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APPLICABILITY OF GST ON INTEREST FREE LOAN PROVIDED TO SUBSIDIARY COMPANY

It is often observed that company is giving loan to its subsidiary company which is commonly known as **corporate loan (loan to subsidiary)**. Under the GST regime the holding and its subsidiary company are related persons. This corporate loan is generally provided either at a very concessional interest rate or without any interest but with a shorter period of recovery. Further, this financial service of taking loan from its holding company is also a hassle free. In the instance article we are exploring the possibility of GST aspect and its liability for providing interest free loan or with a concessional interest on loan given to its subsidiary.

It is beyond any doubt that Holding company and its subsidiary is related person as per the explanation provided in section 15 of CGST Act, 2017. Extending any loan to its subsidiary is basically a financial services or facility provided as per the concept of Financial Management Accounting. From accounting point of view we can say that this is a financial service. As per the *Schedule I* appended to CSGT Act 2017, the supply of goods or services between related persons even without consideration is under the ambit of GST liability. Now, we look at the aspect that this instance transaction of giving loan without any interest will fall under the category of schedule I or outside of GST purview. GST will be levied on supply of goods or services or both. So, there must be involved either a goods or a service or both of them before considering a supply. Providing any loan is merely a transaction in money. In a layman language, loan is lending some money to another person under a legal agreement to payback after certain period of time. The meaning of loan as per Oxford Advanced Learner's Dictionary is "*money that an organization such as a bank lends and somebody borrows*". We may refer the definition of service as reiterated in provision of section 2(102) of CSGT Act as follows:

*Services means anything other than goods, money and securities but **includes activity relating to use of money** or its conversion by cash or by any other mode, from one form, currency or denomination to another form, currency or denomination **for which a separate consideration is charged**.*

Mere money is not neither goods nor service. However, activity relating to use of money is a service only when a separate consideration is charged for such activity. In our considered view the instance transaction of providing loan without any interest, without any consideration, is merely a transaction of money or activity of money. In order to be a service the loan must have been provided against the

consideration in the form of interest. The definition of interest may be borrowed from the definition given in the context of exemption notification no 12/2017 – Central Tax (Rate) as-

“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 utilized”

However, department may take a stand that apparently there is no interest involved for such kind of transaction but it must have a *notional interest* in different form in providing loan to its subsidiary. The main definition of services includes the activity relating to use of money for which a separate consideration is charge. It must have a separate consideration charged on giving any loan and there is no hypothetical concept of notional interest in the given definition of services.

Further, we may refer the exemption notification no 12/2017 -Central Tax (Rate) dated 28th June 2017 in serial no 27(a) as -

“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 services);**
- (b)**

The exemption notification clearly says that extending loan with a consideration by way of interest is exempted service. So, the consideration must have been tighten with the provision of loan then only it is a services and in turn it becomes an exempted service as per notification no 12/2017- Central Tax (Rate). In one hand the company is providing loan to its subsidiary and after certain period of time it takes back the same amount from its subsidiary is merely a refund of original amount of money to the lending company.

In this connection we are also referring an order of Hon’ble Advance Ruling Authority in the State of Gujarat in the matter of Gujarat State Financial Services Ltd. having its GSTN 24AAACG5581B1Z0. In that case the GSFSL is providing loan to its subsidiary with interest but they are not charging any processing fee and any other charges except interest. The applicant has raised one of the very pertinent questions before the Advance Authority as to the applicability of GST on notional processing fee.

Question: The Applicant is not charging any processing fees/ any other charges, for providing to Government of Gujarat State owned entities, and interest being charged as full consideration, then whether GST will be chargeable on, notional processing fees/ notional any other charges, provided by way of loans to Gujarat state owned entities?

Answer: Looking to the facts of the case, as there is no other consideration except interest, the Services by way of extending deposits, loans or advances provided by M/s. Gujarat State Financial Services Ltd (GSTIN 24AAACG5581B1Z0) is covered under sub entry (a) of entry 27 of Notification No. 12/2017-Central Tax (Rate) under CGST Act 2017 and corresponding State notification No. 12/2017- State Tax (Rate) under GGST Act 2017.

In the given case the GSFSL is charging only interest against the loan to its subsidiary and the same is an exempted service as per notification no12/2017-Central Tax (Rate) under CGST Act 2017. In my view the interest free loan is not a supply of service and does not come under purview of GST. This is just a Balance Sheet of Financial Statement.

Note: *The views expressed in this article are the author’s own understanding the provision of GST. However, readers are suggested to go through circulars/ notifications and also take legal opinion before taking any firm decision.*