

**GOVERNMENT OF TAMIL NADU
COMMERCIAL TAXES DEPARTMENT**

**OFFICE OF THE COMMISSIONER OF COMMERCIAL TAXES
EZHILAGAM, CHENNAI-600 005**

**PRESENT: DR. T.V. SOMANATHAN, I.A.S.,
COMMISSIONER OF STATE TAX**

Circular No. 74/2019/TNGST
(RC No.26/2019/A1/P&P)

Dated: 05.07.2019

Sub:	Clarification regarding applicability of GST on additional / penal interest – reg.
Ref:	Circular No. 102/21/2019-GST, dated 28-06-2019 issued by the Department of Revenue, Ministry of Finance, Government of India, New Delhi.

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-Central Tax (Rate) dated 28th June 2017 and Tamil Nadu Notification No. II(2)/CTR/532(d-15)/2017, dated 29.6.2017 [Issue No. 202] 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 Tamil Nadu Goods and Services Tax Act, 2017 (hereinafter referred to as the TNGST 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, in exercise of its powers conferred by section 168 of the TNGST 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 TNGST 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 and Tamil Nadu Notification No. II(2)/CTR/532(d-15)/2017, dated 29.6.2017 [Issue No. 202] "*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 and Tamil Nadu Notification No. II(2)/CTR/532(d-15)/2017, dated 29.6.2017 [Issue No. 202], *“‘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 TNGST 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 and Tamil Nadu Notification No. II(2)/CTR/532(d-15)/2017, dated 29.6.2017 [Issue No. 202]. 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 and Tamil Nadu Notification No. II(2)/CTR/532(d-15)/2017, dated 29.6.2017 [Issue No. 202]. 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

TNGST 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 and Tamil Nadu Notification No. II(2)/CTR/532(d-15)/2017, dated 29.6.2017 [Issue No. 202] . 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. 11/2017 Central Tax (Rate) dated the 28th June, 2017 and Tamil Nadu Notification No.II(2)/CTR/532(d-14)/2017, dated 29.6.2017 [Issue No. 202], and accordingly will not be exempt.

Sd/-T.V.Somanathan
Commissioner of State Tax
Tamil Nadu

To
All the Joint Commissioners (ST) (Territorial) in the State, including LTU,

Copy to the Principal Secretary to Government/ Commercial Taxes & Registration Department, Chennai- 9.

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Copy to all Heads of Assessment Circles.

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Assistant Commissioner (P & P)