

MAHARASHTRA AUTHORITY FOR ADVANCE RULING.

GST Bhavan, 8th floor, 'H' Wing, Mazgaon, Mumbai - 400010.

(Constituted under section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

(1) Shri B. Timothy, Addl. Commissioner of Central Tax, (Member)

(2) Shri B. V. Borhade, Joint Commissioner of State Tax, (Member)

GSTIN Number, if any/ User-id		27AAACG5176C1ZT
Legal Name of Applicant		E-SQUARE LEISURE PVT LTD
Registered Address/Address provided while obtaining user id		132A ESQUARE University Road, Pune Maharashtra - 411016
Details of application		GST-ARA, Application No. 76 Dated 12.09.2018
Concerned officer		Dy. Commr. S.T.(E-201), PUN-VAT-E-201, PUNE
Nature of activity(s) (proposed / present) in respect of which advance ruling sought		
A	Category	Service Provision
B	Description (in brief)	The Company is engaged in various services including renting of immovable property to business entities for commercial purpose. The Applicant is discharging GST on the rent received from the lessees. The Applicant has also taken interest free security deposit (hereinafter to be referred as "security deposit") from the lessees.
Issue/s on which advance ruling required		(v) Determination of the liability to pay tax on any goods or services or both (vi) Whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.
Question(s) on which advance ruling is required		As reproduced in para 02 of the Proceedings below.

PROCEEDINGS

(Under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

The present application has been filed under section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act"] by E-SQUARE LEISURE PVT LTD., the applicant, seeking an advance ruling in respect of the following questions :

- *Whether GST would be applicable on interest free security deposit and notional interest if any?*
- *In case GST is applicable what would be value of notional interest for levy of GST?*

At the outset, we would like to make it clear that the provisions of both the CGST Act and the

MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / MGST Act would be mentioned as being under the "GST Act".

02. FACTS AND CONTENTION – AS PER THE APPLICANT

The submissions, **as reproduced verbatim**, could be seen thus-
STATEMENT OF THE RELEVANT FACTS HAVING A BEARING ON THE QUESTION(S) ON WHICH THE ADVANCE RULING IS REQUIRED.

- This application is being filed by E SQUARE LEISURE PRIVATE LIMITED ('Company'/'Applicant' /'We') having its registered office at 132A, University Road, Ganeshkhind, Pune - 411 016.
- The Company is engaged in various services including renting of immovable property to business entities for commercial purpose. The Applicant is discharging GST on the rent received from the lessees. The Applicant has also taken interest free security deposit (hereinafter to be referred as "security deposit") from the lessees.
- The security deposit taken from the lessees on account of security against the damages, if any, caused to the furniture, equipments, fittings supplied along with the premises or any damage done to the properties. Further, such security deposit is taken on returnable basis and shall be returned on completion of tenure of lease.
- In view of the above, the issue for determination before the Authority for Advance Ruling ('AAR') is
- *Whether GST would be applicable on interest free security deposit and notional interest if any?*
- *In case GST is applicable what would be value of notional interest for levy of GST?*

2.1 STATEMENT CONTAINING THE APPLICANT'S INTERPRETATION OF LAW AND/OR FACTS, AS THE CASE MAY BE, IN RESPECT OF THE QUESTION(S) ON WHICH THE ADVANCE RULING IS REQUIRED

ISSUE FOR DETERMINATION---

The question/ issue before your determination is -

Whether GST would be applicable on interest free security deposit and notional interest if any?

- In case GST is applicable what would be value of notional interest for levy of GST?
- The question / issue placed for determination before Your Honor has to be appreciated in light of the following position of law and its applicability to the current activity by the Applicant, discussed hereunder

2. OUR SUBMISSIONS –

Deposit not affects the rent payable and not liable for GST

- GST is levied on 'supply' as defined under section 7 of the CGST Act.
- Section 7 (a) of the CGST Act, the expression "supply" includes



(a) all forms of supply of goods or services or both such as sale, transfer, barter, 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.**

- Further, we refers to proviso to sub-section 31 of section 2 of the Central Goods and Services Tax Act, 2017 (hereinafter to be referred 'CGST Act') as follows -
(31) "Consideration" in relation to the supply of goods or services or both includes --
(a)...
(b)

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;

[Emphasis supplied] –

As per above, it is clear that 'consideration' has been defined to include all monetary payments and promises, and the monetary value of any acts, promised to be made by the receiver of the supply of goods or services, or both, to the provider. The proviso explains as to when 'deposits' will form part of consideration, and hence, forms part of value of the supply and consequentially get taxed.

- Further, deposits will not form part of payment for the supply unless the supplier applies such deposit as consideration for the supply. Thus, only when the deposit is applied as consideration it becomes taxable and if it is held as security deposit or refunded, it is not taxable.
- It is a common practice in the renting / leasing transactions to collect sums in the form of security deposit from the lessee. Further, it is important to mention that, usually deposit is pre-decided by the parties before or at the time of entering into an agreement. Also, rent/lease is collected over and above, as a consideration towards use of property. Therefore, the amount of rent/lease could vary as per agreement and depends on various businesses, market, and commercial factors.
- Typically, the prices of commercial immovable property are very significant and therefore Applicant has obtained these security deposits in order to safeguard itself from any contingent loss caused during the tenure of the lease period and it is a common commercial practice followed by all landlords while letting out immovable property to tenants.
- It is submitted that the interest free refundable security deposits have not given to the Applicant as any additional consideration and thus, the said amount should not be considered for the purpose of discharging GST. Further, security deposit needs to be refunded to the tenant on completion of lease term / period and therefore, it cannot form part of the consideration received towards rendition of renting services.
- This fact can be clear from para 10(c) of the agreement under consideration, "At the end of the Tenure of 18 years, the Lessor shall refund the Security Deposit. The Lessor shall pay interest on the Security Deposit, at the rate of 16% (sixteen percent) per annum from the date from which the



Security Deposit is refundable until the actual date of receipt of the Security Deposit along with the interest by the Lessee and the Lessee shall remain in exclusive possession... “

- Given the aforesaid, we submit that, security deposit does not form the part of consideration as defined under section 2(31) of the CGST Act, hence GST on the same cannot be levied.

Notional interest provision not existing in the GST law –

- With regard to the concept of notional interest, the Applicant refers to the GST Rules; wherein the concept for inclusion of notional interest has not been prescribed.
- The concept of notional interest was referred into Excise Law and under the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 (hereinafter to be referred as 'Excise Valuation Rules'); the Explanation to Rule 6 specifically provides that no notional interest on advances be included in the assessable value unless the Excise Officer has evidence to the effect that the advance received has influenced the fixation of the price of the goods. Reproduced below is the relevant extract of the Rule:

Explanation 2 - Where an assessee receives any advance payment from the buyer against delivery of any excisable goods, no notional interest on such advance shall be added to the value unless the Central Excise Officer has evidence to the effect that the advance received has influenced the fixation of the price of the goods by way of charging a lesser price from or by offering a special discount to the buyer who has made the advance deposit.

- Given the above, it can be construed that only where an advance has been received from the buyer of goods and the Excise Officer had evidence to prove that such advance has influenced the price of the goods by way of any discounts/offers, then in that case, the notional interest can be added to the assessable value to arrive at the appropriate Excise duty to be paid.
- It is submitted that in the present case, the interest free refundable security deposits has not influenced the rent of the properties given to lessees.

- Further, the decision in the case of M/s. **Magarpatta Township Dev. & Const. Co. Ltd VS. Commr. Of C. Ex. Pune III (2014 (33) STR 53 (Tri. Mumbai)**, wherein; it was held that

"The practice of taking security deposit for the premises rented out on lease basis is common throughout the country and the amount of security deposit taken also varies from place to place and also depends on the property, whether it is for commercial or residential purpose. There is no evidence available on record led by the Revenue to show that the notional interest on the interest free security deposit has influenced the consideration received for renting and it is only a presumption on the part of the revenue. Therefore, the ratio of the Apex Court decision in the case of ISPL Industries Ltd. (cited supra) would apply. Accordingly, we are; prima facie, of the view that the appellant has made out a case in their favour for grant of stay. Accordingly, we grant unconditional waiver from pre-deposit of dues adjudged against the appellant and stay recovery thereof during the pendency of the appeal."



- The Applicant herewith submits that interest free security deposit received from the lessees does not amount to consideration since the same is not payable for service provided but is merely a security measure and hence not liable to GST.

Alternate school of thought - Deposit affects the rent payable and liable for GST

- There is another view possible, where rent received / receivable from the lessees is influenced by the security deposit amount, whereas rent amount has been reduced to adjust the benefits accruing out of the security deposits.
- In such cases, GST to be computed on notional interest (which may be average of benchmark Prime Lending Rate of SBI or LIBOR Interest Rate) on net deposit amount (Gross Deposit minus fixed period of rent).
- Thus, the Applicant is seeking clarity on value of GST on interest free security deposit.
- In any case if it is chargeable to GST, then rate of interest on which tax to be computed? Also ratio on which deposit amount to be computed

PRAYER

In view of the submissions made above, it is most humbly prayed that Hon'ble authorities may kindly pass advance ruling to clarify:

- Whether GST would be applicable on interest free security deposit and notional interest if any?

- In case GST is applicable what would be value of notional interest for levy of GST?

03. CONTENTION – AS PER THE CONCERNED OFFICE

The written contention submitted by the concerned officer on this issues is as under ,
Issues on which advance ruling is sought are-

Whether GST would be applicable on interest free security deposit and notional interest, if any?

In case GST is applicable what would be value of notional interest for value of GST?

Submission as departmental authority:

As per definition of consideration in section 2, sub-section 31 of MGST Act 2017, deposit does not form part of consideration, unless adjusted against consideration.

As per terms and conditions of copy of agreement produced by lessor and copy of Order by Stamp Duty authority, lessor has determined the rent at market value. Lessor has also made provision for increase in rent at fixed time schedule. Free refundable deposit does not provide for any additional consideration to the lessor.

Therefore, interest/ notional interest on security deposit received by the lessor is not liable to GST.

04. HEARING

The Preliminary hearing in the matter was held on 05.12.2018, Ms. Vaishali Kharde, C.A. and Ms. Shruti Gulecha C.A. appeared and made oral and written submissions for admission of application as per detailed contentions made in their ARA submissions. Jurisdictional Officer Ms. Kiran Sonawane was not present at the time of the Preliminary Hearing.

The final hearing in the matter was held on 18.12.2018 Sh. Pritam Mahure, C.A., along with Ms. Vaishali Kharde, C.A. appeared and made arguments on submissions. Jurisdictional Officer Ms. Kiran Sonawane, Dy. Commr. of S.T.(E-201), Pune appeared and submitted their contention. We heard from both the parties during the course of the hearing.

05. OBSERVATIONS

We have gone through the facts of the case, oral and written submissions made by the applicant as well as the jurisdictional officer & the applicable provisions of the GST laws in this regard. Few facts relevant for the present purpose those are as follows:

Applicant is engaged in supply of various services including renting of immovable property to business entities for commercial purpose. The Applicant is discharging liability under the provisions of GST Act on the amount rent received from the lessee. Applicant has taken security deposit from the lessee as security against damages to property such as furniture, fittings attached with the property or any damage to the property leased. The security deposit is free from any interest payable to lessee that is Interest Free Security Deposit. This interest free security deposit is the central point of this application and applicant seek clarification on the levy of GST on such deposits. Applicant has raised following questions:

1. *Whether GST would be applicable on interest free security deposit and notional interest if any?*
2. *In case GST is applicable what would be value of notional interest for levy of GST?*

Thus, the issue for our consideration in this application is the levability of GST on interest free deposit and notional interest 'if any'. The taxable event in GST is supply of goods of services or both. The term 'supply' is inclusive in nature can be understood in terms of following parameters namely:--

1. Supply of goods or services. Supply of anything other than goods or services does not attract GST.
2. Supply should be made for a consideration.
3. Supply should be made in the course or furtherance of business.
4. Supply should be made by a taxable person.
5. Supply should be a taxable supply.

Besides above parameters, GST Laws have provided certain exceptions to the requirement of supply being made for consideration and in the course of furtherance of business.

We therefore have to find whether the security deposit taken from lessee on account of security against damages, if any, caused to the furniture, equipment's, fittings supplied along with the premises or any damage constitute consideration is vis a vis any supply under the provisions of GST Act. Section 2(31) defines the term consideration as following:-

- (31) "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;

The definition of consideration is inclusive and the consideration may be in cash or kind. The payment received will not be treated as consideration, if there is no direct link between the payment and supply. From the close scrutiny of above definition it is clear that there should be a close nexus between the payment and supply and thus any payment/exchange/barter etc would be treated as consideration for supply and liable to GST. Prima facie a conclusion can be drawn without much difficulty that a deposit given in respect of the supply shall not be considered as payment made for such supply unless the supplier appropriates such deposit as consideration for the said supply.

In view of the above we take up the subject matter for discussion. The term deposit is not defined in the GST Act. From the perusal of Dictionary meaning deposit has several dimension that include part or full price of the purchase, sum money paid into a bank account, a sum you pay when you start a renting something etc. Thus for a payment to be considered as security deposit should have following attributes

namely:

- i) For performance of an obligation.
- ii) Security against return of the hired goods.
- iii) Security against damage to properties rented.
- iv) Must be reasonable.

Applying the above test to the facts of the case we find that, the security deposit taken by the applicant is to secure or to act as a guarantee as per the terms of agreement against damages to the properties. Further, admittedly applicant has taken security deposit against the damages caused to the furniture, equipment's, fittings supplied along with the premises or damage done to the properties. The undisputed fact is that the amount of deposit taken by the applicant is Rupees Fifty Seven Crore for the period of 18 years. We find, as per the submissions made by the applicant and the facts of the matter as stated by them, the applicant will not apply such deposit received, as consideration for the said supply and therefore the provision to Section 2 (31) will not be applicable to this matter. Thus we find that in the subject case, the deposit received by the applicant cannot be treated as consideration for the supply made by the applicant and therefore they will not be liable to pay GST on such deposit amount received by them.

To sum up, we find that the applicant, for leasing of commercial property has, in addition to rent, also collected interest free deposit from their lessee which is returnable on the completion of the tenure of the lease. Since the entire amount is to be returned back to their lessee, such deposits cannot be considered as consideration for such supply of services as mentioned by them and hence will not be liable to tax. However at the time of completion of the lease tenure, if the entire deposit or a part of it is withheld and not paid back, as a charge against damages, etc. then at that stage such amounts not returned back will be liable to GST as per the present GST laws.

06. In view of the deliberations as held hereinabove, we pass an order as follows:

ORDER

(Under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

NO.GST-ARA- 76/2018-19/B- 172 Mumbai, dt. 29/12/2018

For reasons as discussed in the body of the order, the questions are answered thus –

Question :- Whether GST would be applicable on interest free security deposit and notional interest if any?

Answer :- In view of above discussion, GST is not applicable on interest free security deposit.

Question :- In case GST is applicable what would be value of notional interest for levy of GST?

Answer :- Not answered in view of answer to question no. 01 above.



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B. TIMOTHY
(MEMBER)

—sd—
B. V. BORHADE
(MEMBER)
CERTIFIED TRUE COPY

Copy to:-

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Jurisdictional Commissioner of Central Tax.
5. Joint commissioner of State Tax , Mahavikas for Website.

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MEMBER
ADVANCE RULING AUTHORITY
MAHARASHTRA STATE, MUMBAI

Note :- An Appeal against this advance ruling order shall be made before The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India building, Nariman Point, Mumbai - 400021.