GST on Trading of Priority Security Lending Certificates (PSLC’s) by Banks

BACKGROUND:

Priority Sector Lending Certificates (PSLCs) are tradable certificates issued against priority sector loans of banks so as to enable banks to achieve their specified target and sub-targets for priority sector lending through purchase of these instruments in the event of a shortfall and at the same time incentivizing the surplus banks to lend more to these sectors. It was first proposed by A.M. Godbole in his article "How to lend more to the poor" (Mint, 28 March 2007). A.M. Godbole had called tradable Priority Sector Lending Certificates as 'social credits'. Buyers of PSLCs are usually those banks who could not meet their priority sector lending targets. The price of PSLCs will be determined on the basis of demand and supply that will be reflected in the auction under the RBI’s e-Kuber trading platform.

The RBI guidelines explains the objective of PSLCs and their trading “To enable banks to achieve the priority sector lending target and sub-targets by purchase of these instruments in the event of shortfall and at the same time incentivize the surplus banks; thereby enhancing lending to the categories under priority sector.” The four types of Priority Sector Lending Certificates are:

- PSLC Agriculture: Priority Sector Lending Certificates for agriculture lending sub-target.
- PSLC SF/MF: Priority Sector Lending Certificates for small and marginal Farmers lending sub-target.
- PSLC Micro Enterprises: Priority Sector Lending Certificates for micro enterprises lending sub-target.
- PSLC General: Priority Sector Lending Certificates corresponding to the overall priority sector lending target.

Since, levy of GST is on supply of goods or services or both, it needs to be understood whether PSLC’s can be termed as ‘Goods’ or ‘Services’ in order to attract levy. As per section 2(52) of CGST act, goods means every kind of movable property **other than money and securities** but includes actionable claims, growing crops and things attached to earth or forming part of earth.

Here, it shall be important to note that GST is not applicable on transactions in securities. However, it shall be important to understand whether the PSLC certificates can be termed as ‘securities’. Here it is important to refer section 2(101) of CGST act which states that ‘securities’ shall have the same meaning as assigned to it in clause (h) of section 2 of the securities contracts (regulations) act, 1956. Clause (h) of section 2 of the securities contracts (regulations) act is an inclusive definition which defines securities to include the following:

i) Shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate
ii) Units or any other instrument issued by any collective investment scheme to the investors in such schemes
iii) Rights or interest in securities
iv) -------

From the above definition, it can be said that these certificates cannot be called as ‘securities’ to be kept out of purview of GST. Further, it is important to note that in case of PSLC’s seller will be selling fulfilment of priority sector obligation and the buyer would be buying the same, but there will be no transfer of risks or loan assets. PSLCs do not represent any interest or right in any other securities. These PSLCs have an intrinsic value of their own and are independent of the value of the PSL assets. Therefore, on the plain reading of the definition PSLCs do not fall under the definition of ‘securities’. One must note that same has also been clarified by CBEC vide its Circular No. 34/2018 issued dated 01.03.2018 wherein it says that PSLC cannot be called as ‘securities’.

Further, Reserve Bank of India FAQ on PSLC, it has been mentioned that PSLC may be construed to be in the nature of goods, dealing in which has been notified as a permissible activity under section 6(1) of the Banking Regulation Act, 1949 vide Government of India notification dated 4th February, 2016.

Further, in several rulings such as ***Vikas Sales Corporation v. Commissioner of Commercial Taxes***, there has been an elaborate discussion on replenishment licenses qualifying as goods. In other rulings such as ***M/S. Sunrise Associates v. Government. Of NCT of Delhi & Others***, ***H. Anraj v. Government of Tamil Nadu***, there has been elaborate discussion on what qualifies to be goods. Goods have certain features which include

a. That the property has intrinsic value of its own;
b. Is not contended to be actionable claim; and
c. The moveable property can be bought and sold freely in the market, i.e. they have a ready market for trade.

Extending the analogy to PSLCs, it is possible that PSLCs can be said to be as ‘Goods’ for the purpose of levy of GST.

Once it is clear that PSCL's are in the nature of goods, it is pertinent to note that no any specific exemption is provided in the GST law in respect of trading of PSLC's and therefore trading of PSLC would attract GST @ 18% under entry No. 453 of Schedule III of Notification No. 1/2017 of CGST states that "*Goods which are not specified in Schedule I, II, IV, V or VI".*

PSLC's covered under reverse charge

Recently, vide Notification No. 11/2018 central tax (rate), CBEC has amended the Notification No. 4/2017 central tax (rate) stating that GST in case of the trading of PSLCs needs to be paid by the recipient of the certificate under reverse charge, therefore in case of all trading transactions of PSLCs, on or after 28.05.2018, the issuing bank need not charge and collect GST and instead the recipient bank need to suo motu pay GST to the credit of the central government under reverse charge and once paid the same shall be eligible as Input Tax credit.

Conclusion:

It is quite a dampener that the fiscal laws whose one of the objectives is also to maintain a right balance between the tax levies vis-a-vis overall growth of the sector have gone a step ahead in levying GST on the priority sector lending certificates, one must note that Banks can avail only Input Tax credit only to the tune of 50% and therefore tax even if paid under reverse charge on this certificates would amount to cost @ 9% of the value of certificates traded whereby indirectly taxing the priority sector and making the trading of these instruments highly unattractive and a non-starter.

Therefore, Government must stand true to the basic objective for which any scheme is intended, Government vide its notification exempted the export incentive scrips issued by DGFT under Foreign Trade Policy, therefore similar tax treatment must be accorded to the PSLCs wherein Government must go back to its basic objective for which this scheme was introduced and accordingly exempt GST on the same in order to encourage banks to lend more in the priority sector and trade the certificates received for the surplus lending with other banks without any tax consequence.

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