

TAX INFO

Dated 05/08/2022

Latest update on GST Law: Summary of **Circular No. 177/09/2022-TRU dated 3rd August, 2022.**

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16 issues have been examined by GST Council and the issue-wise clarifications as recommended by the GST Council are as below:

1. Rate of GST applicable on supply of ice-cream by ice-cream parlours during the period from 01.07.2017 to 05.10.2021.

It was clarified vide circular 164/20/2021-GST dated 06.10.2021 that ice cream parlours sell already manufactured ice-cream and they do not have a character of a restaurant and hence, ice cream sold by a parlour or any similar outlet attracts standard rate of GST @ 18% with ITC. GST at 18% is levied on supply of ice-cream by ice-cream parlours with effect from 06.10.2021.

However, it is clarified that prior to 06.10.2021, the past cases 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. Since the 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.

2. 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 educational services supplied by educational institutions to its students are exempt from GST vide Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017. Accordingly, it is clarified that the amount or fee charged from prospective students for entrance or admission, or for issuance of eligibility certificate to them in the process of their entrance/admission as well as the fee charged for issuance of migration certificates by educational institutions to the leaving or ex-students is covered by exemption under Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 and thus are exempt from levy of GST.

3. Whether storage or warehousing of cotton in baled or ginned form is covered under Notification No. 12/2017-Central Tax (Rate) which exempted services by way of storage and warehousing of raw vegetable fibres such as cotton before 18.07.2022.

Prior to 18.07.2022, Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 exempted the services by way of storage and warehousing of, inter alia, raw vegetable fibers such as cotton, flax, jute etc. It is clarified that service by way of storage or warehousing of cotton in ginned and or baled form was covered under 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.

4. Whether exemption under Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 covers services associated with transit cargo both to and from Nepal and Bhutan.

It is clarified that exemption under Notification 12/2017- Central Tax (Rate) covers services associated with transit cargo both **to and from** Nepal and Bhutan. The 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. Thus, GST is exempt on transportation of empty containers returning from Nepal and Bhutan after delivery of transit cargo, to India.

5. Applicability of GST on sanitation and conservancy services supplied to Army and other Central and State Government departments.

The exemption under 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 is 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, in the manner as a local authority does for the general public, the same are not eligible for exemption under Notification 12/2017- Central Tax (Rate).

6. Whether the activity of selling of space for advertisement in souvenirs is eligible for concessional rate of 5%.

As per 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 Notification No.12/2017-Central Tax (Rate) dated 28.06.2017 as "book" as defined in Press and Registration of Books Act, 1867. It 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. Thus, GST @ 5% is applicable on 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.

7. 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.

Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 exempts transport of goods by road except by a GTA. Usually, 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.

It is clarified that such 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 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%.

8. 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.

Allowing choice of location of plot is integral part of supply of long-term lease of plot and therefore, location charge is nothing but part of consideration charged for long term lease of plot. Being charged upfront along with the upfront amount for the lease, the same is exempt. It is 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 Notification no. 12/2017- Central Tax (Rate) dated 28.06.2017. PLC collected in addition to the lease premium for long term lease of land do not constitute part of the lease premium.

9. Applicability of GST on payment of honorarium to the Guest Anchors.

TV channels invite guest anchors for participating in their shows and pays remuneration to them in the form of honorarium. Some of the guest anchors have requested payment of GST @ 18% on the honorarium paid to them for such appearances. It is clarified that supply of all goods & services are taxable unless exempt or declared as 'neither a supply of goods nor a supply of service'. Services provided by the guest anchors in lieu of honorarium attract GST liability.

10. Whether the additional toll fees collected in the form of higher toll charges from vehicles not having fastag is exempt from GST.

It is 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. Notification No.12/2017- Central Tax (Rate) dated 28th June, 2017 exempts service by way of access to a road or a bridge on payment of toll charges. Thus, the additional amount collected from the users of the road not having a functional Fastag, is in the nature of Toll Charges and should be treated as additional toll charges which are exempted under GST.

11. 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 para-medics are exempt under Notification No. 12/2017- Central Tax (Rate) dated 28.06. 2017. The abnormality/disease/ailment of infertility is treated using ART procedure such as IVF. It is clarified that services by way of IVF are also covered under the definition of health care services for the purpose of above exemption notification. Thus, GST is exempted on services by way of Assisted Reproductive Technology (ART) procedures such as In vitro fertilization (IVF).

12. Whether sale of land after levelling, laying down of drainage lines etc., is taxable under GST.

As per Schedule III of the CGST Act, 2017, 'sale of land' is neither a supply of goods nor a supply of services, therefore, sale of land does not attract GST. Land may be sold either as it is or after some development such as levelling, laying down of drainage lines, water lines, electricity lines, etc. It is clarified that sale of such developed land is also sale of land and is covered by Schedule III of the CGST Act, 2017 and accordingly does not attract GST.

13. Situations in which corporate recipients are liable to pay GST on renting of motor vehicles designed to carry passengers.

In case of services provided by a non-body corporate to a body corporate by way of renting of any motor vehicle for transport of passengers, tax is required to be paid by the body corporate under RCM. Renting of motor vehicle with operator for transport of passengers means the renting of motor vehicle for transport of passengers for a period of time where the renter defines how and when the vehicles will be operated, determining schedules, routes and other operational considerations. "Passenger transport services" on the other hand covers passenger transport services over pre-determined routes on pre-determined schedules. Therefore, a clear distinction exists in service of transport of passengers and renting of a vehicle that is used for transport. Accordingly, it is 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 body corporate shall be liable to pay GST on the same under RCM. RCM, 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 and does not take vehicle on rent for any particular period of time, the body corporate shall not be liable to pay GST on the same under RCM.

14. Whether hiring of vehicles by firms for transportation of their employees to and from work is exempt under Notification No. 12/2017-Central Tax (Rate)- transport of passengers by non-air conditioned contract carriage.

The 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 is not exempt. The exemption under Notification No. 12/2017-Central Tax (Rate) would apply to passenger transportation services by non-air conditioned contract carriages where 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.

15. 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 is clarified that a contract of the nature described here for construction, installation and commissioning of a dairy plant constitutes supply of works contract and such works contract services were eligible for concessional rate of 12% GST under 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).

16. Applicability of GST on tickets of private ferry used for passenger transportation.

As per 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 is 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 because, 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, accommodation such as in shikara, cruise etc. Thus, NO GST is applicable on private ferry tickets which are used as means of transport from one island to another in Andaman and Nicobar Island.

Suresh Aggarwal, Advocate

Compliance & Litigation under GST

Address: House No. 54, Pocket A-3, Sector-5, Rohini- 110085

Phone: 91-9810032846; 011 - 45131427

Email: sureshagg@gmail.com

Website: <http://www.sureshtaxation.com>