

GOODS & SERVICES TAX / IDT UPDATE-156

Recent clarifications issued by CBIC

1. Clarifications regarding applicable GST rates and exemptions on certain services

The following issues have been clarified by the CBIC vide the [Circular No. 177/09/2022-TRU dt. 03.08.2022](#)

(i) Rate of GST applicable on supply of ice-cream by ice-cream parlours during the period from 01.07.2017 to 05.10.2021

[Circular No. 164/20/2021-GST dt. 06.10.2021](#) has clarified that ice-cream parlours do not have the character of restaurants as they sell already manufactured ice-creams. Hence ice cream sold by such parlours or outlets attracts GST @ 18% with ITC (and not 5% without ITC). It has now been clarified that past cases (from 01.07.2017 to 05.10.2021) of payment of GST on supply of ice-cream by ice-cream parlours @ 5% without ITC shall be treated as fully GST paid to avoid unnecessary litigation and since this decision is only to regularize the past practice, no refund of GST shall be allowed, if already paid at 18%. With effect from 6.10.2021, the ice Cream parlours are required to pay GST on supply of ice-cream at the rate of 18% with ITC.

(ii) Applicability of GST on application fee charged for entrance or the fee charged for issuance of eligibility certificate for admission or for issuance of migration certificate by educational institutions

The amount or fee charged for admission or entrance, or amount charged for application fee for entrance, or the fee charged from prospective students for issuance of eligibility certificate to them in the process of their entrance/admission to the educational institution is exempt under entry no 66 of [Notification No. 12/2017-CT\(R\) dt. 28.06.2017](#). Further, services supplied by an educational institution by way of issuance of migration certificate to the leaving or ex-students are also exempt under Sl. No. 66 of [Notification No. 12/2017-CT\(R\) dated 28.06.2017](#).

(iii) Whether storage or warehousing of cotton in baled or ginned form is covered under entry 24B of Notification No. 12/2017-CT(R) which exempted services by way of storage and warehousing of raw vegetable fibres such as cotton before 18.07.2022?

It has been clarified that service by way of storage or warehousing of cotton in ginned and or baled form was covered under entry 24B of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 in the category of raw vegetable fibres such as cotton. However, this exemption has been withdrawn w.e.f. 18.07.2022.

(iv) Whether exemption under Sl. No. 9B of Notification No. 12/2017- CT(R) dt. 28.06.2017 covers services associated with transit cargo both to and from

Nepal and Bhutan?

It has been clarified that exemption under Sl. No. 9B of the exemption notification shall cover services associated with transit cargo **both to and from** Nepal and Bhutan. It has been further clarified that movement of empty containers from Nepal and Bhutan, after delivery of goods there, is a service associated with the transit cargo to Nepal and Bhutan and is therefore covered by the exemption.

It has been provided that the cargo has to be transshipped / transited to Nepal and Bhutan, as per Regulations under the Customs Act read with the Treaties for Trade & Transit with Nepal & Bhutan in addition to ensuring that an electronic track and trace facility is in place. This facility uses container numbers to locate the cargo. Thus, it is verifiable that the empty container returning from Nepal or Bhutan is the same container which was used to deliver goods to Nepal or Bhutan.

(v) Applicability of GST on sanitation and conservancy services supplied to Army and other Central and State Government department

The exemption under entry 3& 3A of notification 12/2017-Central Tax (Rate) dated 28.06.2017 has been given on pure services & composite supplies procured by Central Government, State Government, Union Territories or local authorities for performing functions listed in the 11th and 12th Schedule of the Constitution.

It has been clarified that if such services are procured by Indian Army or any other Government Ministry/Department which does not perform any functions listed in the 11th and 12th Schedule of the Constitution, in the manner as a local authority does for the general public, the same are not eligible for exemption under Sl. No. 3 and 3A of [Notification No. 12/2017-CT\(R\) dated 28.06.2017](#).

(vi) Whether the activity of selling of space for advertisement in souvenirs published in the form of books by different institutions/organizations like educational institutions, social, cultural and religious organizations including clubs etc., is eligible for concessional rate of 5%?

As per serial number (i) of entry 21 of notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 selling of space for advertisement in print media attracts GST @ 5%. The term 'print media' has been defined in clause (zt) of notification No.12/2017-Central Tax (Rate) dated 28.06.2017 to mean "*book as defined in sub-section (1) of section 1 of the Press and Registration of Books Act, 1867 (25 of 1867), but does not include business directories, yellow pages and trade catalogues which are primarily meant for commercial purposes.*"

Further, sub-section (1) of section 1 of the Press and Registration of Books Act, 1867 defines 'book to "*include every volume, part or division of a volume, and pamphlet, in any language and every sheet of music, map, chart or plan separately printed*". It therefore appears that 'book' has been defined in the Press and Registration of Books Act, 1867 in an inclusive manner with a wide ambit which would cover souvenir book also.

Accordingly, it has been clarified that sale of space for advertisement in souvenir book is covered under serial number (i) of entry 21 of notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 and attracts GST @ 5%.

(vii) Taxability and applicable rate of GST on transport of minerals from mining pit head to railway siding, beneficiation plant etc., by vehicles deployed with driver for a specific duration of time

Usually in such cases the vehicles such as tippers, dumpers, loader, trucks etc., are given on hire to the mining lease operator. Expenses for fuel are generally borne by the recipient of service. The vehicles with driver are at the disposal of the mining lease operator for transport of minerals within the mine area (mining pit to railway siding, beneficiation plant etc.) as per his requirement during the period of contract.

Such services are nothing but “rental services of transport vehicles with operator” which fall under heading 9966 and attract GST @ 18% under Sr. No. 10 part (iii) of notification No. 11/2017-Central Tax (Rate) dated 28.06.2017. The person who takes the vehicle on rent defines how and when the vehicles will be operated, determines schedules, routes and other operational considerations. The person who gives the vehicles on rent with operator cannot be said to be supplying the service by way of transport of goods.

It has been clarified that renting of trucks and other freight vehicles with driver for a period of time is a service of renting of transport vehicles with operator falling under Heading 9966 and not service of transportation of goods by road. This being so, it is not eligible for exemption under Sl. No. 18 of notification No. 12/2017-Central Tax (Rate) dated 28.06.2017. On such rental services of goods carriages where the cost of fuel is included in the consideration charged from the recipient of service, GST rate has been reduced from 18% to 12% with effect from 18.07.2022. Prior to 18.07.2022, it attracted GST at the rate of 18%.

(viii) Whether location charges or preferential location charges (PLC) collected in addition to the lease premium for long term lease of land constitute part of the lease premium or of upfront amount charged for long term lease of land and are eligible for the same tax treatment?

It has been clarified that location charges or preferential location charges (PLC) paid upfront in addition to the lease premium for long term lease of land constitute part of upfront amount charged for long term lease of land and are eligible for the same tax treatment, and thus eligible for exemption under Sl. No. 41 of notification no. 12/2017-Central Tax (Rate) dated 28.06.2017.

(ix) Applicability of GST on payment of honorarium to the Guest Anchor

It has been clarified that services provided by the guest anchors invited by the TV channels for participating in their shows in lieu of honorarium, attracts GST liability. However, guest anchors whose aggregate turnover in a financial year does not exceed Rs 20 lakhs (Rs 10 lakhs in case of special category states) shall not be liable to take registration and pay GST.

(x) Whether the additional toll fees collected in the form of higher toll charges from vehicles not having fastag is exempt from GST under entry 23 of notification No.12/2017-Central Tax (Rate) dated 28th June, 2017?

It has been clarified that additional fee collected in the form of higher toll charges from vehicles not having Fastag is essentially payment of toll for allowing access to

roads or bridges to such vehicles and may be given the same treatment as given to toll charges.

Further, earlier also, Circular No. 164/20/2021-GST dated 06.10.2021 has clarified that overloading charges collected at toll plazas in the form of higher toll would get the same treatment as given to toll charges.

(xi) Applicability of GST on services in form of Assisted Reproductive Technology (ART)/ In vitro fertilization (IVF)

Health care services provided by a clinical establishment, an authorized medical practitioner or paramedics are exempt under Sl. No. 74 of notification No. 12/2017-Central Tax (Rate) dated 28.06. 2017. It has been clarified that abnormality/disease/ailment of infertility is treated using ART procedure such as IVF and accordingly services by way of IVF are also covered under the definition of health care services for the purpose of exemption notification.

(xii) Whether sale of land after levelling, laying down of drainage lines etc., is taxable under GST?

It has been clarified that sale of a land after some development such as levelling, laying down of drainage lines, water lines, electricity lines, etc., is also a sale of land and is covered by Sr. No. 5 of Schedule III and thus, does not attract GST.

However, it may be noted that any service provided for development of land, like levelling, laying of drainage lines (as may be received by developers) shall attract GST at applicable rate for such services.

(xiii) When services are provided by a non-body corporate to a body corporate by way of renting of any motor vehicle for transport of passengers, whether RCM is applicable on service of transportation of passengers (Heading 9964) or on renting of motor vehicle designed to carry passengers (Heading 9966)?

It has been clarified that where the body corporate hires the motor vehicle (for transport of employees etc.) for a period of time, during which the motor vehicle shall be at the disposal of the body corporate, the service would fall under Heading 9966, and the body corporate shall be liable to pay GST on the same under RCM. It may be seen that reverse charge thus would apply on act of renting of vehicles by body corporate and in such a case, it is for the body corporate to use in the manner as it likes subject to agreement with the person providing vehicle on rent.

However, where the body corporate avails the passenger transport service for specific journeys or voyages and does not take vehicle on rent for any particular period of time, the service would fall under Heading 9964 and the body corporate shall not be liable to pay GST on the same under RCM.

(xiv) Whether hiring of vehicles by firms for transportation of their employees to and from work is exempt under Sr. No. 15(b) of Notification No. 12/2017-CT(R) transport of passengers by non-air conditioned contract carriage?

Sr. No. 15(b) of [Notification No. 12/2017-CT\(R\) dated 28.06.2017](#) exempts

“transport of passengers, with or without accompanied belongings, by non-air conditioned contract carriage, other than radio taxi, excluding tourism, conducted tour, charter or hire.

It is clarified that ‘charter or hire’ excluded from the above exemption entry is charter or hire of a motor vehicle for a period of time, where the renter defines how and when the vehicles will be operated, determining schedules, routes and other operational considerations.

Thus, the said exemption would apply to passenger transportation services by non-air conditioned contract carriage falling under Heading 9964 where according to explanatory notes, transportation takes place over pre-determined route on a pre-determined schedule. The exemption shall not be applicable where contract carriage is hired for a period of time, during which the contract carriage is at the disposal of the service recipient and the recipient is thus free to decide the manner of usage (route and schedule) subject to conditions of agreement entered into with the service provider.

(xvi) Whether supply of service of construction, supply, installation and commissioning of dairy plant on turn-key basis constitutes a composite supply of works contract service and is eligible for concessional rate of GST prior to 18.07.2022?

It has been clarified that a contract of the nature described here for construction, installation and commissioning of a dairy plant constitutes supply of works contract. Dairy plant which comes into existence as a result of such contracts is an immovable property. It has also been clarified that such works contract services were eligible for concessional rate of 12% GST under serial number 3(v)(f) of notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 prior to 18.07.2022. With effect from 18.07.2022, such works contract services would attract GST at the rate of 18% in view of amendment carried out in notification No. 11/2017-Central Tax (Rate) vide notification No. 03/2022-Central Tax (Rate).

(xvii) Applicability of GST on tickets of private ferry used for passenger transportation

As per Sl. No 17 (d) of notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, “transportation of passengers by public transport, other than predominantly for tourism purpose, in a vessel between places located in India” is exempted.

It has been clarified that this exemption would apply to tickets purchased for transportation from one point to another irrespective of whether the ferry is owned or operated by a private sector enterprise or by a PSU/government. It has been further clarified that the expression ‘public transport’ used in the exemption notification only means that the transport should be open to public; it can be privately or publicly owned. Only exclusion is on transportation which is predominantly for tourism, such as services which may combine with transportation, sightseeing, food and beverages, music, accommodation such as in shikara, cruise etc.

[Circular No. 177/09/2022-TRU dt. 03.08.2022](#)

2. Clarification on GST applicability on liquidated damages, compensation and penalty arising out of breach of contract or other provisions of law

(i) Liquidated damages

Where the amount paid as 'liquidated damages' is an amount paid only to compensate for injury, loss or damage suffered by the aggrieved party due to breach of the contract and there is no agreement, express or implied, by the aggrieved party receiving the liquidated damages, to refrain from or tolerate an act or to do anything for the party paying the liquidated damages, in such cases liquidated damages are mere a flow of money from the party who causes breach of the contract to the party who suffers loss or damage due to such breach. Such payments do not constitute consideration for a supply and are not taxable.

If a payment constitutes a consideration for a supply, then it is taxable irrespective of by what name it is called; it must be remembered that a "consideration" cannot be considered *de hors* an agreement/contract between two persons wherein one person does something for another and that other pays the first in return. If the payment is merely an event in the course of the performance of the agreement and it does not represent the 'object', as such, of the contract then it cannot be considered 'consideration'.

Amounts paid for acceptance of late payment, early termination of lease or for pre-payment of loan or the amounts forfeited on cancellation of service by the customer as contemplated by the contract as part of commercial terms agreed to by the parties, constitute consideration for the supply of a facility, namely, of acceptance of late payment, early termination of a lease agreement, of pre-payment of loan and of making arrangements for the intended supply by the tour operator respectively. Therefore, such payments, even though referred to as fine or penalty, are actually payments that amount to consideration for supply, and are subject to GST, in cases where the principal supply is taxable. Since these supplies are ancillary to the principal supply for which the contract is signed, they shall be eligible to be assessed as the principal supply. Hence, such payments will not be taxable if the principal supply is exempt.

(ii) Compensation for cancellation of coal blocks

Due to cancellation of coal block/mine allocations on the order of Hon'ble Supreme Court, the prior allottees were given compensation by the Government. There was no contract/ agreement between the prior allottees and the Government that the previous allottees shall agree to or tolerate cancellation of the coal blocks allocated to them if the Government pays compensation to them. The allottees had no option but to accept the cancellation. The compensation was given to them for such cancellation, not under a contract between the allottees and the Government, but under the provisions of the statute and in pursuance of the Supreme Court Order. Therefore, it cannot be said that the prior allottees of the coal blocks supplied a service to the Government by way of agreeing to tolerate the cancellation of the allocations made to them by the Government or that the compensation paid by the Government was a consideration for such service. Therefore, the compensation paid for cancellation of coal blocks pursuant to the order of the Supreme Court in the

above case was not taxable.

(iii) Cheque dishonor fine/ penalty

The fine or penalty that the supplier or a banker imposes, for dishonour of a cheque, is a penalty imposed not for tolerating the act or situation but a fine, or penalty imposed for not tolerating, penalizing and thereby deterring and discouraging such an act or situation. Therefore, cheque dishonor fine or penalty is not a consideration for any service and not taxable.

(iv) Penalty imposed for violation of laws

Penalties imposed for violation of laws cannot be regarded as consideration charged by Government or a Local Authority for tolerating violation of laws. Laws are not framed for tolerating their violation. They stipulate penalty not for tolerating violation but for not tolerating, penalizing and deterring such violations. There is no agreement between the Government and the violator specifying that violation would be allowed or permitted against payment of fine or penalty. There cannot be such an agreement as violation of law is never a lawful object or consideration.

The service tax Education Guide issued in 2012 on advent of negative list regime of services explained that fines and penalties paid for violation of provisions of law are not considerations as no service is received in lieu of payment of such fines and penalties. It was also clarified vide Circular No. 192/02/2016-Service Tax, dated 13.04.2016 that fines and penalty chargeable by Government or a local authority imposed for violation of a statute, bye-laws, rules or regulations are not leviable to service tax. The same holds true for GST also.

(v) Forfeiture of salary or payment of bond amount in the event of the employee leaving the employment before the minimum agreed period

The provisions for forfeiture of salary or recovery of bond amount in the event of the employee leaving the employment before the minimum agreed period are incorporated in the employment contract. The said amounts are recovered by the employer not as a consideration for tolerating the act of such premature quitting of employment but as penalties for dissuading the non-serious employees from taking up employment and to discourage and deter such a situation. The employee does not get anything in return from the employer against payment of such amounts. Therefore, such amounts recovered by the employer are not taxable as consideration for the service of agreeing to tolerate an act or a situation.

(vi) Compensation for not collecting toll charges during the period 08.11.2016 to 01.12.2016

During the period from 8.11.2016 to 1.12.2016, the service of access to a road or bridge continued to be provided without collection of toll from users. Consideration came from the project authority. The fact that for this period, for the same service, consideration came from a person other than the actual user of service does not mean that the service has changed.

(vii) Late payment surcharge or fee

The facility of accepting late payments with interest or late payment fee, fine or

penalty is a facility granted by supplier naturally bundled with the main supply. Since it is ancillary to and naturally bundled with the principal supply it should be assessed at the same rate as the principal supply.

(viii) Fixed Capacity charges for Power

The minimum fixed charges/capacity charges and the variable/energy charges are charged for sale of electricity and are not taxable as electricity is exempt from GST. Power purchase agreements which ensure assured supply of power to State Electricity Boards/DISCOMS are ancillary arrangements, the contract is essentially for supply of electricity.

(ix) Cancellation charges

Cancellation fee can be considered as the charges for the costs involved in making arrangements for the intended supply and the costs involved in cancellation of the supply, such as in cancellation of reserved tickets by the Indian Railways. Facilitation supply of allowing cancellation of an intended supply against payment of cancellation fee or retention or forfeiture of a part or whole of the consideration or security deposit should be assessed as the principal supply. For example, cancellation charges of railway tickets for a class would attract GST at the same rate as applicable to the class of travel.

The amount forfeited in the case of non-refundable ticket for air travel or security deposit, or earnest money forfeited in case of the customer failing to avail the travel, tour operator or hotel accommodation service or such other intended supplies should be assessed at the same rate as applicable to the service contract, say air transport or tour operator service, or other such services.

However, forfeiture of earnest money by a seller in case of breach of 'an agreement to sell' an immovable property by the buyer or such forfeiture by Government or local authority in the event of a successful bidder failing to act after winning the bid for allotment of natural resources, is a mere flow of money, as the buyer or the successful bidder does not get anything in return for such forfeiture of earnest money. Such payments being merely flow of money are not a consideration for any supply and are not taxable.

[Circular No. 178/10/2022-GST dt. 03.08.2022](#)

3. Clarification regarding GST rates & classification (goods) based on the recommendations of the GST Council in its 47th meeting

(i) Electric vehicles whether or not fitted with a battery pack attract GST rate of 5%

Electrically operated vehicle including three wheeled electric vehicle means vehicle that run solely on electrical energy derived from an external source or from electrical batteries. Therefore, the fitting of batteries cannot be considered as a concomitant factor for defining a vehicle as an electrically operated. In view of the above, it is clarified that electrically operated vehicle is to be classified under HSN 8703 even if the battery is not fitted to such vehicle at the time of supply and thereby attract GST at the rate of 5% in terms of entry 242A of Schedule I of notification No. 1/2017-

Central Tax (Rate).

(ii) Stones otherwise covered in S. No. 123 of Schedule-I (such as Napa stones), which are not mirror polished, are eligible for concessional rate under said entry

Napa Stone is a variety of dimensional limestone, which is a brittle stone and cannot be subject to extensive mirror polishing. Currently, S. No. 123 of Schedule-I prescribes GST rate of 5% for 'Ecaussine and other calcareous monumental or building stone; alabaster [other than marble and travertine], other than mirror polished stone which is ready to use.' However, being brittle in nature, stones like Napa Stone, even though ready for use, are not subject to extensive polishing. Therefore, such minor polished stones do not qualify as mirror polished stones. Therefore, it is clarified that S. No. 123 in schedule-I to the notification No. 1/2017-Central Tax (Rate) dated 28.06.2017 covers minor polished stones.

(iii) Mangoes under CTH 0804 including mango pulp, but other than fresh mangoes and sliced, dried mangoes shall attract GST at 12% rate

It is clarified that mangoes, sliced and dried, falling under 0804 are chargeable to a concessional rate of 5%, while all other forms of dried mango, including Mango pulp, shall attract GST at the rate of 12%. Fresh mangoes, falling under heading 0804, shall continue to remain exempt from GST.

(iv) Treated sewage water attracts Nil rate of GST

In general, water, falling under heading 2201, with certain specified exclusions, is exempt from GST vide entry at S. No. 99 of notification No. 2/2017-Central Tax (Rate), dated the 28th June, 2017. Accordingly, it is clarified that supply of treated sewage water, falling under heading 2201, is exempt under GST. Further, to clarify the issue, the word 'purified' is being omitted from the above-mentioned entry vide notification No. 7/2022-Central Tax (Rate), dated the 13th July, 2022. Treated sewage water was not meant to be construed as falling under "purified" water for the purpose of levy of GST.

(v) Nicotine Polacrilex Gum attracts a GST rate of 18%

It is clarified that Nicotine Polacrilex gum which is commonly applied orally and is intended to assist tobacco use cessation is appropriately classifiable under tariff item 2404 91 00 with applicable GST rate of 18% [Sl. No. 26B in Schedule III of notification no. 1/2017-Central Tax (Rate), dated the 28th June, 2017].

(vi) Fly ash bricks and aggregate - condition of 90% fly ash content applied only to fly ash aggregate, and not fly ash bricks

Hitherto, as per entry at S. No. 176B of the Schedule II the items of description "Fly ash bricks or fly ash aggregate with 90% or more fly ash content; Fly ash blocks" attracted a GST rate of 12%. It is clarified that the condition of 90% or more fly ash content applied only to Fly Ash Aggregates and not to fly ash bricks and fly ash blocks. Further, with effect from 18th July, 2022 the condition is omitted from the

description.

(vii) Applicability of GST on by-products of milling of Dal/ Pulses such as Chilka, Khanda and Churi

While milling of pulses/ dal, a wide range of by-products such as chilka, khanda, churi, among others, are obtained which are used as cattle feed by dairy industry for better palatability and higher nutritive value. The mentioned by-products are required to go through varying degrees of processing in order to customize the colour, size, aroma, nutrition, purity, etc., of the cattle feed so produced, depending upon the dietary and nutritional requirement of the cattle and the budget availability of the customer(s).

It is hereby clarified that the subject goods which *inter alia* is used as cattle feed ingredient are appropriately classifiable under heading 2302 and attract GST at the rate of 5% vide S. No. 103A of Schedule-I of notification no. 1/2017-Central Tax (Rate), dated the 28th June, 2017 and that for the past, the matter would be regularized on as is basis.

[Circular No. 179/11/2022-GST dt. 03.08.2022](#)

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