

GOODS & SERVICES TAX / IDT UPDATE – 39

Power to issue show cause notice

The Central Government vide [Circular No. 31/05/2018-GST dated 9th February, 2018](#) has clarified the monetary limits up to which the functions in relation to issue of show cause notices and orders can be exercised by the proper officers.

Sl. No.	Officer of Central Tax	Monetary limit of the amount of tax (including cess) not paid or short paid or erroneously refunded or input tax credit of respective taxes wrongly availed or utilized for issuance of show cause notices and passing of orders under sections 73 and 74 of CGST Act /section 20 of IGST Act.		
		Central tax	Integrated tax	Central tax and integrated tax
(1)	(2)	(3)	(4)	(5)
1.	Superintendent of Central Tax	Not exceeding Rs 10 lakhs	Not exceeding Rs. 20 lakhs	Not exceeding Rs. 20 lakhs
2.	Deputy or Assistant Commissioner of Central Tax	Above Rupees 10 lakhs and not exceeding Rs. 1 crore	Above Rs. 20 lakhs and not exceeding Rs. 2 crores	Above Rs. 20 lakhs and not exceeding Rupees 2 crores
3.	Additional or Joint Commissioner of Central Tax	Above Rs. 1 crore without any limit	Above Rs. 2 crores without any limit	Above Rs. 2 crores without any limit

Comment: This circular is very important as it sets limits to the powers to issue SCN. Any breach of these pecuniary limits renders the SCN 'null and void' and this cannot be cured but a new SCN alone must be issued to start the process of demand.

[\[Circular No. 31/05/2018-GST dated 9th February, 2018\]](#)

Clarifications regarding GST in respect of certain services

The Central Government vide [Circular No. 32/06/2018-GST dated 12th February 2018](#) has clarified certain issues regarding levy of GST on supply of services which are as follows:

S. No.	Issue	Clarification
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1.	<p>Is hostel accommodation provided by Trusts to students covered within the definition of Charitable Activities and thus, exempt under Sl. No. 1 of notification No. 12/2017-CT (Rate).</p>	<p>Hostel accommodation services do not fall within the ambit of charitable activities as defined in para 2(r) of notification No. 12/2017-CT (Rate). However, services by a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes, having declared tariff of a unit of accommodation below one thousand rupees per day or equivalent are exempt. Thus, accommodation service in hostels including by Trusts having declared tariff below one thousand rupees per day is exempt. [Sl. No. 14 of notification No. 12/2017-CT(Rate) refers]</p>
2.	<p>Is GST leviable on the fee/amount charged in the following situations/cases: –</p> <p>(1) A customer pays fees while registering complaints to Consumer Disputes Redressal Commission office and its subordinate offices. These fees are credited into State Customer Welfare Fund's bank account.</p> <p>(2) Consumer Disputes Redressal Commission office and its subordinate offices charge penalty in cash when it is required.</p> <p>(3) When a person files an appeal to Consumers Disputes Redressal Commission against order of District Forum, amount equal to 50% of total amount imposed by the District Forum or Rs 25000/- whichever is less, is required to be paid.</p>	<p>Services by any court or Tribunal established under any law for the time being in force are neither a supply of goods nor services. Consumer Disputes Redressal Commissions (National/ State/ District) may not be tribunals literally as they may not have been set up directly under Article 323B of the Constitution. However, they are clothed with the characteristics of a tribunal on account of the following: -</p> <p>(1) Statement of objects and reasons as mentioned in the Consumer Protection Bill state that one of its objects is to provide speedy and simple redressal to consumer disputes, for which a quasi judicial machinery is sought to be set up at District, State and Central levels.</p> <p>(2) The President of the District/ State/National Disputes Redressal Commissions is a person who has been or is qualified to be a District Judge, High Court Judge and Supreme Court Judge respectively.</p> <p>(3) These Commissions have been vested with the powers of a civil court under CPC for issuing summons, enforcing attendance of defendants/witnesses, reception of evidence, discovery/production of documents, examination of witnesses, etc.</p> <p>(4) Every proceeding in these Commissions is deemed to be judicial proceedings as per sections 193/228 of IPC.</p> <p>(5) The Commissions have been deemed to be a civil court under CrPC.</p> <p>(6) Appeals against District Commissions lie to State Commission while appeals against the State</p>

		<p>Commissions lie to the National Commission. Appeals against National Commission lie to the Supreme Court.</p> <p>In view of the aforesaid, it is hereby clarified that fee paid by litigants in the Consumer Disputes Redressal Commissions are not leviable to GST. Any penalty imposed by or amount paid to these Commissions will also not attract GST.</p>
3.	<p>Whether the services of elephant or camel ride, rickshaw ride and boat ride should be classified under heading 9964 (as passenger transport service) in which case, the rate of tax on such services will be 18% or under the heading 9996 (recreational, cultural and sporting services) treating them as joy rides, leviable to GST@ 28%?</p>	<p>Elephant/ camel joy rides cannot be classified as transportation services. These services will attract GST @ 18% with threshold exemption being available to small service providers. [Sl. No 34(iii) of notification No. 11/2017-CT(Rate) dated 28.06.2017 as amended by notification No. 1/2018-CT(Rate) dated 25.01.2018 refers]</p>
4.	<p>What is the GST rate applicable on rental services of self-propelled access equipment (Boom Scissors/ Telehandlers)? The equipment is imported at GST rate of 28% and leased further in India where operator is supplied by the leasing company, diesel for working of machine is supplied by customer and transportation cost including loading and unloading is also paid by the customer</p>	<p>Leasing or rental services, with or without operator, for any purpose are taxed at the same rate of GST as applicable on supply of like goods involving transfer of title in goods. Thus, the GST rate for the rental services in the given case shall be 28%, provided the said goods attract GST of 28%. IGST paid at the time of import of these goods would be available for discharging IGST on rental services. Thus, only the value added gets taxed. [Sl. No 17(vii) of notification No. 11/2017- CT(Rate) dated 28.6.17 as amended refers].</p> <p><i>Comment: please note that there should be no further confusion and rental of vehicles or equipment will be liable to 'rate of GST on supply' of them. There is no general rate on rental at 18%.</i></p>
5.	<p>Is GST leviable in following cases:</p> <p>(1) Hospitals hire senior doctors/ consultants/ technicians independently, without any contract of such persons with the patient; and pay them consultancy charges, without there being any employer employee relationship. Will such consultancy charges be exempt from GST? Will revenue take a stand that they are providing services to hospitals and not to</p>	<p>Health care services provided by a clinical establishment, an authorised medical practitioner or para-medics are exempt. [Sl. No. 74 of notification No. 12/2017- CT(Rate) dated 28.06.2017 as amended refers].</p> <p>(1) Services provided by senior doctors/ consultants/ technicians hired by the hospitals, whether employees or not, are healthcare services which are exempt.</p> <p>(2) Healthcare services have been defined to mean any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or</p>

	<p>patients and hence must pay GST?</p> <p>(2) Retention money: Hospitals charge the patients, say, Rs.10000/- and pay to the consultants/technicians only Rs. 7500/- and keep the balance for providing ancillary services which include nursing care, infrastructure facilities, paramedic care, emergency services, checking of temperature, weight, blood pressure etc. Will GST be applicable on such money retained by the hospitals?</p> <p>(3) Food supplied to the patients: Health care services provided by the clinical establishments will include food supplied to the patients; but such food may be prepared by the canteens run by the hospitals or may be outsourced by the Hospitals from outdoor caterers. When outsourced, there should be no ambiguity that the suppliers shall charge tax as applicable and hospital will get no ITC. If hospitals have their own canteens and prepare their own food; then no ITC will be available on inputs including capital goods and in turn if they supply food to the doctors and their staff; such supplies, even when not charged, may be subjected to GST.</p>	<p>pregnancy in any recognised system of medicines in India [Para 2(zg) of notification No. 12/2017-CT(Rate)]. Therefore, hospitals also provide healthcare services. The entire amount charged by them from the patients including the retention money and the fee/payments made to the doctors etc., is towards the healthcare services provided by the hospitals to the patients and is exempt.</p> <p>(3) Food supplied to the in-patients as advised by the doctor/nutritionists is a part of composite supply of healthcare and not separately taxable. Other supplies of food by a hospital to patients (not admitted) or their attendants or visitors are taxable.</p> <p><i>Comment: Care should be taken to charge tax on supplies to anyone 'other than patient' by the Clinical Establishment. And supplies directly 'by' third person to patient or attender are not exempt under this category.</i></p>
6.	Appropriate clarification may be issued regarding taxability of Cost Petroleum	As per the Production Sharing Contract (PSC) between the Government and the oil exploration & production contractors, in case of a commercial discovery of petroleum, the contractors are entitled to recover from the sale proceeds all expenses incurred in exploration, development, production and payment of royalty. Portion of the value of petroleum which the contractor is entitled to take in a year for recovery of these contract costs is called "Cost Petroleum". The relationship of the oil exploration and production contractors with the Government is not that of partners but that of licensor/lessor and licensee/lessee in terms of the Petroleum and Natural Gas Rules, 1959. Having

acquired the right to explore, exploit and sell petroleum in lieu of royalty and a share in profit petroleum, contractors carry out the exploration and production of petroleum for themselves and not as a service to the Government. Para 8.1 of the Model Production Sharing Contract (MPSC) states that subject to the provisions of the PSC, the Contractor shall have exclusive right to carry out Petroleum Operations to recover costs and expenses as provided in this Contract. The oil exploration and production contractors conduct all petroleum operations at their sole risk, cost and expense. Hence, cost petroleum is not a consideration for service to GOI and thus not taxable per se. However, cost petroleum may be an indication of the value of mining or exploration services provided by operating member to the joint venture, in a situation where the operating member is found to be supplying service to the oil exploration and production joint venture.

[Circular No. 32/06/2018-GST dated 12th February 2018]

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