



Finance Industry Development Council

(A Representative Body of Assets and Loan Financing NBFCs)

101/103, Sunflower, 1st Floor, Rajawadi Road No.2, Ghatkopar (East), Mumbai – 400 077

Tel: 022 21029898/9820035553 • E-mail: directorgeneral@fidcindia.org.in



www.fidcindia.org.in

March 25, 2022

To

Smt. Nirmala Sitharaman,
The Hon'ble Finance Minister of India,
Government of India,
North Block, Rajpath Marg, E Block,
Central Secretariat, New Delhi 110011.
Email: fmo@nic.in; appointment.fm@gov.in

Respected Madam,

Sub: Mounting litigations on Service Tax matters – Show Cause Notices demanding Service Tax on penal interest - For CBEC clarification on penal interest taxability in service tax regime requested as Circular No. 102/21/2019-GST dated 28.06.2019 exempting penal interest from GST

Finance Industry Development Council (FIDC) is a Representative Body of Asset and Loan Financing of the NBFCs registered with the Reserve Bank of India. FIDC was formed 17 years ago and is the recognized face of the NBFC sector. We have been engaged in regular interaction both with Reserve Bank of India and Govt. of India, which include pre-budget meetings and also important policy related meetings with RBI. Almost all the leading NBFCs and a large number of small and medium sized NBFCs are our members.

We wish to draw your attention to one urgent issue the Industry is facing. In the event of default in making the payments at the due dates, interest at a higher rate is collected from the defaulting customers who is also termed as interest or sometimes termed as penal interest. Though there is a specific provision in Rule 6(2)(iv) of Service Tax (Determination of Value) Rules, 2006 for exclusion of





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“interest on delayed payment of any consideration for the provision of services or sale of property whether movable or immovable” still Department issues Show Cause Notices/initiates investigation procedures by issuing summons on the ground that interest collected at a higher rate on default whether or not mentioned as penal interest is taxable under Section 66E (e) of the Finance Act i.e. “agreeing to the obligation to refrain from an act, or to tolerate an act or a situation or to do an act.”

CBIC Circular No. 102/21/2019-GST dated 28.06.2019 clarifies in Para – 6 that penal interest is not liable for GST. Relevant part of the circular is reproduced below.

“It is further clarified that the transaction of levy of additional / penal interest does not fall within the ambit of entry 5(e) of Schedule II of the CGST Act i.e. “agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act”, as this levy of additional / penal interest satisfies the definition of “interest” as contained in notification No. 12/2017- Central Tax (Rate) dated 28.06.2017”

As Section 66E(e) is *pari materia* with entry 5(e) of Schedule II of the CGST Act 2017 it is just and proper for CBEC to issue a clarificatory circular that interest recovered at a higher rate from the loan customers on default of installments of loan payments whether or not termed as penal interest is not liable for service tax under Section 66 E(e) especially when there is a clear provision under Rule 6(2)(iv) of Service Tax (Determination of Value) Rules, 2006 for exclusion of such interest on delayed payment of consideration as consideration in advancing the loan is interest.

As it is not the intention of the Government to encourage frivolous litigations, a clarification in this respect as clarified in GST context would liquidate large number of show cause notices to be adjudicated / appeals pending before the Appellate Authorities.





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We earnestly urge upon you to consider our request.

Thanking you,

Yours Faithfully,

For **FINANCE INDUSTRY DEVELOPMENT COUNCIL**

MAHESH THAKKAR
DIRECTOR GENERAL
9820035553

CC to

1. The Chairman, CBIC,
Govt of India, North Block
New Delhi -110001
E-mail:chmn-cbic@gov.in
2. The Revenue Secretary,
Ministry of Finance
North Block,
New Delhi 110001
3. Chief Commissioner,
Central Tax and Central Excise,
Central Revenue Bhavan,
I.S. Press road, Kochi - 682018

