


GUJARAT AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX A/5, RAJYA KAR BHAVAN, ASHRAM ROAD, AHMEDABAD – 380 009.	
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ORDER NO. GUJ/GAAR/R/9/2019
(IN APPLICATION NO. Advance Ruling/GGST&CGST/2018/AR/1)

Date: 15/05/2019

Name and address of the applicant	:	M/s. Rajkot Nagarik Sahakari Bank Ltd, Head Office, Arvindbhai Maniar Nagarik Sevalay, 150 Feet Ring Road, Near Raiya Circle, Rajkot.
GSTIN of the applicant	:	24AAAAR2912F1Z0
Date of application	:	8/01/2018
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(e) determination of the liability to pay tax on any goods or services or both
Date of Personal Hearing	:	05/02/2018
Present for the applicant	:	Mr. Paresh Sheth (Advocate) Mr. Yatin Gandhi (CFO-RNSB) Mr. Nishith Trivedi (Manager-RNSB)

2. M/s. Rajkot Nagarik Sahakari Bank Ltd, herein after called as “The applicant” or “RNSB”, has sought the advance ruling on following queries :

- i) In the facts and circumstances of the case whether Refundable Interest Free Deposit received could be treated as Supply under the provisions of Goods and Services Tax Act, 2017? And chargeable to tax in the hands of the applicant?
- ii) In the facts and circumstances of the case whether the amount of Rs. 2500/- being Refundable interest free deposit, which allows depositor same benefits, would attract GST?
- iii) In the facts and circumstances of the case, whether first 10 free transactions subject to maximum of rupees 5 Lakh allowed to the Demat account holder depositing Refundable interest free deposit would attract GST?

2.2. The Applicant M/s. Rajkot Nagarik Sahakari Bank Ltd, vide attached sheet to their application dated 08.01.2018, has submitted the Statement of Facts which is as follows:

- I. The applicant is multi-state Schedule Co-operative Bank registered with the department of Goods and Service Tax and is also holder of Registration certificate bearing No. 24AAAAR2912F1Z0.
- II. The applicant is providing various services under the category of Financial and Related Services classifiable under SAC 997112, 997113, 997119, 997139, 997159 & 997161 and is accordingly discharging its liability.
- III. The applicant is providing various services to respective account holders which were chargeable to Service Tax under the erstwhile provisions of Service Tax Act and now under the provisions of Goods and Service Tax Act, 2017.
- IV. The applicant Rajkot Nagarik Sahakari Bank Limited (here in after referred to as RNSB), among other services is also providing service for operation of Demate account to various account holder as well as to the persons who intends to operate only their Demate account.
- V. The applicant RNSB is running three schemes for the Demat account holder namely Basic Service Demate Account (as prescribed under circular dated. 27-08-2012 by SEBI), Rajkot Nagarik Investor Scheme and Rajkot Nagarik Free Scheme and the basic difference between these schemes are as per the chart attached and marked as Annexure - 'A' of the application.
- VI. In terms of the chart it is crystal clear that none of the scheme are comparable with each other and each scheme has its own merits and benefits. It is also an admitted fact that in Rajkot Nagarik Free Scheme account holder is getting some free services only because he is depositing some amount, interest free, as security and the applicant on his transactions in the Demate account.
- VII. The applicant RNSB, while working under the erstwhile provisions of Service tax Act had dispute with the department on the amount received as Refundable interest free deposit and the free services provided to such account and hence the applicant is desirous to obtain Ruling on the said issue to avoid future litigation as also the liability.
- VIII. The applicant RNSB, as of now is operating the said schemes and is of the view that on such Refundable interest free security deposit or on free services being provided are not chargeable to GST under the provisions of Goods and Service Tax and has therefore approach this Honorable Authority for Ruling on the issues referred here in above.

2.3 Submission on the issue for Advance Ruling:

- a. The applicant RNSB submits that the Honorable Government after introduction of the Goods and Service Tax Act, 2017 has clarified that on free supply of either goods or services no tax would be payable.
- b. The applicant RNSB submits that to attract GST the transactions should be treated as supply as defined under the provisions of Section 7 of Goods and Service Tax Act, 2017

and one of the important criteria is that there should be consideration. Admittedly the Refundable Interest Free Deposits received is not a consideration for allowing any benefit under the said scheme in as much as the said amount is refundable at any time. However while refunding such amount some amount is deducted being process charge on which RNSB is discharging GST.

- c. In this connection we would like to draw kind attention of this Honorable Bench to some of the clarifications as are reproduced in the book published by Shri R. K. Jain, 4th Edition, 2017-18. Copy of such clarifications are annexed as Annexure 'B' of the application.
- d. From the copy of clarifications this Honorable Bench would be pleased to see that the Honorable Government has clarified beyond doubt that for considering any supply as taxable the criteria prescribed are to be fulfilled and one of such criteria is that the supply should be supported by consideration. It is also clarified by the Honorable Government that only the supplies, without consideration, specified in Schedule I to the CGST Act/SGCT Act comes within the scope of supply and are accordingly chargeable to tax. Admittedly the transactions under consideration are not covered by Schedule I and hence cannot be treated as supply under the provisions of Goods and Service Tax Act and consequently GST is not applicable and such transactions are not liable to GST.
- e. For the sake of ready reference relevant provisions are re-produced here under.

2.4 Section 7 of Central Goods & Service Tax Act, 2017, "Scope of supply"

(1) For the purposes of this Act, the expression "Supply" includes

*(a) All forms of supply of Goods or Services or both such as sale, transfer, after, exchange, licence, rental, lease or disposal made or agreed to be **made for a consideration** by a person in the course or furtherance of business;*

(b) Import of services for a consideration whether or not in the course of further of business;

(c)

(d)

Section 2 Sub Section 31 meaning of the word "Consideration"

" Consideration " in relation to the supply of goods or services or both

includes-

(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

(b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply;”

Section 9 of The Central Goods & Service Tax Act, 2017

“Levy and collection

1 Subject to the provisions of sub section (2), there shall be levied a tax called e Central Goods and Service Tax on all Intra-state supplies of Goods or Service or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rate...”

Section 15 of the Central Goods & Service Act, 2017

“Value of Taxable supply

(1) The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

(2)”

Section 20 of The Integrated Goods and Service Tax Act, 2017

“Application of provisions of Central Goods and Service Tax Act

Subject to the provisions of this Act, and the rules made thereunder, the provisions of Central Goods and Service Tax Act, relating to ;

- (i) Scope of supply ;*
- (ii)*
- (iii) Time and value of supply*
- (iv)*
- (v) To (xxv)....”*

Rule 27 of the Central Goods and Service Tax Rule 2017

“Value of supply of Goods or Services where the consideration is not wholly in money, the value of supply shall, -

- (a)*
- (b)*
- (c) If the value of supply is not determinable under clause (a) or clause (b), value of supply of Goods or services or both of like kind and quality;*
- (d)”*

Explanation: For the purpose of the provisions of this chapter, the expressions.

(a)

(b) *“Supply of goods or services for both of like kind and quality” any other goods or services or both made under similar circumstances that, in respect of the characteristics, quality, quantity, functional components, materials and the reputation of the goods or services or both first mentioned, is the same as, or closely or substantially resembles, that supply of goods or services or both.*

The applicant is of the view that the none of the Scheme is under similar circumstances, in respect of characteristics, quality, quantity etc. and cannot be treated as the same or closely or substantially resembles to each other, and hence the provisions of the Rule 27 of the Central Goods and Service Tax Rules 2017, would not be applicable.

Since the all the schemes are operative individually and are optional schemes cannot be treated as closely or substantially resembling to each other. The provisions of Section 7 read with section 9 of the Central Goods and Service Act and section 15 of the provisions of the Central Goods and Service Tax Act, makes it clear that the tax is payable on the transaction value only and in case of free supply or free service no tax is payable.

This is also clear from the fact that the definition of the word “Consideration” does not cover the amount of deposit unless such deposit is adjusted against the consideration for supply of goods or services and admittedly the applicant is neither adjusting refundable interest free deposit against any supply of services or against any free services. And as clarified in the comparative chart on closer of account, only such amount is adjusted which stands payable by the said account holder as also the process charge and on which the due amount of GST stands paid by the applicant.

The Honorable Central Board Excise and Customs, in reply to one of the query on applicability of tax on free supply of replacement part under warranty has clarified that no GST is chargeable on such replacement since value of supply is deemed to be included in the value charged earlier. Though, this clarification is not directly applicable principally the board has clarified that where there is no consideration, no GST is payable.”

2.5 Annexure A submitted by the assessee:

Annexure A			
PARTICULARS OF CHARGES	NAGARIK INVESTOR SCHEME (AMT IN RS.)	NAGARIK FREE SCHEME (AMT IN RS.)	BSDA (AMT IN RS.)
ACCOUNT OPENING FORM	RS.25	RS.25	RS.100
ACCOUNT OPENING CHARGE	FREE	FREE	FREE
ACCOUNT CLOSING CHARGE	FREE	FREE	FREE
ANNUAL MAINTENANCE CHARGE	RS.300	NA	AS PER SEBI CIRCULAR DP MAY CHARGE AMC OF RS 100, IF HOLDING VALUE EXCEEDS MORE THAN 50,000 BUT LESS THAN RS 2,00,000
DEMATERIALISATION CHARGE	FREE	FREE	FREE
REMATERIALISATION CHARGE	0.15% OR RS.25 PER CERTIFICATE WHICH EVER IS HIGHER	0.15% OR RS.25 PER CERTIFICATE WHICH EVER IS HIGHER	0.15% OR RS.50 PER CERTIFICATE WHICH EVER IS HIGHER
POSTAGE PER DEMAT REQUEST FORM (DRF)	RS.35 + 2 PER ADDITIONAL CERTIFICATE	RS.35 + 2 PER ADDITIONAL CERTIFICATE	RS.50 + 2 PER ADDITIONAL CERTIFICATE
ON/OFF MARKET SALES NOTE: MINIMUM TRADE CHARGE TO BE COLLECTED UPFRONT OR WHILE RISING THE BILL AS PER BANK POLICY	0.02% SUBJECT TO A MINIMUM OF RS.12/- PER TRADE	FREE 10 TRANSACTIONS IN A YEAR SUBJECT TO A MAXIMUM OF RS.5 LACS AFTER THAT 0.02% SUBJECT TO A MINIMUM OF RS.12 PER TRADE	0.04% SUBJECT TO A MINIMUM OF RS.40/- PER TRADE TRANSACTION
CUSTODY CHARGE	FREE	FREE	FREE
CREATION OF PLEDGE	RS.30	RS.30	RS.50
INVOCATION OF PLEDGE	RS.30	RS.30	RS.50
CLOSURE OF PLEDGE	RS.30	RS.30	RS.50
REFUNDABLE INTEREST FREE DEPOSIT	NOT APPLICABLE	RS.2500/- (IF THE BENEFICIARY OWNER IS CLOSING THE ACCOUNT BEFORE EXPIRY OF ONE YEAR THAN THE AMOUNT OF RS 300 SHALL BE DEDUCTED AND IF IS CLOSED AFTER ONE YEAR BUT BEFORE THE END OF TWO YEAR RS 600 SHALL BE DEDUCTED. HOWEVER IF THE ACCOUNT CLOSED AFTER TWO YEARS THAN THE AMOUNT OF RS 200 SHALL BE DEDUCTED OVER AND ABOVE THE OUTSTANDING AMOUNT	NOT APPLICABLE
CDSL'S ANNUAL LEVY ON CORPORATE / INSTITUTIONAL BO ACCOUNT	RS.500	RS.500	AS PER CDSL CHARGE



3. The Central Goods and Services Tax Additional Commissioner (Tech), Rajkot, vide their letter dated. 03.01.2019, gave their point wise comments are as under:

(i) The activity in respect of which Advance Ruling has been sought is an ‘Ongoing Activity’.

(ii) No issue regarding applicability of GST is pending With the Commissionerate. However, prior to the implementation of GST, the issue in respect of applicability of Service Tax was raised against the appellant by the Department and the demand was confirmed vide 010 No. 33/ADC/PV/2014-15 dated 11.02.2015 and subsequent OIOs dated 31.03.2016 85 07.02.2018, all issued by the Additional Commissioner (Central Excise & Service Tax/CGST), Rajkot Commissionerate.

(iii) The issue pertains to applicability of tax on interest free deposits received for maintaining De-mat accounts without any charge. The matter was settled in Pre-GST era in favor of Revenue. Since, the provisions of applicability of GST have been adopted from erstwhile Service Tax Acts and Rules and as the said services were chargeable to Service Tax under the erstwhile provisions of Service Tax era, GST related provisions being pari materia, it is aptly applicable on such services/activities.

4 We have gone through the submission of the Applicant and also the comments given by the jurisdictional CGST Commissionerate.

4.1 Now we take the queries one by one for discussion. The first query is:

In the facts and circumstances of the case whether Refundable Interest Free Deposit received could be treated as Supply under the provisions of Goods and Services Tax Act, 2017? and chargeable to tax in the hands of the applicant?

The query is a bit confusing. Refundable Interest Free deposit received cannot be treated as supply. It appears that the applicant wants to know whether services provided by the applicant against the Refundable Interest Free Deposit could be treated as supply and chargeable to tax.

The moot question to be decided is whether refundable interest free deposit can be considered as “Consideration” for the services provided by RNSB to their demat account holders.

The definition of Consideration under Section 2(31) of CGST & GGST Act, 2017 reads as below

“Consideration in relation to the supply of goods or services or both

Includes-

(a) Any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

(b) The monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply;”

As can be seen, deposit is excluded from definition of the consideration by the proviso to Section 2(31) of CGST & GGST Act, 2017.

However, the notional interest/monetary value of the act of providing refundable interest free deposit will be considered as consideration. In our opinion it is covered in both the limbs of the definition of consideration.

1. “Any payment made or to be made, whether in money or otherwise”. It is included in the phrase ‘or otherwise’.
2. “the monetary value of any act or forbearance” It is included in the phrase ‘the monetary value of any act’

Further, it appears that the Refundable Interest Free Deposit are an additional commercial consideration to cover risk of the Demat account. It appears that the main purpose of the deposits is not only security but also collection of capital.

It is also not out of place to mention that the said services were chargeable to Service Tax under the erstwhile provisions of Service Tax era. GST related provisions are also broadly pari materia so far as services are concerned.

In view of the above discussion the monetary value of the act of providing refundable interest free deposit is the consideration for the services provided by the RNSB and therefore the services provided by RNSB can be treat as supply and chargeable to tax in the hands of the applicant

4.2 Now we take the second query which is as below

In the facts and circumstances of the case whether the amount of Rs. 2500/- being Refundable interest free deposit, which allows depositor some benefits, would attract GST?

Proviso to Section 2(31) of CGST & GGST Act, 2017 reads as below

Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply;”

It appears that the amount of Rs. 2500/- will not attract the GST being the deposit Unless the supplier applies such deposit as consideration. However the monetary value of the act of providing this deposit of Rs.2500/- will attract GST.

4.3 Now we take the third query which is as below:

In the facts and circumstances of the case, whether first 10 free transactions subject to maximum of rupees 5 Lakh allowed to the Demat account holder depositing Refundable interest free deposit would attract GST?

It appears from the above that the first 10 free transaction allowed to the demat account holders are in the nature of discount and will not attract GST subject to the fulfillment of the conditions prescribed under Section 15(3) of the CGST & GGST Act which is reproduced as below

SECTION 15. Value of taxable supply. —

(1) -----

(2) -----

(3) ***The value of the supply shall not include any discount which is given —***

(a) *before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply; and*

(b) *after the supply has been effected, if—*

(i) *such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and*

(ii) *input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.*

5. In view of the foregoing, we rule as under –

RULING

Question1 : In the facts and circumstances of the case whether Refundable Interest Free Deposit received could be treated as Supply under the provisions of Goods and Services Tax Act, 2017? And chargeable to tax in the hands of the applicant?

Answer 1: The monetary value of the act of providing refundable interest free deposit is the consideration for the services provided by the RNSB and therefore the services provided by RNSB can be treated as supply and chargeable to tax in the hands of the applicant

Question 2: In the facts and circumstances of the case whether the amount of Rs. 2500/- being Refundable interest free deposit, which allows depositor same benefits, would attract GST?

Answer 2: The amount of Rs. 2500/- will not attract the GST but the monetary value of the act of providing this deposit will attract GST.

Question 3: In the facts and circumstances of the case, whether first 10 free transactions subject to maximum of rupees 5 Lakh allowed to the Demat account holders depositing Refundable interest free deposit would attract GST?

Answer 3: The first 10 free transaction allowed to the demat account holder are in the nature of discount and will not attract GST subject to the fulfillment of the conditions prescribed under Section 15(3) of the CGST & GGST Act 2017.

(R.B. Mankodi)
Member

(G.C. Jain)
Member

Place: Ahmedabad
Date: 15.05.2019