

**Representation requesting clarification that GST is not applicable
on assignment of receivables**

Following Representation was made to Mr. Pramod Kumar, Central Board of Indirect Taxes and Customs, via e-mail dated 23rd May, 2018

Date: 23.05.2018

To,
Mr. Pramod Kumar
Assistant Commissioner
Central Board of Indirect Taxes and Customs
Government of India,
Ghaziabad, Uttar Pradesh

Dear Sir,

It was nice meeting you at the meeting at Ministry of Civil Aviation today.

I was pointing out to you, how a Rs 90000 crore business of securitization/assignment of receivables, and the entire activity of sale of loans by banks to factoring companies, ARCs etc., is at stake because some people are wrongly interpreting the transfer of a receivable as a "supply". These people are wrongly going by the definition of actionable claims, where the right expression to see is the definition of "goods" and "services", both of which exclude money.

I am trying to explain the scenario, though you quite well versed on the subject already.

- If S sells goods to P, for a price of Rs 100, payment after 3 months, the sale of goods is a supply, on which GST is chargeable on the entire value of Rs 100. That Rs 100 inherently includes the cost of credit of 3 months.

- When P pays the price of Rs 100, it cannot be argued that P is making a supply – because the payment of Rs 100 is nothing but a settlement of the price of the supply made by S to P.
- Now, if S goes to F, and asks F to prepay the price to S (say at a discounted rate of Rs 90), one cannot argue that F making the payment of Rs 90 to S is making a supply. Neither can S be seen as making a supply, as S has simply transferred the right to receive the very same payment, which he was to collect from P, and which would not have been a supply.
- If, by an erroneous argument, the transfer of the right to receive the payment from P is taken as a supply, then S would have made two supplies for the same economic transaction –one, when he supplied the goods, and second, when he transferred the right to the payment. This would be double-counting the same economic transaction.

What holds true in case of receivables holds true in case of loan transactions too. A loan transaction consists of principal and interest, both of which are not chargeable to GST.

If this right to receive money is transferred to someone, there can be no question of GST on such transfer, as, after all, a right to receive money is no different from money itself.

This is clear from ICAI's background material on GST.

This is also clear from global laws (EU laws as well as UK law).

My colleague has explained this elaborately in an article, which I am linking below:
<http://vinodkothari.com/blog/gst-on-securitisation-transactions-2/>

The confusion on the GST on these transactions is costing the market heavy. During financial year 2017-18, the market for securitization shrunk, whereas last year, there was a growth of about 30%.

Kindly clarify the position soonest.



For Indian Securitisation Foundation

**Sd/-
Vinod Kothari**

Encl:
Annexure I: Securitisation volumes
Annexure II: About Indian Securitisation Foundation

INDIAN SECURITISATION FOUNDATION

(A Not-For-Profit Company Licensed under Section 25 of Companies Act, 1956)

Regd. Office: 403-406, 175 Shreyas Chambers, D.N. Road, Fort
Mumbai - 400 001

Phone: 022-2261 4021/ 6237 0959

Email: info@indiansecuritisation.com; vinod@vinodkothari.com

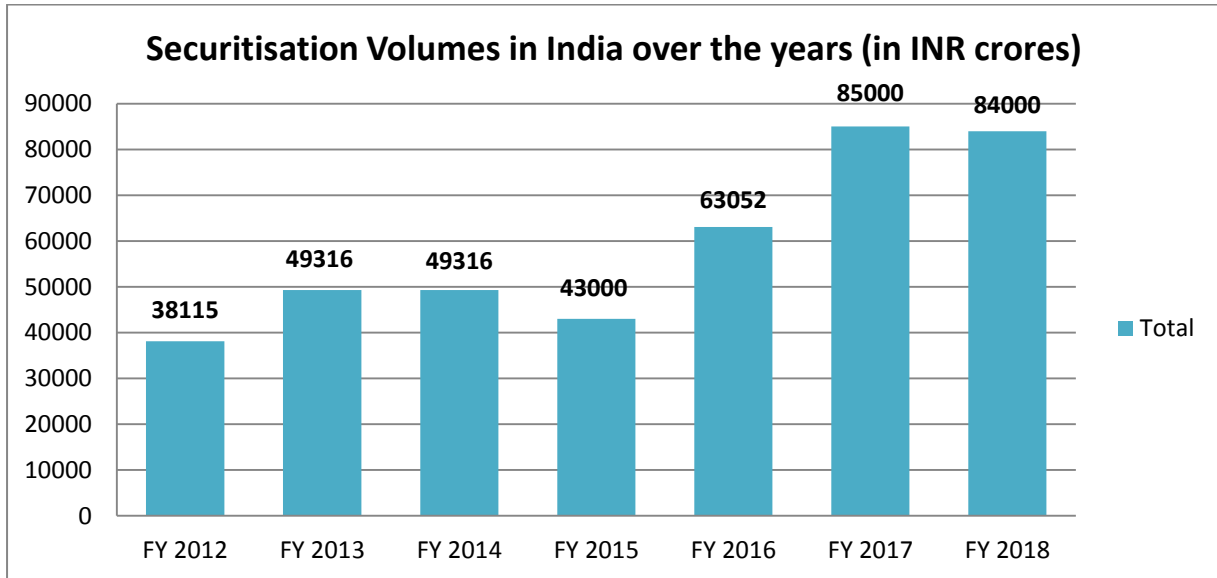
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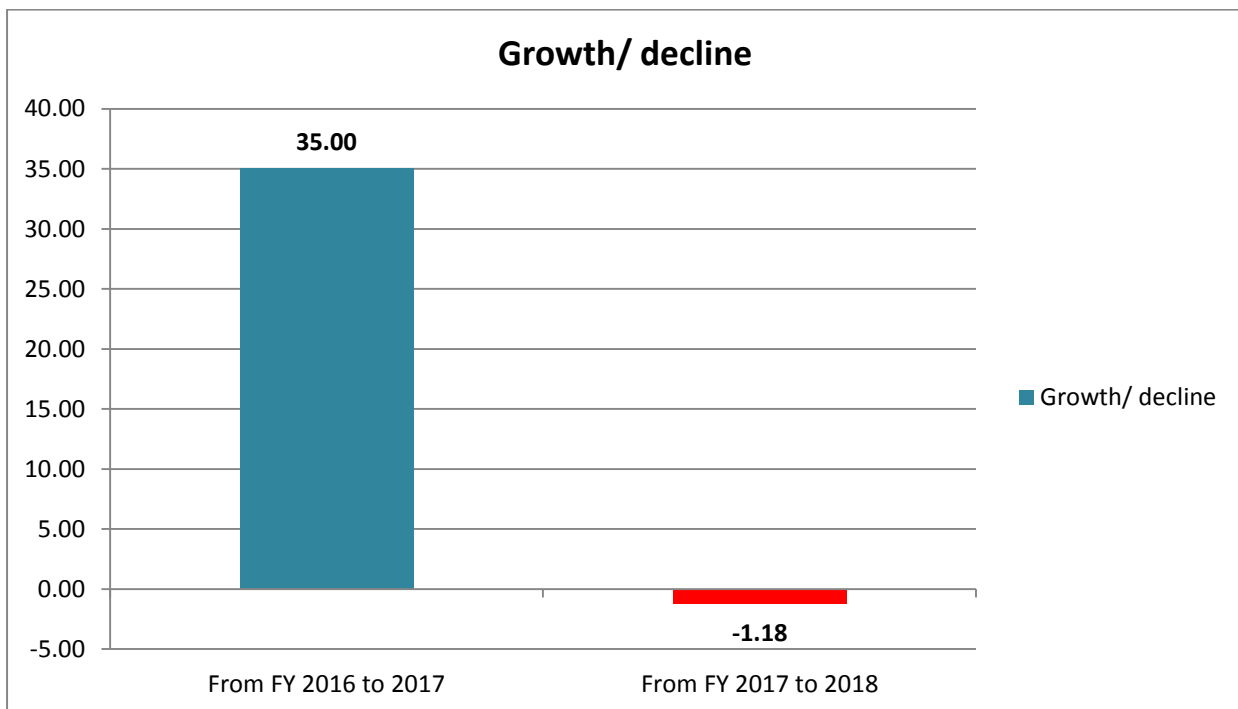


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Annexure I: Securitisation Volumes



Source: VKC Estimates



Source: VKC Estimates

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Provisions of Law

Goods and Services

Section 9 of the CGST Act provides for levy and collection of CGST on all intra-State supplies of goods or services or both.

“Goods” are defined in section 2(52) as –

“(52) “goods” means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply;”

“Services” are defined in section 2(102), as –

““services” means anything other than goods, money and securities but includes activities relating to the 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;”

Supply

Section 7 details the scope of the expression “supply”:

“supply” includes “all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business.” However, activities as specified in Schedule III of the said Act shall not be considered as “supply”.

Money

Section 2(75) defines money as follows:

“money” means the Indian legal tender or any foreign currency, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveller cheque, money order, postal or electronic remittance or any other instrument recognised by the



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Reserve Bank of India when used as a consideration to settle an obligation or exchange with Indian legal tender of another denomination but shall not include any currency that is held for its numismatic value."

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Annexure II: About Indian Securitisation Foundation

Indian Securitisation Foundation (ISF) is a not-for-profit organisation incorporated under section 25 of the Companies Act, 1956, a representative body of the securitisation industry in India. ISF is formed with the objective of developing, promoting and protecting the securitisation, structured finance markets in India in particular, and market for fixed income securities in general.

Securitisation in India is not just a fixed income investing instrument, but essential for the idea of financial inclusion, in form of priority sector lending. Banks meet their priority sector targets partly through portfolio acquisitions and securitisation, thereby putting securitisation at par with the banking book.

Infrastructure sector also depends substantially on securitisation for equity extraction.

In essence, the significance of securitisation to India's financial sector cannot be underestimated.

Over time, credit default swaps are also expected to be prevalent as ways of synthetically replicating credit risk.

It is a clear policy choice to have a strong market for fixed income securities in India: structured finance securities are an essential part of that market, to provide variety, choice and alignment to investor needs.

In this background, ISF was conceptualised to provide direction, leadership, advocacy and support to the securitisation and structured finance industry.

Some of the functions of the Foundation include:

- a. **Advocacy** – making representation to various authorities from time to time on matters as may concern securitisation and similar capital market instruments.
- b. **Industry forums and networking** - holding periodic conventions and educational courses.
- c. **Development of industry standards** - framing self-regulatory standards on disclosures, reporting, servicing reporting, DOs and DONTs for securitisation and direct assignment transactions, etc. Development of standards such as standard

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assignment agreements, assignment procedures, notification procedures, etc. on the lines of ISDA agreements and encouraging members over period to start using such standard templates.

- d. **Information exchange** – on matters of common interest, collateral performance, etc.

Advisory Committee

Mr. M.R Umarji

Mr. Madhukar R Umarji, Chief Advisor - Legal of the Indian Banks' Association is acknowledged as an authority on Secured Transactions Law in India. He began his career as a Legal Assistant for the state government simultaneously pursuing his Masters in law. Following his Masters, he shifted to being a Legal Advisor in commercial banks and completed his transition to a commercial banker by becoming Executive Director of a public sector bank. Later he was taken on deputation at Reserve Bank of India as Executive Director in charge of Department of Non-Banking Supervision. He has been a part of several Expert Committees set up by the Government and Working Groups concerned with Banking Sector Reforms in India. His pivotal role in the drafting of secured transactions legislation in India shaped the way for a path-breaking reform for the Indian banking industry. Presently, he is actively involved with Working Group VI of UNCITRAL on Secured Transactions as an expert from India.

Mr. Sanjay Chamria

Mr. Chamria founded Magma in 1988, along with Mr. Mayank Poddar. As the Vice Chairman and Managing Director of Magma, he anchors policy formation, strategy planning and execution. He was born and educated in Kolkata, and graduated as one of the country's youngest chartered accountants in 1985 with national ranking. For the past 23 years, he has steered the organization from a three-employee, one-office set up to a company with 225+ branch offices and more than 6000 employees.

Mr. Chamria uses his position as one of the foremost leaders in India's asset financing industry to articulate his views on critical issues facing the industry and its future. He

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has represented the BFSI and NBFC industry at various forums, including RBI, and before the finance ministry and other government bodies. He has also chaired committees at the FICCI, the Hire Purchase & Lease Association of India, the CII, the Finance Industry Development Council (FIDC) and the Indian Merchants Chamber in Mumbai.

Mr. D.K. Vyas, CEO, SREI BNP

Mr. D K Vyas, CEO of Srei BNP, has catapulted Srei BNP Paribas to a dominant leadership position in the infrastructure and construction equipment finance business, with over 33% market share, leading a team of over 1,000 professionals, and with distribution across the country. Demonstrating a judicious balance between growth and prudence in lending, the company under his leadership has registered a CAGR of over 35% over the past five years, disbursed over Rs. 10,010 crore in FY 11 and has one of the lowest NPA's in the industry.

Mr. V. S Rangan

Mr. V. Srinivasa Rangan is Executive Director at Housing Development Finance Corporation Limited (HDFC Ltd). He has been associated with the company since 1986. Mr. Rangan is a Graduate in Commerce, CWA and an Associate member of the Institute of Chartered Accountants of India with national ranking.

Mr Rangan has worked on international consulting assignments in housing finance in countries such as Ghana and the Maldives. He has also been a member of various committees constituted by the regulators in the areas of development of Mortgage Backed Securitisation and Secondary Mortgage Markets which includes RBI's Committee on Asset Securitisation and Mortgage Backed Securitisation and Technical Group formed by National Housing Bank for setting up of a Secondary Mortgage market institution in India.

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Mr Rangan was recently conferred the "Best CFO in the Financial Sector for 2010" by "The Institute of Chartered Accountants of India" (ICAI) for exceptional performance and achievements as CFO in the Financial Sector for the year 2010.

Mr. T.T Srinivasraghavan

Mr. T. T. Srinivasaraghavan is the Managing Director at Sundaram Finance Ltd. He served as Joint Managing Director of Sundaram Finance Ltd. Mr. Srinivasaraghavan serves as Chairman of Infreight Logistics Solutions Ltd. He serves as an Executive Director of Sundaram Finance Ltd, and Director of Sundaram BNP Paribas Home Finance Limited and Sundaram BNP Paribas Asset Management Co. Ltd. Mr. Srinivasaraghavan has a vast experience in the Banking and Finance sectors. He serves as President of International Finance & Leasing Association, United Kingdom. Mr. Srinivasaraghavan holds an M.B.A. in Finance Degree.

Executive Committee

Executive functions of the ISF are currently being discharged by team of Vinod Kothari Consultants P. Ltd. The team is led by Mr. Vinod Kothari and Ms. Vinita Nair.

Mr. Vinod Kothari

Mr. Kothari is a noted scholar on securitisation and has lectured all over the World on securitisation. Vinod Kothari has been consulted by regulators in various countries, and has structured transactions in several markets. Vinod Kothari is the author of several books on the subject including Securitisation: Financial Instruments of Future, Introduction to Securitization (co-author with Frank Fabozzi), Credit Derivatives, Structured Credit Trading and Guide to Structured Finance etc. For detailed profile of Vinod Kothari, see www.vinodkothari.com/profile

Ms. Vinita Nair

Ms. Vinita Nair is the Director of the Indian Securitisation Foundation. Her expertise lies in the field of Corporate Laws, Corporate Restructuring, Merger/Amalgamation and general corporate advisory matters, incorporation of companies including section 25 companies, FEMA matters and compliances. Vinita has also taken lectures on related topics. See full profile of Ms. Vinita Nair at - <http://vinodkothari.com/ms-vinita-nair/>

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