

GOODS & SERVICES TAX / IDT UPDATE-138

Based on the recommendations of the GST Council made at its 45th meeting held on 17th September, 2021 at Lucknow, CBIC has issued clarifications regarding GST rates & classification of certain goods as well as clarifications regarding applicable GST rates & exemptions in respect of certain services vide *Circular No. 163/19/2021 GST dated 06.10.2021* and *Circular No. 164/20/2021-GST dated 06.10.2021* respectively.

Clarification on rate and classification for certain goods: Some of the significant clarifications made in *Circular No. 163/19/2021 GST dated 06.10.2021* are:

- ❖ Exemption from GST to fresh fruits and nuts covers only such products which are not frozen or dried or otherwise processed. Supply of dried fruits and nuts, falling under heading 0801 and 0802 attract GST @ 5%/12% as specified in the respective rate Schedules.
- ❖ With effect from 1.10.2021, tamarind and other seeds falling under heading 1209, (i.e. including tamarind seeds), if not supplied as seed for sowing, would attract GST @ 5%.
- ❖ Pure henna powder and henna leaves, having no additives is classifiable under tariff item 1404 90 90 and shall attract GST @ 5%. Further, the GST rate on mehndi paste in cones falling under heading 1404 and 3305 shall also be 5%.
- ❖ Flavored and coated *illaichi* is a value added product and falls under sub-heading 2106 and thus, attracts GST @ 18%.
- ❖ Exemption available to coconut, fresh or dried, whether or not shelled or peeled is not available to copra and it attracts GST @ 5% irrespective of use.
- ❖ Brewers' spent grain (BSG), dried distillers' grains with soluble [DDGS] and other such residues are classifiable under heading 2303, attracting GST @ 5%.

For detailed clarifications on the above aspects and other issues clarified by the CBIC namely, GST rate on pharmaceutical goods falling under heading 3006, applicability of GST rate of 12% on all laboratory reagents and other goods falling under heading 3822, requirement of original/ import essentiality certificate issued by the DGH on each inter-State stock transfer of goods imported at concessional GST rate for petroleum operations, GST rates on external batteries sold along with UPS systems/ inverter, specified renewable energy projects, fiber drums, whether corrugated or non-corrugated, please refer [*Circular No. 163/19/2021-GST dated 6th October, 2021.*](#)

Clarification on rate and exemption for certain services: The significant clarifications made in *Circular No. 164/20/2021 GST dated 06.10.2021* are:

- ❖ Service provided by way of cooking and supply of food, by cloud kitchens/central kitchens are covered under “restaurant service” and attract GST rate of 5% (without ITC).
- ❖ Where ice cream parlors sell already manufactured ice- cream and do not cook/prepare ice-cream for consumption like a restaurant, it is supply of ice cream as goods and not

as a service, even if the supply has certain ingredients of service. Accordingly, ice cream sold by a parlor or any similar outlet would attract GST at the rate of 18%.

- ❖ Services provided by any institutions/ NGOs under the central scheme of “Scholarships for students with Disabilities” where total expenditure is borne by the Government is exempt under GST under entry no. 72 of *Notification No. 12/2017-CT(Rate)*.
- ❖ As the satellite launch services supplied by New Space India Limited (NSIL), a wholly-owned Government of India Company under the administrative control of Department of Space (DoS), are similar to those supplied by ANTRIX Corporation Ltd, *Circular No. 2/1/2017-IGST dated 27.09.2017*, issued in respect of ANTRIX Corporation Ltd. is applicable to NSIL as well.

Circular No. 2/1/2017-IGST has clarified that place of supply (PoS) of satellite launch services supplied by ANTRIX Corporation Ltd to customers located outside India is outside India and such supply which meets the requirements of section 2(6) of IGST Act, constitutes export of service and shall be zero rated. If the service recipient is located in India, the satellite launch services would be taxable.

- ❖ Overloading charges at toll plazas would get the same treatment as given to toll charges.
- ❖ The expression “giving on hire” in Sl. No. 22 of the *Notification No. 12/2017-CT (Rate)* includes renting of vehicles. Accordingly, services where the said vehicles are rented or given on hire to State Transport Undertakings or Local Authorities are eligible for the said exemption irrespective of whether such vehicles are run on routes, timings as decided by the State Transport Undertakings or Local Authorities and under effective control of State Transport Undertakings or Local Authorities which determines the rules of operation or plying of vehicles.
- ❖ 28% rate [entry 34 (iiia)] applies on admission to a place having casino or race club [even if it provides certain other activities] or admission to a sporting event like IPL. On the other hand, entry 34 (iii), having a rate of 18%, covers all other cases of admission to amusement parks, or theme park etc or any place having joy rides, merry-go rounds, go- carting etc, whether indoor or outdoor, so long as no access is provided to a casino or race club. This clarification will also apply to entries 34(iii) and 34(iiia) as they existed prior to their amendment w.e.f 01.10.2021.
- ❖ The expression “food and food products” in Sl. No. 26 [Item 1(i)f] of *Notification No. 11/2017-CT (R)* excludes alcoholic beverages for human consumption. As such, in common parlance also alcoholic liquor is not considered as food. Accordingly, services by way of job work in relation to manufacture of alcoholic liquor for human consumption are not eligible for the GST rate of 5% prescribed under the said entry. GST Council recommended that such job work would attract GST at the rate of 18%.
- ❖ Service by way of grant of mineral exploration and mining rights most appropriately fall under service code 997337, i.e. “licensing services for the right to use minerals including its exploration and evaluation” and the intention has always been to tax this activity / supply at standard rate of 18%.

For detailed clarifications on the above aspects, please refer [*Circular No. 164 /20 /2021- GST dated 6th October, 2021.*](#)

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