

Case study series – GST Advance Ruling

Crux of the case:

Applicability of GST on interest on late payment of invoices of imported goods

Authority	Gujarat Authority for Advance Ruling
Legal name of Applicant	M/s. Enpay Transformers Components India Private Limited
Details of Application	Advance Ruling/SGST&CGST/2018/AR/34) Dated 20.01.2021

Facts of the case:

1. The company is importing goods from its holding company in Turkey for a 120 days' credit period.
2. If the payment is not made within 120 days from the date of the invoice, the company is required to pay interest in respect of the late payment to its holding company.
3. The applicant wants clarification regarding the applicability of GST on such interest paid and if yes, whether the tax should be paid by the Indian company under the reverse charge mechanism?

Discussion and finding:

1. As per entry 5(e) of Schedule II of the CGST Act, 2017, **“agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act”** shall be considered as supply of services.
2. In the given case, it can be said that foreign supplier has tolerated the act of receiving payment beyond the agreed credit period of 120 days.
3. As per section 15(2)(d) of the CGST Act, 2017, value of supply also includes **“interest, late fee or penalty for delayed payment of any consideration for any supply”**
4. Therefore, the interest paid for delayed payment will be considered as supply as per entry 5(e) of schedule II and it is also liable to GST as per section 15(2)(d).
5. Further, the rate of GST payable on the interest will be the same as that of the IGST applicable on the imported goods pertaining to that invoice since the same forms part of the value of supply as per section 15(2)(d).

Order:

6. Whether the liability to pay GST on reverse charge arises if any amount is paid as interest on late payment of invoices of imported goods? If yes, then at what rate?
 - The applicant is liable to pay GST on reverse charge mechanism for the amount paid as interest on late payment of invoices of imported goods. The rate of GST will be the same as the rate of IGST leviable on the imported goods.

Key takeaways:

1. Interest on delayed payment will attract GST at the same rate as that of the imported goods.
2. Even though the order did not discuss why the importer is required to pay the GST on RCM basis, we have to assume that such transactions will be considered as **import of service** and thus GST shall be payable by the importer on reverse charge basis. There are multiple case laws which state that the interest on late payment is not liable to any GST. Proper clarification from CBIC is needed in this regard.