

GOVERNMENT OF ASSAM
OFFICE OF THE COMMISSIONER OF TAXES, ASSAM :: KAR BHAWAN
DISPUR, GUWAHATI-6

CIRCULAR NO. 57/2019-GST

Dated Dispur the 1st July, 2019.

**Subject: Clarification regarding applicability of GST on additional / penal interest
– reg.**

No. CT/GST-15/Pt-1/2017/26.— 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 Instalments (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-State Tax (Rate) [FTX.56/2017/25 dated 29th 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 Assam Goods and Services Tax Act, 2017 (hereinafter referred to as the “Assam GST 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 Commissioner of State tax, in exercise of its powers conferred by section 168 of the Assam GST 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 **Assam 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-State Tax (Rate) [FTX.56/2017/25 dated 29th June 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-State Tax (Rate) [FTX.56/2017/25 dated 29th 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 Assam GST 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-State Tax (Rate) [FTX.56/2017/25 dated 29th June 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-State Tax (Rate) [FTX.56/2017/25 dated 29th June 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 Assam GST 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-State Tax (Rate) [FTX.56/2017/25 dated 29th June 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-State Tax (Rate) [FTX.56/2017/25 dated 29th June 2017], and accordingly will not be exempt.
7. This Circular is clarificatory in nature and not meant for any interpretation of provisions of the Act and rules.
8. Difficulties, if any, in implementation of the above instructions may be brought to the notice of the Commissioner at an early date.

9. This Circular shall be deemed to have been issued on 28th June, 2019.


Sd/- Anurag Goel, IAS.,
Commissioner of State tax, Assam,
Dispur, Guwahati

Memo No. CT/GST-15/Pt-1/2017/26-A

Dated Dispur the 1st July, 2019.

Copy to :

1. The Additional Chief Secretary to the Government of Assam, Finance Department, Dispur, Guwahati-6 for favour of kind information.
2. The Commissioner & Secretary to the Government of Assam, Finance (Taxation) Department, Dispur, Guwahati-6 for favour of kind information.
3. The Commissioner of Central GST, Guwahati / Dibrugarh for information.
4. The Additional Commissioner of State tax (All) / Joint Commissioner of State tax (All) for information.
5. The Deputy Commissioner of State tax (All) / Assistant Commissioner of State tax (All) / Superintendent of State tax (All) / Inspector of State tax (All) for information and necessary action.
6. The Information Technology Officer, Office of the Commissioner of State tax, Assam for uploading it on the website of the Commissionerate for information of all concerned.


Commissioner of State tax, Assam,
Dispur, Guwahati