

**GUJARAT APPELLATE AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX**
D/5, RAJYA KAR BHAVAN, ASHRAM ROAD, AHMEDABAD:380009



**ADVANCE RULING (APPEAL) NO. GUJ/GAAAR/APPEAL/2023/07
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2021/AR/19)**

Date : 07.12.2023

Name and address of the appellant	:	M/s. Rajkot Nagarik Sahakari Bank Ltd., Head Office, Arvindbhai Maniar Nagarik Sevalay, 150 feet Ring Road, Nr. Raiya Circle, Rajkot.
GSTIN of the appellant	:	24AAAAR2912F1Z0
Advance Ruling No. and Date	:	GUJ/GAAR/R/35/2021 dated 30.07.2021
Date of appeal	:	06.09.2021
Date of Personal Hearing	:	26.07.2023
Present for the appellant	:	Shri Paresh Sheth, Advocate

At the outset we would like to make it clear that the provisions of the Central Goods and Services Tax Act, 2017 and Gujarat Goods and Services Tax Act, 2017 (hereinafter referred to as the 'CGST Act, 2017' and the 'GGST Act, 2017') are *pari materia* and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act, 2017 would also mean reference to the corresponding similar provisions in the GGST Act, 2017.

2. The present appeal has been filed under Section 100 of the CGST Act, 2017 and the GGST Act, 2017 by M/s Rajkot Nagarik Sahakari Bank Ltd (hereinafter referred to as Appellant) against the Advance Ruling No. GUJ/GAAR/R/35/2021 dated 30.07.2021.

3. Briefly, the facts are enumerated below for ease of reference:

4. The appellant, is registered with the department & their GST registration no. is 24AAAAR2912F1Z0.

5. The State Government announced the "Atma Nirbhar Gujarat



Sahay Yojna" wherein Nagarik Sahakari Banks (including Banks registered under Multi State Cooperative Act) and Cooperative Credit Societies were to provide loans, without security upto Rs. 1 lacs to small traders, middle class businessman, individual artisans and working class, @ 8% interest. Out of this 8% interest, 2% interest was to be paid by the customer (loanee) while the remaining 6% interest was to be borne by the Gujarat State Government.

6. Further based on the performance of the Banks disbursing these loans, they were to be granted a one-time incentive by the State Government, depending on the total lendings done under the *Atma Nirbhar Gujarat Sahay Yojna*. This incentive was over and above the 6% interest borne by the State Government as mentioned *supra*.

7. On the belief that the 'incentive' so received under the scheme is akin to a 'subsidy' and hence is not leviable to GST, the appellant sought a ruling from the Gujarat Authority for Advance Ruling [GAAR] on the following questions viz

1. Whether the incentives received under "Atma Nirbhar Gujarat Sahay Yojna" dated 16.05.2020 declared by the Gujarat Government could be considered as subsidy and not chargeable to tax?
2. Whether the incentive received under said scheme could be considered as supply of service under the provisions of section 7 under CGST Act?
3. Whether the incentive received under said scheme if considered as supply then would it be covered under section 7(2) of CGST Act?
4. Whether the incentive received under said scheme could be considered as excluded from the value of taxable supply under section 15(2)(e) of CGST Act, 2017.

8. The GAAR vide its order No. GUJ/GAAR/R/44/2021 dated 11.08.2021, gave the following ruling to the aforementioned questions:

We hold the subject incentive amount liable to GST. The said Incentive is not subsidy and does not merit exclusion from valuation under section 15(2)(e) of the CGST Act. The subject supply is covered at section 7(1) (a) CGST Act and not covered at section 7(2) CGST Act.

9. Being aggrieved with the aforementioned Ruling, the appellant has preferred the present appeal on the following grounds:

- that the subsidy received in the form of incentive cannot be considered as consideration under the provisions of Section 2(31), *ibid*;



- the definition of consideration, makes it crystal clear that subsidy given either by the Central/State Government would not form part of consideration and therefore the subsidy in the form of incentive received by the petitioners could not be chargeable to tax;
- that the subsidy in the form of incentive received is also not covered under the definition of scope of supply u/s 7(2), *ibid*;
- that even in terms of Schedule- III of CGST Act, 2017, the payment received by the petitioners as incentive would not be chargeable to GST;
- that according to them the word incentive represents subsidy; that since the word incentive is not defined under CGST Act, 2017, popular meaning as defined under various dictionary is required to be followed.
- that as per new International Webster's Comprehensive Dictionary [Published by Trident Press International 1999 edition] **incentive** means *Encouraging or Impelling* while **subsidy** means *Pecuniary aid directly granted by Government to an individual or private commercial enterprise deemed beneficial to the public; Any financial assistance afforded by one individual or government to another*;
- that payment made by either the Central/State Government as incentive or subsidy is nothing but the subsidy paid to achieve some object;
- that they would like to rely on the following rulings/case laws *viz*
 - **Rashmi Hospitality Services Pvt. Ltd.** [KAR ADRG 61/2019 dated 20-09-2019] wherein it was held that any compensation or amount paid for implementation of government scheme should be treated as subsidy. The decision is squarely applicable in this case.
 - **Ponni Sugars and Chemicals Limited** [2008(9)TMI 14] wherein the Hon'ble SC held that the purpose of payment by the Government is to allow subsidized loan to a specified class of persons and therefore any amount paid under the scheme should be considered as subsidy from the Government which is not liable to GST.
- that the scheme announced by the Honorable Government is for the benefit of the public only and is not beneficial to individual or private commercial enterprise and therefore the amount being paid by the Government over and above reimbursement of 6% interest is nothing but "subsidy";
- that even assuming that the incentive is not a "subsidy", then it could be considered as payment covered under the definition of "Actionable Claim" since by complying with the conditions laid down under the scheme, the applicant had accrued his claim for the payment to be sanctioned by the Government;
- that the amount paid by Government under the said scheme could also be considered as compensation towards the interest since in general terms the banks are charging interest more than 8% but under this scheme were authorized to collect interest @ 8% only; that at the most it can be treated as differential interest, which is not chargeable to GST in terms of notification No. 12/2017-CT (R) dated 28.6.2017, as amended.
- that they have neither supplied any goods nor services & thus the amount cannot be considered as consideration & hence is not covered u/s 7(1)(a) of CGST Act;

10. During the course of personal hearing held on 26.07.2023, Shri Paresh Sheth, Advocate appeared on behalf of the appellant. He reiterated the written submissions made in the appeal.



Discussions and Findings:

11. Before dwelling on to the issue it would be prudent to reproduce the relevant extracts of the Resolutions issued for Aatma Nirbhar Gujarat Sahay Yojana. Since the documents are in vernacular, a free translation of the relevant clauses is reproduced below for ease of reference *viz*

Resolution dated 16.5.2020

1. *The scheme shall be known as 'Aatma Nirbhar Gujarat Sahay Yojna'.*
2. *The main objective of this scheme is to provide interest subsidy on unsecured loans to small traders, middle class persons, individual artisans and working class.*
6. *Any person can get benefit under this scheme only once.*
7. *The maximum rate of interest shall be 8% on the credit given to the borrowers under this scheme by Co-operative Banks and Co-operative Credit Societies.*
12. *Interest subsidy at the rate of 6% per annum shall be provided by the State Government to all the beneficiaries who availed loans under this scheme. (Moratorium period included) when the beneficiary will get the loan at the interest rate of 2% per annum.*
13. *State Government will provide the Co-operative Banks/ Cooperative Credit Societies, 2% incentive [for one time only] on the total credit extended by them.*
23. *The amount of interest subsidy provided by the Co-operative Banks/ Co-operative Credit Societies will be reimbursed by the State Government on a quarterly basis.*
26. *No additional charge such as form fee, stamp duty and processing charge shall be levied by the Co-operative Banks/ Co-operative Credit Societies from the individuals availing such loans.*
27. *In case loans are advanced to persons who are not members of Co-operative Banks/Cooperative Credit Societies no fees leviable as per the by-laws of the organization for making such a person a member, shall be charged from such loanees.*
28. *A Co-operative bank/ Co-operative Credit Society may, however take an advance cheque from the borrower to secure the loan and obtain a simple personal guarantor without collateral.*
37. *During the course of audit by the Comptroller & Auditor General (CAG), the records pertaining to these Yojana should be produced on demand.*



Resolution dated 20.06.2020

1. This scheme shall be known as 'Atma Nirbhar Gujarat Sahay Yojana-II'. This Yojana will be effective from 01.07.2020.
2. The main target of the scheme is to provide subsidy for loans availed by small traders, middle class persons and individual artisans to enable them to accelerate their economic activities.
6. Persons can get benefit under this scheme only once. Persons who have availed benefit under Atmnirbhar Gujarat Sahay Yojana implemented vide Resolution No. SMB/16/2020/253/Yathi dated 16.05.2017 will not be eligible for benefits under this scheme.
7. The maximum rate of interest on credit extended by Co-operative banks to beneficiaries under the scheme will be @ 8%
12. All beneficiaries availing loan under this scheme will be repaid interest @ 4% per annum by the State Government. This interest subsidy amount will be provided in quarterly instalments (including moratorium period). The beneficiary has to pay interest @ of 4% per annum.
13. Gujarat State Co-operative Bank Ltd., District Co-operative Banks Ltd., including all Nagrik Cooperative Banks (including those banks registered under Multi Society Cooperative Societies Act) who have provided loans from the State Government under this scheme, will be provided a one time incentive @ 2% on the total amount lent under the scheme.
23. Gujarat State Co-operative Bank Ltd., District Central Co-operative Banks Ltd. including all Nagrik Cooperative Banks (including those banks registered under Multi Society Cooperative Societies Act) shall not charge any additional charges such as form fee, processing charge and stamp duty, registration fee. Also, no stamp duty will be levied on bank documents, mortgage, encumbrance registration.
26. Gujarat State Co-operative Bank Ltd., District Central Co-operative Banks Ltd. all Nagrik Co-operative banks in the state (including banks registered under the State Co.op. Societies Act) shall provide credit as per the provisions of the Reserve Bank of India relating to credit and the provisions of the Co-operative Banks bye-laws.

Amendment dated 27.08.2020

Amendment Resolution

The following amendments are hereby issued in the conditions of Atmanirbhar Gujarat Sahay Yojana- II issued in respect of Sr. No (1). [Resolution dated 20.6.2020]

Condition No (13): Gujarat State Co-operative Bank Ltd., District Cooperative Banks Ltd., all the Nagrik Sajkari Bank (including Banks registered under Multi State Cooperative Societies Act) who have given loan under the Yojana will be given a one- time (for one time only) incentive on the total credit made by them under Atmanirbhar Gujarat Sahay Yojana-2 as follows.

For loans upto Rs. 10 crores – 2%

For loans from Rs. 10 crores to Rs. 50 crores - 2.5%

For loans from Rs. 50 crores to Rs. 100 crores – 3 %

For loans above 100 crores – 4%



12. As is already evident, we find that the sole contention of the appellant is that the amount received by them under the heading ‘incentive’ as mentioned in the State Government Resolutions, the relevant extract of which is reproduced *supra*, is akin to ‘subsidy’ and hence not leviable to GST. The appellants further contend that subsidy would also not form a part of supply u/s 7(2), *ibid*; that it is not taxable under Schedule-III of CGST Act, 2017. The appellant has also relied upon the dictionary meaning of the word subsidy and incentive to drive home the point that both the words mean the same.

13. We find that the State Government Resolution, the copies of which were enclosed with the appeal papers and the relevant extract of which is reproduced *supra*, emphatically show that the Government Resolution purposefully used two words one being વ્યાજ સહાય in vernacular, [the literal translation being ‘*vyaj sahay*’] which basically would mean **interest subsidy** while the other word being *incentive*, which even in the Government Resolution is mentioned in English language, though the text of the entire Resolution is in Gujarati.

14. Therefore, the submission that both the words mean the same is neither factually correct nor legally tenable. Had the words been same, there was no reason to have mentioned them differently in the Government Resolution. While the 6% interest rebate granted to the beneficiary/loanee who avails the loan is mentioned as વ્યાજ સહાય, the amount paid to the Cooperative Banks, Cooperative Credit Society, on achieving a certain amount of disbursement of loan target, is explicitly mentioned in a different and distinct terminology as an *incentive*.

15. We find that the Banks were provided a base percentage of loan disbursement amount as an incentive. The incentive so granted varied, meaning thereby that the percentage of incentive increased on higher disbursement of loan. At best, the incentive can be termed as a consideration to the Cooperative Banks for providing the service to the beneficiaries/loanees by extending loans under the scheme promoted by the State Government of Gujarat. The argument of the appellant therefore that they had provided services only to the person who had availed loan and not to the State



Government, fails. We further find that there is no bar on including the incentive received under consideration as far as definition of 'consideration' as defined under section 2(31) of the CGST Act, 2017 is concerned. For the ease of understanding the same is reproduced here-in-below *viz*

(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;

Thus, the reliance of the appellant on various dictionary meaning to argue that both the words *subsidy* and *incentive*, mean the same, is not a plausible contention.

16. The next submission of the appellant is that the subsidy in the form of an incentive received is also not covered under the definition of scope of supply u/s 7(2), *ibid*; that even in terms of Schedule III of CGST Act, 2017, the payment received by the petitioners would not be chargeable to GST. Before addressing the argument, we would like to reproduce both section 7(2), *ibid* and schedule III.

Section 7. Scope of supply. —

(1)

(2) Notwithstanding anything contained in sub-section (1), —

- (a) activities or transactions specified in Schedule III; or
- (b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, shall be treated neither as a supply of goods nor a supply of services.

SCHEDULE III
[See Section 7]



ACTIVITIES OR TRANSACTIONS WHICH SHALL BE TREATED NEITHER AS A SUPPLY OF GOODS NOR A SUPPLY OF SERVICES

1. Services by an employee to the employer in the course of or in relation to his employment.
2. Services by any court or Tribunal established under any law for the time being in force.
3. (a) the functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities;
- (b) the duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or
- (c) the duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause.
4. Services of funeral, burial, crematorium or mortuary including transportation of the deceased.
5. Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.
6. Actionable claims, other than lottery, betting and gambling.
7. Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India.
- 8.(a) Supply of warehoused goods to any person before clearance for home consumption;
- (b) Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.]

[**Explanation 1.**] — For the purposes of paragraph 2, the term “court” includes District Court, High Court and Supreme Court.

[**Explanation 2.** — For the purposes of this paragraph, the expression “warehoused goods” shall have the same meaning as assigned to it in the Customs Act, 1962 (52 of 1962).]

We find that the appellant has not explained how incentive would fall within the ambit of section 7(2) or Schedule III.

17. The next argument of the appellant is that the scheme is for the benefit of the public and not beneficial to an individual or private commercial enterprise and therefore the amount being paid by the Government over and above reimbursement of 6% interest is nothing but ‘subsidy’. The dispute here is not in respect of reimbursement of 6% interest to the beneficiary. However, to equate this subsidy of 6% granted to the loanee, as a part of relief measure announced by the State Government on account of the pandemic situation, with the incentive granted to the Cooperative Banks and Cooperative Credit Societies, which solely depended on the performance in disbursing loans, is not a prudent argument in the first place. This incentive granted based on the performance cannot be termed as a subsidy. Even otherwise, we find that the GAAR has clearly held that this incentive granted to Cooperative Banks/Cooperative Credit Societies granted



no benefit to the loanees. This was one of the ground adopted by the GAAR to hold that the incentive was not a subsidy. We are in complete agreement with this finding of the GAAR.

18. An alternative plea raised in the appeal is that even if it is assumed that incentive is not a "subsidy", then it could be considered as payment covered under the definition of "Actionable Claim" since by complying with the conditions laid down under the scheme, the applicant had accrued his claim for the payment to be sanctioned by the Government.

19. Let us examine the above contention. 'Actionable claim' has been defined u/s 2(1) of the CGST Act, 2017 as under *viz*

(1) "actionable claim" shall have the same meaning as assigned to it in section 3 of the Transfer of Property Act, 1882 (4 of 1882);

Now, actionable claim, as defined under section 3 of the Transfer of Property Act, 1882, states as follows *viz*

"actionable claim" means a claim to any debt, other than a debt secured by mortgage of immoveable property or by hypothecation or pledge of moveable property, or to any beneficial interest in moveable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognise as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent:

20. Actionable claim as defined *supra* is an intangible movable property, and its transfer is dealt with in Chapter VIII of the Act, *ibid.* Accordingly, actionable claim means [a] claim to an unsecured debt and [b] beneficial interest in a movable property.

21. Further, we find that the Hon'ble Supreme Court in the case of M/s. Sunrise Associates [CA No. 4552/1998], has held as under

Distinct elements are deducible from the definition of 'actionable claim' in Section 3 of the Transfer of Property Act. An actionable claim is of course as its nomenclature suggests, only a claim. A claim might connote a demand, but in the context of the definition it is a right, albeit an incorporeal one. Every claim is not an actionable claim. It must be a claim either to a debt or to a beneficial interest in movable property. The beneficial interest is not the movable property itself, and may be existent, accruing, conditional or contingent. The movable property in which such beneficial interest is claimed, must not be in the possession of the claimant. An actionable claim is therefore an incorporeal right. That goods for the purposes of Sales Tax may be intangible and incorporeal has been held in Tata Consultancy Services Vs. State of Andhra Pradesh (2005) 1 SCC 308.



Thus one time incentive earned proportionate to the total disbursements of loans, would not fall within the ambit of actionable claims so as to fall within the exclusion as per Sr. No.6 of Schedule-III, which deals with the activities of transactions which are neither supply of goods nor a supply of services.

22. The appellant has further argued that the incentive paid by Government under the said scheme could also be considered as the compensation towards the interest since in general terms the banks are charging interest which is more than 8% but under this scheme were authorized to collect interest @ 8% only; that at best it can be treated as differential interest which is not chargeable to GST in terms of notification No. 12/2017-CT (R) dtd 28.6.2017, as amended. This argument, we find is not substantiated. Since it is not substantiated with facts as to what exactly was the rate charged for other borrowings outside the scheme, what was the rate charged by other Banks during the period under dispute etc., it is difficult to come to a conclusion as far correctness of the submission is concerned. Had that been the case, the incentive given would have been constant/static and would not have varied with the increase in the level of disbursements of loans. Even otherwise, we find that the loans were advanced during a period when the country was going through pandemic which could have also had its effect on the market borrowings & consequently on the rates charged by the Banks. The scheme provided for incentives, meaning rewards, which varied based on performance.

23. In this regard to substantiate our view, we would like to rely on the case of Dilip Kumar & Company [2018 (361) ELT 577 (SC)], wherein the Constitution Bench of the Hon'ble SC held as follows:

52. To sum up, we answer the reference holding as under -

(1) Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.

(2) When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue.

(3) The ratio in Sun Export case (supra) is not correct and all the decisions which took similar view as in Sun Export case (supra) stands overruled.



Thus in terms of the aforementioned judgement any claim for an exemption notification is to be strictly interpreted. The appellants contention of falling within the ambit of notification No. 12/2017-CT(Rate), is not legally tenable in terms of the findings recorded above.

24. The last submission of the appellant is that they have not supplied any goods or services and the amount cannot be considered as consideration & hence is not covered u/s 7(1)(a) of CGST Act. This was addressed in paragraph 15 holding that incentives were directly linked to the service provided by the appellant of granting loans to the beneficiary/loanee under the Scheme. Therefore, the above argument is not a legally tenable argument.

25. The appellant has also relied upon two rulings/case laws viz

- o Rashmi Hospitality Services Pvt. Ltd. [KAR ADRG 61/2019 dated 20-09-2019] wherein it was held that any compensation or amount paid for implementation of government scheme should be treated as subsidy. The decision is squarely applicable in this case.

On examining the aforementioned ruling, we find that M/s. Rashmi had entered into an agreement with Deputy Commissioners of the Districts to provide hotel/restaurant services for the Indira Canteen through tender. For the restaurant services, M/s. Rashmi was collecting a specified amount from the beneficiaries based on daily menu. At the end of the month M/s. Rashmi was submitting a consolidated bill by showing the amount collected from the beneficiaries and subsidy available from the Government. The ruling was sought in respect of the said subsidy. However, we find that the ruling is not applicable to the present dispute primarily since unlike in this case, there was no incentive paid over and above the amount fixed to M/s. Rashmi. Even otherwise, in terms of Section 103 of the CGST Act, 2017, the aforementioned ruling is applicable only to M/s. Rashmi [the applicant] and the jurisdictional officer.

- o Ponni Sugars and Chemicals Limited [2008(9)TMI 14] wherein the Hon'ble SC held that the purpose of payment by the Government is to allow subsidized loan to a specified class of persons and therefore any amount paid under the scheme should be considered as subsidy from the Government which is not liable to GST.

We find that the appellant has erred in relying on the aforementioned judgement to substantiate his argument, more so since in the said judgement

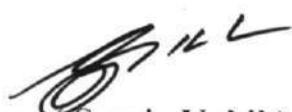


the two questions of law framed by the Hon'ble Apex Court were as follows *viz*

- (i) *Whether the incentive subsidy received by the assessee is a capital receipt not includable in the total income?*
- (ii) *Whether the assessee was entitled to exemption under section 80P(2)(a)(i) of the Income Tax Act, 1961, in respect of interest received from the members of the society?*

In the aforementioned dispute, the questions on which the ruling was sought from GAAR at paragraph 7 are different. The reliance therefore, on the aforementioned judgement of the Hon'ble Supreme Court, is legally untenable.

26. In view of the above findings, the appeal filed by appellant M/s Rajkot Nagrik Sahakari Bank Limited against Advance Ruling No. GUJ/GAAR/R/35/2021 dated 30.07.2021 of the Gujarat Authority for Advance Ruling is rejected.



(Samir Vakil)
Member (SGST)



(B V Siva Naga Kumari)
Member (CGST)

Place: Ahmedabad

Date: 07.12.2023

