2017-CT (Rate) dated 28-6-2017 prescribes GST on the foreman commission and not on chit amount, being actionable claim. It is further submitted that interests on deposits is exempt from GST Act in terms of Sl.no.27 of the Notification No.11/2017-CT (Rate) dated 28-6-2017.

**B.** The applicant submits that in terms of Section 15(2)(d) of the APGST Act, 2017, the value of supply includes interest or late payment or penalty for delayed payment of any consideration. Therefore, the interest, penalty or late fees are considered as part and parcel of the consideration towards the execution of activity. Accordingly, the interest/penalty collected for delay in payment of subscription charges would be treated as a part of subscription charges, which are not chargeable to GST.

**C.** Further attention is invited to the Circular No.102/21/2019-GST dated 28-6-2019 issued by the CBIC, wherein it was clarified that in cases involving interest or penal interest on delayed payment of EMI are not leviable to GST as the said amount is treated as part of Actionable Claim and being interest on deposit extended in terms of Notifications No.12/2017-CT(Rate) supra.

**D.** The consideration towards the foreman services is represented by 5% of prize money on which the applicant is already discharging the GST liability.



**E.** In view of the above, the interest/penalty collected for delay in payment of subscription amount is treated as neither supply of goods nor supply of services and cannot be levied to GST.

Interpretations in respect of Questions No.2 is that since the activity is neither supply of goods nor supply of services, the same cannot be charged GST, and the question of classifying the services does not arise and no GST is payable on the said activity.

## **6. Record of Personal Hearing:**

The authorised representative of the applicant, Shri R.Narasimha Murthy appeared in person for Personal Hearing held on 05.02.2020 and he reiterated the submissions already made in the application and requested to pass necessary orders.

## **7. Discussion and Findings**

The Advance Ruling Authority observed the facts of the case, and the documents on record submitted by the applicant. The applicant, M/s. Usha Bala Chits Private Limited, Eluru is dealing in finance and related services and engaged in conducting of chits. They have been paying GST on the foreman commission and claiming exemption on the money part being auction in money. Sometimes the company collects penal interest for delayed payment of instalments from the members.

The words chit and foreman of a chit are defined in explanation given at Entry No.15 (SAC code 9971) Financial and related services as follows:

a) "chit" means a transaction whether called chit, chit fund, chitty, kuri, or by whatever name by or under which a person enters into an agreement with a specified number of persons that every one of them shall subscribe a certain sum of money (or a certain quantity of grain instead) by way of periodical instalments over a definite period and that each subscriber shall, in his turn, as determined by lot or by auction or by tender or in such other manner as may be specified in the chit agreement, be entitled to a prize amount;

(b) "foreman of a chit fund" shall have the same meaning as is assigned to the expression "foreman" in clause (j) of section 2 of the Chit Funds Act, 1982 (40 of 1982).

Advance ruling is sought on the matter whether there is any Tax Liability on such additional amount (termed as Interest) charged on delayed payment?

**7.1** The question is regarding the Classification of additional amount termed as interest is being charged on the delayed payment from customers.



The GST Act 2017 mentioned the value of supply, vide Section 15 (2)

*“shall include-(d)- interest or late fee or penalty for delayed payment of any consideration for any supply”;*

It is clear from the simple reading of 15(2)(d) that the interest, late fee or penalty charged from customer shall be added to the transaction value and hence shall be taxable at the rate at which such goods/ services are taxable or in other words the classification of interest, late fee or penalty cannot be different from the classification of goods or services.

Here in the given case, the applicant is chit company engaged in the activity of distribution of prize money to its members and the additional amount is being collected in the form of interest for delay payment from the members as consideration as a fixed percentage of transaction value. Having regard to the trade parlance it is also clear that chit company gives a reasonable time to its customer to make the

payment however if the customer do not make the payment within the stipulated time then an additional amount is being charged and it may be termed as different names i.e. Interest, Late fee or Penalty.

The additional amount being charged on delayed payment termed as Interest, late fee or penalty on the amount delayed in specified time cannot be bifurcated as **such additional payment do not have its own classification. It is taking colour from original supply i.e., supply of financial and related services.**

Further Section 8 of GST Act 2017 deals with composite supply -

Sec 8 - Composite supply means a supply comprises two or more goods/services, which are naturally bundled and supplied in with each other in the ordinary course of business, one of which is a principal supply.

In this case financial and related service is the principal supply and all other ancillary supplies shall take colours from the principal supply itself and it shall be classified as principal supplies i.e. financial and related services.

**7.2** Applicant's contention is, on the delay of payment, the additional amount charged is interest in nature. To qualify the amount as interest, there must be some specific percentage to be charged on daily / monthly or some periodic basis. Hence the amount charged cannot be qualified as interest.

Here it is necessary to differentiate between the Interest, late fee and Penalty.



**Interest:** interest is charged to compensate for late payment etc. Interest is charged to compensate for time value of money. Interest is charged at the specified percentage and cannot be fixed.

**Late Fee:** Late fee is generally charges as fixed amount on a daily basis depending on the period of delay.

**Penalty:** Penalty is levied for something wrong you have done or what you should have done but could not do so. Penalty can be in absolute as well as in percentage terms.

Hence the additional amount being charged on delayed payment is in the nature of penalty which is being charged for the payments which the customer has to make within the stipulated time but failed to do so.

Here the entry No 27 of Notification no 12 / 2017 of CGST dated 28th June 2017 exempt the services by the way of 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). Further, interest is also defined vide Section No.2 z(k) as 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*'

Further this matter has also been discussed in detail in the Circular No. 102/21/2019-GST issued on 28th June 2019, the relevant extracts are being produced here :-

*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 instalments. 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.

As per the provisions of sub-clause (d) of sub-section (2) of section 15 of the GST 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.

Accordingly, based on the above provisions, the applicability of GST in both cases listed 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 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 not 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."

In the instant case, having regard to the nature of transaction it cannot be said that the chit company has extended any deposit, loans or advances to its customers hence the additional amount being charged cannot be treated as interest hence the exemption granted under entry no 27 of notification no 12/2017 is not applicable on the transaction on which advance ruling is sought.



It is further clarified in circular No.102/21/2019-GST dated 28<sup>th</sup> June, 2019 that “any service fee/charge or any other charges that are levied by M/s. ABC Ltd in respect of the transaction relating to extending deposits, loans or advances does not qualify to be interest as defined in notification 12/2017-Central Tax (Rate) dated 28<sup>th</sup> June, 2017, and accordingly will not be exempt”

**7.3** The applicant further stated that vide Notification No.11/2017-CT (Rate) dated 28-6-2017, the law prescribes GST on the foreman commission and not on chit amount, being actionable claim as per Schedule III of GST Act, 2017. On examination of acts and rules prevailing it is opined that the chit amount is not a actionable claim and it defines under Section 3 of Transfer of Property Act, 1982 as “ a claim of any debt, or to any beneficial interest in movable property other than the debt secured by mortgage of immovable property or by hypothecation or pledge of movable property, not in possession, either actual or constructive, of the claimant, which the Civil Courts recognize as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent.”

Here if we observe the difference between lottery ticket and railway ticket, a lottery ticket is actionable claim and railway ticket is not actionable claim. Purchase of a railway ticket gives the right to a person to travel by railway. It is nothing other than a contract of carriage. It clearly clarified that assignment of right of recovery of unsecured debt is actionable claim. Therefore chit amount will not come under purview of actionable claim.

**7.4** The additional amount being charged in delay of payment by whatever name called should be classified as principal supply and the classification of the same cannot differ from the original supply. Hence the additional amount charged on delayed payment shall be taxed as per original supply i.e. supply of financial and related services.

Accordingly we pass the following order.

### **RULING**

**Query:** Whether the interest/penalty collected for delay in payment of monthly subscription by the members forms a supply under GST?

**Answer:** Affirmative.

**Query:** If the said interest/penalty is a supply, what is the classification and rate of duty applicable on the said supply?





**Answer:** It is classified under Sl. No 15 of Heading 9971 Financial and related services, GST @12% as per Notification No. 8/2017-Integrated Tax (Rate) dated, the 28th June, 2017 as amended from time to time.

**Sd/-D.RAMESH  
(MEMBER)**

**Sd/-M.SREEKANTH  
(MEMBER)**

//t.c.f.b.o//

**Assistant Commissioner (ST)**

Assistant Commissioner (State Tax)  
O/o. Chief Commissioner of State Tax,  
Andhra Pradesh, Vijayawada.

To

M/s Usha Bala Chits Private Limited, 25-2-12-2, Usha Bala Complex, John Street, Narasimharao Pet, Eluru, A.P., **(Registered post)**

**Copy to**

1. The Assistant Commissioner of State Tax, Eluru Circle, Eluru Division, Eluru **(Registered post)**
2. The Superintendent, Central Tax, Amaravathi Capital City Range, Amaravathi Central GST Division, Guntur. (Registered post)

**Copy Submitted to**

1. The Chief Commissioner (State Tax), o/o Chief Commissioner of State Tax, Government of A.P., Eedupugallu, Vijayawada.
2. The Chief Commissioner (Central Tax), o/o Chief Commissioner of Central tax & Customs, Visakhapatnam Zone, GST Bhavan, Port area, Visakhapatnam -530035. A.P. **(Registered post)**

**Note:** Under Section 100 of the APGST Act 2017, an appeal against this ruling lies before the Appellate Authority for Advance Ruling constituted under Section 99 of APGST Act 2017, with in a period of 30 days from the date of service of this order

