CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 85650 of 2020

(Arising out of Order-in-Original No. PUN-EXCUS-001-COM-06/19-20 dated 30.12.2019 passed by the Commissioner of GST & Central Excise, Pune-I)

M/s Bajaj Finance Limited **.... Appellant**
3rd Floor, Panchshil Tech Park,
Viman Nagar, Pune-Ahmednagar Road,
Pune – 411 014

Versus

Commissioner of Service Tax, Pune **.... Respondent**
GST Bhavan, 41/A, Sassoon Road,
Opp. Wadia College, Pune – 411 001

APPEARANCE:

Shri Jay Chheda, Advocate for the Appellant

Shri Manish Mohan, Commissioner, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/86076/2025

Date of Hearing: 24.06.2025
Date of Decision: 24.06.2025

PER: S.K. MOHANTY

Heard both sides and perused the case records.

2. Briefly stated, the facts of the case are that the appellants are engaged *inter alia*, in the business of providing finance for various purposes, including loan against property, personal loan, business loan to the customers. For providing such facilities to the customers, the appellants collect various charges from the customers viz., processing fee, loan statement issuing charges etc., on which they discharged the appropriate service tax liabilities. However, when the customers failed to repay the loan amount within the stipulated time frame as agreed upon in the EMI Scheme, the appellants charge penal interest from them; besides, the appellants also claimed cheque bounce charges, whenever the cheque issued by the customers used

to be dishonoured by the banker, due to the reasons assigned by them. The appellants did not pay the service tax attributable to the penal interest and cheque bounce charges collected from the customers. Therefore, the Department had proceeded against the appellants for confirmation of the service tax demand on such charges collected by them. The adjudication order dated 30.12.2019 (impugned herein), passed in this case, confirming the service tax demand has been assailed by the appellants before this Tribunal in the present appeal.

3. We find that the issue arising out of the present dispute is no more *res integra,* in view of the Order passed by the Tribunal in the case of the appellants themselves, reported in 2023 (8) TMI 473 - CESTAT MUMBAI. The Tribunal had allowed the appeal in favour of the appellants for the disputed period i.e., July, 2012 to March, 2016. The period involved in the present appeal is from April, 2016 to June, 2017. Since the Department had issued the show cause notices, seeking for recovery of service tax for different periods, and the law remained the same all along, we are of the view that the earlier order (supra) passed by the Tribunal in the case of the appellants should be considered for deciding the present appeal. Thus, the relevant paragraphs recorded in the previous order dated 07.08.2023 are extracted herein below: -

> *"6. We find that the issue for consideration before us is to determine whether service tax is liable to be paid in respect of penal interest and bouncing charges, more fully described below:*
>
> *(i) penal interest or delayed payment charges in case of late payment of EMI or delay in payment of periodical installments of loan/advance repayments, and*
> *(ii) bouncing charges i.e., charges recovered for bouncing of repayment instruments such as dishonour of cheque/ECS or any other electronic or clearing mandate given by the customers/borrowers.*
>
> *and which were collected by the appellants during the disputed period i.e., from July, 2012 to March, 2016, and whether the appellants are providing a declared service in terms of Section 66E(e) of the Finance Act, 1994 read with Section 174 (2) CGST Act, 2017.*
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> xxxx xxxx xxxx
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> *"9. From the perusal of the case records it transpires that the appellants are engaged in the business of financing including lending of loans and advances. As a consideration for lending/financing, the appellants charge interest from their customers/ borrowers at a particular rate, for the period for which such loan is taken. The principal and interest amount on such loan is repaid by customers/borrowers by way of EMI over a period of loan tenure. Accordingly, while computing the EMI, the appellants charges pro-rata interest payable on each due date, on the underlying assumption that the customers/borrowers would not default in payment of the EMI on the due dates. However, in case of any default, the appellants charge them an additional interest in the form of penal interest for the number of days of default. In any case of loan arrangement*

for lending money, the agreement between the parties i.e., lender and borrower provide for repayment of outstanding loan amount and the interest thereon in the form of Equated Monthly Installments, payable on a pre-determined date, over the entire loan tenure/repayment period. Considering the nature of the principal interest on the loan due over the entire loan tenure, collected in the form of EMI comprising of principal amount plus interest, in our considered opinion this principal interest could be treated as consideration for the usage or retention of money lent by the appellants to their customers/borrowers as per the agreement and EMIs in force. In a case where the borrower is unable to repay a particular EMI on the due date, penal interest is charged on the period of delay or additional time taken for repayment of EMI, beyond the due date. Therefore, in our considered opinion such penal interest also represents the consideration for usage or retention of money lent beyond the agreed time for payment in the form of due date of EMI. In other words, both the principal interest and the penal interest represent the time value of money. While the former indicates the interest in the form of cost for agreed periodical repayments in the form of EMI period/due dates, the later represent the cost for period of delay or additional time taken for repayment of EMI, beyond the due date. Thus, we find that both the principal interest and penal interest is covered under the scope of the term "interest" under Section 65B(30) ibid.

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11.2 We find that the issue regarding charging of penal interest in respect of delay in payment of EMI, had been examined by the Ministry of Finance in the context of applicability of GST and it was clarified vide CBIC Circular No. 102/21/2019-GST dated 28.06.2019, that the transaction of levy of additional/penal interest does not fall within the ambit of entry 5(e) of Schedule II of the CGST 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. Accordingly, it was clarified that 'penal interest' charged on a transaction would not be subject to GST. The said circular is extracted below:

"Circular No. 102/21/2019-GST
F. No. CBEC- 20/16/04/2018 – GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing
****
New Delhi, Dated the 28th June, 2019

To,
The Principal Chief Commissioners / Chief Commissioners / Principal Commissioners / Commissioners of Central Tax (All)
The Principal Director Generals / Director Generals (All)

Madam/Sir,

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

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 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 Central Goods and Services Tax Act, 2017 (hereinafter referred to as the CGST 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 Board, in exercise of its powers conferred by section 168 (1) of the CGST 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.*
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> *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 CGST 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. Further, as per clause 2 (zk) of the notification No. 12/2017-Central Tax (Rate) dated the 28th 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 CGST 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.*
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> *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.*

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 CGST 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. 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- Central Tax (Rate) dated 28.06.2017, and accordingly will not be exempt.

7. It is requested that suitable trade notices may be issued to publicize the contents of this circular.

8. Difficulty, if any, in the implementation of this circular may be brought to the notice of the Board immediately. Hindi version follows."

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14. We further find that the issue of liability of service tax on the declared service of "Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act" under clause (e) of Section 66E of the Finance Act, 1994 was clarified by the CBEC in its Circular No.214/1/2023-Service Tax dated 28.02.2023, in the context of the orders passed by this Tribunal in various cases. Accordingly, it was clarified that there should be a flow of consideration for this activity of tolerating an act or a situation. It was also decided by the Board not to pursue the Civil Appeals filed before the Apex Court in those cases, where the Tribunal had ordered for setting aside the orders of lower authorities for confirming the service tax demands under Section 66E(e). …………

15. We also note that demand of service tax in respect of the amount collected on account of bouncing of cheques, the issue has already been decided by the Principal Bench of this Tribunal in the case of M/s. Rohan Motors Ltd. Vs. Commissioner of Central Excise, Dehradun in Final Order No. 51620/2020 dated 05.10.2020 reported in 2021 (45) G.S.T.L. 315 (Tri. - Del.) holding that these charges are penal in nature and thus are not towards consideration for any service.

***"19.** The demand of service tax in respect of the amount collected on account of bouncing of cheques and cancellation of orders is also not sustainable. These amount are penal in nature and not towards consideration for any service. In this connection reliance can be placed on the decisions of the Tribunal in Jaipur Jewellery Show v. C.C.E & S.T., Jaipur - 2016 (12) TMI 344 - CESTAT New Delhi = 2017 (49) S.T.R. 313 (Tribunal) and K.N. Food Industries (P.) Ltd. v. Commissioner of CGST & Central Excise, Kanpur - 2019-TIOL-3651-CESTAT-ALL = 2020 (38) G.S.T.L. 60 (Tri. - All.).*

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***21.** The Learned Authorized Representative of the Department has, however, placed reliance upon a ruling dated March, 2019 of the Appellate Authority for Advance Ruling Maharashtra to contend that the amount collected towards bouncing of cheque charges amounts to supply of service, but Learned Counsel for the appellant has pointed out that the said order was rectified subsequently by the Appellate Authority for Advance Ruling Maharashtra in its order dated December 12, 2019 [2020 (41) G.S.T.L. 651 (App. A.A.R. GST - Mah.)] and it was held.*

"We hereby hold that the additional/Penal interest recovered by the Applicant from their customers against the delayed payment of monthly instalments of the load extended to such customers, would be exempt from GST in terms of Sl. 27 of the Notification No. 12/2017-C.T. (Rate), dated 28-6-2017."

> ***22.*** *Thus, for all the reasons stated above, it is not possible to sustain the impugned order dated June 18, 2015 passed by Commissioner. It is, accordingly, set aside and the appeal is allowed.***"**

> *16. In view of the above discussions and findings recorded in the preceding paragraphs, as well as on the basis of decisions of the Tribunal and higher judicial forum, we are of the considered view that the impugned order holding that penal interest and bouncing charges received by the appellants as "consideration" for "tolerating an act", and are leviable to service tax under section 66E(e) of the Finance Act, 1994, cannot be sustained."*

4. In view of the fact that on identical set of facts for the earlier period, this Tribunal has taken a view that the appellants shall not be liable for payment of service tax on the penal interest and cheque bounce charges collected by them from their customers, we are of the view that the adjudged demands confirmed in the impugned order cannot be sustained for recovery from the appellants. Therefore, the impugned order is set aside and the appeal is allowed in favour of the appellants.

(Dictated and pronounced in open court)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

Sinha