Law and Provisions under CGST

Chapter 3 – LEVY AND COLLECTION OF TAX

3.0 LEVY AND COLLECTION OF TAX – The provisions related to Levy and Collection of Tax - Scope of supply, Tax liability on composite and mixed supplies, Levy and collection, Composition levy and Power to grant exemption from tax are covered under Chapter III of the CGST Act 2017 from Section 7 to Section 11.

The Central Government has appointed the 22nd day of June, 2017, as the date on which the provisions of sections 10 of the said Act shall come into force vide Notification No. 01/2017-Central Tax, dated. 19-06-2017.

The Central Government has appointed the 1st Day of July, 2017, as the date on which the provisions of sections 7 to 9, 11 of the CGST Act 2017, shall come into force vide Notification No. 09/2017-Central Tax,dt. 28-06-2017.

Chapter III of the CGST Act 2017 - Levy and Collection of Tax	
Section	**Particulars**
Section 7	Scope of supply
Schedule I	Activities to be treated as supply even if made without consideration
Schedule II	Activities [1][or transactions] to be treated as supply of goods or supply of services
Schedule III	Activities or transactions which shall be treated neither as a supply of goods nor a supply of services
Section 8	Tax liability on composite and mixed supplies
Section 9	Levy and collection
Section 10	Composition levy
Section 11	Power to grant exemption from tax

CGST Rules 2017 - Levy and Collection of Tax	
Rules	**Particulars**
Rule 3	Intimation for composition levy
Rule 4	Effective date for composition levy
Rule 5	Conditions and restrictions for composition levy
Rule 6	Validity of composition levy
Rule 7	Rate of tax of the composition levy

Forms - Composition Levy	
Forms	**Particulars**
FORM GST CMP-01	Intimation to pay tax under section 10 (composition levy)
FORM GST CMP-02	Intimation to pay tax under section 10 (composition levy)
FORM GST CMP-03	Intimation of details of stock on date of opting for composition levy
FORM GST CMP-04	Intimation/Application for Withdrawal from Composition Levy
FORM GST CMP-05	Notice for denial of option to pay tax under section 10
FORM GST CMP-06	Reply to the notice to show cause
FORM GST CMP-07	Order for acceptance / rejection of reply to show cause notice
FORM GST CMP-08	Statement for payment of self-assessed tax

3.1 Time of supply of goods. [Section 7]

<table>
<tr>
<td>Section 7(1)</td>
<td>01.07.2017 to till date</td>
<td>The expression “supply” for the purposes of CGST Act

For the purposes of this Act, the expression “supply” includes–

<table>
<tr><td>(a)</td><td>The expression “supply” is inclusive term

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;</td></tr>
<tr><td>[1][(aa)</td><td>The expression “supply” includes the activities or transactions, by a person, other than an individual, i.e. a club, trust or such other organisations/ associations to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration.
the activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration.</td></tr>
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			Explanation.- For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another;]
		(b)	**The expression "supply" includes import of services for a consideration** import of services for a consideration whether or not in the course or furtherance of business [2][and];
		(c)	**The expression "supply" includes the activities specified in Schedule I, made or agreed to be made without a consideration** the activities specified in Schedule I, made or agreed to be made without a consideration; [3][****]
		(d)	[4][*****]

1. **I**nserted and shall be deemed to have been inserted with effect from the 1st day of July, 2017 vide Section 108 of the **Finance Act, 2021 (NO. 13 OF 2020)** which has come into force on 1st January 2022 vide Notification No. 39/2021 – Central Tax dated 21st December, 2021.
2. Inserted with effect from the 1st day of July, 2017 vide clause (a) (i) of Section 3 of the Central Goods and Services Tax (Amendment) Act, 2018 and shall always be deemed to have been inserted which comes into force on 1st February 2019 vide Notification No. 02/2019 – Central Tax dated 29th January, 2019.
3. Omitted with effect from the 1st day of July, 2017, The word "and" vide clause (a) (ii) of Section 3 of the Central Goods and Services Tax (Amendment) Act, 2018 and shall always be deemed to have been omitted which comes into force on 1st February 2019 vide Notification No. 02/2019 – Central Tax Dated 29th January, 2019.
4. Omitted with effect from the 1st day of July, 2017, The clause "(d) the activities to be treated as supply of goods or

		supply of services as referred to in Schedule II." Vide clause (a) (iii) of Section 3 of the Central Goods and Services Tax (Amendment) Act, 2018 and shall always be deemed to have been omitted which comes into force on 1st February 2019 vide Notification No. 02/2019 – Central Tax dated 29th January, 2019.
Section [1][7(1A)	01.07.2017 to till date	**Activities or transactions to be treated either as supply of goods or supply of services** where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.;] 1. Inserted with effect from the 1st day of July, 2017 vide clause (b) of Section 3 of the Central Goods and Services Tax (Amendment) Act, 2018 and shall always be deemed to have been inserted which comes into force on 1st February 2019 vide Notification No. 02/2019 – Central Tax dated 29th January, 2019.
Section 7(2)	01.07.2017 to till date	**Activities or transactions which shall be treated neither as a supply of goods nor a supply of services.** Notwithstanding anything contained in sub-section (1),— (a) activities or transactions specified in Schedule III; or (b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified[$] by the Government on the recommendations of the Council, shall be treated neither as a supply of goods nor a supply of services. $. The Central Government has notified that the following activities or transactions undertaken by the Central Government or State Government or any local authority in which they are engaged as public authority, shall be treated neither as a supply of goods nor a supply of service, namely:- "Services by way of any activity in relation to a

			function entrusted to a Panchayat under article 243G of the Constitution." Vide Notification No. 14/2017-Central Tax (Rate) dated 28th June, 2017 effective from 1st day of July, 2017. Further, the Central Government has amended the Notification No.14/2017- Central Tax (Rate), dated the 28th June, 2017, vide Notification No. 16/2018-Central Tax (Rate) dated 26th July, 2018 effective from 27th of July, 2018.namely:- In the said notification, in the first paragraph,- (i) after the words "State Government", the words "or Union territory" shall be inserted; (ii) after the word "Constitution", the words "or to a Municipality under article 243W of the Constitution" shall be inserted. $ The Central Government, on the recommendations of the Council has notified that the following activities or transactions undertaken by the State Governments in which they are engaged as public authorities, shall be treated neither as a supply of goods nor a supply of service, namely:- "Service by way of grant of alcoholic liquor licence, against consideration in the form of licence fee or application fee or by whatever name it is called." Vide Notification No. 25/2019-Central Tax (Rate) dated 30th September, 2019. Please refer Circular No. 121/40/2019-GST dated 11th October, 2019 wherein it has been clarified that GST Council has decided in the 37th meeting held on 20.09.2019, to clarify that this special dispensation applies only to supply of service by way of grant of liquor licenses by the State Governments as an agreement between the Centre and States and has no applicability or precedence value in relation to grant of other licenses and privileges for a fee in other situations, where GST is payable.
Section 7(3)	01.07.2017 to till date	**Power to the Government to specify the transactions that are to be treated as a supply of goods and not as a supply of services or a supply of services and not as a supply of goods.** Subject to the provisions of [1][sub-sections (1), (1A) and (2)], the Government may, on the recommendations of the	

		Council, specify, by notification, the transactions that are to be treated as— (a) a supply of goods and not as a supply of services; or (b) a supply of services and not as a supply of goods. 1. Substituted the words, brackets and figures "sub-sections (1) and (2)" with effect from the 1st day of July, 2017 vide clause (c) of Section 3 of the Central Goods and Services Tax (Amendment) Act, 2018 which comes into force on 1st February 2019 vide Notification No. 02/2019 – Central Tax dated 29th January, 2019.

SCHEDULE I

[See section 7]

ACTIVITIES TO BE TREATED AS SUPPLY EVEN IF MADE WITHOUT CONSIDERATION

1. Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.

2. Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business:

Provided that gifts not exceeding fifty thousand rupees in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.

3. Supply of goods—

(a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or

(b) by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.

4. Import of services by a [1][person] from a related person or from any of his other establishments outside India, in the course or furtherance of business.

Notes

1 Substituted for the words “taxable person”, w.e.f. 01.02.2019 vide Section 30 of Central Goods and Services Tax (Amendment) Act, 2018 which comes into force vide Notification No. 02/2019 – Central Tax dated 29th January, 2019.

SCHEDULE II

[See section 7]

ACTIVITIES [1][OR TRANSACTIONS] TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES

1. Transfer

(a) any transfer of the title in goods is a supply of goods;

(b) any transfer of right in goods or of undivided share in goods without the transfer of title thereof, is a supply of services;

(c) any transfer of title in goods under an agreement which stipulates that property in goods shall pass at a future date upon payment of full consideration as agreed, is a supply of goods.

2. Land and Building

(a) any lease, tenancy, easement, licence to occupy land is a supply of services;

(b) any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly, is a supply of services.

3. Treatment or process

Any treatment or process which is applied to another person's goods is a supply of services.

4. Transfer of business assets

(a) where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, [2][*****] such transfer or disposal is a supply of goods by the person;

(b) where, by or under the direction of a person carrying on a business, goods held or used for the purposes of the business are put to any private use or are used, or made available to any person for use, for any purpose other than a purpose of the business, [3][*****] the usage or making available of such goods is a supply of services;

(c) where any person ceases to be a taxable person, any goods forming part of the assets of any business carried on by him shall be deemed to be supplied by him in the course or furtherance of his business immediately before he ceases to be a taxable person, unless—

(i) the business is transferred as a going concern to another person; or

(ii) the business is carried on by a personal representative who is deemed to be a taxable person.

5. Supply of services

The following shall be treated as supply of services, namely:—

(a) renting of immovable property;

(b)[$] construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.

Explanation.—For the purposes of this clause—

(1) the expression "competent authority" means the Government or any authority authorised to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely:—

(i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972; or

(ii) a chartered engineer registered with the Institution of Engineers (India); or

(iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority;

(2) the expression "construction" includes additions, alterations, replacements or remodelling of any existing civil structure;

(c) temporary transfer or permitting the use or enjoyment of any intellectual property right;

(d) development, design, programming, customisation, adaptation, upgradation,enhancement, implementation of information technology software;

(e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act; and

(f) transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.

6. Composite supply

The following composite supplies shall be treated as a supply of services, namely:—

(a) works contract as defined in clause (119) of section 2; and

(b) supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration.

7. [4]**[*****]**

Notes

1 Inserted with effect from the 1st day of July, 2017 vide Section 31 of the Central Goods and Services Tax (Amendment) Act, 2018 and shall always be deemed to have been inserted which comes into force vide Notification No. 02/2019 – Central Tax dated 29th January, 2019.

2. Omitted the words "whether or not for a consideration," and shall be deemed to have been omitted with effect from the 1st day of July, 2017 vide Section 131 of the Finance Act, 2020 NO. 12 of 2020 dated 27th March, 2020 which comes into force vide Notification No. 92/2020 – Central Tax dated 22nd December 2020.

3. Omitted the words "whether or not for a consideration," and shall be deemed to have been omitted with effect from the 1st day of July, 2017 vide Section 131 of the Finance Act, 2020 NO. 12 of 2020dated 27th March, 2020 which comes into force vide Notification No. 92/2020 – Central Tax dated 22nd December 2020.

$ The Central Goods and Services Tax (Fourth Removal of Difficulties) Order, 2019 effective from 1st day of April, 2019 has clarified that in case of supply of services covered by clause (b) of paragraph 5 of Schedule II of the said Act, the amount of credit attributable to the taxable supplies including zero rated supplies and exempt supplies shall be determined on the basis of the area of the construction of the complex, building, civil structure or a part thereof, which is taxable and the area which is exempt.

4. Omitted Paragraph 7 and shall be deemed to have been omitted with effect from the 1st day of July, 2017 vide Section 109 of the Finance Act, 2020 NO. 12 of 2020 which has come into force on 1st January 2022 vide Notification No. 39/2021 – Central Tax dated 21st December, 2021. Read as – "7. Supply of Goods- The following shall be treated as supply of goods, namely: — Supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration."

SCHEDULE III

[See section 7]

ACTIVITIES OR TRANSACTIONS WHICH SHALL BE TREATED NEITHER AS A SUPPLY OF GOODS NOR A SUPPLY OF SERVICES

1. Services by an employee to the employer in the course of or in relation to his employment.
2. Services by any court or Tribunal established under any law for the time being in force.
3. (a) the functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities;
   (b) the duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or
   (c) the duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause.
4. Services of funeral, burial, crematorium or mortuary including transportation of the deceased.
5. Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.
6. Actionable claims, other than [1][specified actionable claims].

[2$][7. Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India.

8. (a) Supply of warehoused goods to any person before clearance for home consumption;
   (b) Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.]

[3]**[Explanation 1] —**For the purposes of paragraph 2, the term "court" includes District Court, High Court and Supreme Court.

[4]**[Explanation 2. —**For the purposes of paragraph 8, the expression “warehoused goods” shall have the same meaning as assigned to it in the Customs Act, 1962.]

Notes	
1.	Substituted for the words "lottery, betting and gambling" vide Section 4 of the Central Goods and Services Tax (Amendment) Act, 2023 which has come into force w.e.f. 01.10.2023 as the Central Government has appointed the 1st day of October, 2023, as the date on which the provisions of the said Act, have come into force vide Notification No. 48/2023 – Central Tax dated 29.09.2023.
2	Inserted with effect from the 01.02.2019 vide clause (i) of Section 32 of the Central Goods and Services Tax (Amendment) Act, 2018 which comes into force vide Notification No. 02/2019 – Central Tax dated 29th January, 2019.
$	Paragraphs 7 and 8 and the Explanation 2 thereof (as inserted vide section 32 of Act 31 of 2018) shall be deemed to have been inserted therein with effect from the 1st day of July, 2017. No refund shall be made of all the tax which has been collected, but which would not have been so collected, had subsection (1) been in force at all material times, vide Section 159 of the Finance Act 2023 and has come into force w.e.f. 01.10.2023 as the Central Government has appointed the 1st day of October, 2023, as the date on which the provisions have come into force vide Notification No. 28/2023–Central Tax dated 31.07.2023.
3	Explanation renumbered with effect from the 01.02.2019 vide clause (ii) of Section 32 of the Central Goods and Services Tax (Amendment) Act, 2018which comes into force vide Notification No. 02/2019 – Central Tax dated 29th January, 2019.
4	Explanation Inserted with effect from the 01.02.2019 vide clause (i) of Section 32 of the Central Goods and Services Tax (Amendment) Act, 2018 which comes into force vide Notification No. 02/2019 – Central Tax dated 29th January, 2019.

3.1.1.1 Departmental Notifications - The activities or transactions undertaken by the Central Government or State Government or any local authority in which they are engaged as public authority, shall be treated neither as a supply of goods nor a supply of service

Notification No. 14/2017-Central Tax (Rate) dated 28th June, 2017 effective from 1st day of July, 2017 - The Central Government, on the recommendations of the Council has notified that the following activities or transactions undertaken by the Central Government or State Government or any local authority in which they are engaged as public authority, shall be treated neither as a supply of goods nor a supply of service, namely:-

“Services by way of any activity in relation to a function entrusted to a Panchayat under article 243G of the Constitution.”

Further, Notification No. 16/2018-Central Tax (Rate) dated 26th July, 2018 effective from 27th of July, 2018 –

The Central Government, on the recommendations of the Council, has amended Notification No. 14/2017-Central Tax (Rate) dated 28th June, 2017, namely:-

In the said notification, in the first paragraph,-

(i) after the words “State Government”, the words “or Union territory” shall be inserted;

(ii) after the word “Constitution”, the words “or to a Municipality under article 243W of the Constitution” shall be inserted.

3.1.1.2 Departmental Notifications - The activities or transactions undertaken by the State Governments in which they are engaged as public authorities, shall be treated neither as a supply of goods nor a supply of service

Notification No. 25/2019-Central Tax (Rate) dated 30th September, 2019 - In exercise of the powers conferred by sub-section (2) of section 7 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council hereby notifies that the following activities or transactions undertaken by the State Governments in which they are engaged as public authorities, shall be treated neither as a supply of goods nor a supply of service, namely:-

“Service by way of grant of alcoholic liquor licence, against consideration in the form of licence fee or application fee or by whatever name it is called.”

3.1.2.1 Departmental Clarifications - Clarification on taxability of printing contracts - Circular No. 11/11/2017-GST dated 20th October 2017

Requests have been received to clarify whether supply of books, pamphlets, brochures, envelopes, annual reports, leaflets, cartons, boxes etc., printed with design, logo, name, address or other contents supplied by the recipient of such supplies, would constitute supply of goods falling under Chapter 48 or 49 of the First Schedule to the Customs Tariff Act, 1975 (51of 1975) or supply of services falling under heading 9989 of the scheme of classification of services annexed to notification No. 11/2017-CT(R).

2. In the above context, it is clarified that supply of books, pamphlets, brochures, envelopes, annual reports, leaflets, cartons, boxes etc. printed with logo, design, name, address or other contents supplied by the recipient of such printed goods, are composite supplies and the question, whether such supplies constitute supply of goods or services would be determined on the basis of what constitutes the principal supply.

3. Principal supply has been defined in Section 2(90) of the Central Goods and Services Tax Act as supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary.

4. In the case of printing of books, pamphlets, brochures, annual reports, and the like, where only content is supplied by the publisher or the person who owns the usage rights to the intangible inputs while the physical inputs including paper used for printing belong to the printer, supply of printing [of the content supplied by the recipient of supply] is the principal

supply and therefore such supplies would constitute supply of service falling under heading 9989 of the scheme of classification of services.

5. In case of supply of printed envelopes, letter cards, printed boxes, tissues, napkins, wall paper etc. falling under Chapter 48 or 49, printed with design, logo etc. supplied by the recipient of goods but made using physical inputs including paper belonging to the printer, predominant supply is that of goods and the supply of printing of the content [supplied by the recipient of supply] is ancillary to the principal supply of goods and therefore such supplies would constitute supply of goods falling under respective headings of Chapter 48 or 49 of the Customs Tariff.

3.1.2.2. Departmental Clarifications - Clarifications regarding applicability of GST and availability of ITC in respect of certain services - Circular No. 16/16/2017-GST dated 15th November 2017

I am directed to issue clarification with regard to certain issues brought to the notice of Board as under:

S. No.	Issue	Comment
1.	Is GST applicable on warehousing of agricultural produce such as tea (i.e. black tea, white tea etc.), processed coffee beans or powder, pulses (de-husked or split), jaggery, processed spices, processed dry fruits, processed cashew nuts etc.?	1. As per GST notification No. 11/2017-Central Tax (Rate), S.No. 24 and notification No. 12/2017-Central Tax (Rate), S.No. 54, dated 28thJune 2017, the GST rate on loading, unloading packing, storage or warehousing of agricultural produce is Nil. 2. Agricultural produce in the notification has been defined to mean "any produce out of cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products, on which either no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market" 3. Tea used for making the beverage, such as black tea, green tea, white tea is a processed product made in tea factories after carrying out several processes, such as drying, rolling, shaping, refining, oxidation, packing etc. on green leaf and is the processed output of the same.

		4. Thus, green tea leaves and not tea is the "agricultural produce" eligible for exemption available for loading, unloading, packing, storage or warehousing of agricultural produce. Same is the case with coffee obtained after processing of coffee beans. 5. Similarly, processing of sugarcane into jaggery changes its essential characteristics. Thus, jaggery is also not an agricultural produce. 6. Pulses commonly known as dal are obtained after dehusking or splitting or both. The process of dehusking or splitting is usually not carried out by farmers or at farm level but by the pulse millers. Therefore pulses (dehusked or split) are also not agricultural produce. However whole pulse grains such as whole gram, rajma etc. are covered in the definition of agricultural produce. 7. In view of the above, it is hereby clarified that processed products such as tea (i.e. black tea, white tea etc.), processed coffee beans or powder, pulses (dehusked or split), jaggery, processed spices, processed dry fruits, processed cashew nuts etc. fall outside the definition of agricultural produce given in notification No. 11/2017-CT (Rate) and 12/2017-CT(Rate) and corresponding notifications issued under IGST and UGST Acts and therefore the exemption from GST is not available to their loading, packing, warehousing etc. and that any clarification issued in the past to the contrary in the context of Service Tax or VAT/ Sales Tax is no more relevant.
2.	Is GST leviable on inter-state transfer of aircraft engines, parts and accessories for use by their own airlines?	1. Under Schedule I of the CGST Act, supply of goods or services or both between related persons or between distinct persons as specified in Section 25, when made in the course or furtherance of business, even if, without consideration, attracts GST.

		2. It is hereby clarified that credit of GST paid on aircraft engines, parts & accessories will be available for discharging GST on inter–state supply of such aircraft engines, parts & accessories by way of inter-state stock transfers between distinct persons as specified in section 25 of the CGST Act, notwithstanding that credit of input tax charged on consumption of such goods is not allowed for supply of service of transport of passengers by air in economy class at GST rate of 5%.
3	Is GST leviable on General Insurance policies provided by a State Government to employees of the State government/ Police personnel, employees of Electricity Department or students of colleges/ private schools etc. (a) where premium is paid by State Government and (b) where premium is paid by employees, students etc.?	It is hereby clarified that services provided to the Central Government, State Government, Union territory under any insurance scheme for which total premium is paid by the Central Government, State Government, Union territory are exempt from GST under Sl. No. 40 of notification No. 12/2017-Central Tax (Rate). Further, services provided by State Government by way of general insurance (managed by government) to employees of the State government/ Police personnel, employees of Electricity Department or students are exempt vide entry 6 of notification No. 12/2017- CT(R) which exempts Services by Central Government, State Government, Union territory or local authority to individuals.

3.1.2.3 Departmental Clarifications - Clarification on Inter-state movement of rigs, tools and spares, and all goods on wheels [like cranes]- Circular No. 21/21/2017-GST dated 22nd of November, 2017 –

The issue of IGST exemption on inter-state movement of various modes of conveyance, between distinct persons as specified in section 25(4) of the Central Goods and Services Tax Act, 2017, carrying goods or passengers or both; or for repairs and maintenance, [except in cases where such movement is for further supply of the same conveyance] was examined and a circular 1/1/2017-IGST dated 7.7.2017, was issued clarifying that such interstate

movement shall be treated “neither as a supply of goods nor supply of service” and therefore would not be leviable to IGST.

2. The issue pertaining to inter-state movement of rigs, tools and spares, and all goods on wheels [like cranes] was discussed in GST Council’s meeting held on 10th November, 2017 and the Council recommended that the circular 1/1/2017-IGST shall mutatis mutandis apply to inter-state movement of such goods, and except in cases where movement of such goods is for further supply of the same goods, such inter-state movement shall be treated ‘neither as a supply of goods or supply of service,’ and consequently no IGST would be applicable on such movements.

3. In this context, it is also reiterated that applicable CGST/SGST/IGST, as the case maybe, is leviable on repairs and maintenance done for such goods.

3.1.2.4 Departmental Clarifications - Joint Venture --- Taxable services provided by the members of the Joint Venture (JV) to the JV and vice versa and inter se between the members of the JV- Circular No. 35/9/2018-GST dated 5th March 2018

I am directed to say that in the Service Tax regime, CBEC vide Circular No. 179/5/2014 – ST issued from F.No. 179/5/2014-ST dated 24 September 2014 had clarified that if cash calls are merely transaction in money, then they are excluded from the definition of service provided in Section 65B (44) of the Finance Act, 1994. Whether a cash call is merely a transaction in money and hence not in the nature of consideration for taxable service, would depend on the terms of the Joint Venture Agreement, which may vary from case to case. The Circular clarified that cash calls, sometimes, could be in the nature of advance payments made by members towards taxable services received from joint venture(JV); and that payments made out of cash calls pooled by a JV towards taxable services received from a member or a third party is in the nature of consideration and hence attracts Service Tax. The Circular further stated that JV being an unincorporated temporary association constituted for the limited purpose of carrying out a specified project within a time frame, a comprehensive examination of the various JV agreements (at times, there could be number of inter se agreements between members of the JV) holds the key to understanding of the taxation of transactions involving taxable services between the JV and its members or inter-se between the members of a JV. Therefore, officers in the field formations were advised to carefully examine the leviability of service tax with reference to the specific terms/clauses of each JV agreement.

2. In the Service Tax Law, service was defined as an activity carried out by a person for another for consideration [Section 65B(44) of the Finance Act 1994]. Explanation 3 to the said definition stated than an unincorporated association or a body of persons as the case may be, and a member thereof shall be treated as distinct persons.

3. GST is levied on intra-State and inter-State supply of goods and services. According to section 7 of CGST Act, 2017, the expression “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, and includes activities specified in Schedule II to the CGST Act, 2017. The definition of "business" in section 2(17) of CGST Act states that "business" includes provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members. The term person is defined in section 2(84) of the CGST Act, 2017 to include an association of persons or a body of individuals, whether incorporated or not, in India or outside India. Further, Schedule II of CGST Act, 2017 enumerates activities which are to be treated as supply of goods or as supply of services. It states in para 7 that supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration shall be treated as supply of goods. A conjoint reading of the above provisions of the law implies that supply of services by an unincorporated association or body of persons (AOP) to a member thereof for cash, deferred payment or other valuable consideration shall be treated as supply of services. The above entry in Schedule II is analogous to and draws strength from the provision in Article 366(29A)(e) of the Constitution according to which a tax on the sale or purchase of goods includes a tax on the supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.

4. Therefore, the law with regard to levy of GST on service supplied by member of an unincorporated joint venture (JV) to the JV or to other members of the JV, or by JV to the members, essentially remains the same as it was under service tax law. Thus, it is clarified that the clarification given vide Board Circular No. 179/5/2014 – ST dated 24.09.2014 ibid in the context of service tax is applicable for the purpose of levy of GST also. It is reiterated that the question whether cash calls are taxable or not will entirely depend on the facts and circumstances of each case. 'Cash calls' are raised by an operating member of the joint venture on other members in proportion to their participating interests in the joint venture(unincorporated) to meet the expenditure on the operations to be carried out as per the approved work programme and budget. Taxability of cash calls can be further explained by the following illustrations:

Illustration A: There are 4 members in the JV including the operating member and each one contributes Rs 100 as part of their share. A total amount of Rs 400 is collected. The operating member purchases machinery for Rs 400 for the JV to be used in oil production. Illustration

B: There are 4 members in the JV including the operating member and each one contributes Rs 100 as part of their share. A total amount of Rs 400 is collected. The operating member thereafter uses its own machine and performs exploration and production activities on behalf of the JV.

4.1 Illustration A will not be the subject matter of 'ST/GST' for the reason that the operating member is not carrying out an activity for another for consideration. In Illustration A, the money paid for purchase of machinery is merely in the nature of capital contribution and is therefore a transaction in money.

4.2 On the other hand, in Illustration B, the operating member uses its own machinery and is therefore providing 'service' within the scope of supply of CGST Act, 2017. This is because in this scenario, the operating member is recovering the cost appropriated towards machinery and services from the other JV members in their participating interest ratio.

3.1.2.5 Departmental Clarifications - Issue related to taxability of 'tenancy rights' under GST- Circular No.44/18/2018-CGST dated 2nd May, 2018

Doubts have been raised as to,-

(i) Whether transfer of tenancy rights to an incoming tenant, consideration for which is in form of tenancy premium, shall attract GST when stamp duty and registration charges is levied on the said premium, if yes what would be the applicable rate?

(ii) Further, in case of transfer of tenancy rights, a part of the consideration for such transfer accrues to the outgoing tenant, whether such supplies will also attract GST?

2. The issue has been examined. The transfer of tenancy rights against tenancy premium which is also known as “pagadi system” is prevalent in some States. In this system the tenant acquires, tenancy rights in the property against payment of tenancy premium(pagadi). The landlord may be owner of the property but the possession of the same lies with the tenant. The tenant pays periodic rent to the landlord as long as he occupies the property. The tenant also usually has the option to sell the tenancy right of the said property and in such a case has to share a percentage of the proceed with owner of land, as laid down in their tenancy agreement. Alternatively, the landlord pays to tenant the prevailing tenancy premium to get the property vacated. Such properties in Maharashtra are governed by Maharashtra Rent Control Act, 1999.

3. As per section 9(1) of the CGST Act there shall be levied central tax on the intra-State supplies of services. The scope of supply includes all forms of supply of goods and 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 and also includes the activities specified in Schedule II. The activity of transfer of tenancy right against consideration in the form of tenancy premium is a supply of service liable to GST. It is a form of lease or renting of property and such activity is specifically declared to be a service in para 2 of Schedule II i.e. any lease, tenancy, easement, licence to occupy land is a supply of services.

4. The contention that stamp duty and registration charges is levied on such transfers of tenancy rights, and such transaction thus should not be subjected to GST, is not relevant. Merely because a transaction or a supply involves execution of documents which may require registration and payment of registration fee and stamp duty, would not preclude them from the scope of supply of goods and services and from payment of GST. The transfer of tenancy rights cannot be treated as sale of land or building declared as neither a supply of goods nor of services in para 5 of Schedule III to CGST Act, 2017. Thus a consideration for the said activity shall attract levy of GST.

5. To sum up, the activity of transfer of ‘tenancy rights’ is squarely covered under the scope of supply and taxable per-se. Transfer of tenancy rights to a new tenant against consideration in the form of tenancy premium is taxable. However, renting of residential dwelling for use as a residence is exempt[Sl. No. 12 of notification No. 12/2017-Central Tax(Rate)]. Hence, grant of tenancy rights in a residential dwelling for use as residence dwelling against tenancy premium or periodic rent or both is exempt. As regards services provided by outgoing tenant by way of surrendering the tenancy rights against consideration in the form of a portion of tenancy premium is liable to GST.

3.1.2.6 Departmental Clarifications - Scope of Principal-agent relationship in the context of Schedule I of the CGST Act- Circular No. 57/31/2018-GST dated 4th September, 2018 and Corrigendum to Circular No. 57/31/2018-GST dated 5th November, 2018

In terms of Schedule I of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the "CGST Act"), the supply of goods by an agent on behalf of the principal without consideration has been deemed to be a supply. In this connection, various representations have been received regarding the scope and ambit of the principal-agent relationship under GST. In order to clarify some of the issues and to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under section 168 (1) of the CGST Act hereby clarifies the issues in the succeeding paras.

2. As per section 182 of the Indian Contract Act, 1872, an "agent" is a person employed to do any act for another, or to represent another in dealings with third person. The person for whom such act is done, or who is so represented, is called the "principal". As delineated in the definition, an agent can be appointed for performing any act on behalf of the principal which may or may not have the potential for representation on behalf of the principal. So, the crucial element here is the representative character of the agent which enables him to carry out activities on behalf of the principal.

3. The term "agent" has been defined under sub-section (5) of section 2 of the CGST Act as follows:

"agent" means a person, including a factor, broker, commission agent, arhatia, del credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another.

4. The following two key elements emerge from the above definition of agent:

a) the term „agent" is defined in terms of the various activities being carried out by the person concerned in the principal-agent relationship; and

b) the supply or receipt of goods or services has to be undertaken by the agent on behalf of the principal.

From this, it can be deduced that the crucial component for covering a person within the ambit of the term "agent" under the CGST Act is corresponding to the representative character identified in the definition of "agent" under the Indian Contract Act, 1872.

5. Further, the two limbs of any supply under GST are "consideration" and "in the course or furtherance of business". Where the consideration is not extant in a transaction, such a transaction does not fall within the ambit of supply. But, in certain scenarios, as elucidated in Schedule I of the CGST Act, the key element of consideration is not required to be present for treating certain activities as supply. One such activity which has been detailed in para 3 of Schedule I (hereinafter referred to as "the said entry") is reproduced hereunder:

> 3. Supply of goods—
>
> (a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or

(b) by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.

6. Here also, it is worth noticing that all the activities between the principal and the agent and vice versa do not fall within the scope of the said entry. Firstly, the supply of services between the principal and the agent and vice versa is outside the ambit of the said entry, and would therefore require "consideration" to consider it as supply and thus, be liable to GST. Secondly, the element identified in the definition of "agent", i.e., **"supply or receipt of goods on behalf of the principal"** has been retained in this entry.

7. It may be noted that the crucial factor is how to determine whether the agent is wearing the representative hat and is supplying or receiving goods on behalf of the principal. Since in the commercial world, there are various factors that might influence this relationship, it would be more prudent that an objective criteria is used to determine whether a particular principal-agent relationship falls within the ambit of the said entry or not. Thus, the key ingredient for determining relationship under GST would be whether the invoice for the further supply of goods on behalf of the principal is being issued by the agent or not. Where the invoice for further supply is being issued by the agent in his name then, any provision of goods from the principal to the agent would fall within the fold of the said entry. However, it may be noted that in cases where the invoice is issued by the agent to the customer in the name of the principal, such agent shall not fall within the ambit of Schedule I of the CGST Act. Similarly, where the goods being procured by the agent on behalf of the principal are invoiced in the name of the agent then further provision of the said goods by the agent to the principal would be covered by the said entry. In other words, the crucial point is whether or not the agent has the authority to pass or receive the title of the goods on behalf of the principal.

8. Looking at the convergence point between the character of the agent under both the CGST Act and the Indian Contract Act, 1872, the following scenarios are discussed:

Scenario 1

Mr. A appoints Mr. B to procure certain goods from the market. Mr. B identifies various suppliers who can provide the goods as desired by Mr. A, and asks the supplier (Mr. C) to send the goods and issue the invoice directly to Mr. A. In this scenario, Mr. B is only acting as the procurement agent, and has in no way involved himself in the supply or receipt of the goods. Hence, in accordance with the provisions of this Act, Mr.B is not an agent of Mr. A for supply of goods in terms of Schedule I.

Scenario 2

M/s XYZ, a banking company, appoints Mr. B (auctioneer) to auction certain goods. The auctioneer arranges for the auction and identifies the potential bidders. The highest bid is accepted and the goods are sold to the highest bidder by M/s XYZ. The invoice for the supply of the goods is issued by M/s XYZ to the successful bidder. In this scenario, the auctioneer is merely providing the auctioneering services with no role played in the supply of the goods. Even in this scenario, Mr.B is not an agent of M/s XYZ for the supply of goods in terms of Schedule I.

Scenario 3

Mr. A, an artist, appoints M/s B (auctioneer) to auction his painting. M/s B arranges for the auction and identifies the potential bidders. The highest bid is accepted and the painting is sold to the highest bidder. The invoice for the supply of the painting is issued by M/s B on the behalf of Mr. A but in his own name and the painting is delivered to the successful bidder. In

this scenario, M/s B is not merely providing auctioneering services, but is also supplying the painting on behalf of Mr. A to the bidder, and has the authority to transfer the title of the painting on behalf of Mr. A. This scenario is covered under Schedule I. A similar situation can exist in case of supply of goods as well where the C&F agent or commission agent takes possession of the goods from the principal and issues the invoice in his own name. In such cases, the C&F/commission agent is an agent of the principal for the supply of goods in terms of Schedule I. The disclosure or non-disclosure of the name of the principal is immaterial in such situations.

Scenario 4

Mr A sells agricultural produce by utilizing the services of Mr B who is a commission agent as per the Agricultural Produce Marketing Committee Act (APMC Act) of the State. Mr B identifies the buyers and sells the agricultural produce on behalf of Mr. A for which he charges a commission from Mr. A. As per the APMC Act, the commission agent is a person who buys or sells the agricultural produce on behalf of his principal, or facilitates buying and selling of agricultural produce on behalf of his principal and receives, by way of remuneration, a commission or percentage upon the amount involved in such transaction.

In cases where the invoice is issued by Mr. B to the buyer, the former is an agent covered under Schedule I. However, in cases where the invoice is issued directly by Mr. A to the buyer, the commission agent (Mr. B) doesn"t fall under the category of agent covered under Schedule I.

9. In scenario 1 and scenario 2, Mr. B shall not be liable to obtain registration in terms of clause (vii) of section 24 of the CGST Act. He, however, would be liable for registration if his aggregate turnover of supply of taxable services exceeds the threshold specified in sub-section (1) of section 22 of the CGST Act. In scenario 3, M/s B shall be liable for compulsory registration in terms of the clause (vii) of section 24 of the CGST Act. In respect of commission agents in Scenario 4, notification No. 12/2017 Central Tax (Rate) dated 24.06.2017 has exempted “services by any APMC or board or services provided by the commission agents for sale or purchase of agricultural produce” from GST. Thus, the „services" provided by the commission agent for sale or purchase of agricultural produce is exempted. Such commission agents (even when they qualify as agent under Schedule I) are not liable to be registered according to sub-clause (a) of sub-section (1) of section 23 of the CGST Act, if the supply of the agricultural produce, and /or other goods or services supplied by them are not liable to tax or wholly exempt under GST.

Further, according to clause (vii) of section 24 of the CGST Act, a person is liable for mandatory registration if he makes taxable supply of goods or services or both on behalf of other taxable persons. Accordingly, the requirement of compulsory registration for commission agent, under the said clause shall arise when both the following conditions are satisfied, namely: -

(a) the principal should be a taxable person; and

(b) the supplies made by the commission agent should be taxable.

Generally, a commission agent under APMC Act makes supplies on behalf of an agriculturist. Further, as per provisions of clause (b) of sub-section (1) of section 23 of the CGST Act an agriculturist who supplies produce out of cultivation of land is not liable for registration and therefore does not fall within the ambit of the term „taxable person". Thus a commission agent who is making supplies on behalf of such an agriculturist, who is not a taxable person, is not liable for compulsory registration under clause (vii) of section 24 of the CGST Act. However,

where a commission agent is liable to pay tax under reverse charge, such an agent will be required to get registered compulsorily under section 24 (iii) of the CGST Act."

3.1.2.7 Departmental Clarifications - Scope of principal and agent relationship under Schedule I of CGST Act, 2017 in the context of del-credere agent- Circular No. 73/47/2018-GST dated 5th November, 2018

Post issuance of circular No. 57/31/2018-GST dated 4th September, 2018 from F. No. CBEC/20/16/4/2018-GST, various representations have been received from the trade and industry, as well as from the field formations regarding the scope and ambit of principal agent relationship under GST in the context of del-credere agent (hereinafter referred to as "DCA"). In order to clarify these issues and to ensure uniformity of implementation across field formations, the Board, in exercise of its powers conferred under section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act") hereby clarifies the issues in succeeding paras.

2. In commercial trade parlance, a DCA is a selling agent who is engaged by a principal to assist in supply of goods or services by contacting potential buyers on behalf of the principal. The factor that differentiates a DCA from other agents is that the DCA guarantees the payment to the supplier. In such scenarios where the buyer fails to make payment to the principal by the due date, DCA makes the payment to the principal on behalf of the buyer (effectively providing an insurance against default by the buyer), and for this reason the commission paid to the DCA may be relatively higher than that paid to a normal agent. In order to guarantee timely payment to the supplier, the DCA can resort to various methods including extending short-term transaction-based loans to the buyer or paying the supplier himself and recovering the amount from the buyer with some interest at a later date. This loan is to be repaid by the buyer along with an interest to the DCA at a rate mutually agreed between DCA and buyer. Concerns have been expressed regarding the valuation of supplies from Principal to recipient where the payment for such supply is being discharged by the recipient through the loan provided by DCA or by the DCA himself. Issues arising out of such loan arrangement have been examined and the clarifications on the same are as below:

Sl. No.	Issue	Clarification
1	Whether a DCA falls under the ambit of agent under Para 3 of Schedule I of the CGST Act?	As already clarified *vide* circular No. 57/31/2018-GST dated 4th September, 2018, whether or not the DCA will fall under the ambit of agent under Para 3 of Schedule I of the CGST Act depends on the following possible scenarios: In case where the invoice for supply of goods is issued by the supplier to the customer, either himself or through DCA, the DCA does not fall under the ambit of agent. In case where the invoice for supply of goods is issued by the DCA in his own name, the DCA would fall under the ambit of agent.
2	Whether the temporary short-term transaction	In such a scenario following activities are taking place:

	based loan extended by the DCA to the recipient (buyer), for which interest is charged by the DCA, is to be included in the value of goods being supplied by the supplier (principal) where DCA is not an agent under Para 3 of Schedule I of the CGST Act?	1. Supply of goods from supplier (principal) to recipient; 2. Supply of agency services from DCA to the supplier or the recipient or both; 3. Supply of extension of loan services by the DCA to the recipient. It is clarified that in cases where the DCA is not an agent under Para 3 of Schedule I of the CGST Act, the temporary short-term transaction based loan being provided by DCA to the buyer is a supply of service by the DCA to the recipient on Principal to Principal basis and is an independent supply. Therefore, the interest being charged by the DCA would not form part of the value of supply of goods supplied (to the buyer) by the supplier. It may be noted that vide notification No. 12/2017-Central Tax (Rate) dated 28th June, 2017 (S. No. 27), services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services) has been exempted.
3.	Where DCA is an agent under Para 3 of Schedule I of the CGST Act and makes payment to the principal on behalf of the buyer and charges interest to the buyer for delayed payment along with the value of goods being supplied, whether the interest will form a part of the value of supply of goods also or not?	In such a scenario following activities are taking place: 1. Supply of goods by the supplier (principal) to the DCA; 2. Further supply of goods by the DCA to the recipient; 3. Supply of agency services by the DCA to the supplier or the recipient or both; 4. Extension of credit by the DCA to the recipient. It is clarified that in cases where the DCA is an agent under Para 3 of Schedule I of the CGST Act, the temporary short-term transaction based credit being provided by DCA to the buyer no longer retains its character of an independent supply and is subsumed in the supply of the goods by the DCA to the recipient. It is emphasised that the activity of extension of credit by the DCA to the recipient would not be considered as a separate supply as it is in the context of the supply of goods made by the DCA to the recipient. It is further clarified that the value of the interest charged for such credit would be required to be included in the value of supply of goods by DCA to the recipient as per clause (*d*) of sub-section (2) of section 15 of the CGST Act.

3.1.2.8 Departmental Clarifications - Clarification on various doubts related to treatment of sales promotion schemes under GST- Circular No. 92/11/2019-GST dated 7th March, 2019

Various representations have been received seeking clarification on issues raised with respect to tax treatment of sales promotion schemes under GST. To ensure uniformity in the implementation of the law across the field formations, the Board, in exercise of its powers conferred under section 168(1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "the said Act") hereby clarifies the issues in succeeding paragraphs.

2. It has been noticed that there are several promotional schemes which are offered by taxable persons to increase sales volume and to attract new customers for their products. Some of these schemes have been examined and clarification on the aspects of taxability, valuation, availability or otherwise of Input Tax Credit in the hands of the supplier (hereinafter referred to as the "ITC") in relation to the said schemes are detailed hereunder:

A. Free samples and gifts:

i. It is a common practice among certain sections of trade and industry, such as, pharmaceutical companies which often provide drug samples to their stockists, dealers, medical practitioners, etc. without charging any consideration. As per subclause (a) of sub-section (1) of section 7 of the said Act, the expression "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. Therefore, the goods or services or both which are supplied free of cost (without any consideration) shall not be treated as „supply" under GST (except in case of activities mentioned in Schedule I of the said Act). Accordingly, it is clarified that samples which are supplied free of cost, without any consideration, do not qualify as „supply" under GST, except where the activity falls within the ambit of Schedule I of the said Act.

ii. Further, clause (h) of sub-section (5) of section 17 of the said Act provides that ITC shall not be available in respect of goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples. Thus, it is clarified that input tax credit shall not be available to the supplier on the inputs, input services and capital goods to the extent they are used in relation to the gifts or free samples distributed without any consideration. However, where the activity of distribution of gifts or free samples falls within the scope of „supply" on account of the provisions contained in Schedule I of the said Act, the supplier would be eligible to avail of the ITC.

B. Buy one get one free offer:

i. Sometimes, companies announce offers like 'Buy One, Get One free" For example, „buy one soap and get one soap free" or „Get one tooth brush free along with the purchase of tooth paste". As per sub-clause (a) of sub-section (1) of section 7 of the said Act, the goods or services which are supplied free of cost (without any consideration) shall not be treated as „supply" under GST (except in case of activities mentioned in Schedule I of the said Act). It may appear at first glance that in case of offers like „Buy One, Get One Free", one item is being „supplied free of cost" without any consideration. In fact, it is not an individual supply of free goods but a case of two or more individual supplies where a single price is being charged for the entire supply. It can at best be treated as supplying two goods for the price of one.

ii. Taxability of such supply will be dependent upon as to whether the supply is a composite supply or a mixed supply and the rate of tax shall be determined as per the provisions of section 8 of the said Act.

iii. It is also clarified that ITC shall be available to the supplier for the inputs, input services and capital goods used in relation to supply of goods or services or both as part of such offers.

C. Discounts including 'Buy more, save more' offers:

i. Sometimes, the supplier offers staggered discount to his customers (increase in discount rate with increase in purchase volume). For example- Get 10 % discount for purchases above Rs. 5000/-, 20% discount for purchases above Rs. 10,000/- and 30% discount for purchases above Rs. 20,000/-. Such discounts are shown on the invoice itself.

ii. Some suppliers also offer periodic / year ending discounts to their stockists, etc. For example- Get additional discount of 1% if you purchase 10000 pieces in a year, get additional discount of 2% if you purchase 15000 pieces in a year. Such discounts are established in terms of an agreement entered into at or before the time of supply though not shown on the invoice as the actual quantum of such discounts gets determined after the supply has been effected and generally at the year end. In commercial parlance, such discounts are colloquially referred to as "volume discounts". Such discounts are passed on by the supplier through credit notes.

iii. It is clarified that discounts offered by the suppliers to customers (including staggered discount under „Buy more, save more" scheme and post supply / volume discounts established before or at the time of supply) shall be excluded to determine the value of supply provided they satisfy the parameters laid down in sub-section (3) of section 15 of the said Act, including the reversal of ITC by the recipient of the supply as is attributable to the discount on the basis of document (s) issued by the supplier.

iv. It is further clarified that the supplier shall be entitled to avail the ITC for such inputs, input services and capital goods used in relation to the supply of goods or services or both on such discounts.

D. Secondary Discounts

i. These are the discounts which are not known at the time of supply or are offered after the supply is already over. For example, M/s A supplies 10000 packets of biscuits to M/s B at Rs. 10/- per packet. Afterwards M/s A re-values it at Rs. 9/- per packet. Subsequently, M/s A issues credit note to M/s B for Rs. 1/- per packet.

ii. The provisions of sub-section (1) of section 34 of the said Act provides as under: "Where one or more tax invoices have been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to exceed the taxable value or tax payable in respect of such supply, or where the goods supplied are returned by the recipient, or where goods or services or both supplied are found to be deficient, the registered person, who has supplied such goods or services or both, may issue to the recipient one or more credit notes for supplies made in a financial year containing such particulars as may be prescribed."

iii. Representations have been received from the trade and industry that whether credit notes(s) under sub-section (1) of section 34 of the said Act can be issued in such cases even if the conditions laid down in clause (b) of sub-section (3) of section 15 of the said Act are not satisfied. It is hereby clarified that financial / commercial credit note(s) can be issued by the supplier even if the conditions mentioned in clause (b) of sub-section (3) of section 15 of the said Act are not satisfied. In other words, credit note(s) can be issued as a commercial transaction between the two contracting parties.

iv. It is further clarified that such secondary discounts shall not be excluded while determining the value of supply as such discounts are not known at the time of supply and the conditions laid down in clause (b) of sub-section (3) of section 15 of the said Act are not satisfied.

v. In other words, value of supply shall not include any discount by way of issuance of credit note(s) as explained above in para 2 (D)(iii) or by any other means, except in cases where the provisions contained in clause (b) of sub-section (3) of section 15 of the said Act are satisfied.

vi. There is no impact on availability or otherwise of ITC in the hands of supplier in this case.

3.1.2.9 Departmental Clarifications - Clarification in respect of goods sent/taken out of India for exhibition or on consignment basis for export promotion- Circular No. 108/27/2019-GST dated 18th July, 2019

Various representations have been received from the trade and industry regarding procedure to be followed in respect of goods sent / taken out of India for exhibition or on consignment basis for export promotion. Such goods sent / taken out of India crystallise into exports, wholly or partly, only after a gap of certain period from the date they were physically sent / taken out of India.

2. The matter has been examined and in view of the difficulties being faced by the trade and industry and to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under section 168(1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the "CGST Act") hereby clarifies various issues in succeeding paragraphs.

3. As per section 7 of the CGST Act, for any activity or transaction to be considered a supply, it must satisfy twin tests namely-

(i) it should be for a consideration by a person; and

(ii) it should be in the course or furtherance of business.

4. The exceptions to the above are the activities enumerated in Schedule I of the CGST Act which are treated as supply even if made without consideration. Further, sub-section (21) of section 2 of the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as the "IGST Act") defines "supply", wherein it is clearly stated that it shall have the same meaning as assigned to it in section 7 of the CGST Act.

5. Section 16 of the IGST Act deals with "Zero rated supply". The provisions contained in the said section read as under:

> 16. (1) "zero rated supply" means any of the following supplies of goods or services or both, namely:—
>
> (a) export of goods or services or both; or
>
> (b) supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit.

Therefore, it can be concluded that only such „supplies" which are either „export" or are „supply to SEZ unit / developer" would qualify as zero-rated supply.

6. It is, accordingly, clarified that the activity of sending / taking the goods out of India for exhibition or on consignment basis for export promotion, except when such activity satisfy the tests laid down in Schedule I of the CGST Act (hereinafter referred to as the "specified goods"), do not constitute supply as the said activity does not fall within the scope of section 7 of the CGST Act as there is no consideration at that point in time. Since such activity is not a supply, the same cannot be considered as "Zero rated supply" as per the provisions contained in section 16 of the IGST Act.

7. Since the activity of sending / taking specified goods out of India is not a supply, doubts have been raised by the trade and industry on issues relating to maintenance of records, issuance of delivery challan / tax invoice etc. These issues have been examined and the clarification on each of these points is as under: -

Sl.No.	Issue	Clarification
1.	Whether any records are required to be maintained by registered person for sending/taking specified goods out of India?	The registered person dealing in specified goods shall maintain a record of such goods as per the format at Annexure to this Circular.
2.	What is the documentation required for sending/taking the specified goods out of India?	(*a*) As clarified above, the activity of sending/taking specified goods out of India is not a supply. (*b*) The said activity is in the nature of "sale on approval basis" wherein the goods are sent/taken outside India for the approval of the person located abroad and it is only when the said goods are approved that the actual supply from the exporter located in India to the importer located abroad takes place. The activity of sending/taking specified goods is covered under the provisions of sub-section (7) of section 31 of the CGST Act read with rule 55 of Central Goods & Services Tax Rules, 2017 (hereinafter referred to as the "CGST Rules"). (*c*) The specified goods shall be accompanied with a delivery challan issued in accordance with the provisions contained in rule 55 of the CGST Rules. (*d*) As clarified in paragraph 6 above, the activity of sending/taking specified goods out of India is not a zero-rated supply. That being the case, execution of a bond or LUT, as required under section 16 of the IGST Act, is not required.

3.	When is the supply of specified goods sent /taken out of India said to take place?	(*a*) The specified goods sent/taken out of India are required to be either sold or brought back within the stipulated period of six months from the date of removal as per the provisions contained in sub-section (7) of section 31 of the CGST Act. (*b*) The supply would be deemed to have taken place, on the expiry of six months from the date of removal, if the specified goods are neither sold abroad nor brought back within the said period. (*c*) If the specified goods are sold abroad, fully or partially, within the specified period of six months, the supply is effected, in respect of quantity so sold, on the date of such sale.
4.	Whether invoice is required to be issued when the specified goods sent/taken out of India are not brought back, either fully or partially, within the stipulated period?	(*a*) When the specified goods sent/taken out of India have been sold fully or partially, within the stipulated period of six months, as laid down in sub-section (7) of section 31 of the CGST Act, the sender shall issue a tax invoice in respect of such quantity of specified goods which has been sold abroad, in accordance with the provisions contained in section 12 and section 31 of the CGST Act read with rule 46 of the CGST Rules. (*b*) When the specified goods sent/taken out of India have neither been sold nor brought back, either fully or partially, within the stipulated period of six months, as laid down in sub-section (7) of section 31 of the CGST Act, the sender shall issue a tax invoice on the date of expiry of six months from the date of removal, in respect of such quantity of specified goods which have neither been sold nor brought back, in accordance with the provisions contained in section 12 and section 31 of the CGST Act read with rule 46 of the CGST Rules.
5.	Whether the refund claims can be preferred in respect of specified goods sent/taken out of India but not brought back?	(*a*) As clarified in para 5 above, the activity of sending/taking specified goods out of India is not a zero-rated supply. That being the case, the sender of goods cannot prefer any refund claim when the specified goods are sent/ taken out of India.

		(*b*) It has further been clarified in answer to question no. 3 above that the supply would be deemed to have taken place: (*i*) on the date of expiry of six months from the date of removal, if the specified goods are neither sold nor brought back within the said period; or (*ii*) on the date of sale, in respect of such quantity of specified goods which have been sold abroad within the specified period of six months. (*c*) It is clarified accordingly that the sender can prefer refund claim even when the specified goods were sent/ taken out of India without execution of a bond or LUT, if he is otherwise eligible for refund as per the provisions contained in sub-section (3) of section 54 the CGST Act read with sub-rule (4) of rule 89 of the CGST Rules, in respect of zero rated supply of goods after he has issued the tax invoice on the dates as has been clarified in answer to the question no. 4 above. It is further clarified that refund claim cannot be preferred under rule 96 of CGST Rules as supply is taking place at a time after the goods have already been sent/taken out of India earlier.

8. The above position is explained by way of illustrations below:

Illustrations:

i) M/s ABC sends 100 units of specified goods out of India. The activity of merely sending / taking such specified goods out of India is not a supply. No tax invoice is required to be issued in this case but the specified goods shall be accompanied with a delivery challan issued in accordance with the provisions contained in rule 55 of the CGST Rules. In case the entire quantity of specified goods is brought back within the stipulated period of six months from the date of removal, no tax invoice is required to be issued as no supply has taken place in such a case. In case, however, the entire quantity of specified goods is neither sold nor brought back within six months from the date of removal, a tax invoice would be required to be issued for entire 100 units of specified goods in accordance with the provisions contained in section 12 and section 31 of the CGST Act read with rule 46 of the CGST Rules within the time period stipulated under sub-section (7) of section 31 of the CGST Act.

ii) M/s ABC sends 100 units of specified goods out of India. The activity of sending / taking such specified goods out of India is not a supply. No tax invoice is required to be issued in this case but the specified goods shall be accompanied with a delivery challan issued in accordance with the provisions contained in rule 55 of the CGST Rules. If 10 units of specified goods are sold abroad say after one month of sending / taking out and another 50 units are sold say after two months of sending / taking out, a tax invoice would be required to be issued

for 10 units and 50 units, as the case may be, at the time of each of such sale in accordance with the provisions contained in section 12 and section 31 of the CGST Act read with rule 46 of the CGST Rules. If the remaining 40 units are not brought back within the stipulated period of six months from the date of removal, a tax invoice would be required to be issued for 40 units in accordance with the provisions contained in section 12 and section 31 of the CGST Act read with rule 46 of the CGST Rules. Further, M/s ABC may claim refund of accumulated input tax credit in accordance with the provisions contained in subsection (3) of section 54 of the CGST Act read with sub-rule (4) of rule 89 of the CGST Rules in respect of zero-rated supply of 60 units.

3.1.2.10 Departmental Clarifications - : Levy of GST on the service of display of name or placing of name plates of the donor in the premises of charitable organisations receiving donation or gifts from individual donors– - Circular No. 116/35/2019-GST dated 11th October, 2019

Representations have been received seeking clarification whether GST is applicable on donations or gifts received from individual donors by charitable organisations involved in advancement of religion, spirituality or yoga which is acknowledged by them by placing name plates in the name of the individual donor.

2. The issue has been examined. Individual donors provide financial help or any other support in the form of donation or gift to institutions such as religious institutions, charitable organisations, schools, hospitals, orphanages, old age homes etc. The recipient institutions place a name plate or similar such acknowledgement in their premises to express the gratitude. When the name of the donor is displayed in recipient institution premises, in such a manner, which can be said to be an expression of gratitude and public recognition of donor's act of philanthropy and is not aimed at giving publicity to the donor in such manner that it would be an advertising or promotion of his business, then it can be said that there is no supply of service for a consideration (in the form of donation). There is no obligation (quid pro quo) on part of recipient of the donation or gift to do anything (supply a service). Therefore, there is no GST liability on such consideration.

2.1 Some examples of cases where there would be no taxable supply are as follows:-

(a) "Good wishes from Mr. Rajesh" printed underneath a digital blackboard donated by Mr. Rajesh to a charitable Yoga institution.

(b) "Donated by Smt. Malati Devi in the memory of her father" written on the door or floor of a room or any part of a temple complex which was constructed from such donation.

2.2. In each of these examples, it may be noticed that there is no reference or mention of any business activity of the donor which otherwise would have got advertised. Thus where all the three conditions are satisfied namely the gift or donation is made to a charitable organization, the payment has the character of gift or donation and the purpose is philanthropic (i.e. it leads to no commercial gain) and not advertisement, GST is not leviable.

3.1.2.11 Departmental Clarifications - GST on license fee charged by the States for grant of Liquor licences to vendors - Circular No. 121/40/2019-GST dated 11th October, 2019

Services proved by the Government to business entities including by way of grant of privileges, licences, mining rights, natural resources such as spectrum etc. against payment of consideration in the form of fee, royalty etc. are taxable under GST. Same was the position under Service Tax regime also with effect from 1st April, 2016. Tax is required to be paid by the business entities on such services under reverse charge.

2. GST Council in its 26th meeting held on 10.03.2018, recommended that GST was not leviable on license fee and application fee, by whatever name it is called, payable for alcoholic liquor for human consumption and that this would apply mutatis mutandis to the demand raised by Service Tax/Excise authorities on license fee for alcoholic liquor for human consumption in the pre-GST era, i.e. for the period from 01-04-2016 to 30-06-2017.

3. Grant of liquor licences by State Government against payment of consideration in the form of licence fee, application fee etc. was a taxable service under Service Tax, therefore to implement GST Council's recommendation, Central Government decided to exempt service provided or agreed to be provided by way of grant of liquor licence by the State Government, against consideration in the form of licence fee or application fee, by whatever name called, during the period from 01.04.2016 to 30.06.2017. Clause No. 117 of Finance (No. 2) Act, 2019 may be referred in this regard.

4. GST Council in its 37th meeting held on 20.09.2019 further recommended that the decision of the 26th GST Council meeting be implemented by notifying service by way of grant of alcoholic liquor licence, against consideration in the form of licence fee or application fee or by whatever name it is called, by State Government as neither a supply of goods nor a supply of service. Therefore, in exercise of powers conferred under sub-section 2 (b) of section 7 of CGST Act, 2017, Notification No. 25/2019-Central Tax (Rate) dated 30th September, 2019 has been issued.

5. GST Council further decided in the 37th meeting held on 20.09.2019, to clarify that this special dispensation applies only to supply of service by way of grant of liquor licenses by the State Governments as an agreement between the Centre and States and has no applicability or precedence value in relation to grant of other licenses and privileges for a fee in other situations, where GST is payable.

3.1.2.12 Departmental Clarifications - Clarification on various issue pertaining to GST- - Circular No. 172/04/2022-GST dated 6th July, 2022 – Relevant extracts only

Various representations have been received from the field formations seeking clarification on certain issues with respect to –

iii. perquisites provided by employer to the employees as per contractual agreement; and

2. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby clarify the issues as under:

S. No.	Issue	Clarification
Refund claimed by the recipients of supplies regarded as deemed export		
Perquisites provided by employer to the employees as per contractual agreement		
5.	Whether various perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are liable for GST?	1. Schedule III to the CGST Act provides that "services by employee to the employer in the course of or in relation to his employment" will not be considered as supply of goods or services and hence GST is not applicable on services rendered by employee to employer provided they are in the course of or in relation to employment. 2. Any perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are in lieu of the services provided by employee to the employer in relation to his employment. It follows therefrom that perquisites provided by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST when the same are provided in terms of the contract between the employer and employee.

3.1.2.13 Departmental Clarifications - Clarification on various issue pertaining to GST- Circular No. 186/18/2022-GST dated 27th December, 2022

Representations have been received from the field formations seeking clarification on certain issues with respect to –

i. taxability of No Claim Bonus offered by Insurance companies;

ii. applicability of e-invoicing w.r.t an entity.

2. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”), hereby clarifies the issues as under:

Sl. No.	Issue	Clarification
Taxability of No Claim Bonus offered by Insurance companies		

1.	Whether the deduction on account of No Claim Bonus allowed by the insurance company from the insurance premium payable by the insured, can be considered as consideration for the supply provided by the insured to the insurance company, for agreeing to the obligation to refrain from the act of lodging insurance claim during the previous year(s)?	As per practice prevailing in the insurance sector, the insurance companies deduct No Claim Bonus from the gross insurance premium amount, when no claim is made by the insured person during the previous insurance period(s). The customer/ insured procures insurance policy to indemnify himself from any loss/ injury as per the terms of the policy, and is not under any contractual obligation not to claim insurance claim during any period covered under the policy, in lieu of No Claim Bonus. It is, therefore, clarified that there is no supply provided by the insured to the insurance company in form of agreeing to the obligation to refrain from the act of lodging insurance claim during the previous year(s) and No Claim Bonus cannot be considered as a consideration for any supply provided by the insured to the insurance company.
2.	Whether No Claim Bonus provided by the insurance company to the insured can be considered as an admissible discount for the purpose of determination of value of supply of insurance service provided by the insurance company to the insured?	As per clause (*a*) of sub-section (3) of section 15 of the CGST Act, value of supply shall not include any discount which is given before or at the time of supply if such discount has been duly recorded in the invoice issued in respect of such supply. The insurance companies make the disclosure of the fact of availability of discount in form of No Claim Bonus, subject to certain conditions, to the insured in the insurance policy document itself and also provide the details of the no claim Bonus in the invoices also. The pre-disclosure of NCB amount in the policy documents and specific mention of the discount in form of No Claim Bonus in the invoice is in consonance with the conditions laid down for deduction of discount from the value of supply under clause (*a*) of sub-section (3) of section 15 of the CGST Act. It is, therefore, clarified that No Claim Bonus (NCB) is a permissible deduction under clause (*a*) of sub-section (3) of section 15 of the CGST Act for the purpose of calculation of value of supply of the insurance services provided by the insurance company to the insured. Accordingly, where the deduction on account of No claim bonus is provided in the

		invoice issued by the insurer to the insured, GST shall be leviable on actual insurance premium amount, payable by the policy holders to the insurer, after deduction of No Claim Bonus mentioned on the invoice.
Clarification on applicability of e-invoicing w.r.t an entity		
3.	Whether the exemption from mandatory generation of e-invoices in terms of Notification No. 13/2020-Central Tax, dated 21st March, 2020, as amended, is available for the entity as whole, or whether the same is available only in respect of certain supplies made by the said entity?	In terms of Notification No. 13/2020-Central Tax, dated 21st March, 2020, as amended, certain entities/sectors have been exempted from mandatory generation of e-invoices as per sub-rule (4) of rule 48 of Central Goods and Services Tax Rules, 2017. It is hereby clarified that the said exemption from generation of e-invoices is for the entity as a whole and is not restricted by the nature of supply being made by the said entity. **Illustration**: A Banking Company providing banking services, may also be involved in making supply of some goods, including bullion. The said banking company is exempted from mandatory issuance of e-invoice in terms of Notification No. 13/2020-Central Tax, dated 21st March, 2020, as amended, for all supplies of goods and services and thus, will not be required to issue e-invoice with respect to any supply made by it.

3.2 Tax liability on composite and mixed supplies. [Section 8]

Section 8	01.07.2017 to till date	**Tax liability on composite and mixed supplies.** The tax liability on a composite or a mixed supply shall be determined in the following manner, namely:— (a) a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply; and (b) a mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax.

3.3 Levy and collection. [Section 9]

Section 9(1)	01.07.2017 to till date	**Levy, collection and payment of the central goods and services tax** Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.
Section 9(2)	01.07.2017 to till date	**Levy of the central goods and services tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel with effect from such date as may be notified by the Government.** The central tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council.
Section 9(3)	01.07.2017 to till date	**The Government to specify the categories of supply of goods or services or both, central goods and services tax on which shall be paid on reverse charge basis** The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.
Section 9(4)	01.07.2017 to till date	**The central goods and services tax in respect of the supply of taxable goods or services or both by a supplier, who is not registered, to a registered person shall be paid by such person on reverse charge basis**

		The central tax in respect of the supply of taxable goods or services or both by a supplier, who is not registered, to a registered person shall be paid by such person on reverse charge basis as the recipient and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.
	01.02.2019 to till date	**The central goods and services tax in respect of the supply of taxable goods or services or both by a supplier, who is not registered, to a registered person shall be paid by such person on reverse charge basis** [1][The Government may, on the recommendations of the Council, by notification, specify a class of registered persons who shall, in respect of supply of specified categories of goods or services or both received from an unregistered supplier, pay the tax on reverse charge basis as the recipient of such supply of goods or services or both, and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to such supply of goods or services or both.] 1 Substituted w.e.f. 01.02.2019 sub-section (4) vide Section 4 of the Central Goods and Services Tax (Amendment) Act, 2018 which comes into force on 1st February 2019 vide Notification No. 02/2019 – Central Tax dated 29th January, 2019.
Section 9(5)	01.07.2017 to till date	**The Government to specify the categories of services, the tax on intra-State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it.** The Government may, on the recommendations of the Council, by notification[$], specify categories of services the tax on intra-State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of this Act shall apply to such

		electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services: $ The Central Government, has notified the categories of services, the tax on intra-State supplies shall be paid by the electronic commerce operator vide Notification No. 17/2017-Central Tax (Rate) dated 28th June, 2017 effective from 1st day of July, 2017
First Proviso	01.07.2017 to till date	**Person liable to pay tax where an electronic commerce operator does not have a physical presence in the taxable territory** **Provided that** where an electronic commerce operator does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax:
Second Proviso	01.07.2017 to till date	**Person liable to pay tax where an electronic commerce operator does not have a physical presence in the taxable territory and also he does not have a representative in the said territory.** **Provided further** that where an electronic commerce operator does not have a physical presence in the taxable territory and also he does not have a representative in the said territory, such electronic commerce operator shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax.

3.3.1.1 Departmental Notifications — Levy and collection of Tax - Section 9

1. **CGST Rate Schedule for Goods.**—Notification No. 01/2017-Central Tax (Rate), dated 28-6-2017- as amended from time to time.

2. **CGST rates on the intra-State supply of services**. Notification No. 11/2017-Central Tax (Rate), dated 28-6-2017- as amended from time to time.

3. The Central Government has notified the goods or services which shall be liable to tax in the hands of the recipient under reverse charge, These Notifications are just a klick away to be viewed – Notifications issued in pursuance of Section 9(3) of the CGST Act

2017. The Central Government has notified Notification No. 4/ 2017-Central Tax (Rate), dated 28/06/2017 as amended from time to time in case of goods and Notification No. 13/2017-Central Tax (Rate), dated 28/06/2017 as amended from time to time in case of services.

4. The Central Government has issued many Notifications in pursuance of the provisions of Section 9(4) of the CGST Act 2017 from time to time, These Notifications are just a klick away to be viewed – Notifications issued in pursuance of Section 9(4) of the CGST Act 2017.

5. The Central Government has issued many Notifications in pursuance of the provisions of Section 9(5) of the CGST Act 2017 from time to time, These Notifications are just a klick away to be viewed – Notifications issued in pursuance of Section 9(5) of the CGST Act 2017.

3.3.1.2 Departmental Notifications — Levy and collection of Tax - Section 9(4)

Notification No. 8/2017 – Central Tax (Rate) dated 28/06/2017 – The Central Government has exempted intra-State supplies of goods or services or both received by a registered person from any supplier, who is not registered, from the whole of the central tax leviable thereon under sub-section (4) of section 9 of the Central Goods and Services Tax Act, 2017 (12 of 2017) provided that the said exemption shall not be applicable where the aggregate value of such supplies of goods or service or both received by a registered person from any or all the suppliers, who is or are not registered, exceeds five thousand rupees in a day.

Further, Notification No. 38/2017 – Central Tax (Rate) dated 13/10/2017 - The Central Government has amended Notification No. 8/2017 – Central Tax (Rate) dated 28/06/2017 namely:-

In the said notification, the proviso under Paragraph 1 shall be omitted.

2. The exemption contained in the Notification No. 8/2017 – Central Tax (Rate) dated 28/06/2017 as amended by this notification shall apply to all registered persons till the 31st day of March, 2018.

Further, Notification No. 10/2018 – Central Tax (Rate) dated 23rd March, 2018 – The Central Government has amended Notification No. 8/2017 – Central Tax (Rate) dated 28/06/2017 and amended vide Notification No. 38/2017 – Central Tax (Rate) dated 13/10/2017 namely:-

In the said notification, for the figures, letters and words “31st day of March, 2018”, the figures, letters and words “30th day of June, 2018” shall be substituted.

Further, Notification No. 12/2018 – Central Tax (Rate) dated 29th June, 2018 - The Central Government has amended Notification No. 8/2017 – Central Tax (Rate) dated 28/06/2017 and amended vide Notification No. 38/2017 – Central Tax (Rate) dated 13/10/2017 namely:-

In the said notification, for the figures, letters and words “30th day of June, 2018”, the figures, letters and words “30th day of September, 2018” shall be substituted.

Further, Notification No. 22/2018 – Central Tax (Rate) dated 6th August, 2018 - The Central Government has amended Notification No. 8/2017 – Central Tax (Rate) dated 28/06/2017 and amended vide Notification No. 38/2017 – Central Tax (Rate) dated 13/10/2017 , Notification

No. 10/2018 – Central Tax (Rate) dated 23rd March, 2018, Notification No. 12/2018 – Central Tax (Rate) dated 29th June, 2018 namely:-

In the said notification, for the figures, letters and words “30th day of September, 2018”, the figures, letters and words “30th day of September, 2019” shall be substituted.

Further, Notification No. 01/2019 – Central Tax (Rate) dated 29th January, 2019 effective from 1st day of February, 2019.- The Central Government has rescinded Notification No. 8/2017 – Central Tax (Rate) dated 28/06/2017, except as respects things done or omitted to be done before such rescission.

Notification No. 10/2017 – Central Tax (Rate) dated 28/06/2017 - The Central Government has exempted Intra-State supplies of second hand goods received by a registered person, dealing in buying and selling of second hand goods and who pays the central tax on the value of outward supply of such second hand goods as determined under sub-rule (5) of rule 32 of the Central Goods and Services tax Rules, 2017, from any supplier, who is not registered, from the whole of the central tax leviable thereon under sub-section (4) of section 9 of the Central Good and Services Tax Act, 2017 (12 of 2017).

Notification No. 06/2019-Central Tax (Rate) dated 29th March, 2019 effective from 1st of April, 2019.- The Central Government has notified the following **classes of registered persons**, namely:-

> (i) a promoter who receives development rights or Floor Space Index (FSI) (including additional FSI) on or after 1 st April, 2019 for construction of a project against consideration payable or paid by him, wholly or partly, in the form of construction service of commercial or residential apartments in the project or in any other form including in cash;
>
> (ii) a promoter, who receives long term lease of land on or after 1 st April, 2019 for construction of residential apartments in a project against consideration payable or paid by him, in the form of upfront amount (called as premium, salami, cost, price, development charges or by any other name),

as the registered persons in whose case the liability to pay central tax on, -

> (a) the consideration paid by him in the form of construction service of commercial or residential apartments in the project, for supply of development rights or FSI (including additional FSI);
>
> (b) the monetary consideration paid by him, for supply of development rights or FSI (including additional FSI) relatable to construction of residential apartments in project;
>
> (c) the upfront amount (called as premium, salami, cost, price, development charges or by any other name) paid by him for long term lease of land relatable to construction of residential apartments in the project; and
>
> (d) the supply of construction service by him against consideration in the form of development rights or FSI(including additional FSI), -

shall arise on the date of issuance of completion certificate for the project, where required, by the competent authority or on its first occupation, whichever is earlier.

2. Explanation:- For the purpose of this notification,-

(i) The term “apartment” shall have the same meaning as assigned to it in clause (e) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);

(ii) the term “promoter” shall have the same meaning as assigned to it in in clause (zk) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);

(iii) the term “project” shall mean a Real Estate Project (REP) or a Residential Real Estate Project (RREP);

(iv) the term “Real Estate Project (REP)” shall have the same meaning as assigned to it in in clause (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);.

(v) the term “Residential Real Estate Project (RREP)” shall mean a REP in which the carpet area of the commercial apartments is not more than 15 per cent. of the total carpet area of all the apartments in the REP.

(vi) the term “floor space index (FSI)” shall mean the ratio of a building’s total floor area (gross floor area) to the size of the piece of land upon which it is built.

(vii) Tax on services covered by sub-para (i) and (ii) of paragraph 1 above is required to be paid under reverse charge basis in accordance with notification No. 13/2017- Central Tax (Rate), dated 28.06.2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Subsection (i), vide GSR No. 692 (E), dated 28.06.2017, as amended.

Notification No. 07/2019- Central Tax (Rate) dated 29th March, 2019 effective from 1st of April, 2019.- The Central Government has notified that the registered person specified in column (3) of the table below, shall in respect of supply of goods or services or both specified in column (2) of the Table below, received from an unregistered supplier shall pay tax on reverse charge basis as recipient of such goods or services or both, namely:-

Sl. No.	Category of supply of goods and services	Recipient of goods and services
(1)	(2)	(3)
1	Supply of such goods and services or both [other than services by way of grant of development rights, long term lease of land (against upfront payment in the form of premium, salami, development charges, etc.) or FSI (including additional FSI)] which constitute the shortfall from the minimum value of goods or services or both required to be purchased by a promoter for construction of project, in a financial year (or part of the financial year till the date of issuance of completion certificate or first occupation, whichever is earlier) as prescribed in Notification No. 11/ 2017-Central Tax (Rate), dated 28th June, 2017, at items (i), (ia), (ib), (ic) and (id) against serial number 3 in the Table, published in Gazette of India vide G.S.R. No. 690, dated 28th June, 2017, as amended.	Promoter.
2	Cement falling in chapter heading 2523 in the first schedule to the Customs Tariff Act, 1975 (51 of 1975) which constitute the shortfall from the minimum value of goods or services or both required to be	Promoter.

	purchased by a promoter for construction of project, in a financial year (or part of the financial year till the date of issuance of completion certificate or first occupation, whichever is earlier) as prescribed in notification No. 11/ 2017- Central Tax (Rate), dated 28th June, 2017, at items (i), (ia), (ib), (ic) and (id) against serial Promoter. number 3 in the Table, published in Gazette of India vide G.S.R. No. 690, dated 28th June, 2017, as amended.	
3	Capital goods falling under any chapter in the first schedule to the Customs Tariff Act, 1975 (51 of 1975) supplied to a promoter for construction of a project on which tax is payable or paid at the rate prescribed for items (i), (ia), (ib), (ic) and (id) against serial number 3 in the Table, in notification No. 11/2017-Central Tax (Rate), dated 28th June, 2017, published in Gazette of India vide G.S.R. No. 690, dated 28th June, 2017, as amended.	Promoter

Explanation. - For the purpose of this notification, -

(i) the term “promoter” shall have the same meaning as assigned to it in in clause (zk) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);

(ii) “project” shall mean a Real Estate Project (REP) or a Residential Real Estate Project (RREP);

(iii) the term “Real Estate Project (REP)” shall have the same meaning as assigned to it in in clause (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);

(iv) “Residential Real Estate Project (RREP)” shall mean a REP in which the carpet area of the commercial apartments is not more than 15 per cent. of the total carpet area of all the apartments in the REP.

(v) the term “floor space index (FSI)” shall mean the ratio of a building’s total floor area (gross floor area) to the size of the piece of land upon which it is built.

Further, Notification No. 24/2019- Central Tax (Rate) dated 30th September, 2019 effective from 1st day of October, 2019 – The Central Government has amended Notification No. 07/2019- Central Tax (Rate) dated 29th March, 2019namely:-

In the said notification, in the Table, against serial number 2, for the entry in column (2), the following entry shall be substituted, namely: -

“Cement falling in chapter heading 2523 in the first schedule to the Customs Tariff Act, 1975 (51 of 1975).”.

3.3.1.3 Departmental Notifications — Levy and collection of Tax - Section 9(5)

Notification No. 17/2017-Central Tax (Rate) dated 28th June, 2017 effective from 1st day of July, 2017 - The Central Government, on the recommendations of the Council, hereby notifies

that in case of the following categories of services, the tax on intra-State supplies shall be paid by the electronic commerce operator –

(i) services by way of transportation of passengers by a radio-taxi, motorcab, maxicab and motor cycle;

(ii) services by way of providing accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes, except where the person supplying such service through electronic commerce operator is liable for registration under sub-section (1) of section 22 of the said Central Goods and Services Tax Act.

Explanation.- For the purposes of this notification,-

(a) "radio taxi" means a taxi including a radio cab, by whatever name called, which is in twoway radio communication with a central control office and is enabled for tracking using Global Positioning System (GPS) or General Packet Radio Service (GPRS);

(b) "maxicab", "motorcab" and "motor cycle" shall have the same meanings as assigned to them respectively in clauses (22), (25) and (26) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988).

3.3.2.1 Departmental Clarifications - Issue related to classification and GST rate on lottery tickets - Circular No.06/06/2017-CGST dated 27th August, 2017

Supply of lottery has been treated as supply of goods under the Central Goods and Services Tax (CGST) Act, 2017.

2. Accordingly, based on the recommendation of the GST Council, the GST rate for supply of lottery has been notified under relevant GST rate notification relating to CGST/IGST/UTGST/SGST. However, entries in the respective notifications mention classification for lottery as "-".

3. In this connection, references have been received, inter-alia, stating that due to discrepancy in code allotted, i.e., lottery is defined as goods but code allotted for lottery is under services, the assessees are not able to upload return or deposit tax in time.

4. The matter has been examined. It should be noted that the process of filing return is linked with rate of tax specified for supply. Further, there is complete clarity about rate of tax on lotteries. As mentioned above, in GST, lottery is goods and the classification indicated in relevant notification for lottery is "-", which means any chapter.

5. That being so, it is clarified that the classification for lottery in respective CGST, IGST, UTGST and SGST notifications shall be 'Any Chapter' of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and tax on lottery should be paid accordingly at prescribed rates, 12% or 28%, as the case may be.

3.3.2.2 Departmental Clarifications - Clarification on taxability of printing contracts - Circular No. 11/11/2017-GST dated 20th October 2017

Requests have been received to clarify whether supply of books, pamphlets, brochures, envelopes, annual reports, leaflets, cartons, boxes etc., printed with design, logo, name, address or other contents supplied by the recipient of such supplies, would constitute supply of goods falling under Chapter 48 or 49 of the First Schedule to the Customs Tariff Act, 1975 (51of 1975) or supply of services falling under heading 9989 of the scheme of classification of services annexed to notification No. 11/2017-CT(R).

2. In the above context, it is clarified that supply of books, pamphlets, brochures, envelopes, annual reports, leaflets, cartons, boxes etc. printed with logo, design, name, address or other contents supplied by the recipient of such printed goods, are composite supplies and the question, whether such supplies constitute supply of goods or services would be determined on the basis of what constitutes the principal supply.

3. Principal supply has been defined in Section 2(90) of the Central Goods and Services Tax Act as supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary.

4. In the case of printing of books, pamphlets, brochures, annual reports, and the like, where only content is supplied by the publisher or the person who owns the usage rights to the intangible inputs while the physical inputs including paper used for printing belong to the printer, supply of printing [of the content supplied by the recipient of supply] is the principal supply and therefore such supplies would constitute supply of service falling under heading 9989 of the scheme of classification of services.

5. In case of supply of printed envelopes, letter cards, printed boxes, tissues, napkins, wall paper etc. falling under Chapter 48 or 49, printed with design, logo etc. supplied by the recipient of goods but made using physical inputs including paper belonging to the printer, predominant supply is that of goods and the supply of printing of the content [supplied by the recipient of supply] is ancillary to the principal supply of goods and therefore such supplies would constitute supply of goods falling under respective headings of Chapter 48 or 49 of the Customs Tariff.

3.3.2.3 Departmental Clarifications - Clarification regarding applicability of GST on the superior kerosene oil [SKO] retained for the manufacture of Linear Alkyl Benzene [LAB] - Circular No. 12/12/2017-GST dated 26th October, 2017

Briefly stated, references have been received related to applicability of GST on the superior kerosene oil [SKO] retained for the manufacture of Linear Alkyl Benzene [LAB].

2. In this context, LAB manufacturers have stated that they receive superior Kerosene oil (SKO) from, a refinery, say, Indian Oil Corporation (IOC). They extract n-Paraffin (C9-C13 hydrocarbons) from SKO and return back the remaining of SKO to the refinery. In this context, the issue has arisen as to whether in this transaction GST would be levied on SKO sent by IOC for extracting n-paraffin or only on the n-paraffin quantity extracted by the LAB manufactures. Further, doubt have also been raised as to whether the return of remaining Kerosene by LAB manufactures would separately attract GST in such transaction.

3. The matter was examined. LAB manufacturers generally receive superior kerosene oil [SKO] from a refinery through a dedicated pipeline; on an average about 15 to 17% of the total quantity of SKO received from refinery is retained and balance quantity ranging from 83%-85% is returned back to refinery. The retained SKO is towards extraction of Normal Paraffin, which is used in the manufacturing of LAB. In this transaction consideration is paid by LAB manufactures only on the quantity of retained SKO (n-paraffin).

4. In this context, the GST Council in its 22nd meeting held on 06.10.2017 discussed the issue and recommended for issuance of a clarification that in this transaction GST will be payable by the refinery on the value of net quantity of superior kerosene oil (SKO) retained for the manufacture of Linear Alkyl Benzene (LAB).

5. Accordingly, it is here by clarified that, in aforesaid case, GST will be payable by the refinery only on the net quantity of superior kerosene oil (SKO) retained for the manufacture of Linear Alkyl Benzene (LAB). Though, refinery would be liable to pay GST on such returned quantity of SKO, when the same is supplied by it to any other person.

6. This clarification is issued in the context of Goods & Service Tax (GST) law only and past issues, if any, will be dealt in accordance with the law prevailing at the material time.

3.3.2.4 Departmental Clarifications - Clarification on Unstitched Salwar Suits - Circular No.13/13/2017-GST dated 27th October 2017

Doubts have been raised regarding the classification of Cut pieces of Fabrics under GST.

2. It has been represented that before becoming readymade articles or an apparel, the fabric is cut from bundles or thans and sold in that unstitched state. The consumers buy these sets or pieces and get it stitched to their shape and size.

3. Fabrics are classifiable under chapters 50 to 55 of the First Schedule to the Customs Tariff Act, 1975 on the basis of their constituent materials and attract a uniform GST rate of 5% with no refund of the unutilized input tax credit.

4. Mere cutting and packing of fabrics into pieces of different lengths from bundles or thans, will not change the nature of these goods and such pieces of fabrics would continue to be classifiable under the respective heading as the fabric and attract the 5% GST rate.

3.3.2.5 Departmental Clarifications - Clarifications regarding applicability of GST and availability of ITC in respect of certain services - Circular No. 16/16/2017-GST dated 15th November 2017

I am directed to issue clarification with regard to certain issues brought to the notice of Board as under:

S. No.	Issue	Comment
1.	Is GST applicable on warehousing of agricultural produce such as tea (i.e. black tea, white tea etc.), processed coffee beans or powder, pulses (de-husked or split), jaggery, processed spices, processed dry fruits, processed cashew nuts etc.?	1. As per GST notification No. 11/2017-Central Tax (Rate), S.No. 24 and notification No. 12/2017-Central Tax (Rate), S.No. 54, dated 28thJune 2017, the GST rate on loading, unloading packing, storage or warehousing of agricultural produce is Nil. 2. Agricultural produce in the notification has been defined to mean "any produce out of cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products, on which either no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market" 3. Tea used for making the beverage, such as black tea, green tea, white tea is a processed product made in tea factories after carrying out several processes, such as drying, rolling, shaping, refining, oxidation, packing etc. on green leaf and is the processed output of the same. 4. Thus, green tea leaves and not tea is the "agricultural produce" eligible for exemption available for loading, unloading, packing, storage or warehousing of agricultural produce. Same is the

		case with coffee obtained after processing of coffee beans. 5. Similarly, processing of sugarcane into jaggery changes its essential characteristics. Thus, jaggery is also not an agricultural produce. 6. Pulses commonly known as dal are obtained after dehusking or splitting or both. The process of dehusking or splitting is usually not carried out by farmers or at farm level but by the pulse millers. Therefore pulses (dehusked or split) are also not agricultural produce. However whole pulse grains such as whole gram, rajma etc. are covered in the definition of agricultural produce. 7. In view of the above, it is hereby clarified that processed products such as tea (i.e. black tea, white tea etc.), processed coffee beans or powder, pulses (dehusked or split), jaggery, processed spices, processed dry fruits, processed cashew nuts etc. fall outside the definition of agricultural produce given in notification No. 11/2017-CT (Rate) and 12/2017-CT(Rate) and corresponding notifications issued under IGST and UGST Acts and therefore the exemption from GST is not available to their loading, packing, warehousing etc. and that any clarification issued in the past to the contrary in the context of Service Tax or VAT/ Sales Tax is no more relevant.
2.	Is GST leviable on inter-state transfer of aircraft engines, parts and accessories for use by their own airlines?	1. Under Schedule I of the CGST Act, supply of goods or services or both between related persons or between distinct persons as specified in Section 25, when made in the course or furtherance of business, even if, without consideration, attracts GST. 2. It is hereby clarified that credit of GST paid on aircraft engines, parts & accessories will be available for discharging GST on inter–state supply of such aircraft engines, parts & accessories by way of inter-state stock transfers between distinct persons as

		specified in section 25 of the CGST Act, notwithstanding that credit of input tax charged on consumption of such goods is not allowed for supply of service of transport of passengers by air in economy class at GST rate of 5%.
3	Is GST leviable on General Insurance policies provided by a State Government to employees of the State government/ Police personnel, employees of Electricity Department or students of colleges/ private schools etc. (a) where premium is paid by State Government and (b) where premium is paid by employees, students etc.?	It is hereby clarified that services provided to the Central Government, State Government, Union territory under any insurance scheme for which total premium is paid by the Central Government, State Government, Union territory are exempt from GST under Sl. No. 40 of notification No. 12/2017-Central Tax (Rate). Further, services provided by State Government by way of general insurance (managed by government) to employees of the State government/ Police personnel, employees of Electricity Department or students are exempt vide entry 6 of notification No. 12/2017- CT(R) which exempts Services by Central Government, State Government, Union territory or local authority to individuals.

3.3.2.6 Departmental Clarifications - Clarification on taxability of custom milling of paddy.- Circular No. 19/19/2017-GST dated 20th November 2017

Representations have been received seeking clarification on whether custom milling of paddy by Rice millers for Civil Supplies Corporation is liable to GST or is exempted under S. No 55 of Notification 12/2017 - Central Tax (Rate) dated 28th June 2017.

2. The matter has been examined. S. No 55 of Notification 12/2017- Central Tax (Rate) exempts carrying out an intermediate production process as job work in relation to cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products or agricultural produce. Agricultural produce has been defined in the notification to mean, any produce out of cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products, on which either no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential

characteristics but makes it marketable for primary market. Job work has been defined under section 2 (68) of the CGST Act to mean any treatment or process undertaken by a person on goods belonging to another registered person. Further, under Schedule II (para 3) of the CGST Act, any treatment or process which is applied to another person's goods is a supply of service.

3. Milling of paddy is not an intermediate production process in relation to cultivation of plants. It is a process carried out after the process of cultivation is over and paddy has been harvested. Further, processing of paddy into rice is not usually carried out by cultivators but by rice millers. Milling of paddy into rice also changes its essential characteristics. Therefore, milling of paddy into rice cannot be considered as an intermediate production process in relation to cultivation of plants for food, fibre or other similar products or agricultural produce.

4. In view of the above, it is clarified that milling of paddy into rice is not eligible for exemption under S. No 55 of Notification 12/2017 - Central Tax (Rate) dated 28th June 2017 and corresponding notifications issued under IGST and UTGST Acts.

5. GST rate on services by way of job work in relation to all food and food products falling under Chapters 1 to 22 has been reduced from 18% to 5% vide notification No. 31/2017-CT(R) [notification No. 11/2017-CT (Rate) dated 28.6.17, S.No. 26 refers]. Therefore, it is hereby clarified that milling of paddy into rice on job work basis, is liable to GST at the rate of 5%, on the processing charges (and not on the entire value of rice).

3.3.2.7 Departmental Clarifications - Issue related to classification and GST rate on Terracotta idols.- Circular No. 20/20/2017-IGST dated 22nd of November, 2017

The GST rate on Idols made of clay is nil. (S.No. 135A of Schedule notification 2/2017 dated 28.06.2017).

2. In this connection, references have been received as to whether this entry would cover idols made of terracotta.

3. The matter has been examined. As terracotta is clay based, terracotta idols will be eligible for Nil rate under Sl. No.135A of notification 2/2017 dated 28.06.2017.

maybe, is leviable on repairs and maintenance done for such goods.

3.3.2.8 Departmental Clarifications - Clarification on issues regarding treatment of supply by an artist in various States and supply of goods by artists from galleries- Circular No. 22/22/2017-GST dated 21st December, 2017

Various representations have been received regarding taxation of the supply of art works by artists in different States other than the State in which they are registered as a taxable person. In such cases, if the art work is selected by the buyer, then the supplier issues a tax invoice only at the time of supply. It has been represented that the artists give their work of art to galleries where it is exhibited for supply. There seems to be confusion regarding the treatment of this activity whether it is taxable in the hands of the artist when the same is given to the art gallery or at the time of actual supply by the gallery. Therefore, in exercise of the powers conferred under section 168 (1) of the Central Goods and Services Tax Act, 2017, for the purpose of uniformity in the implementation of the Act, it has been decided to clarify this matter.

2. It is seen that clause (c) of sub-rule (1) of rule 55 of the Central Goods and Services Tax Rules, 2017 (hereafter referred as “the said Rules”) provides that the supplier shall issue a delivery challan for the initial transportation of goods where such transportation is for reasons other than by way of supply. Further, sub-rule (3) of the said rule provides that the said delivery challan shall be declared as specified in rule 138 of the said Rules. It is also seen that sub-rule (4) of rule 55 of the said Rules provides that where the goods being transported are for the purpose of supply to the recipient but the tax invoice could not be issued at the time of removal of goods for the purpose of supply, the supplier shall issue a tax invoice after delivery of goods.

3. A combined reading of the above provisions indicates that the art work for supply on approval basis can be moved from the place of business of the registered person (artist) to another place within the same State or to a place outside the State on a delivery challan along with the eway bill wherever applicable and the invoice may be issued at the time of actual supply of art work.

4. It is also clarified that the supplies of the art work from one State to another State will be inter-State supplies and attract integrated tax in terms of section 5 of the Integrated Goods and Services Tax Act, 2017.

5. It is further clarified that in case of supply by artists through galleries, there is no consideration flowing from the gallery to the artist when the art works are sent to the gallery for exhibition and therefore, the same is not a supply. It is only when the buyer selects a particular art work displayed at the gallery, that the actual supply takes place and applicable GST would be payable at the time of such supply.

3.3.2.9 Departmental Clarifications - Clarifications regarding levy of GST on accommodation services, betting and gambling in casinos, horse racing, admission to

cinema, homestays, printing, legal services etc.- Circular No. 27/01/2018-GST dated 04th January 2018

Representations were received from trade and industry for clarification on certain issues regarding levy of GST on supply of services.

S. No.	*Questions/Clarifications sought*	*Clarifications*
1	1. Will GST be charged on actual tariff or declared tariff for accommodation services? 2. What will be GST rate if cost goes up (more than declared tariff) owing to additional bed. 3. Where will the declared tariff be published? 4. Same room may have different tariff at different times depending on season or flow of tourists as per dynamic pricing. Which rate to be used then? 5. If tariff changes between booking and actual usage, which rate will be used? 6. GST at what rate would be levied if an upgrade is provided to the customer at a lower rate?	1. Declared or published tariff is relevant only for determination of the tax rate slab. GST will be payable on the actual amount charged (transaction value). 2. GST rate would be determined according to declared tariff for the room, and GST at the rate so determined would be levied on the entire amount charged from the customer. For example, if the declared tariff is Rs. 7000 per unit per day but the amount charged from the customer on account of extra bed is Rs. 8000, GST shall be charged at 18% on Rs. 8000. 3. Tariff declared anywhere, say on the websites through which business is being procured or printed on tariff card or displayed at the reception will be the declared tariff. In case different tariff is declared at different places, highest of such declared tariffs shall be the declared tariff for the purpose of levy of GST.

		4. In case different tariff is declared for different seasons or periods of the year, the tariff declared for the season in which the service of accommodation is provided shall apply. 5. Declared tariff at the time of supply would apply. 6. If declared tariff of the accommodation provided by way of upgrade is Rs 10000, but amount charged is Rs 7000, then GST would be levied @ 28% on Rs 7000/-.
2	*Vide* Notification No. 11/2017-Central Tax (Rate) dated the 28th June 2017 entry 34, GST on the service of admission into casino under Heading 9996 (Recreational, cultural and sporting services) has been levied @ 28%. Since the Value of supply rule has not specified the method of determining taxable amount in casino, Casino Operators have been informed to collect 28% GST on gross amount collected as admission charge or entry fee. The method of levy adopted needs to be clarified.	Relevant part of entry 34 of the said CGST notification reads as under: *"Heading 9996 (Recreational, cultural and sporting services) - …* *(iii) Services by way of admission to entertainment events or access to amusement facilities including exhibition of cinematograph films, theme parks, water parks, joy rides, merry-go rounds, go-carting, **casinos**, race-course, ballet, any sporting event such as Indian Premier League and the like. - 14%* *(iv)…* *(v) Gambling. - 14 %"* As is evident from the notification, "entry to casinos" and "gambling" are two different services, and GST is leviable at 28% on both these services (14% CGST and 14% SGST) on the value determined as per section 15 of the CGST Act. Thus, GST @ 28% would apply on entry to casinos as well as on betting/gambling services being provided by casinos on the transaction value of betting, i.e. the total bet value, in addition to GST levy on any other services being provided by the casinos (such as

		services by way of supply of food/drinks etc. at the casinos). Betting, in pre-GST regime, was subjected to betting tax on full bet value.
3	The provision in rate schedule notification No. 11/2017-Central Tax (Rate) dated the 28th June 2017 does not clearly state the tax base to levy GST on horse racing. This may be clarified.	GST would be leviable on the entire bet value i.e. total of face value of any or all bets paid into the totalisator or placed with licensed book makers, as the case may be. Illustration: If entire bet value is Rs. 100, GST leviable will be Rs. 28/-.
4	2. Whether rent on rooms provided to in-patients is exempted? If liable to tax, please mention the entry of CGST Notification 11/2017- CT(Rate) 3. What will be the rate of tax for bakery items supplied where eating place is attached - manufacturer for the purpose of composition levy?	1. Price/declared tariff does not include taxes. 2. Room rent in hospitals is exempt. 3. Any service by way of serving of food or drinks including by a bakery qualifies under section 10(1)(b) of CGST Act and hence GST rate of composition levy for the same would be 5%.
5	Whether homestays providing accommodation through an Electronic Commerce Operator, below threshold limit are exempt from taking registration?	Notification No. 17/2017-Central Tax (Rate), has been issued making ECOs liable for payment of GST in case of accommodation services provided in hotels, inns guest houses or other commercial places meant for residential or lodging purposes provided by a person having turnover below Rs. 20 lakhs (Rs. 10 lakhs in special category states) per annum and thus not required to take registration under section 22(1) of CGST Act. Such persons, even though they provide services through ECO, are not required to take registration in view of section 24(ix) of CGST Act, 2017.
6	To clarify whether supply in the situations listed below shall be treated as a supply of goods or supply of service: — 1. The books are printed/published/sold on procuring copyright from the author or his	The supply of books shall be treated as supply of goods as long as the supplier owns the books and has the legal rights to sell those books on his own account.

	<table><tr><td></td><td>legal heir. [e.g. White Tiger Procures copyright from Ruskin Bond]</td></tr><tr><td>2.</td><td>The books are printed/published/sold against a specific brand name. [e.g. Manorama Year Book]</td></tr><tr><td>3.</td><td>The books are printed/published/sold on paying copyright fees to a foreign publisher for publishing Indian edition (same language) of foreign books. [e.g. Penguin (India) Ltd. pays fees to Routledge (London)] The books are printed/published/sold on paying copyright fees to a foreign publisher for publishing Indian language edition (translated). [e.g. Ananda Publishers Ltd. pays fees to Penguin (NY)]</td></tr></table>	
7	Whether legal services other than representational services provided by an individual advocate or a senior advocate to a business entity are liable for GST under reverse charge mechanism?	Yes. In case of legal services including representational services provided by an advocate including a senior advocate to a business entity, GST is required to be paid by the recipient of the service under reverse charge mechanism, i.e. the business entity.

3. The above clarifications are reiterated for the purpose of levy of GST on supply of services.

3.3.2.10 Departmental Clarifications - Clarifications regarding GST on College Hostel Mess Fees.- Circular No. 28/02/2018-GST dated 08th January 2018 and Corrigendum to Circular No. 28/02/2018-GST dated 08th January 2018 issued vide F.No. 354/03/2018

Queries have been received seeking clarification regarding the taxability and rate of GST on services by a college hostel mess. The clarification is as given below:

2. The educational institutions have mess facility for providing food to their students and staff. Such facility is either run by the institution/ students themselves or is outsourced to a third person. Supply of food or drink provided by a mess or canteen is taxable at 5% without Input Tax Credit [Serial No. 7(i) of notification No. 11/2017-CT (Rate) as amended vide notification No. 46/2017-CT (Rate) dated 14.11.2017 refers].

2.1 If the catering services is one of the services provided by an educational institution to its students, faculty and staff and the said educational institution is covered by the definition given

under para 2(y) of notification No. 12/2017-Central Tax (Rate), then the same is exempt. [Sl. No. 66(a) of notification No. 12/2017-Central Tax (Rate) refers]

2.2 If the catering services, i.e., supply of food or drink in a mess or canteen, is provided by anyone other than the educational institution, then it is a supply of service at entry 7(i) of notification No. 11/2017-CT (Rate) [as amended vide notification No. 46/2017-CT (Rate) dated 14.11.2017] to the concerned educational institution and attracts GST of 5% provided that credit of input tax charged on goods and services used in supplying the service has not been taken, effective from 15.11.2017.

3.3.2.10A Departmental Clarifications - Withdrawal of Circular No. 28/02/2018-GST, dated 08.01.2018 as amended vide Corrigendum dated 18.01.2018 and Order No 02/2018–Central Tax dated 31.03.2018- Circular No. 50/24/2018-GST dated 31th July 2018

The Circular No. 28/02/2018-GST, dated 08.01.2018 as amended vide Corrigendum dated 18.01.2018 was issued to clarify GST rate applicable on catering services, i.e., supply of food or drink in a mess or canteen in an educational institute. Also, Order No 02/2018- Central Tax dated 31.03.2018, was issued to clarify GST rate on supply of food and/or drinks by the Indian Railways or Indian Railways Catering and Tourism Corporation Ltd. or their licensees, in trains or at platforms (static units).

2. Consequent to the decisions of 28th GST Council Meeting held on 21.07.2018, the contents of the Circular No. 28/02/2018-GST dated 08.01.2018 as amended vide Corrigendum dated 18.01.2018 have been incorporated in Sl. No. 7 (i) of the Notification No. 13/2018-Central Tax (Rate), dated 26.07.2018 amending the Notification No. 11/2017- Central Tax (Rate) dated 28th June 2017.

3. Also, the contents of the Order No 02/2018-Central Tax dated 31.03.2018 have been incorporated in Sl. No. 7(ia) of the Notification No. 13/2018-Central Tax (Rate), dated 26.07.2018 amending the Notification No. 11/2017-Central Tax (Rate) dated 28th June 2017.

4. Hence, Circular No. 28/02/2018-GST, dated 08.01.2018 as amended vide Corrigendum dated 18.01.2018 and Order No 02/2018-Central Tax dated 31.03.2018 is withdrawn w.e.f 27.07.2018.

3.3.2.11 Departmental Clarifications - Clarification regarding applicability of GST on Polybutylene feedstock and Liquefied Petroleum Gas retained for the manufacture of Poly Iso Butylene and Propylene or Di-butyl para Cresol.- Circular No. 29/3/2018-GST dated 25 January, 2018

References have been received related to the applicability of GST on the Polybutylene feedstock and Liquefied Petroleum Gas retained for the manufacture of Poly Iso Butylene and Propylene or Di-butyl para Cresol.

2. In this context, manufacturers of Propylene or Di-butyl para Cresol and Poly Iso Butylene have stated that the principal raw materials for manufacture of such goods are Liquefied Petroleum Gas and Poly butylene feed stock respectively, which are supplied by oil refineries to them on a continuous basis through dedicated pipelines while a portion of the raw material is retained by these manufacturers, the remaining quantity is returned to the oil refineries. In this regard an issue has arisen as to whether in this transaction GST would be leviable on the whole quantity of the principal raw materials supplied by the oil refinery or on the net quantity retained by the manufacturers of Propylene or Di-butyl para Cresol and Poly Iso Butylene.

3. The GST Council in its 25th meeting held on 18.1.2018 discussed this issue and recommended for issuance of a clarification stating that in such transactions, GST will be payable by the refinery on the value of net quantity of polybutylene feedstock and liquefied petroleum gas retained for the manufacture of Poly Iso Butylene and Propylene or Di-butyl Para Cresol.

4. Accordingly, it is hereby clarified that, in the aforesaid cases, GST will be payable by the refinery only on the net quantity of Polybutylene feedstock and Liquefied Petroleum Gas retained by the manufacturer for the manufacture of Poly Iso Butylene and Propylene or Di-butyl para Cresol . Though, the refinery would be liable to pay GST on such returned quantity of Polybutylene feedstock and Liquefied Petroleum Gas, when the same is supplied by it to any other person.

5. This clarification is issued in the context of the Goods and Service Tax (GST) law only and past issues, if any, will be dealt in accordance with the law prevailing at the material time.

3.3.2.12 Departmental Clarifications - Clarification on supplies made to the Indian Railways classifiable under any chapter, other than Chapter 86.- Circular No. 30/4/2018-GST dated 25 January, 2018

Representations have been received that certain suppliers are making supplies to the railways of items classifiable under any chapter other than chapter 86, charging the GST rate of 5%.

2. The matter has been examined. Vide notification No. 1/2017 –Central Tax (Rate) dated 28th June, 2017, read with notification No. 5/2017-Central Tax (Rate) dated 28th June, 2017, goods classifiable under Chapter 86 are subjected to 5% GST rate with no refund of unutilised input

tax credit (ITC). Goods classifiable in any other chapter attract the applicable GST, as specified under notification No. 1/2017 –Central Tax (Rate) dated 28th June, 2017 or notification No.2/2017-Central Tax (Rate) dated 28th June, 2017.

3. The GST Council during its 25th meeting held on 18th January, 2018, discussed this issue and recorded that a clarification regarding applicable GST rates on various supplies made to the Indian Railways may be issued.

4. Accordingly, it is hereby clarified that

• only the goods classified under Chapter 86, supplied to the railways attract 5% GST rate with no refund of unutilised input tax credit and

• other goods [falling in any other chapter], would attract the general applicable GST rates to such goods, under the aforesaid notifications, even if supplied to the railways.

3.3.2.13 Departmental Clarifications - Clarifications regarding GST in respect of certain services- Circular No. 32/06/2018-GST dated 12th February 2018

I am directed to issue clarification with regard to the following issues approved by the GST Council in its 25th meeting held on 18th January 2018:-

S. No.	*Issue*	*Clarification*
1.	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).	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*]
2.	Is GST leviable on the fee/amount charged in the following situations/cases: –	Services by any court or Tribunal established under any law for the time being in force is 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

	(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.
	(2)	Consumer Disputes Redressal Commission office and its subordinate offices charge penalty in cash when it is required.
	(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.

under Article 323B of the Constitution. However, they are clothed with the characteristics of a tribunal on account of the following:—

(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.
(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.
(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.
(4)	Every proceeding in these Commissions is deemed to be judicial proceedings as per sections 193/228 of IPC.
(5)	The Commissions have been deemed to be a civil court under CrPC.
(6)	Appeals against District Commissions lie to State Commission while appeals against the State Commissions lie to the National Commission. Appeals against National Commission lie to the Supreme Court.

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.
3.	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%?	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*]
4.	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.	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 28-6-2017 as amended *refers*].
5.	Is GST leviable in following cases: (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 patients and hence must pay GST? (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	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 28-6-2017 as amended *refers*]. (1) Services provided by senior doctors/ consultants/ technicians hired by the hospitals, whether employees or not, are healthcare services which are exempt. (2) Healthcare services have been defined to mean any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or 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

	be applicable on such money retained by the hospitals?	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.
	(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.	(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.
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.

3.3.2.14 Departmental Clarifications - Clarifications regarding GST in respect of certain services- Circular No. 34/8/2018-GST dated 1st March 2018

I am directed to issue clarification with regard to the following issues as approved by the Fitment Committee to the GST Council in its meeting held on 9th, 10th and 13th January 2018:-

S. No.	*Issue*	*Clarification*
1.	Whether activity of bus body building, is a supply of goods or services?	In the case of bus body building there is supply of goods and services. Thus, classification of this composite supply, as goods or service would depend on which supply is the principal supply which may be determined on the basis of facts and circumstances of each case.
2.	Whether retreading of tyres is a supply of goods or services?	In retreading of tyres, which is a composite supply, the pre-dominant element is the process of retreading which is a supply of service. Rubber used for retreading is an ancillary supply. Which part of a composite supply is the principal supply, must be determined keeping in view the nature of the supply involved. Value may be one of the guiding factors in this determination, but not the sole factor. The primary question that should be asked is what is the essential nature of the composite supply and which element of the supply imparts that essential nature to the composite supply. Supply of retreaded tyres, where the old tyres belong to the supplier of retreaded tyres, is a supply of goods (retreaded tyres under heading

<table>
<tr><td></td><td></td><td>4012 of the Customs Tariff attracting GST @ 28%)</td></tr>
<tr><td>3.</td><td>Whether Priority Sector Lending Certificates (PSLCs) are outside the purview of GST and therefore not taxable?</td><td>In Reserve Bank of India FAQ on PSLC, it has been mentioned that PSLC may be construed to be in the nature of goods, dealing in which has been notified as a permissible activity under section 6(1) of the Banking Regulation Act, 1949 vide Government of India notification dated 4th February, 2016. PSLC are not securities. PSLC are akin to freely tradeable duty scrips, Renewable Energy Certificates, REP license or replenishment license, which attracted VAT.

In GST there is no exemption to trading in PSLCs. Thus, PSLCs are taxable as goods at standard rate of 18% under the residuary S. No. 453 of Schedule III of notification No. 1/2017-Central Tax(Rate). GST payable on the certificates would be available as ITC to the bank buying the certificates.</td></tr>
<tr><td>4.</td><td>(1) Whether the activities carried by DISCOMS against recovery of charges from consumers under State Electricity Act are exempt from GST?

(2) Whether the guarantee provided by State Government to state owned companies against guarantee commission, is taxable under GST?</td><td>(1) Service by way of transmission or distribution of electricity by an electricity transmission or distribution utility is exempt from GST under Notification No. 12/2017- CT (R), Sl. No. 25. The other services such as, -

<table><tr><td>i.</td><td>Application fee for releasing connection of electricity;</td></tr><tr><td>ii.</td><td>Rental Charges against metering equipment;</td></tr><tr><td>iii.</td><td>Testing fee for meters/ transformers, capacitors etc.;</td></tr><tr><td>iv.</td><td>Labour charges from customers for shifting of meters or shifting of service lines;</td></tr><tr><td>v.</td><td>charges for duplicate bill;</td></tr><tr><td></td><td>provided by DISCOMS to consumer are taxable.</td></tr></table>
(2) The service provided by Central Government/State Government to any business entity including PSUs by way of guaranteeing the loans taken by them from financial institutions against consideration in any form including Guarantee Commission is taxable.</td></tr>
</table>

3.3.2.14A Departmental Clarifications - Applicable GST rate on Priority Sector Lending Certificates (PSLCs), Renewable Energy Certificates (RECs) and other similar scrips- Circular No. 46/20/2018-GST dated 6th June, 2018 to modify/clarify Sr. No. 3 of Circular No. 34/8/2018- GST dated 01.03.2018

Representations have been received seeking clarification regarding the classification and applicable GST rate on the Renewable Energy Certificates (RECs) and Priority Sector Lending Certificates (PSLCs).

2. Earlier, in response to a FAQ, it was clarified (vide advertisement dated 27.07.2017), that MEIS and other scrips like SEIS and IEIS are goods classified under heading 4907 and attract 12% GST, which is the general GST rate for goods falling under heading 4907. Subsequently, the duty credit scrips classifiable under 4907 were exempted from GST, while stock, share or bond certificates and similar documents of title [other than Duty Credit Scrips], classifiable under heading 4907, attract 12% GST.

3. Later on, Circular No. 34/8/2018- GST dated 01.03.2018 (S.No.3) was issued clarifying that PSLCs are taxable as goods at a standard rate of 18 % under the residual entry S. No. 453 of Schedule III of notification No. 01/2017-Central Tax (Rate).

4. As a result, there is lack of clarity on the applicable rate of GST on various scrips/ certificates like RECs, PSLCs etc.

5. The matter has been re-examined. GST rate of 18 % under the residual entry at S.No. 453 of Schedule III of notification No. 01/2017-Central Tax (Rate) applies only to those goods which are not covered under any other entries of Schedule I, II, IV, V, or VI of the notification. In other words, if any goods are covered under any of the entries of Schedule I, II, IV, V, or VI, the GST rate applicable on them will be decided accordingly, without resorting to the residual entry 453 of Schedule III.

6. As such, various certificates like RECs, PSLCs etc are classified under heading 4907 and will accordingly attract GST @ 12 %, though duty paying scrips classifiable under the same heading will attract Nil GST{under S.No. 122A of Notification No. 2/2017-Central Tax (Rate) dated 28.06.2017, as amended vide Notification No. 35/2017-Central Tax (Rate) dated 13.10.2017}.

7. Accordingly, in modification of S.No. 3 of Circular No. 34/8/2018- GST dated 01.03.2018, it is hereby clarified that Renewable Energy Certificates (RECs) and Priority Sector Lending Certificates (PSLCs) and other similar documents are classifiable under heading 4907 and attract 12% GST. The duty credit scrips, however, attract Nil GST under S.No. 122A of Notification No. 2/2017-Central Tax (Rate) dated 28.06.2017.

3.3.2.15 Departmental Clarifications - Joint Venture --- Taxable services provided by the members of the Joint Venture (JV) to the JV and vice versa and inter se between the members of the JV- Circular No. 35/9/2018-GST dated 5th March 2018

I am directed to say that in the Service Tax regime, CBEC vide Circular No. 179/5/2014 – ST issued from F.No. 179/5/2014-ST dated 24 September 2014 had clarified that if cash calls are merely transaction in money, then they are excluded from the definition of service provided in Section 65B (44) of the Finance Act, 1994. Whether a cash call is merely a transaction in money and hence not in the nature of consideration for taxable service, would depend on the terms of the Joint Venture Agreement, which may vary from case to case. The Circular clarified that cash calls, sometimes, could be in the nature of advance payments made by members towards taxable services received from joint venture(JV); and that payments made out of cash calls pooled by a JV towards taxable services received from a member or a third party is in the nature of consideration and hence attracts Service Tax. The Circular further stated that JV being an unincorporated temporary association constituted for the limited purpose of carrying out a specified project within a time frame, a comprehensive examination of the various JV agreements (at times, there could be number of inter se agreements between members of the JV) holds the key to understanding of the taxation of transactions involving taxable services between the JV and its members or inter-se between the members of a JV. Therefore, officers in the field formations were advised to carefully examine the leviability of service tax with reference to the specific terms/clauses of each JV agreement.

2. In the Service Tax Law, service was defined as an activity carried out by a person for another for consideration [Section 65B(44) of the Finance Act 1994]. Explanation 3 to the said definition stated than an unincorporated association or a body of persons as the case may be, and a member thereof shall be treated as distinct persons.

3. GST is levied on intra-State and inter-State supply of goods and services. According to section 7 of CGST Act, 2017, the expression “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, and includes activities specified in Schedule II to the CGST Act, 2017. The definition of “business” in section 2(17) of CGST Act states that “business” includes provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members. The term person is defined in section 2(84) of the CGST Act, 2017 to include an association of persons or a body of individuals, whether incorporated or not, in India or outside India. Further, Schedule II of CGST Act, 2017 enumerates activities which are to be treated as supply of goods or as supply of services. It states in para 7 that supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration shall be treated as supply of goods. A conjoint reading of the above provisions of the law implies that supply of services by an unincorporated association or body of persons (AOP) to a member thereof for cash, deferred payment or other valuable consideration shall be treated as supply of services. The above entry in Schedule II is analogous to and draws strength from the provision in Article 366(29A)(e) of the Constitution according to which a tax on the sale or purchase of goods includes a tax on the supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.

4. Therefore, the law with regard to levy of GST on service supplied by member of an unincorporated joint venture (JV) to the JV or to other members of the JV, or by JV to the members, essentially remains the same as it was under service tax law. Thus, it is clarified that the clarification given vide Board Circular No. 179/5/2014 – ST dated 24.09.2014 ibid in the context of service tax is applicable for the purpose of levy of GST also. It is reiterated that the question whether cash calls are taxable or not will entirely depend on the facts and circumstances of each case. ‘Cash calls’ are raised by an operating member of the joint

venture on other members in proportion to their participating interests in the joint venture(unincorporated) to meet the expenditure on the operations to be carried out as per the approved work programme and budget. Taxability of cash calls can be further explained by the following illustrations:

Illustration A: There are 4 members in the JV including the operating member and each one contributes Rs 100 as part of their share. A total amount of Rs 400 is collected. The operating member purchases machinery for Rs 400 for the JV to be used in oil production. Illustration

B: There are 4 members in the JV including the operating member and each one contributes Rs 100 as part of their share. A total amount of Rs 400 is collected. The operating member thereafter uses its own machine and performs exploration and production activities on behalf of the JV.

4.1 Illustration A will not be the subject matter of 'ST/GST' for the reason that the operating member is not carrying out an activity for another for consideration. In Illustration A, the money paid for purchase of machinery is merely in the nature of capital contribution and is therefore a transaction in money.

4.2 On the other hand, in Illustration B, the operating member uses its own machinery and is therefore providing 'service' within the scope of supply of CGST Act, 2017. This is because in this scenario, the operating member is recovering the cost appropriated towards machinery and services from the other JV members in their participating interest ratio.

3.3.2.16 Departmental Clarifications - Issue related to taxability of 'tenancy rights' under GST- Circular No.44/18/2018-CGST dated 2nd May, 2018

Doubts have been raised as to,-

(i) Whether transfer of tenancy rights to an incoming tenant, consideration for which is in form of tenancy premium, shall attract GST when stamp duty and registration charges is levied on the said premium, if yes what would be the applicable rate?

(ii) Further, in case of transfer of tenancy rights, a part of the consideration for such transfer accrues to the outgoing tenant, whether such supplies will also attract GST?

2. The issue has been examined. The transfer of tenancy rights against tenancy premium which is also known as "pagadi system" is prevalent in some States. In this system the tenant acquires, tenancy rights in the property against payment of tenancy premium (pagadi). The landlord may be owner of the property but the possession of the same lies with the tenant. The tenant pays periodic rent to the landlord as long as he occupies the property. The tenant also usually has the option to sell the tenancy right of the said property and in such a case has to share a percentage of the proceed with owner of land, as laid down in their tenancy agreement. Alternatively, the landlord pays to tenant the prevailing tenancy premium to get the property vacated. Such properties in Maharashtra are governed by Maharashtra Rent Control Act, 1999.

3. As per section 9(1) of the CGST Act there shall be levied central tax on the intra-State supplies of services. The scope of supply includes all forms of supply of goods and 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

and also includes the activities specified in Schedule II. The activity of transfer of tenancy right against consideration in the form of tenancy premium is a supply of service liable to GST. It is a form of lease or renting of property and such activity is specifically declared to be a service in para 2 of Schedule II i.e. any lease, tenancy, easement, licence to occupy land is a supply of services.

4. The contention that stamp duty and registration charges is levied on such transfers of tenancy rights, and such transaction thus should not be subjected to GST, is not relevant. Merely because a transaction or a supply involves execution of documents which may require registration and payment of registration fee and stamp duty, would not preclude them from the scope of supply of goods and services and from payment of GST. The transfer of tenancy rights cannot be treated as sale of land or building declared as neither a supply of goods nor of services in para 5 of Schedule III to CGST Act, 2017. Thus a consideration for the said activity shall attract levy of GST.

5. To sum up, the activity of transfer of 'tenancy rights' is squarely covered under the scope of supply and taxable per-se. Transfer of tenancy rights to a new tenant against consideration in the form of tenancy premium is taxable. However, renting of residential dwelling for use as a residence is exempt[Sl. No. 12 of notification No. 12/2017-Central Tax(Rate)]. Hence, grant of tenancy rights in a residential dwelling for use as residence dwelling against tenancy premium or periodic rent or both is exempt. As regards services provided by outgoing tenant by way of surrendering the tenancy rights against consideration in the form of a portion of tenancy premium is liable to GST.

3.3.2.17 Departmental Clarifications - Clarifications of certain issues under GST- Circular No. 47/21/2018-GST dated 08th June, 2018

Representations have been received seeking clarification on certain issues under the GST laws. The same have been examined and the clarifications on the same are as below:

Sl. No.	*Issue*	*Clarification*
1	Whether moulds and dies owned by Original Equipment Manufacturers (OEM) that are sent free of cost (FOC) to a component manufacturer is leviable to tax and whether OEMs are required to reverse input tax credit in this case?	1.1 Moulds and dies owned by the original equipment manufacturer (OEM) which are provided to a component manufacturer (the two not being related persons or distinct persons) on FOC basis does not constitute a supply as there is no consideration involved. Further, since the moulds and dies are provided on FOC basis by the OEM to the component manufacturer in the course or furtherance of his business, there is no requirement for reversal of input tax credit availed on such moulds and dies by the OEM. 1.2 It is further clarified that while calculating the value of the supply made by the component manufacturer, the value of moulds and dies provided by the OEM to the component manufacturer on FOC basis shall not be added to the value of such supply because the cost

		of moulds/dies was not to be incurred by the component manufacturer and thus, does not merit inclusion in the value of supply in terms of section 15(2)(b) of the Central Goods and Services Tax Act, 2017 (CGST Act for short). 1.3 However, if the contract between OEM and component manufacturer was for supply of components made by using the moulds/dies belonging to the component manufacturer, but the same have been supplied by the OEM to the component manufacturer on FOC basis, the amortised cost of such moulds/dies shall be added to the value of the components. In such cases, the OEM will be required to reverse the credit availed on such moulds/dies, as the same will not be considered to be provided by OEM to the component manufacturer in the course or furtherance of the former's business.
2	How is servicing of cars involving both supply of goods (spare parts) and services (labour), where the value of goods and services are shown separately, to be treated under GST?	2.1 The taxability of supply would have to be determined on a case to case basis looking at the facts and circumstances of each case. 2.2 Where a supply involves supply of both goods and services and the value of such goods and services supplied are shown separately, the goods and services would be liable to tax at the rates as applicable to such goods and services separately.
3	In case of auction of tea, coffee, rubber etc., whether the books of accounts are required to be maintained at every place of business by the principal and the auctioneer, and whether they are eligible to avail input tax credit?	3.1 The requirement of maintaining the books of accounts at the principal place of business and additional place(s) of business is clarified as below: (*a*) For the purpose of auction of tea, coffee, rubber, etc, the principal and the auctioneer may declare the warehouses, where such goods are stored, as their additional place of business. The buyer is also required to disclose such warehouse as his additional place of business if he wants to store the goods purchased through auction in such warehouses. For the purpose of supply of tea through a private treaty, the principal and an auctioneer may also comply with the said provisions. (*b*) The principal and the auctioneer for the purpose of auction of tea, coffee, rubber etc., or the principal and the auctioneer for the purpose of supply of tea through a private treaty, are required to maintain the books of accounts relating to each and every place of business in that place itself in terms of the first proviso to sub-section (1) of section 35 of the CGST Act. However, in case difficulties are faced in maintaining the books of accounts, it is clarified

		that they may maintain the books of accounts relating to the additional place(s) of business at their principal place of business instead of such additional place(s).
		(*c*) The principal and the auctioneer for the purpose of auction of tea, coffee, rubber etc., or the principal and the auctioneer for the purpose of supply of tea through a private treaty, shall intimate their jurisdictional officer in writing about the maintenance of books of accounts relating to the additional place(s) of business at their principal place of business.
		3.2 It is further clarified that the principal and the auctioneer for the purpose of auction of tea, coffee, rubber etc., or the principal and the auctioneer for the purpose of supply of tea through a private treaty, shall be eligible to avail input tax credit subject to the fulfilment of other provisions of the CGST Act read with the rules made thereunder.
4	In case of transportation of goods by railways, whether goods can be delivered even if the e-way bill is not produced at the time of delivery?	As per proviso to rule 138(2A) of the Central Goods and Services Tax Rules, 2017 (CGST Rules for short), the railways shall not deliver the goods unless the e-way bill is produced at the time of delivery.
5	Whether e-way bill is required in the following cases- (*i*) Where goods transit through another State while moving from one area in a State to another area in the same State. (*ii*) Where goods move from a DTA unit to a SEZ unit or vice versa located in the same State.	(*i*) It may be noted that e-way bill generation is not dependent on whether a supply is inter State or not, but on whether the movement of goods is inter-State or not. Therefore, if the goods transit through a second State while moving from one place in a State to another place in the same State, an e-way bill is required to be generated. (*ii*) Where goods move from a DTA unit to a SEZ unit or vice versa located in the same State, there is no requirement to generate an e-way bill, if the same has been exempted under rule 138(14)(d) of the CGST Rules.

3.3.2.18 Departmental Clarifications - Applicability of GST on ambulance services provided to Government by private service providers under National Health Mission (NHM)- Circular No. 51/25/2018-GST dated 31st July 2018

I am directed to invite your attention to the Circular No. 210/2/2018-Service Tax, dated 30th May, 2018. The said Circular has been issued in the context of service tax exemption contained in Notification No. 25/2012- Service Tax dated 20.06.2012 at Sl. No. 2 and 25(a). The Circular states, *inter alia*, that the service of transportation in ambulance provided by State Governments and private service providers (PSPs) to patients are exempt under Notification No. 25/2012- Service Tax dated 20.06.2012 and that ambulance service provided by PSPs to State Governments under National Health Mission is a service provided to Government by way of public health and hence exempted under Notification No. 25/2012-Service Tax dated 20.06.2012.

2. The service tax exemption at Sl. No.2 of Notification No. 25/2012 dated 20.06.2012 has been carried forward under GST in the identical form vide Sl. No. 74 of Notification No. 12/2017-CT (R) dated 28.06.2017. The service tax exemption at serial No. 25(a) of notification No. 25/2012 dated 20.06.2012 has also been substantially, although not in the same form, continued under GST *vide* Sl. Nos. 3 and 3 A of the Notification No. 12/2017-CT (R) dated 28.06.2017. The said exemption entries under Service Tax and GST notification read as under.

Service Tax	GST
Sl. No. 2: (*i*) Health care services by a clinical establishment, an authorized medical practitioner or para-medics; (*ii*) Services provided by way of transportation of a patient in an ambulance, other than those specified in (i) above.	Sl. No. 74: Services by way of- (a) health care services by a clinical establishment, an authorized medical practitioner or para-medics; (b) services provided by way of transportation of a patient in an ambulance, other than those specified in (a) above.
Sl. No. 25(a): Services provided to Government, a local authority or a governmental authority by way of water supply, public health, sanitation conservancy, solid waste management or slum improvement and upgradation	Sl. No. 3: Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union territory or local authority or a Governmental authority or a Government Entity by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.
	Sl. No. 3A: Composite supply of goods and services in which the value of supply of goods constitutes not more than 25 per cent, of the value of the said composite supply provided to the Central Government, State Government or Union territory or local authority or a Governmental authority or a Government Entity by way of any

	activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243 W of the Constitution.

3. Functions of 'Health and sanitation' is entrusted to Panchayats under Article 243G of the Constitution of India read with Eleventh Schedule. Function of 'Public health' is entrusted to Municipalities under Article 243 W of the Constitution read with Twelfth schedule to the Constitution. Thus ambulance services are an activity in relation to the functions entrusted to Panchayats and Municipalities under Articles 243G and 243W of the Constitution.

4. In view of the above, it is clarified that the clarification contained in the Circular No. 210/2/2018- Service Tax dated 30th May, 2018 with regard to the services provided by Government and PSPs by way of transportation of patients in an ambulance is applicable for the purpose of GST also, as the said services are specifically exempt under Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 vide Sl. No. 74.

5. As regards the services provided by PSPs to the State Governments by way of transportation of patients on behalf of the State Governments against consideration in the form of fee or otherwise charged from the State Government, it is clarified that the same would be exempt under—

a.	Sl. No. 3 of Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 if it is a pure service and not a composite supply involving supply of any goods, and
b.	Sl. No. 3A of Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 if it is a composite supply of goods and services in which the value of supply of goods constitutes not more than 25 per cent of the value of the said composite supply.

3.3.2.19 Departmental Clarifications - Clarification regarding applicability of GST on various goods and services- Circular No.52/26/2018-GST dated 9th August, 2018

Representations have been received seeking clarification in respect of applicable GST rates on the following items:

(i) Fortified Toned Milk

(ii) Refined beet and cane sugar

(iii) Tamarind Kernel Powder (Modified & Un Modified form)

(iv) Drinking water

(v) Plasma products

(vi) Wipes using spun lace non-woven fabric

(vii) Real Zari Kasab (Thread)

(viii) Marine Engine

(ix) Quilt and comforter

(x) Bus body building as supply of motor vehicle or job work

(xi) Disc Brake Pad

2. The matter has been examined. The issue-wise clarifications are discussed below:

3.1 Applicability of GST on Fortified Toned Milk: Representations have been received seeking clarification regarding applicability of GST on Fortified Toned Milk.

3.2 Milk is classified under heading 0401 and as per S.No. 25 of notification No. 2/2017-Central Tax (Rate) dated 28.06.2017, fresh milk and pasteurised milk, including separated milk, milk and cream, not concentrated nor containing added sugar or other sweetening matter, excluding Ultra High Temperature (UHT) milk falling under tariff head 0401 attracts NIL rate of GST. Further, as per HSN Explanatory Notes, milk enriched with vitamins and minerals is classifiable under HSN code 0401. Thus, it is clarified that toned milk fortified (with vitamins 'A' and 'D') attracts NIL rate of GST under HSN Code 0401.

4.1 Applicable GST rate on refined beet and cane sugar: Doubts have been raised regarding GST rate applicable on refined beet and cane sugar. Vide S. No. 91 of schedule I of notification No. 1/2017-Central Tax (Rate) dated 28.06.2017, 5% GST rate has been prescribed on all kinds of beet and cane sugar falling under heading 1701.

4.2 Doubts seem to have arisen in view of S. No. 32 A of the Schedule II of notification No. 1/2017-Central Tax (Rate) dated 28.06.2017, which prescribes 12% GST rate on "All goods, falling under tariff items 1701 91 and 1701 99 including refined sugar containing added flavouring or colouring matter, sugar cubes (other than those which attract 5% or Nil GST)".

4.3 It is clarified that by virtue of specific exclusion in S. No. 32 A, any sugar that falls under 5% category [at the said S. No. 91 of schedule I of notification No.1/2017-Central Tax (Rate) dated 28.06.2017] gets excluded from the S. No. 32 A of Schedule II. As all kinds of beet and cane sugar falling under heading 1701 are covered by the said entry at S. No. 91 of Schedule I, these would get excluded from S. No. 32 A of Schedule II, and thus would attract GST @ 5%.

4.4 Accordingly, it is clarified that beet and cane sugar, including refined beet and cane sugar, will fall under heading 1701 and attract 5% GST rate.

5.1 Applicable GST rate on treated (modified) tamarind kernel powder and plain (unmodified) tamarind kernel powder : Representation have been received seeking clarification regarding GST rate applicable on treated (modified) tamarind kernel powder and plain (unmodified) tamarind kernel powder.

5.2 There are two grades of Tamarind Kernel Powder (TKP):- Plain (unmodified) form (hot, water soluble) and Chemically treated (modified) form (cold, water soluble).

5.3 As per S. No. 76 A of schedule I of notification No. 1/2017-Central Tax (Rate) dated 28.06.2017, 5% GST rate was prescribed on Tamarind Kernel powder falling under chapter 13. However, certain doubts have been expressed regarding GST rate on Tamarind kernel powder, as the said notification does not specifically mention the word "modified".

5.4 As both plain (unmodified) tamarind kernel powder and treated (modified) tamarind kernel powder fall under chapter 13, it is hereby clarified that both attract 5% GST in terms of the said notification.

6.1 Applicability of GST on supply of safe drinking water for public purpose: Representations have been received seeking clarification regarding applicability of GST on supply of safe drinking water for public purpose.

6.2 Attention is drawn to the entry at S. No. 99 of notification No. 2/2017-Central Tax (Rate) dated 28.06.2017, by virtue of which water [other than aerated, mineral, purified, distilled, medicinal, ionic, battery, de-mineralized and water sold in sealed container] falling under HS code 2201 attracts NIL rate of GST.

6.3 Accordingly, supply of water, other than those excluded from S. No. 99 of notification No. 2/2017-Central Tax (Rate) dated 28.06.2017, would attract GST at "NIL" rate. Therefore, it is clarified that supply of drinking water for public purposes, if it is not supplied in a sealed container, is exempt from

GST. 7.1 GST rate on Human Blood Plasma: References have been received about the varying practices being followed in different parts of the country regarding the GST rates on "human blood plasma".

7.2 Plasma is the clear, straw coloured liquid portion of blood that remains after red blood cells, white blood cells, platelets and other cellular components have been removed. As per the explanatory notes to the Harmonized System of Nomenclature (HSN), plasma would fall under the description antisera and other blood fractions, whether or not modified or obtained by means of biotechnological processes and would fall under HS code 3002.

7.3 Normal human plasma is specifically mentioned at S. No. 186 of List I under S. No. 180 of Schedule I of the notification No. 1/2017-Central Tax (Rate) dated 28th June, 2017, and attracts 5% GST. Other items falling under HS Code 3002 (including plasma products) would attract 12% GST under S. No. 61 of Schedule II of the said notification, not specifically covered in the said List I.

7.4 Thus, a harmonious reading of the two entries would mean that normal human plasma would attract 5% GST rate under List I (S. No. 186), whereas plasma products would attract 12% GST rate, if otherwise not specifically covered under the said List.

8.1 Appropriate classification of baby wipes, facial tissues and other similar products: Varied practices are being followed regarding the classification of baby wipes, facial tissues and other similar products, and references have been received requesting for correct classification of these products. As per the references, these products are currently being classified under different HS codes namely 3307, 3401 and 5603 by the industry.

8.2 Commercially, wipes are categorized into various types such as baby wipes, facial wipes, disinfectant wipes, make-up remover wipes etc. These products are generally made by using non-woven fabrics of viscose and polyviscous blend and are sprinkled with demineralized water and various chemicals and fragrances, which impart the essential character to the product. The base raw materials are moisturising and cleansing agents, preservatives, aqua base, cooling agents, perfumes etc. The textile material is present as a carrying medium of these cleaning/wiping components.

8.3 According to the General Rules for Interpretation [GRI- 3(b)] of the First Schedule to the Customs Tariff Act (CTA), 1975, "Mixtures, composite goods consisting of different materials

or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3 (a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable." Since primary function of the article should be taken into consideration while deciding the classification, it is clear that the essential character of the wipes in the instant case is imparted by the components which are to be mixed with the textile material.

8.4 As per the explanatory notes to the HSN, the HS code 5603 clearly excludes nonwoven, impregnated, coated or covered with substances or preparations such as perfumes or cosmetics, soaps or detergents, polishes, creams or similar preparations. The HSN is reproduced as follows : "The heading also excludes:

Nonwoven, impregnated, coated or covered with substances or preparations [i.e. perfumes or cosmetics (Chapter 33), soaps or detergents (heading 3401), polishes, creams, or similar preparations (heading 3405), fabric, softeners (heading 3809)] where the textile material is present merely as a carrying medium. Further, HS code 3307 covers wadding, felt and non-woven, impregnated, coated or covered with perfumes or cosmetics. The HS code 3401, would cover paper, wadding, felt and non-woven impregnated, coated or covered with soap or detergent whether or not perfumed"

8.5 Further, as per the explanatory notes to the HSN, the heading 3307 includes wadding, felt and nonwovens impregnated, coated or covered with perfume or cosmetics. Similarly, as per explanatory notes to the HSN, the heading 3401 includes wipes made of paper, wadding, felt and nonwovens, impregnated, coated or covered with soap or detergent, whether or not perfumed or put up for retail sale.

8.6 Thus, the wipes of various kinds (as stated above) are classifiable under heading 3307 or 3401 depending upon their constituents as discussed above. Therefore, if the baby wipes are impregnated with perfumes or cosmetics, then the same would fall under HS code 3307 and would attract 18% GST rate. Similarly, if they are coated with soap or detergent, then it would fall under HS code 3401 and would attract 18% GST.

9.1 Classification and applicable GST rate on real zari Kasab (thread): Certain doubts have been raised regarding the classification and applicable GST rate on Kasab thread (a metallised yarn) as yarn falling under heading 5605 attracts 12% GST, as per entry 137 of the Schedule-II-12% of the notification No.01/2017-Central Tax (rate) dated 28.06.2017, while specified embroidery product falling under 5809 and 5810 attracts GST @ 5%, as per entry no. 220 of the Schedule-I-5% of the above-mentioned notification.

9.2 The heading 5809 and 5810 cover embroidery and zari articles. These heading do not cover yarn of any kinds. Hence, while these headings apply to embroidery articles, embroidery in piece, in strips, or in motifs, they do not apply to yarn, including Kasab yarn.

9.3 Further all types of metallised yarns or threads are classifiable under tariff heading 5605. Kasab (yarn) falls under this heading. Under heading 5605, real zari manufactured with silver wire gimped (vitai) on core yarn namely pure silk and cotton and finally gilted with gold would attract 5% GST under tariff item 5605 00 10, as specified at entry no. 218A of ScheduleI-5% of the GST rate schedule. Other goods falling under this heading attract 12% GST. Accordingly, kasab (yarn) would attract 12% GST along with other metallised yarn, whether or not gimped, being textile yarn, combined with metal in the form of thread, strip or powder or covered with metal including imitation zari thread (S. No. 137 of the Schedule-II-12%). Therefore, it is clarified that imitation zari thread or yarn known as "Kasab" or by any other name in trade parlance, would attract a uniform GST rate of 12% under tariff heading 5605.

10.1 Applicability of GST on marine engine: Reference has been received seeking clarification regarding GST rates on Marine Engine. The fishing vessels are classifiable under heading 8902, and attract GST @ 5%, as per S. No. 247 of Schedule I of the notification No. 01/2017-Central Tax (rate) dated 28.06.2017. Further, parts of goods of heading 8902, falling under any chapter also attracts GST rate of 5%, vide S. No. 252 of Schedule I of the said notification. The Marine engine for fishing vessel falling under Tariff item 8408 1093 of the Customs Tariff Act, 1975 would attract a GST rate of 5% by virtue of S. No. 252 of Schedule I of the notification No. 01/2017-Central Tax (rate) dated 28.06.2017.

10.2 Therefore, it is clarified that the supplies of marine engine for fishing vessel (being a part of the fishing vessel), falling under tariff item 8408 10 93 attracts 5% GST.

11.1 Applicable GST rate on cotton quilts under tariff heading 9404-Scope of the term “Cotton Quilt”.

11.2 Cotton quilts falling under tariff heading 9404 attract a GST rate of 5% if the sale value of such cotton quilts does not exceed Rs. 1000 per piece [as per S. No. 257 A of Schedule I of the notification No. 01/2017-Central Tax (rate) dated 28.06.2017]. However, such cotton quilts, with sale value exceeding Rs.1000 per piece attract a GST rate of 12% (as per S. No. 224A of Schedule II of the said notification). Doubts have been raised as to what constitutes cotton quilt, i.e. whether a quilt filled with cotton with cover of cotton, or filled with cotton but cover made of some other material, or filled with material other than cotton.

11.3 The matter has been examined. The essential character of the cotton quilt is imparted by the filling material. Therefore, a quilt filled with cotton constitutes a cotton quilt, irrespective of the material of the cover of the quilt. The GST rate would accordingly apply.

12.1 Applicable GST rate for bus body building activity: Representations have been received seeking clarifications on GST rates on the activity of bus body building. The doubts have arisen on account of the fact that while GST applicable on job work services is 18%, the supply of motor vehicles attracts GST @ 28%.

12.2 Buses [motor vehicles for the transport of ten or more persons, including the driver] fall under headings 8702 and attract 28% GST. Further, chassis fitted with engines [8705] and whole bodies (including cabs) for buses [8707] also attract 28% GST. In this context, it is mentioned that the services of bus body fabrication on job work basis attracts 18% GST on such service. Thus, fabrication of buses may involve the following two situations:

a) Bus body builder builds a bus, working on the chassis owned by him and supplies the built-up bus to the customer, and charges the customer for the value of the bus.

b) Bus body builder builds body on chassis provided by the principal for body building, and charges fabrication charges (including certain material that was consumed during the process of job-work).

12.3 In the above context, it is hereby clarified that in case as mentioned at Para 12.2(a) above, the supply made is that of bus, and accordingly supply would attract GST @28%. In the case as mentioned at Para 12.2(b) above, fabrication of body on chassis provided by the principal (not on account of body builder), the supply would merit classification as service, and 18% GST as applicable will be charged accordingly.

13.1 Applicable GST rate on Disc Brake Pad: Representations have been received seeking clarification on disc brake pad for automobiles. It is stated that divergent practices of

classifying these products, in Chapter 68 or heading 8708 are being followed. Chapter 68 attracts a GST rate of 18%, while heading 8708 attracts a GST rate of 28%.

13.2 Parts and accessories of motor vehicles of headings 8701 to 8705 are classified under heading 8708 and attract 28% GST. Further, friction material and articles thereof (for example, sheets, rolls, strips, segments, discs, washers, pads), not mounted, for brakes, for clutches or the like, with a basis of asbestos, of other mineral substances or of cellulose, whether or not combined with textiles or other mineral substances or of cellulose, whether or not combined with textiles or other materials are classifiable under heading 6813 and attract 18% GST.

13.3 In the above context, it is mentioned that as per HSN Explanatory Notes, heading 8708 covers “Brakes (shoe, segment, disc, etc.) and parts thereof (plates, drums, cylinders, mounted linings, oil reservoirs for hydraulic brakes, etc.); servo-brakes and parts thereof, while Chapter 68 covers articles of Stone, Plaster, Cement, Asbestos, Mica or similar materials. Further, HSN Explanatory Notes to the heading 6813 specifically excludes:

i) Friction materials not containing mineral materials or cellulose fibre (e.g., those of cork);

ii) Mounted brake linings (including friction material fixed to a metal plate provided with circular cavities, perforated tongues or similar fittings, for disc brakes) which are classified as parts of the machines or vehicles for which they are designed (e.g. heading 8708).

13.4 Thus, it is clear, in view of the HSN Explanatory Notes that the said goods, namely “Disc Brake pad” for automobiles, are appropriately classifiable under heading 8708 of the Customs Tariff Act, 1975 and would attract 28% GST.

3.3.2.20 Departmental Clarifications - Clarification regarding applicability of GST on the petroleum gases retained for the manufacture of petrochemical and chemical products - Circular No.53/27/2018-GST dated 9th August, 2018

References have been received regarding the applicability of GST on the petroleum gases retained for the manufacture of petrochemical and chemical products during the course of continuous supply, such as Methyl Ethyl Ketone (MEK) feedstock, petroleum gases etc.

2. In this context, it may be recalled that clarifications on similar issues for specific products have already been issued vide circular Nos. 12/12/2017-GST dated 26th October, 2017 and 29/3/2018-GST dated 25th January, 2018. These circulars apply mutatis mutandis to other cases involving same manner of supply as mentioned in these circulars. However, references have again been received from some of the manufacturers of other petrochemical and chemical products for issue of clarification on applicability of GST on petroleum gases, which are supplied by oil refineries to them on a continuous basis through dedicated pipelines, while a portion of the raw material is retained by these manufacturers (recipient of supply), and the remaining quantity is returned to the oil refineries. In this regard, an issue has arisen as to whether in this transaction GST would be leviable on the whole quantity of the principal raw materials supplied by the oil refinery or on the net quantity retained by the manufacturers of petrochemical and chemical products.

3. The GST Council in its 28th meeting held on 21.7.2018 discussed this issue and recommended for issuance of a general clarification for petroleum sector that in such

transactions, GST will be payable by the refinery on the value of net quantity of petroleum gases retained for the manufacture of petrochemical and chemical products.

4. Accordingly, it is hereby clarified that, in the aforesaid cases, GST will be payable by the refinery only on the net quantity of petroleum gases retained by the recipient manufacturer for the manufacture of petrochemical and chemical products. Though, the refinery would be liable to pay GST on such returned quantity of petroleum gases, when the same is supplied by it to any other person. It is reiterated that this clarification would be applicable mutatis mutandis on other cases involving supply of goods, where feed stock is retained by the recipient and remaining residual material is returned back to the supplier. The net billing is done on the amount retained by the recipient.

5. This clarification is issued in the context of the Goods and Service Tax (GST) law only and past issues, if any, will be dealt in accordance with the law prevailing at the material time.

3.3.2.21 Departmental Clarifications - Classification of fertilizers supplied for use in the manufacture of other fertilizers at 5% GST rate-- Circular No. 54/28/2018-GST dated 9th August, 2018

References have been received regarding a clarification as to whether simple fertilizers, such as MOP (Murate of Potash) classified under Chapter 31 and supplied for use in manufacturing of a complex fertilizer, are entitled to the concessional GST rate of 5%, as applicable in general to fertilizers (i.e. fertilizers which are cleared to be used as fertilizers).

2.1 The matter has been examined. Chapter 31 of the Customs Tariff Act, 1975 covers Fertilizers. The fertilizers are mostly used for increasing soil and land fertility, either directly, or by use in manufacturing of complex fertilizers. However, certain fertilizers and similar goods falling under this Chapter may be used for individual purposes like use of molten urea for manufacture of melamine and urea used in manufacturing of urea-formaldehyde resins or organic synthesis.

2.2 In the pre-GST regime, the concessional duty rate was prescribed for fertilizers falling under Chapter 31 of the Tariff (notification No. 12/2012-Central Excise). This concessional rate was applied to goods falling under Chapter 31 which are clearly to be used directly as fertilizers or in the manufacture of other fertilizers, whether directly or through the stage of an intermediate product.

3. In the GST regime, tax structure on fertilizers has been prescribed on the lines of pre-GST tax incidence. The wording of the GST notification is similar to the central excise notification except certain changes to meet the requirements of GST. These changes were necessitated as GST is applicable on the supply of goods while central excise duty was applicable on manufacture of goods. Accordingly, fertilizers falling under heading 3102, 3103, 3104 and 3105, other than those which are clearly not to be used as fertilizers, attract 5% GST [S. No. 182A to 182D of the First schedule to the notification No.1/2017-Central Tax (Rate) dated 28.06.2017]. However, the fertilizers items falling under the above mentioned headings, which are clearly not to be used as fertilizer attract 18% GST [S. No. 42 to 45 of the III schedule to the notification No. 1/2017 Central Tax (Rate)]. The intention has been to provide concessional rate of GST to the fertilizers which are used directly as fertilizers or which are used in the manufacturing of complex fertilizers which are further used as soil or crop fertilizers. The

phrase “other than clearly to be used as fertilizers” would not cover such fertilizers that are used for making complex fertilizers for use as soil or crop fertilizers.

4. Thus, it is clarified that the fertilizers supplied for direct use as fertilizers, or supplied for use in the manufacturing of other complex fertilizers for agricultural use (soil or crop fertilizers), will attract 5% IGST.

3.3.2.22 Departmental Clarifications - Taxability of services provided by Industrial Training Institutes (ITI) .- Circular No.55/29/2018-GST dated 10th August, 2018

Representations have been received requesting to clarify the following:

(*a*)	Whether GST is payable on vocational training provided by private it is in designated trades and in other than designated trades.
(*b*)	Whether GST is payable on the service, provided by a private Industrial Training Institute for conduct of examination against consideration in the form of entrance fee and also on the services relating to admission to or conduct of examination.

2. With regard to the first issue, [Para 1(a) above], it is clarified that Private ITIs qualify as an educational institution as defined under para 2(y) of notification No. 12/2017-CT(Rate) if the education provided by these ITIs is approved as vocational educational course. The approved vocational educational course has been defined in para 2(h) of notification *ibid* to mean a course run by an ITI or an Industrial Training Centre affiliated to NCVT (National Council for Vocational Training) or SCVT (State Council for Vocational Training) offering courses in designated trade notified under the Apprenticeship Act, 1961; or a Modular employable skill course, approved by NCVT, run by a person registered with DG Training in Ministry of Skill Development. Therefore, services provided by a private ITI in respect of designated trades notified under Apprenticeship Act, 1961 are exempt from GST under Sr. No. 66 of Notification No. 12/2017-CT(Rate). As corollary, services provided by a private ITI in respect of other than designated trades would be liable to pay GST and are not exempt.

3. With regard to the second issue, [Para 1(b) above], it is clarified that in case of designated trades, services provided by a private ITI by way of conduct of entrance examination against consideration in the form of entrance fee will also be exempt from GST [Entry (aa) under Sr. No. 66 of Notification No. 12/2017-CT(Rate) refers]. Further, in respect of such designated trades, services provided to an educational institution, by way of, services relating to admission to or conduct of examination by a private ITI will also be exempt [Entry (b(iv)) under Sr. No. 66 of notification No. 12/2017-CT(Rate) refers]. It is further clarified that in case of other than designated trades in private ITIs, GST shall be payable on the service of conduct of examination against consideration in the form of entrance fee and also on the services relating to admission to or conduct of examination by such institutions, as these services are not covered by the exemption ibid.

4. As far as Government ITIs are concerned, services provided by a Government ITI to individual trainees/students, is exempt under Sl. No. 6 of 12/2017-CT(R) dated 28.06.2017 as these are in the nature of services provided by the Central or State Government to individuals. Such exemption in relation to services provided by Government ITI would cover both - vocational training and examinations conducted by these Government ITIs.

3.3.2.24 Departmental Clarifications - Levy of GST on Priority Sector Lending Certificates (PSLC)- CIRCULAR No.62/36/2018-GST dated 12th September, 2018

Representations have been received requesting to clarify the following:

(i) Mechanism for discharge of tax liability on trading of Priority Sector Lending Certificate (PSLC) for the period 1.7.2017 to 27.5.2018.

(ii) GST rate applicable on trading of PSLCs.

2. The representations have been examined. With the approval of the GST Implementation Committee of the GST Council, it is clarified that GST on PSLCs for the period 1.7.2017 to 27.05.2018 will be paid by the seller bank on forward charge basis and GST rate of 12% will be applicable on the supply.

3.3.2.24A Departmental Clarifications - Nature of Supply of Priority Sector Lending Certificates (PSLC)- Circular No. 93/12/2019-GST dated 8th March, 2019

Representations have been received requesting to clarify whether IGST or CGST/ SGST is payable for trading of PSLC by the banks on e-Kuber portal of RBI.

2. In this regard, it is stated that Circular No. 62/36/2018-GST dated 12.09.2018 was issued clarifying that GST on PSLCs for the period 1.7.2017 to 27.05.2018 will be paid by the seller bank on forward charge basis and GST rate of 12% will be applicable on the supply. Further, Notification No. 11/2018-Central Tax (Rate) dated 28.05.2018 was issued levying GST on PSLC trading on reverse charge basis from 28.05.2018 onwards to be paid by the buyer bank.

3. It is further clarified that nature of supply of PSLC between banks may be treated as a supply of goods in the course of inter-State trade or commerce. Accordingly, IGST shall be payable on the supply of PSLC traded over e-Kuber portal of RBI for both periods i.e 01.07.2017 to 27.05.2018 and from 28.05.2018 onwards. However, where the bank liable to pay GST has already paid CGST/SGST or CGST/UTGST as the case may be, such banks for payment already made, shall not be required to pay IGST towards such supply.

3.3.2.25 Departmental Clarifications - GST on Residential programmes or camps meant for advancement of religion, spirituality or yoga by religious and charitable trusts- Circular No. 66/40/2018-GST dated 26th September 2018

Certain representations have been received seeking clarification as regards applicability of GST on residential programmes or camps meant for advancement of religion, spirituality or yoga where the fee charged includes the cost of boarding and lodging.

2. The issue has already been clarified in the Chapter 39 “GST on Charitable and Religious Trusts” of Compilation of 51 GST Flyers updated as on 01.01.2018 available on CBIC website at the link https://goo.gl/EgAJtA.

2.1 The relevant portion reads as under:

“The services provided by entity registered under Section 12AA of the Income Tax Act, 1961 by way of advancement of religion, spirituality or yoga are exempt. Fee or consideration charged in any other form from the participants for participating in a religious, Yoga or meditation programme or camp meant for advancement of religion, spirituality or yoga shall be exempt. Residential programmes or camps where the fee charged includes cost of lodging and boarding shall also be exempt as long as the primary and predominant activity, objective and purpose of such residential programmes or camps is advancement of religion, spirituality or yoga. However, if charitable or religious trusts merely or primarily provide accommodation or serve food and drinks against consideration in any form including donation, such activities will be taxable. Similarly, activities such as holding of fitness camps or classes such as those in aerobics, dance, music etc. will be taxable”.

3. It is accordingly clarified that taxability of the services of religious and charitable trusts by way of residential programmes or camps meant for advancement of religion, spirituality or yoga may be decided accordingly.

3.3.2.26 Departmental Clarifications - Clarification regarding GST rates & classification (goods)- Circular No. 80/54 /2018-GST dated 31st December, 2018

Representations have been received seeking clarification in respect of applicable GST rates on the following items:

(i) Chhatua or Sattu

(ii) Fish meal and other raw materials used for making cattle/poultry/aquatic feed

(iii) Animal Feed Supplements/ feed additives from drugs

(iv) Liquefied Petroleum Gas for Domestic Use

(v) Polypropylene Woven and Non-Woven Bags and PP Woven and NonWoven Bags laminated with BOPP

(vi) Wood logs for pulping

(vii) Bagasse based laminated particle board

(viii) Embroidered fabric sold in three pieces cloth for lady suits

(ix) Waste to Energy Plant-scope of entry No. 234 of Schedule I of notification No.1/2017-Central Tax (Rate) dated 28.6.2017

(x) Turbo Charger for railways

(xi) Rigs, tools & Spares moving inter-state for provision of service

2. The matter has been examined. The issue-wise clarifications are discussed below:

3. Applicability of GST on Chhatua or Sattu:

3.1 Doubts have been raised regarding applicability of GST on Chhatua (Known as "Sattu" in Hindi Belt).

3.2 Chhatua or Sattu is a mixture of flour of ground pulses and cereals. HSN code 1106 includes the flour, meal and powder made from peas, beans or lentils (dried leguminous vegetables falling under 0713). Such flour improved by the addition of very small amounts of additives continues to be classified under HSN code 1106. If unbranded, it attracts Nil GST (S. No. 78 of notification No. 2/2017- Central Tax (Rate) dated 28.06.2017) and if branded and packed it attracts 5% GST (S. No. 59 of schedule I of notification No. 1/2017-Central Taxes (Rate) dated 28.06.2017).

4. Applicable GST rate on Fish meal and other raw materials used for making cattle/poultry/aquatic feed:

4.1. Representations have been received seeking clarification regarding GST rate applicable on the other raw materials/inputs used for making cattle/poultry/aquatic feed. The classification dispute here is between the following two entries in the two notifications. The details are as under:

Notification	Tariff Line	Description	Rate
S. No. 102 of notification No. 2/2017- Central Tax (Rate) dated 28.6.2017	**2301**, 2302, 2308, **2309**	**Aquatic feed** including shrimp feed and prawn feed, **poultry feed & cattle feed**, including grass, hay & straw, supplement & husk of pulses, concentrates & additives, wheat bran & de-oiled cake	NIL
S. No. 103 of notification No. 1/2017- Central Tax (Rate) dated 28.6.2017	**2301**	Flours, **meals** and pellets, of meat or meat offal, **of fish** or of crustaceans, molluscs or other aquatic invertebrates, **unfit for human consumption**; greaves	5%

4.2 A number of raw materials such as fish meal falling under heading 2301, meat and bone meal also falling under heading 2301, oil cakes of various oil seeds, soya seeds, bran, sharps, residue of starch and all other goods falling under headings 2302, 2303, 2304, etc are used to manufacture/formulation of, aquatic feed, animal feed, cattle feed, poultry feed etc. These raw materials/inputs cannot be directly used for feeding animal and cattle. The Larger Bench of the Hon'ble Supreme Court in the Commissioner of Customs (Import), Mumbai vs. Dilip Kumar [2018 (361) E.L.T 577] has laid down that inputs for animal feed are different from the animal feed. Said S. No. 102 covers the prepared aquatic/ poultry/cattle feed falling under headings 2309 and 2301. This entry does not apply to raw material/inputs like fish meals or meat cum bone meal (MBM) falling under heading 2301.

4.3 It is accordingly clarified that fish meals, meat cum bone meal (MBM) etc., attract 5% GST under S. No. 103 in notification No. 1/2017- Central Tax (Rate) dated 28.6.2017.

5. Applicable GST rate on Animal Feed Supplements/feed additives from drugs:

5.1. Representations have been received seeking clarification regarding GST rate applicable on Animal Feed Supplements/feed additives from drugs. The dispute is in classification of Animal Feed Supplements/feed additives from drugs between tariff heading 2309 and 2936.

5.2 As per the HSN, 2309 interalia covers reading vitamins and provitamins which improve digestion and, more generally, ensure that the animal makes good use of the feeds and safeguard its health. On the other hand, HS code 2936 coves vitamins and provitamins which are medicinal in nature and have much higher concentration of active substance.

5.4 Thus while deciding the classification of the products claimed to be animal feed supplements, it may be necessary to ensure that the said animal feed supplements are ordinarily or commonly known to the trade as products for a specific use in animal feeding.

5.5 A product deserves classification chapter 29 (equally applicable to heading 2936), if it is an item of general use, e.g., if a product is of specific use, say dietary supplement for human being product particularly suitable for a specific use rather than for general use. Vitamins and provitamins are normally covered under code heading 2936, but if they're prepared as food supplements in the form of tablets, etc. they would not be classifiable under this heading as the way they are presented, they are suitable for a specific use. Heading 2309 would cover items like feed supplements for animals that contain vitamins and other ingredients - such as cereals and proteins. These are covered in chapter 23 under heading code 2309, or antibiotic preparations used in animal feeding - for example a dried antibiotic mass on a carrier like cereal middling. The antibiotic content in these items is usually between 8% and 16%. Thus, HS code 2309 would cover only such product, which in the form supplied, are capable of specific use as food supplement for animals and not capable of any general use. If the vitamins, provitamins are supplied in a form in which they are capable of general use, i.e. in the form in which it could be used as inputs or raw materials for further processing, instead of being ready to use, then these would be classifiable under heading 2936.

6. Applicability of GST on supply of Liquefied Petroleum Gas for Domestic Use:

6.1 Representations have been received seeking clarification regarding applicability of GST rate at 5% on LPG supplied by refiners/fractionators (like GAIL / ONGC) to Oil Marketing Companies (OMC) for ultimate supply to household domestic consumers in terms of Ministry of Petroleum and Natural Gas (MoPNG) letter No. P 20023/2/2011-PP dated 23.07.2013. The references point to the fact that refiners/ fractionators like GAIL and ONGC are supplying LPG for domestic use to OMCs and this supply is not being treated as a supply for domestic use by field formations.

6.2 The issue seems to have arisen in the context of addition of S. No. 165A to notification No.1/2017-Central Tax (Rate) dated 28.6.2017, vide notification No. 6/2018 dated 25.01.2018. This entry was added on the recommendations of the GST Council in its 25th meeting, extending 5% GST rate for supply of LPG to household domestic consumers.

6.3 It is observed that the LPG stream for domestic LPG is differentially priced and packed differently from commercial LPG. The usage of LPG for domestic supply is known at the time of supply being made by refiner/fractionators to OMCs.

6.4 Therefore, it is being clarified that LPG supplied in bulk, whether by a refiner/fractionator to an OMC or by one OMC to another for bottling and further supply for domestic use will fall under the S. No. 165A of the notification No. 1/2017- Central Tax (Rate) dated 28.06.2017 and shall, accordingly, attract a GST rate of 5%, with effect from 25.1.2018.

7. Applicability of GST on supply of Polypropylene Woven and NonWoven Bags and PP Woven and Non-Woven Bags laminated with BOPP:

7.1 Representations have been received seeking the classification and GST rates on Polypropylene Woven and Non-Woven Bags and Polypropylene Woven and Non-Woven Bags laminated with BOPP

7.2 As per the explanatory notes to the HSN to HS code 39.23, the heading covers all articles of plastics commonly used for the packing or conveyance of all kinds of products and includes boxes, crates, cases, sacks and bags.

7.3 Further as per the Chapter note to Chapter 39, the expression "plastics" means those materials of headings 39.01 to 39.14 which are or have been capable, either at the moment of polymerization or at some subsequent stage, of being formed under external influence (usually heat and pressure, if necessary with a solvent or plasticizer) by moulding, casting, extruding, rolling or other process into shapes which are retained on the removal of the external influence.

7.4 Thus it is clarified that Polypropylene Woven and Non-Woven Bags and PP Woven and Non-Woven Bags laminated with BOPP would be classified as plastic bags under HS code 3923 and would attract 18% GST.

7.5 Non-laminated woven bags would be classified as per their constituting materials.

8. Applicability of GST on supply of wood logs for pulping:

8.1. Representation has been received seeking clarification on applicability of GST rate on wood log for pulping. Wood in the rough (whether or not stripped of bark or sapwood, or roughly squared) is classified under heading 4403 and attracts 18% GST.

8.2 As per HSN, heading 4403 also covers.

“timber for sawing; poles for telephone, telegraph or electrical power transmission lines; unpointed and unsplit piles, pickets, stakes, poles and props; round pit-props; logs, whether or not quarter-split, for pulping; round logs for the manufacture of veneer sheets, etc.; logs for the manufacture of match sticks, wood ware, etc.”.

8.3 Thus, it is clarified that wood logs or any kind of wood in the rough/timber, including the wood in rough/log/timber used for pulping falls under heading 4403 and attract GST at the rate of 18%.

9. Applicability of GST on supply of Bagasse based laminated particle board

9.1 Representation has been received seeking clarification on applicability of GST rate on Bagasse based laminated particle board. In this context, it is sated that the Bagasse Board has specific entry at S. No. 92 in Schedule II to the Notification 1/2017-Central Tax (Rate). Accordingly, the said entry covers Bagasse boards falling under 44 or any other chapter and 12% GST. Further, it is also stated the description “Bagasse board” in the said entry also covers Bagasse board [whether plain or laminated].

9.2 Thus, it is clarified Bagasse board [whether plain or laminated] falling under chapter 44 will attract concessional GST rate of 12%.

10. Applicability of GST on supply of embroidered fabric sold in three piece for lady suits:

10.1. Representations have been received seeking clarification regarding GST rate applicable on supply of embroidered fabric sold in three pieces fabric pack/set for lady suits (fabric for suit, salwar and dupatta). It has been informed that before becoming readymade articles or an apparel, the fabric is cut from bundles or thans and sold in that unstitched state with certain embellishment like gota etc. The consumers buy these sets or pieces and get it tailored which entails cutting of fabric in shape and stitching thereof. Doubts have arisen as regards applicable rates on such three fabric pieces in sets/packs.

10.2 Fabrics are classifiable under chapters 50 to 55 and 60 of the First Schedule to the Customs Tariff Act, 1975 on the basis of their constituent materials and attract a uniform GST rate of 5%. Garments and made up articles of textiles under chapters 61, 62 and 63 attract GST at the rate of 5% when value is upto Rs 1000 per piece and 12% when the value exceeds Rs. 1000 per piece.

10.3 Earlier, vide Circular no. 13/13/2017-CGST dated 27th October 2017, it has been clarified that mere packing of fabrics into pieces of different lengths will not change the nature of these goods and such pieces of fabrics would continue to be classifiable under the respective heading as the fabric and attract the 5% GST rate. This clarification would equally apply to three pieces of fabrics sold in a pack as ladies salwar suit. Any embroidery on a fabric piece or certain embellishment thereon does not change the basic nature of their being a fabric. The chapter 63 covers garment, including the unstitched garments which may or may not be sufficiently completed to be identifiable as garments or parts of garments. However, heading 6307 would not cover a fabric pieces or a set of pre-packed fabric pieces, even if embroidered or embellished. Such set of fabric pieces would attract GST at the rate of 5%.

11. Applicability of GST on supply of Waste to Energy Plant:

11.1. Representations have been received regarding applicable GST rate on the goods used in the setting up of Waste to Energy plants (WTEP) in term of Sr. No. 234 of Schedule I of Notification No 1/2017-Central Tax (Rates) dated 28th June, 2018. The said entry 234 prescribes 5% rate on the following renewable energy devices & parts for their manufacture:

(a) Bio-gas plant

(b) Solar power based devices

(c) Solar power generating system

(d)Wind mills, Wind Operated Electricity Generator (WOEG)

(e) Waste to energy plants / devices

(f) Solar lantern / solar lamp

(g) Ocean waves/tidal waves energy devices/plant

(h)Photo voltaic cells, whether or not assembled in modules or made up into panels

11.2 The notification specifically applies only the goods falling under chapters 84, 85 and 94 of the Tariff. Therefore, this concession would be available only to such machinery, equipment etc., which fall under Chapter 84, 85 and 94 and used in the initial setting up of renewable energy plants and devices including WTEP. This entry does not cover goods falling under other chapters, say a transport vehicle falling under Chapter 87 that may be used for movement of waste to WTEP.

11.3 Another related doubt raised is as to how would a supplier satisfy himself that goods falling under Chapter 84, 85 and 94, say a turbine or a boiler, required in a WTEP, would be used in the WTEP. In this context it is clarified that GST is to be self-assessed by a taxpayer. Therefore, he needs to satisfy himself with the requisite document from a buyer such as supply contracts/order for WTEP from the concerned authorities before supplying goods claiming concession under said entry 234.

12. Applicability of GST on supply of Turbo Charger for railways:

12.1. Representations have been received seeking clarification regarding classification and applicable GST rate on Turbo Chargers supplied to railways. It is stated that some of the supplier are classifying turbo charges supplied to Railways under Chapter 86 and paying GST at the rate of 5% .

12.2 The turbocharger is a turbine-driven forced induction device that increases an internal combustion engine's efficiency and power output by forcing extra compressed air into the combustion chamber. It has the compressor powered by a turbine. The turbine is driven by the exhaust gas from the engine.

12.3 Turbo charger is specifically classified under chapter HS code 8414 80 30. It continues to remain classified under this code irrespective of its use by Railways. Therefore, it is clarified that the turbo charger is classified under heading 8414 and attracts 18% GST.

13. Applicability of GST on supply of cranes, rigs, tools & Spares and other machinery when moved from one state to another by a person on his account for there use for supply of service

13.1 As per Circular No. 21/21/2017-GST dated 22.11.2017, it was clarified that no IGST would be applicable on such interstate movements of rigs, tools & spares and all goods on wheels. Doubts have been raised regarding applicability of GST on inter-state movement of machinery like tower cranes, rigs, batching plants, concrete pumps and mixers which are not mounted on wheels, but require regular means of conveyance (used by companies in Infrastructure business).

13.2 Any inter-state movement of goods for provision of service on own account by a service provider, where no transfer of title in such goods or transfer of goods to the distinct person by way of stock transfer is not involved, does not constitute a supply of such goods. Hence, it is clarified that any such movement on own account (not involving distinct person in terms of section 25), where such movement is not intended for further supply of such goods does not constitute a supply and would not be liable to GST.

3.3.2.27 Departmental Clarifications - Clarification regarding GST tax rate for Sprinkler and Drip Irrigation System including laterals- Circular No. 81/55/2018-GST dated 31st December, 2018

Representations have been received seeking clarification as regards the scope and coverage of entry No. 195B of the Schedule II to notification No. 1/2017- Central Tax (Rate), dated 28.06.2017. The entry No. 195B was inserted vide notification No. 6/2018- Central Tax (Rate), dated 25th January, 2018 and reads as below:

S. No	Chapter Heading/Sub-heading/Tariff Item	Description of Goods	CGST rate
195B	8424	Sprinklers; drip irrigation system including laterals;	6%

2. Doubts have arisen as in certain cases a view has been taken in the field that this entry would not cover “laterals of sprinklers” and “sprinklers irrigation system”, while laterals of drip irrigations are covered by this entry.

3. The matter has been examined. Initially, with effect from 1.7.2017, all goods falling under HS 8424, namely, Mechanical appliances (whether or not hand-operated) for projecting, dispersing or spraying liquids or powders; spray guns and similar appliances; steam or sand blasting machines and similar jet projecting machines (other than fire extinguishers, whether or not charged), were placed under 18% slab. Subsequently, on the recommendation of the GST Council, the item namely, ‘Nozzles for drip irrigation equipment or nozzles for sprinkler was placed under 12% GST slab (Entry No. ‘195A’ with effect from 22.09.2017). Upon revisiting the issue of GST rate on micro irrigation including drip irrigation system, including laterals the GST Council recommended 12% GST rate on micro irrigation system, namely, sprinklers, drip irrigation system, including laterals. Accordingly, the said entry 195B was inserted in the notification No. 1/2017- Central Tax (Rate).

3.1 The micro irrigation, sometimes called „localised irrigation‟, „low volume irrigation‟, or “trickle irrigation‟ is a system where water is distributed under low pressure through piped network, in a pre-determined pattern, and applied as a small discharge to each plant or adjacent to it. The traditional drip irrigation using individual emmitters, subsurfaces drip irrigations (SDI), micro-spray or micro-sprinkler irrigation, and mini bubbler irrigation all belong to the catgeory of micro irrigation method.

4. Therefore, the term “sprinklers”, in the said entry 195B, covers sprinkler irrigation system. Accordingly, sprinkler system consisting of nozzles, lateral and other components would attract 12% GST rate.

3.3.2.28 Departmental Clarifications - Applicability of GST on various programmes conducted by the Indian Institutes of Managements (IIMs)- Circular No. 82/01/2019- GST dated 1st January, 2019

I am directed to invite your attention to the Indian Institutes of Management Act, 2018 which came into force on 31 st January, 2018. According to provisions of the IIM Act, all the IIMs listed in the schedule to the IIM Act are “institutions of national importance”. They are empowered to (i) grant degrees, diplomas, and other academic distinctions or titles, (ii) specify the criteria and process for admission to courses or programmes of study, and (iii) specify the academic content of programmes. Therefore, with effect from 31st January, 2018, all the IIMs are “educational institutions” as defined under notification No. 12/ 2017- Central Tax (Rate) dated 28.06.2017 as they provide education as a part of a curriculum for obtaining a qualification recognised by law for the time being in force.

2. At present, Indian Institutes of Managements are providing various long duration programs (one year or more) for which they award diploma/ degree certificate duly recommended by Board of Governors as per the power vested in them under the IIM Act, 2017. Therefore, it is clarified that services provided by Indian Institutes of Managements to their students- in all such long duration programs (one year or more) are exempt from levy of GST. As per information received from IIM Ahmedabad, annexure 1 to this circular provides a sample list of programmes which are of long duration (one year or more), recognized by law and are exempt from GST.

3. For the period from 1st July, 2017 to 30th January, 2018, IIMs were not covered by the definition of educational institutions as given in notification No. 12/ 2017 Central Tax (Rate) dated 28.06.2017. Thus, they were not entitled to exemption under Sl. No. 66 of the said notification. However, there was specific exemption to following three programs of IIMs under Sl. No. 67 of notification No. 12/2017- Central Tax (Rate): –

(i) two-year full time Post Graduate Programmes in Management for the Post Graduate Diploma in Management, to which admissions are made on the basis of Common Admission Test (CAT) conducted by the Indian Institute of Management,

(ii) fellow programme in Management,

(iii) five years integrated programme in Management.

Therefore, for the period from 1st July, 2017 to 30th January, 2018, GST exemption would be available only to three long duration programs specified above.

4. It is further, clarified that with effect from 31st January, 2018, all IIMs have become eligible for exemption benefit under Sl. No. 66 of notification No. 12/ 2017- Central Tax (Rate) dated 28.06.2017. As such, specific exemption granted to IIMs vide Sl. No. 67 has become redundant. The same has been deleted vide notification No. 28/2018- Central Tax (Rate) dated, 31st December, 2018 w.e.f. 1st January 2019.

5. For the period from 31st January, 2018 to 31st December, 2018, two exemptions, i.e. under Sl. No. 66 and under Sl. No. 67 of notification No. 12/ 2017- Central Tax (Rate), dated 28.06.2017 are available to the IIMs. The legal position in such situation has been clarified by Hon'ble Supreme Court in many cases that if there are two or more exemption notifications available to an assessee, the assessee can claim the one that is more beneficial to him. Therefore, from 31st January, 2018 to 31st December, 2018, IIMs can avail exemption either under Sl. No 66 or Sl. No. 67 of the said notification for the eligible programmes. In this regard following case laws may be referred

i. H.C.L. Limited vs Collector of Customs [2001 (130) ELT 405 (SC)]

ii. Collector of Central Excise, Baroda vs Indian Petro Chemicals [1997 (92) ELT 13 (SC)]

iii. Share Medical Care vs Union of India reported at 2007 (209) ELT 321 (SC)

iv. CCE vs Maruthi Foam (P) Ltd. [1996 (85) RLT 157 (Tri.) as affirmed by Hon'ble Supreme Court vide 2004 (164) ELT 394 (SC)

6. Indian Institutes of Managements also provide various short duration/ short term programs for which they award participation certificate to the executives/ professionals as they are considered as "participants" of the said programmes. These participation certificates are not any qualification recognized by law. Such participants are also not considered as students of Indian Institutes of Management. Services provided by IIMs as an educational institution to

such participants is not exempt from GST. Such short duration executive programs attract standard rate of GST @ 18% (CGST 9% + SGST 9%). As per information received from IIM Ahmedabad, annexure 2 to this circular provides a sample list of programmes which are short duration executive development programs, available for participants other than students and are not exempt from GST.

7. Following summary table may be referred to while determining eligibility of various programs conducted by Indian Institutes of Managements for exemption from GST.

<table>
<tr><th>Sl. No.</th><th>Periods</th><th>Programmes offered by Indian Institutes of Management</th><th>Whether exempt from GST</th></tr>
<tr><td>(1)</td><td>(2)</td><td>(3)</td><td>(4)</td></tr>
<tr><td rowspan="2">1</td><td rowspan="2">1st July, 2017 to 30th January, 2018</td><td><table>
<tr><td>i.</td><td>two-year full time Post Graduate Programmes in Management for the Post Graduate Diploma in Management, to which admissions are made on the basis of Common Admission Test (CAT) conducted by the Indian Institute of Management,</td></tr>
<tr><td>ii.</td><td>fellow programme in Management,</td></tr>
<tr><td>iii.</td><td>five years integrated programme in Management.</td></tr>
</table></td><td>Exempt from GST</td></tr>
<tr><td><table>
<tr><td>i.</td><td>One- year Post Graduate Programs for Executives,</td></tr>
<tr><td>ii.</td><td>Any programs other than those mentioned at Sl. No. 67 of notification No. 12/2017- Central Tax (Rate), dated 28.06.2017.</td></tr>
<tr><td>iii.</td><td>All short duration executive development programs or need based specially designed programs (less than one year).</td></tr>
</table></td><td>Not exempt from GST</td></tr>
<tr><td>2</td><td>31st January, 2018 onwards</td><td>All long duration programs (one year or more) conferring degree/diploma as recommended by Board of Governors as per the power vested in them under the IIM Act, 2017 including one- year Post Graduate Programs for Executives.
All short duration executive development programs or need based specially designed programs (less than one year) which are not a qualification recognized by law.</td><td>Exempt from GST
Not exempt from GST</td></tr>
</table>

8. This clarification applies, mutatis mutandis, to corresponding entries of respective IGST, UTGST, SGST exemption notifications.

3.3.2.29 Departmental Clarifications - Applicability of GST on Asian Development Bank (ADB) and International Finance Corporation (IFC)- Circular No. 83/02/2019- GST dated 1st January, 2019

Representations have been received seeking clarification regarding applicability of GST on Asian Development Bank (ADB) and International Finance Corporation (IFC). The matter has been examined.

2. The ADB Act, 1966 provides that notwithstanding anything to the contrary contained in any other law, the Bank, its assets, properties, income and its operations and transactions shall be exempt from all the taxation and from all customs duties. The Bank shall also be exempt from any obligation for payment, withholding or collection of any tax or duty [Section 5 (1) of the ADB Act, 1966 read with Article 56 (1) of the schedule thereto refers]. DEA has already conveyed vide letter No. 1/28/2002-ADB dated 22-01-2004 addressed to ADB that taxable services provided by ADB are exempted from service tax.

2.1 Similarly, IFC Act, 1958 also provides that notwithstanding anything to the contrary contained in any other law, the Corporation, its assets, properties, income and its operations and transactions authorised by the Agreement, shall be immune from all taxation and from all customs duties. The Corporation shall also be immune from liability for the collection or payment of any tax or duty [Section 3 (1) of IFC Act, 1958 read with Article VI, Section 9 (a) of the Schedule thereto refers].

3. CESTAT Mumbai vide final order dated 17-10-2016 in the case of M/s Coastal Gujarat Power Ltd. has held that when the enactments that honour international agreements specifically immunize the operations of the service provider from taxability, a law contrary to that in the form of Section 66A of Finance Act, 1994 will not prevail. With the provider being not only immune from taxation but also absolved of any obligation to collect and deposit any tax, there is no scope for subjecting the recipient to tax. There is no need for a separate exemption and existing laws enacted by the sovereign legislature of the Union suffice for the purpose of giving effect to Agreements.

4. Accordingly, it is clarified that the services provided by IFC and ADB are exempt from GST in terms of provisions of IFC Act, 1958 and ADB Act. The exemption will be available only to the services provided by ADB and IFC and not to any entity appointed by or working on behalf of ADB or IFC.

3.3.2.30 Departmental Clarifications - Clarification on issue of classification of service of printing of pictures covered under 998386- Circular No. 84/03/2019-GST dated 1th January 2019

It has been brought to the notice of the Board that the service of “printing of pictures” correctly covered under service code 998386 - “Photographic and videographic processing services” is being classified by trade under service code 998912 - “Printing and reproduction services of recorded media, on a fee or contract basis”. The two service codes attract different GST rate of 18% and 12% respectively and therefore wrong classification may lead to short payment of GST.

2. The matter has been examined. According to Explanatory Notes to the scheme of classification of services, the service code "998386 Photographic and videographic processing services, includes, -

"developing of negatives and the printing of pictures for others according to customer specifications such as enlargement of negatives or slides, black and white processing; colour printing of images from film or digital media; slide and negative duplicates, reprints, etc.; developing of film for both amateur photographers and commercial clients; preparing of photographic slides; copying of films; converting of photographs and films to other media"

3. Further, according to explanatory notes, the service code 998912 "Printing and reproduction services of recorded media, on a fee or contract basis" clearly excludes,

- -colour printing of images from film or digital media, cf. 998386,

-audio and video production services, cf. 999613"

4. In view of the above, it is clarified that service of "printing of pictures" falls under service code "998386: Photographic and videographic processing services" and not under "998912: Printing and reproduction services of recorded media, on a fee or contract basis" of the scheme of classification of service annexed to notification No. 11/2017-Central Tax(Rate) dated 28.06.2018. The service of printing of pictures attracts GST @ 18% falling under item (ii), against serial number 21 of the Table in notification No. 11/2017-Central Tax(Rate) dated 28.06.2017.

3.3.2.31 Departmental Clarifications - Clarification on GST rate applicable on supply of food and beverage services by educational institution- Circular No. 85/04/2019- GST dated 1st January, 2019

Representations have been received seeking clarification as to the rate of GST applicable on supply of food and beverages services by educational institution to its students. It has been stated that the words "school, college" appearing in Explanation 1 to Entry 7 (i) of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 give rise to doubt whether supply of food and drinks by an educational institution to its students is eligible for exemption under Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 Sl. No 66, which exempts services provided by an educational institution to its students, faculty and staff.

2. The matter has been examined. Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, Sl. No. 7(i) prescribes GST rate of 5% on supply of food and beverages services. Explanation 1 to the said entry states that such supply can take place at canteen, mess, cafeteria of an institution such as school, college, hospitals etc. On the other hand, Notification No. 12/2017-Central Tax (Rate), Sl. No. 66 (a) exempts services provided by an educational institution to its students, faculty and staff. There is no conflict between the two entries. Entries in Notification No. 11/2017-Central Tax (Rate) prescribing GST rates on service have to be read together with entries in exemption Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017. A supply which is specifically covered by any entry of Notification No. 12/2017-Central Tax (Rate) dated 28-06-2017 is exempt from GST notwithstanding the fact that GST rate has been prescribed for the same under Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017.

2.1 Supply of all services by an educational institution to its students, faculty and staff is exempt under Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, Sl. No. 66. Such services include supply of food and beverages by an educational institution to its students, faculty and staff. As stated in explanation 3 (ii) to Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 Chapter, Section, Heading, Group or Service Codes mentioned in column (2) of the table in Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 are only indicative. A supply is eligible for exemption under an entry of the said notification where the description given in column (3) of the table leaves no room for any doubt. Accordingly, it is clarified that supply of food and beverages by an educational institution to its students, faculty and staff, where such supply is made by the educational institution itself, is exempt under Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, vide Sl. No. 66 w.e.f. 01-07-2017 itself. However, such supply of food and beverages by any person other than the educational institutions based on a contractual arrangement with such institution is leviable to GST@ 5%.

3. In order to remove any doubts on the issue, Explanation 1 to Entry 7(i) of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 has been amended vide Notification No. 27/2018-Central Tax (Rate) dated 31.12.2018 to omit from it the words “school, college”. Further, heading 9963 has been added in Column (2) against entry at Sl. No. 66 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, vide Notification No. 28/2018-Central Tax (Rate) dated 31.12.2018.

3.3.2.32 Departmental Clarifications - GST on Services of Business Facilitator (BF) or a Business Correspondent (BC) to Banking Company- Circular No. 86/05/2019- GST dated 1st January, 2018

Representations have been received seeking clarification on following two issues:

(i) What is the value to be adopted for the purpose of computing GST on services provided by BF/BC to a banking company?

(ii) What is the scope of services provided by BF/BC to a banking company with respect to accounts in its rural area branch that are eligible for existing GST exemption?

2. The matter has been examined. The issues involved are clarified as follows:

2.1 Issue 1: Clarification on value of services by BF/BC to a banking company: As per RBI’s Circular No. DBOD.No.BL.BC. 58/22.01.001/2005-2006 dated 25.01.2006 and subsequent instructions on the issue (referred to as ‘guidelines’ hereinafter), banks may pay reasonable commission/fee to the BC, the rate and quantum of which may be reviewed periodically. The agreement of banks with the BC specifically prohibits them from directly charging any fee to the customers for services rendered by them on behalf of the bank. On the other hand, banks (and not BCs) are permitted to collect reasonable service charges from the customers for such service in a transparent manner. The arrangements of banks with the Business Correspondents specify the requirement that the transactions are accounted for and reflected in the bank's books by end of the day or the next working day, and all agreements/ contracts with the customer shall clearly specify that the bank is responsible to the customer for acts of omission and commission of the Business Facilitator/Correspondent.

2.3 Hence, banking company is the service provider in the business facilitator model or the business correspondent model operated by a banking company as per RBI guidelines. The banking company is liable to pay GST on the entire value of service charge or fee charged to customers whether or not received via business facilitator or the business correspondent.

3. Issue 2: Clarification on the scope of services by BF/BC to a banking company with respect to accounts in rural areas: It has also been requested that the scope of exemption to services provided in relation to "accounts in its rural area branch" vide Sl. No. 39 of Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 be clarified. This clarification has been requested as the exemption from tax on services provided by BF/BC is dependent on the meaning of the expression "accounts in its rural area branch".

3.1 It is clarified that for the purpose of availing exemption from GST under Sl. No. 39 of said notification, the conditions flowing from the language of the notification should be satisfied. These conditions are that the services provided by a BF/BC to a banking company in their respective individual capacities should fall under the Heading 9971 and that such services should be with respect to accounts in a branch located in the rural area of the banking company. The procedure for classification of branch of a bank as located in rural area and the services which can be provided by BF/BC, is governed by the RBI guidelines. Therefore, classification adopted by the bank in terms of RBI guidelines in this regard should be accepted.

3.3.2.33 Departmental Clarifications - GST applicability on Seed Certification Tags- Circular No. 100/19/2019-GST dated 30th April, 2019

Representations have been received by the Board seeking clarification regarding applicability of GST on supply of Seed Certification Tags. Reference in this regard has also been received from the State of Tamil Nadu.

2. The matter has been examined. It is seen that the process of seed testing and certification followed in the state of Tamil Nadu, as prescribed in the Seeds Act, 1966 and elaborated in the Manual on Seed Production and Certification, published by Centre for Indian Knowledge Systems, Chennai, involves the following steps:

a. Application for seed production

b. Registration of sowing report

c. Field inspection

d. Seed processing

e. Seed sample and seed analysis

f. Tagging and sealing

i. Application for seed production

Any person who wants to take up certified seed production should submit a sowing report in triplicate to the Assistant Director of Seed Certification to register the crop and season with a registration fee of Rs. 25/- (Rupees twenty-five only) and prescribed certification charges. The fee is for a single crop variety for an area up to 25 acres and for a single season.

ii. Registration of sowing report

After receiving the application of the sowing report, the Assistant Director of Seed Certification scrutinizes and registers the seed farm and duly assigns a Seed certification number for each sowing report.

iii. Field inspection

Field inspections to check for the factors that may affect the genetic purity and physical health of the seeds are conducted by the Seed Certification Officer (SCO) to whom the specific seed farm has been allocated. Number of field inspections differ from crop to crop. Generally field inspections are carried out during the following growth stages of the crop.

- Pre flowering stage
- Flowering stage
- Post flowering and Pre harvest stage
- Harvest time

iv. Seed processing

Once the seeds are harvested from the seed farm by following the required field standards, it is taken to the approved seed processing units. Each seed lot should accompany the processing report and each seed lot in the unit is verified with this report. Processing includes cleaning, drying, grading, treating and other operations to improve the seed quality. Seed Certification Officer inspects the processing plant to check the possibility of mechanical mixtures.

v. Seed sampling and analysis

Seed sample should be sent to the seed testing laboratory for analysis through the Assistant Director of Seed Certification. The fee of Rs.30/- (Rupees thirty only) for seed analysis should be paid during the registration of the seed farm. To analyse the genetic purity of the seed sample, the producer should pay a fee of Rs. 200/- (Rupees two hundred only) to the Assistant Director of Seed Certification. Seed lots which meet the prescribed seed standards like purity, free of inert matter, moisture percentage and germination capacity alone will be allotted the certification label. White colour label for foundation seeds and blue colour label for certified seeds should be bought from the Assistant Director of Seed Certification by paying Rs. 3/- and Rs. 2/- respectively.

vi. Tagging and sealing

Approved seed lots should be tagged with certification tag within two months from the date of the receipt of seed analysis report or within 30 days from the date of genetic purity test performed. On receipt of the seed tags, it is verified by the Seed Certification Officer. All the prescribed details are entered in the tag without any omission. The green colour (10 – 15 cm size) producer tag should also be attached to the seed lot along with the certification tag. Avoid stitching more than once on the tags. All the tagging operations should be done in the presence of the Seed Certification Officer. If tagging has not been done within the specific time limit, confirmation samples can be taken with prior permission from the Assistant Director of Seed Certification. In such cases the validity of the seed lot will be fixed from the initial date of seed analysis and tagged. The fee for the delayed tagging is Rs. 50/- (Rupees fifty only) and seed analysis fee of Rs. 30/- (Rupees thirty only) has to be paid in such cases.

3. Similarly, in the state of Uttarakhand, the process of seed testing and certification as prescribed in the Seeds Act, 1966 and the rules made thereunder is that a seed producing company/organization which wants to produce certified seeds applies to the Seed Certification Agency of the State Government (Uttarakhand State Seed and Organic Production Certification Agency) for certification of the seeds produced by it in collaboration with seed farmers as certified seeds. The Seed Certification Agency carries out field inspections of the seed farms at various stages: planting, pre harvest and harvest stage to see that the seed is being produced as per the prescribed standards. At the harvest stage, Seed Certification Agency estimates the quantity of seed that will be produced at the seed farm. Depending on the number of packets into which the seed shall be packed for marketing, the seed certification agency issues to the seed company signed seed certificates/tags to be attached to each packet of certified seed. The fee for such testing and certification is charged at three stages:

(i) At field inspection level: On per hectare basis, (Rs. 300/ha by Uttarakhand State Seed Certification Agency)

(ii) At the post processing stage at the seed processing plant:inspection and shift charges

(iii) Issue of seed certificates: After the seed samples pass all the tests, seed certification agency issues the required number of seed certificates to be attached to each packet: amount is charged according to number of tags issued (Rs. 3 to Rs. 8/tag)

4. It may be seen from the above that seed testing and certification is a multi-stage process, the charges for which are collected from the seed producers at different stages. Supply of seed tags to the seed producer is nothing but an element of the one integrated supply of seed testing and certification. All the above charges, including those for issue of seed certificates/tags by the Seed Certification Agency of Tamil Nadu and Uttarakhand to the seed producing organization/ companies are collected for the composite supply of seed testing and certification, which is exempt under Notification No. 12/2017-Central Tax (Rate) Sl. No. 47 (services by Central/State Governments by way of testing/certification relating to safety of consumers and public at large, required under any law). This clarification would apply to supply of seed tags by seed testing and certification agencies of other states also following similar seed testing and certification procedure.

5. However, the State Governments/Seed Certification Agencies may get the tags used in seed certification printed from other departments/ manufacturers outside. Supply of seed tags by the other departments/manufacturers to the State Government/Seed Certification Agencies is a supply of goods liable to tax. Whether such tags would be classified under Chapter 49 as tags made of paper or in Textile chapters as tags made of textile would depend upon the predominant material used in the tags.

3.3.2.34 Departmental Clarifications - Clarification regarding applicability of GST on additional / penal interest- Circular No. 102/21/2019-GST dated 28th June, 2019 and Corrigendum to Circular No. 102/21/2019-GST dated 15th July, 2019

Various representations have been received from the trade and industry regarding applicability of GST on delayed payment charges in case of late payment of Equated Monthly Instalments (EMI). An EMI is a fixed amount paid by a borrower to a lender at a specified date every calendar month. EMIs are used to pay off both interest and principal every month, so that over

a specified period, the loan is fully paid off along with interest. In cases where the EMI is not paid at the scheduled time, there is a levy of additional / penal interest on account of delay in payment of EMI.

2. Doubts have been raised regarding the applicability of GST on additional / penal interest on the overdue loan i.e. whether it would be exempt from GST in terms of Sl. No. 27 of notification No. 12/2017-Central Tax (Rate) dated 28th June 2017 or such penal interest would be treated as consideration for liquidated damages [amounting to a separate taxable supply of services under GST covered under entry 5(e) of Schedule II of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the CGST Act) i.e. "agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act"]. In order to ensure uniformity in the implementation of the provisions of the law, the Board, in exercise of its powers conferred by section 168 (1) of the CGST Act, hereby issues the following clarification.

3. Generally, following two transaction options involving EMI are prevalent in the trade:-

• Case – 1: X sells a mobile phone to Y. The cost of mobile phone is Rs 40,000/-. However, X gives Y an option to pay in installments, Rs 11,000/- every month before 10th day of the following month, over next four months (Rs 11,000/- *4 = Rs. 44,000/-). Further, as per the contract, if there is any delay in payment by Y beyond the scheduled date, Y would be liable to pay additional / penal interest amounting to Rs. 500/- per month for the delay. In some instances, X is charging Y Rs. 40,000/- for the mobile and is separately issuing another invoice for providing the services of extending loans to Y, the consideration for which is the interest of 2.5% per month and an additional / penal interest amounting to Rs. 500/- per month for each delay in payment.

• Case – 2: X sells a mobile phone to Y. The cost of mobile phone is Rs 40,000/-. Y has the option to avail a loan at interest of 2.5% per month for purchasing the mobile from M/s ABC Ltd. The terms of the loan from M/s ABC Ltd. allows Y a period of four months to repay the loan and an additional / penal interest @ 1.25% per month for any delay in payment.

4. As per the provisions of sub-clause (d) of sub-section (2) of section 15 of the CGST Act, the value of supply shall include "interest or late fee or penalty for delayed payment of any consideration for any supply". Further in terms of Sl. No. 27 of notification No. 12/2017- Central Tax (Rate) dated the 28.06.2017 "services by way of (a) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services)"is exempted. Further, as per clause 2 (zk) of the notification No. 12/2017-Central Tax (Rate) dated the 28th June, 2017, "'interest' means interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) but does not include any service fee or other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilised;".

5. Accordingly, based on the above provisions, the applicability of GST in both cases listed in para 3 above would be as follows:

• Case 1: As per the provisions of sub-clause (d) of sub-section (2) of section 15 of the CGST Act, the amount of penal interest is to be included in the value of supply. The transaction between X and Y is for supply of taxable goods i.e. mobile phone. Accordingly, the penal interest would be taxable as it would be included in the value of the mobile, irrespective of the manner of invoicing.

• "*Case 2*: The additional/penal interest is charged for a transaction between Y and M/s ABC Ltd., and the same is getting covered under Sl. No. 27 of notification No. 12/2017-Central Tax (Rate) dated 28.6.2017. Accordingly, in this case the 'penal interest' charged thereon on a transaction between Y and M/s ABC Ltd. would not be subject to GST, as the same would **not** be covered under notification No. 12/2017-Central Tax (Rate) dated 28.6.2017. The value of supply of mobile by X to Y would be Rs. 40,000/- for the purpose of levy of GST."

6. It is further clarified that the transaction of levy of additional / penal interest does not fall within the ambit of entry 5(e) of Schedule II of the CGST Act i.e. "agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act", as this levy of additional / penal interest satisfies the definition of "interest" as contained in notification No. 12/2017-Central Tax (Rate) dated 28.06.2017. It is further clarified that any service fee/charge or any other charges that are levied by M/s ABC Ltd. in respect of the transaction related to extending deposits, loans or advances does not qualify to be interest as defined in notification No. 12/2017- Central Tax (Rate) dated 28.06.2017, and accordingly will not be exempt.

3.3.2.35 Departmental Clarifications - Issues related to GST on monthly subscription/contribution charged by a Residential Welfare Association from its members - Circular No.109/28/2019- GST dated 22nd July, 2019

A number of issues have been raised regarding the GST payable on the amount charged by a Residential Welfare Association for providing services and goods for the common use of its members in a housing society or a residential complex. The same have been examined and are being clarified below.

Sl. No.	Issue	Clarification
1.	Are the maintenance charges paid by residents to the Resident Welfare Association (RWA) in a housing society exempt from GST and if yes, is there an upper limit on the amount of such charges for the exemption to be available?	Supply of service by RWA (unincorporated body or a non-profit entity registered under any law) to its own members by way of reimbursement of charges or share of contribution up to an amount of Rs. 7500 per month per member for providing services and goods for the common use of its members in a housing society or a residential complex are exempt from GST. Prior to 25th January 2018, the exemption was available if the charges or share of contribution did not exceed Rs 5000/- per month per member. The limit was increased to Rs. 7500/- per month per member with effect from 25th January 2018. *[Refer clause (c) of Sl. No. 77 to the Notification No. 12/2018- Central Tax (Rate) dated 28-6-2019]*

<table>
<tr>
<td>2.</td>
<td>A RWA has aggregate turnover of Rs. 20 lakh or less in a financial year. Is it required to take registration and pay GST on maintenance charges if the amount of such charges is more than Rs. 7500/- per month per member?</td>
<td>No. If aggregate turnover of an RWA does not exceed Rs. 20 Lakh in a financial year, it shall not be required to take registration and pay GST even if the amount of maintenance charges exceeds Rs. 7500/- per month per member.

RWA shall be required to pay GST on monthly subscription/ contribution charged from its members, only if such subscription is more than Rs. 7500/- per month per member and the annual aggregate turnover of RWA by way of supplying of services and goods is also Rs. 20 lakhs or more.
<table>
<tr><th>Annual turnover of RWA</th><th>Monthly maintenance charge</th><th>Whether exempt?</th></tr>
<tr><td rowspan="2">More than Rs. 20 lakhs</td><td>More than Rs. 7500/-</td><td>No</td></tr>
<tr><td>Rs. 7500/- or less</td><td>Yes</td></tr>
<tr><td rowspan="2">Rs. 20 lakhs or less</td><td>More than Rs. 7500/-</td><td>Yes</td></tr>
<tr><td>Rs. 7500/- or less</td><td>Yes</td></tr>
</table>
</td>
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<tr>
<td>3.</td>
<td>Is the RWA entitled to take input tax credit of GST paid on input and services used by it for making supplies to its members and use such ITC for discharge of GST liability on such supplies where the amount charged for such supplies is more than Rs. 7,500/- per month per member?</td>
<td>RWAs are entitled to take ITC of GST paid by them on capital goods (generators, water pumps, lawn furniture etc.), goods (taps, pipes, other sanitary/hardware fillings etc.) and input services such as repair and maintenance services.</td>
</tr>
<tr>
<td>4.</td>
<td>Where a person owns two or more flats in the housing society or residential complex, whether the ceiling of Rs. 7500/- per month per member on the maintenance for the exemption to be available shall be applied per residential apartment or per person?</td>
<td>As per general business sense, a person who owns two or more residential apartments in a housing society or a residential complex shall normally be a member of the RWA for each residential apartment owned by him separately. The ceiling of Rs. 7500/- per month per member shall be applied separately for each residential apartment owned by him.

For example, if a person owns two residential apartments in a residential complex and pays Rs. 15000/- per month as maintenance charges towards maintenance of each apartment to the RWA (Rs. 7500/- per month in respect of each residential apartment), the exemption from GST shall be available to each apartment.</td>
</tr>
</table>

5.	How should the RWA calculate GST payable where the maintenance charges exceed Rs. 7500/- per month per member? Is the GST payable only on the amount exceeding Rs. 7500/- or on the entire amount of maintenance charges?	The exemption from GST on maintenance charges charged by a RWA from residents is available only if such charges do not exceed Rs. 7500/- per month per member. In case the charges exceed Rs. 7500/- per month per member, the entire amount is taxable. For example, if the maintenance charges are Rs. 9000/- per month per member, GST @18% shall be payable on the entire amount of Rs. 9000/- and not on [Rs. 9000 - Rs. 7500] = Rs. 1500/- .

3.3.2.36 Departmental Clarifications - Clarification regarding GST rates & classification (goods)- Circular No. 113/32/2019-GST dated 11th October, 2019

Representations have been received seeking clarification in respect of applicable GST rates on the following items:

(i) Classification of leguminous vegetables such as grams when subjected to mild heat treatment

(ii) Almond Milk

(iii) Applicable GST rate on Mechanical Sprayer

(iv) Taxability of imported stores by the Indian Navy

(v) Taxability of goods imported under lease.

(vi) Applicable GST rate on parts for the manufacture solar water heater and system

(vii) Applicable GST on parts and accessories suitable for use solely or principally with a medical device

2. The issue wise clarifications are discussed below:

3. Classification of leguminous vegetables when subject to mild heat treatment (parching):

3.1. Doubts have been raised whether mild heat treatment of leguminous vegetables (such as gram) would lead to change in classification.

3.2. Dried leguminous vegetables are classified under HS code 0713. As per the explanatory memorandum to the HS 2017, the heading 0713 covers leguminous vegetables of heading 0708 which have been dried, and shelled, of a kind used for human or animal consumption (e.g., peas, chickpeas etc.). They may have undergone moderate heat treatment designed mainly to ensure better preservation by inactivating the enzymes (the peroxidases in particular) and eliminating part of the moisture.

3.3. Thus, it is clarified that such leguminous vegetables which are subjected to mere heat treatment for removing moisture, or for softening and puffing or removing the skin, and not subjecting to any other processing or addition of any other ingredients such as salt and oil, would be classified under HS code 0713. Such goodsif branded and packed in a unit container would attract GST at the rate of 5% [S. No. 25 of notification No. 1/2017- Central Tax (Rate)

dated 28.06.2017]. In all other cases such goods would be exempted from GST [S. No. 45 of notification No. 2/2017- Central Tax (Rate) dated 28.06.2017].

3.4. However, if the above dried leguminous vegetable is mixed with other ingredients (such as oil, salt etc) or sold as namkeens then the same would be classified under Sub heading 2106 90 as namkeens, bhujia, chabena and similar edible preparations and attract applicable GST rate.

4. Classification and applicable GST rate on Almond Milk:

4.1. References have been received as to whether "almond milk" would be classified as "Fruit Pulp or fruit juice-based drinks" and attract 12% GST under tariff item 2202 99 20.

4.2. Almond Milk is made by pulverizing almonds in a blender with water and is then strained. As such almond milk neither constitutes any fruit pulp or fruit juice. Therefore, it is not classifiable under tariff item 2202 99 20.

4.3. Almond milk is classified under the residual entry in the tariff item 2202 99 90 and attract GST rate of 18%.

5. Applicable GST rate on Mechanical Sprayer:

5.1 Representations have been received seeking clarification on the scope and applicable GST rate on "mechanical sprayers" of entry No. 195B of the Schedule II to notification No. 1/2017- Central Tax (Rate), dated 28.06.2017. The entry No. 195B was inserted vide notification No. 6/2018- Central Tax (Rate), dated 25th January, 2018.

5.2 All goods of heading 8424 i.e. [Mechanical appliances (whether or not hand-operated) for projecting, dispersing or spraying liquids or powders; spray guns and similar appliances; steam or sand blasting machines and similar jet projecting machines (other than fire extinguishers, whether or not charged)] attracted GST @18% [S.No.325 of Schedule III] till 25th January, 2018. Subsequently, keeping in view various requests/ representations, the GST Council in its 25th meeting recommended 12% GST on mechanical sprayers. Accordingly, vide amending notification No. 6/2018- Central Tax (Rate), dated 25thJanuary, 2018, GST at the rate of 12% was prescribed (entry No. 195B I Schedule II of notification No. 1/2017-Central Tax (Rate) dated 28.6.2017) Simultaneously, mechanical sprayers were excluded from the ambit of the said S. No. 325 of Schedule III.

5.3 Accordingly, it is clarified that the S. No. 195B of the Schedule II to notification No. 1/2017-Central Tax (Rate), dated 28.06.2017 covers "mechanical sprayers" of all types whether or not hand operated (like hand operated sprayer, power operated sprayers, battery operated sprayers, foot sprayer, rocker etc.).

6. Clarification regarding taxability of imported stores by the Indian Navy:

6.1 Representation has been received from the Indian Navy seeking clarification on the taxability of imported stores for use of a ship of Indian Navy.

6.2 Briefly stated, in accordance with letter No. 21/31/63-Cus-IV dated 17 Aug 1966 of the then Department of Revenue and Insurance, the Indian Naval ships were treated as "foreign going vessels" for the purposes of Customs Act, 1962, and the naval personnel serving on board these naval ships were entitled to duty-free supplies of imported stores even when the ships were in Indian harbour. However, in the GST era, no such circular has been issued regarding exemption from IGST on purchase of imported stores by Indian Naval ships. The doubt has arisen as there is a no specific exemption, while there is a specific exemption for

the Coast Guard (vide S. No. 4 of notification No. 37/2017-Customs dated 30.6.2017). Similar exemption has not been specifically provided for Navy.

6.3 Indian Naval ship stores are exempted from import duty in terms of section 90(1) of the Customs Act, 1962. Further, as per section 90(2), goods "taken on board a ship of the Indian Navy" shall be construed as exported to any place outside India. Also, section 90(1) and 90(3) of the Customs Act, 1962 provides that imported stores for the use of a ship of the Indian Navy and stores supplied free by the Government for the use of the crew of a ship of the Indian Navy in accordance with their conditions of service will be exempted from duty.

6.4 Accordingly, it is clarified that imported stores for use in navy ships are entitled to exemption from GST.

7. Clarification regarding taxability of goods imported under lease:

7.1 Representations have been received seeking clarification on the taxability of goods imported under lease.

7.2 In respect of goods imported on temporary basis, aircrafts, aircraft engines and other aircraft parts imported into India under a transaction covered by item 1(b) or 5(f) of Schedule II of the Central Goods and Service Tax Act, 2017 are exempted from IGST vide S. No. 547A of notification No. 50/2017-Customs dated 30.06.2017, subject to condition No. 102, which reads as under :-

The importer, by the execution of bond, in such form and for such sum as may be specified by the Commissioner of Customs, binds himself, -

> (i) to pay integrated tax leviable under section 5(1) of the IGST Act, 2017 on supply of service covered by item 1(b) or 5 (f) of Schedule II of the Central Goods and Services Act, 2017;
>
> (ii) not to sell or part with the goods, without the prior permission of the Commissioner of Customs of the port of importation;
>
> (iii) to re-export the goods within three months of the expiry of the period for which they were supplied under a transaction covered by item 1(b) or 5 (f) of Schedule II of the Central Goods and Services Act, 2017;
>
> (iv) to pay on demand an amount equal to the integrated tax payable on the said goods but for the exemption under this notification in the event of violation of any of the above conditions.

7.3 Similarly, rigs and ancillary items imported for oil or gas exploration and production taken on lease by the importer for use after import have also been exempted from IGST vide S. No. 557A of the said notification. Subsequently, all goods, vessels, ships (other than motor vehicles) imported under lease, by the importer for use after import, were also exempted from IGST vide S. No. 557B of the said notification. Both these entries are subject to the same condition No. 102 of the said notification.

7.4 The intention of S. No. 557 A and 557 B is to exempt from IGST the imports of goods under an arrangement of supply of service covered by item 1(b) or 5(f) of Schedule II of the CGST Act, 2017 so as to avoid double taxation.

7.5 Accordingly, it is hereby clarified that the expression "taken on lease/imported under lease" (in S. No. 557A and 557B respectively of notification No. 50/2017-Customs dated 30.06.2017)

covers imports under an arrangement so as to supply services covered by item 1(b) or 5(f) of Schedule II of the CGST Act, 2017 to avoid double taxation. The above clarification holds forsuch transactions in the past.

7.6 Further, wordings of S. No. 557A and 557B of notification No. 50/2017-Customs dated 30.6.2017, have been aligned with Condition No. 102 of the said notification [vide notification No. 34/2019-Customs dated 30.09.2019 w.e. f 01.10.2019] to address the concerns raised.

8. Applicability of GST rate on parts for the manufacture solar water heater and system:

8.1 Representations have been received seeking clarification on applicable GST rate on Solar Evacuated Tubes used in manufacture of solar water heater. While 5% GST rate applies to parts used in manufacture of Solar Power based devices (S.No. 234 of Notification No. 1/2017 -Central tax (Rate) dated 28.06.2017), doubtshave been raised in respect of parts of Solar water heaters on the ground that Solar Based Devices are being considered only as devices which run on Solar Electricity.

8.2 As per entry No 232, solar water heater and system attracts 5% GST. Further, as per S. No. 234 of the notification No. 1/2017-Central Tax (Rate) dated 28.6.2017, solar power-based devices and parts for their manufacture falling under chapter 84, 85 and 94 attract 5% concessional GST. Solar Power based devices function on the energy derived from Sun (in form of electricity or heat). Thus, solar water heater and system would also be covered under S. No 234 as solar power device. Thus, Solar Evacuated Tubes which falls under Chapter 84 and other parts falling under chapter 84, 85 and 94, used in manufacture of solar water heater and system would be eligible for 5% GST under S. No. 234.

8.3 Accordingly, it is clarified that parts including Solar Evacuated Tube falling under chapter 84, 85 and 94 for the manufacture of solar water heater and system will attract 5% GST.

9. Applicability of GST on the parts and accessories suitable for use solely or principally with a medical device:

9.1 Representations have been received seeking clarification on applicability of GST on the parts of ophthalmic equipment suitable for use solely or principally with an ophthalmic equipment.

9.2 Briefly stated, medical equipment falling under HS 9018, 9019, 9021 and 9022 attract 12% GST. The imports of parts of ophthalmic equipment suitable for use solely or principally with an ophthalmic equipment, were being assessed at 12% GST by classifying it under heading 9018. However, objection has been raised by Comptroller and Auditor General of India (CAG) on the said practice, suggesting that since such goods were not specifically mentioned in the GST rate notification, they fall under tariff item 9033 00 00 [residual entry] and should be assessed at 18% IGST. In this background, representations have been received from trade and industry, seeking clarification in this matter

9.3 The matter has been examined. As per chapter note 2(b) of the Chapter 90, parts and accessories of the instruments used mainly and principally for the medical instrument of chapter 90 shall be classified with the machine only. Chapter note 2(b) (of Chapter 90) reads as below: -

“2 (b): other parts and accessories, if suitable for use solely or principally with a particular kind of machine, instruments or apparatus, or with a number of machines, instruments or apparatus of the same heading (including a machine, instrument or apparatus of heading 9010, 9013 or 9031) are to be classified with the machines, instruments or apparatus of that kind;”

9.4 Thus, as per chapter note 2(b), parts of ophthalmic equipment suitable for use solely or principally with an ophthalmic equipment should be classified with the ophthalmic equipment only and shall attract 12%.

9.5 In view of the above, it is clarified that 12% IGST would be applicable on the parts and accessories suitable for use solely or principally with a medical device falling under heading 9018, 9019, 9021 or 9022 in terms of chapter note 2 (b).

3.3.2.37 Departmental Clarifications - Clarification on scope of support services to exploration, mining or drilling of petroleum crude or natural gas or both- Circular No. 114/33/2019-GST dated 11th October 2019

Representations have been received from trade seeking clarification on the scope of the entry "services of exploration, mining or drilling of petroleum crude or natural gas or both" at Sr. No. 24 (ii) of heading 9986 in Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017.

2. The matter has been examined. Most of the activities associated with exploration, mining or drilling of petroleum crude or natural gas fall under heading 9986. A few services particularly technical and consulting services relating to exploration also fall under heading 9983. Therefore, following entry has been inserted under heading 9983 with effect from 1 st October 2019 vide Notification No. 20/2019- Central Tax(Rate) dated 30.09.2019; -

> "(ia) Other professional, technical and business services relating to exploration, mining or drilling of petroleum crude or natural gas or both"

3. Explanatory Notes to the Scheme of Classification of Services adopted for the purposes of GST, which is based on the United Nations Central Product Classification describe succinctly the activities associated with exploration, mining or drilling of petroleum crude or natural gas under heading 9983 and 9986.

3.1 The relevant Explanatory Notes for Heading 9983 are as follows:

998341 Geological and geophysical consulting services This service code includes provision of advice, guidance and operational assistance concerning the location of mineral deposits, oil and gas fields and groundwater by studying the properties of the earth and rock formations and structures; provision of advice with regard to exploration and development of mineral, oil and natural gas properties, including pre-feasibility and feasibility studies; project evaluation services; evaluation of geological, geophysical and geochemical anomalies; surface geological mapping or surveying; providing information on subsurface earth formations by different methods such as seismographic, gravimetric, magnetometric methods & other subsurface surveying methods

This service code does not include

- test drilling and boring work, cf. 995432

998343 Mineral exploration and evaluation

This service code includes mineral exploration and evaluation information, obtained on own account basis

Note: This intellectual property product may be produced with the intent to sell or license the information to others.

3.2 The relevant Explanatory Notes for Heading 9986 are as follows:

998621 Support services to oil and gas extraction

This service code includes derrick erection, repair and dismantling services; well casing, cementing, pumping, plugging and abandoning of wells; test drilling and exploration services in connection with petroleum and gas extraction; specialized fire extinguishing services; operation of oil or gas extraction unit on a fee or contract basis

This service code does not include:

- geological, geophysical and related prospecting and consulting services, cf. 998341

998622 Support services to other mining n.e.c.

This service code includes draining and pumping of mines; overburden removal and other development and preparation services of mineral properties and sites, including tunneling, except for oil and gas extraction; test drilling services in connection with mining operations, except for oil and gas extraction; operation of other mining units on a fee or contract basis

This service code does not include:

- mineral exploration and evaluation services, cf. 998343

- geophysical services, cf. 998341

4. It is hereby clarified that the scope of the entry at Sr. 24 (ii) under heading 9986 of Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017 shall be governed by the explanatory notes to service codes 998621 and 998622 of the Scheme of Classification of Services.

4.1 It is further clarified that the scope of the entry at Sr. No. 21 (ia) under heading 9983 of Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017 inserted with effect from 1 st October 2019 vide Notification No. 20/2019- CT(R) dated 30.09.2019 shall be governed by the explanatory notes to service codes 998341 and 998343 of the Scheme of Classification of Services.

4.2 The services which do not fall under the said entries under heading 9983 and 9986 of the said notification shall be classified in their respective headings and taxed accordingly.

3.3.2.38 Departmental Clarifications - Clarification on issue of GST on Airport levies - Circular No. 115/34/2019-GST dated 11th October 2019

Various representations have been received seeking clarification on issues relating to GST on airport levies and to clarify that airport levies do not form part of the value of services provided by the airlines and consequently no GST should be charged by airlines on airport levies. In order to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”), hereby clarifies the issues in the succeeding paras.

2. Passenger Service Fee (PSF) is charged under rule 88 of Aircraft Rules, 1937 according to which the airport licensee may collect PSF from embarking passengers at such rates as specified by the Central Government. According to the rule the airport license shall utilize the said fee for infrastructure and facilitation of the passengers. User Development Fee (UDF) is levied under rule 89 of the Aircraft rules 1937 which provides that the licensee may levy and collect, at a major airport, the User Development Fee at such rate as may be determined under clause (b) of sub-section (1) of section 13 of the Airports Economic Regulatory Authority of India Act, 2008.

2.1 Though the rule does not prescribe the specific purpose of levy and whether it is to be charged from the airlines or the passengers. However, it is seen from section 2(n) of Airports Economic Regulatory Authority of India Act, 2008, that the authority which manages the airport is eligible to levy and charge UDF from the embarking passengers at any airport.

2.2 Further, Director General of Civil Aviation has clarified vide order No. AIC Sl. No. 5/2010 dated 13.09.2010 that in order to avoid inconvenience to passengers and for smooth and orderly air transport/airport operations, the User Development Fees (UDF) shall be collected from the passengers by the airlines at the time of issue of air ticket and the same shall be remitted to Airports Authority of India in the line system/procedure in vogue. For this, collection charges of Rs. 5/- shall be receivable by the airlines from AAI, which shall not to be passed on to the passengers in any manner.

2.3 The above facts clearly indicate that PSF and UDF are charged by airport operators for providing the services to passengers.

2.4 Section 2(31) of the CGST Act states that “consideration” in relation to the supply of goods or services or both includes any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person. Thus, PSF and UDF charged by airport operators are consideration for providing services to passengers.

2.5 Thus, services provided by an airport operator to passengers against consideration in the form of UDF and PSF are liable to GST. UDF was also liable to service tax. It is also clear from notification of Director General of Civil Aviation AIC Sl. No. 5 /2010 dated 13.09.2010, which states that UDF approved by MoCA, GoI is inclusive of service tax. It is also seen from the Air India website that the UDF is inclusive of service tax. Further in order No. AIC S. Nos. 3/2018 and 4/2018, both dated 27.2.2018, it has been laid down that GST is applicable on the charges of UDF and PSF.

2.6 PSF and UDF being charges levied by airport operator for services provided to passengers, are collected by the airlines as an agent and is not a consideration for any service provided by the airlines. Thus, airline is not responsible for payment of ST/GST on UDF or PSF provided the airline satisfies the conditions prescribed for a pure agent under Rule 33 of the CGST Rules. It is the licensee, that is the airport operator (AAI, DIAL, MIAL etc) which is liable to pay ST/GST on UDF and PSF.

2.7 Airlines may act as a pure agent for the supply of airport services in accordance with rule 33 of the CGST rules. Rule 33 of the CGST rules provides that the expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply, if all the following conditions are satisfied, namely, -

(i) the supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorisation by such recipient;

(ii) the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and

(iii) the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.

"Pure agent" has been defined to mean a person who-

(a) enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;

(b) neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply;

(c) does not use for his own interest such goods or services so procured; and

(d) receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account.

2.8 Accordingly, the airline acting as pure agent of the passenger should separately indicate actual amount of PSF and UDF and GST payable on such PSF and UDF by the airport licensee, in the invoice issued by airlines to its passengers. The airline shall not take ITC of GST payable or paid on PSF and UDF. The airline would only recover the actual PSF and UDF and GST payable on such PSF and UDF by the airline operator. The amount so recovered will be excluded from the value of supplies made by the airline to its passengers. In other words, the airline shall not be liable to pay GST on the PSF and UDF (for airport services provided by airport licensee), provided the airline satisfies the conditions prescribed for a pure agent under Rule 33 of the CGST Rules. The registered passengers, who are the ultimate recipient of the airport services, may take ITC of GST paid on PSF and UDF on the basis of pure agent's invoice issued by the airline to them.

2.9 The airport operators shall pay GST on the PSF and UDF collected by them from the passengers through the airlines. Since, the airport operators are collecting PSF and UDF inclusive of ST/GST, there is no question of their not paying ST/GST collected by them to the Government.

2.10 The collection charges paid by airport operator to airlines are a consideration for the services provided by the airlines to the airport operator (AAI, DAIL, MAIL etc) and airlines shall be liable to pay GST on the same under forward charge. ITC of the same will be available with the airport operator.

3.3.2.39 Departmental Clarifications - : Levy of GST on the service of display of name or placing of name plates of the donor in the premises of charitable organisations receiving donation or gifts from individual donors– - Circular No. 116/35/2019-GST dated 11th October, 2019

Representations have been received seeking clarification whether GST is applicable on donations or gifts received from individual donors by charitable organisations involved in advancement of religion, spirituality or yoga which is acknowledged by them by placing name plates in the name of the individual donor.

2. The issue has been examined. Individual donors provide financial help or any other support in the form of donation or gift to institutions such as religious institutions, charitable organisations, schools, hospitals, orphanages, old age homes etc. The recipient institutions place a name plate or similar such acknowledgement in their premises to express the gratitude. When the name of the donor is displayed in recipient institution premises, in such a manner, which can be said to be an expression of gratitude and public recognition of donor's act of philanthropy and is not aimed at giving publicity to the donor in such manner that it would be an advertising or promotion of his business, then it can be said that there is no supply of service for a consideration (in the form of donation). There is no obligation (quid pro quo) on part of recipient of the donation or gift to do anything (supply a service). Therefore, there is no GST liability on such consideration.

2.1 Some examples of cases where there would be no taxable supply are as follows:-

(a) "Good wishes from Mr. Rajesh" printed underneath a digital blackboard donated by Mr. Rajesh to a charitable Yoga institution.

(b) "Donated by Smt. Malati Devi in the memory of her father" written on the door or floor of a room or any part of a temple complex which was constructed from such donation.

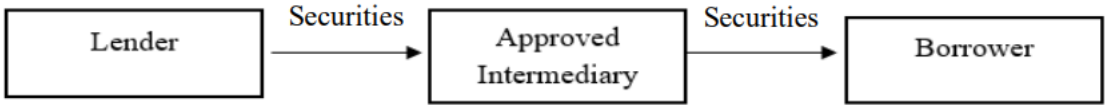
2.2. In each of these examples, it may be noticed that there is no reference or mention of any business activity of the donor which otherwise would have got advertised. Thus where all the three conditions are satisfied namely the gift or donation is made to a charitable organization, the payment has the character of gift or donation and the purpose is philanthropic (i.e. it leads to no commercial gain) and not advertisement, GST is not leviable.

3.3.2.40 Departmental Clarifications - Clarification regarding taxability of supply of securities under Securities Lending Scheme, 1997 - Circular No. 119/38/2019-GST dated 11th October 2019

Trade has requested clarification on whether the supply of securities under Securities Lending Scheme, 1997 ("Scheme") by the lender is taxable under GST.

2. Securities and Exchange Board of India (SEBI) has prescribed the Securities Lending Scheme, 1997 for the purpose of facilitating lending and borrowing of securities. Under the Scheme, lender of securities lends to a borrower through an approved intermediary to a borrower under an agreement for a specified period with the condition that the borrower will return equivalent securities of the same type or class at the end of the specified period along with the corporate benefits accruing on the securities borrowed. The transaction takes place through an electronic screen-based order matching mechanism provided by the recognised stock exchange in India. There is anonymity between the lender and borrower since there is no direct agreement between them.

2.1 The lenders earn lending fee for lending their securities to the borrowers. The security lending mechanism is depicted in the diagram below: -



2.2 In the above chart:

(i) Lender is a person who deposits the securities registered in his name or in the name of any other person duly authorised on his behalf with an approved intermediary for the purpose of lending under the scheme.

(ii) Borrower is a person who borrows the securities under the scheme through an approved intermediary.

(iii) Approved intermediary is a person duly registered by the SEBI under the guidelines/scheme through whom the lender will deposit the securities for lending and the borrower will borrow the securities;

3. It may be noted for the purpose of GST Act, "securities" shall have the same meaning as assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 [Section 2(101) of CGST Act]. The definition of services as per Section 2(102) of the CGST Act, is extracted as below: -

> "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;
>
> Explanation.—For the removal of doubts, it is hereby clarified that the expression "services" includes facilitating or arranging transactions in securities;

4. Securities as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 are not covered in the definition of goods under section 2(52) and services under section 2(102) of the CGST Act. Therefore, a transaction in securities which involves disposal of securities is not a supply in GST and hence not taxable.

4.1 The explanation added to the definition of services w.e.f. 01.02.2019 i.e." includes facilitating or arranging transactions in securities" is only clarificatory in nature and does not have any bearing on the taxability of the services under discussion (lending of securities) in past since 01.07.2017 but relates to facilitating or arranging transactions in securities.

4.2 The activity of lending of securities is not a transaction in securities as it does not involve disposal of securities. The clause 4 of para 4 relating to the Scheme under the Securities Lending Scheme, 1997 doesn't treat lending of securities as disposal of securities and therefore is not excluded from the definition of services.

4.3 The lender temporarily lends the securities held by him to a borrower and charges lending fee for the same from the borrower. The borrower of securities can further sell or buy these securities and is required to return the lended securities after stipulated period of time. The lending fee charged from the borrowers of securities has the character of consideration and this activity is taxable in GST since 01.07.2017.

4.4 Apart from above, the activities of the intermediaries facilitating lending and borrowing of securities for commission or fee are also taxable separately.

5 The supply of lending of securities under the scheme is classifiable under heading 997119 and is leviable to GST@18% under Sl. No. 15(vii) of Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017 as amended from time to time.

5.1 For the past period i.e. from 01.07.2017 to 30.09.2019, GST is payable under forward charge by the lender and request may be made by the lender (supplier) to SEBI to disclose the information about borrower for discharging GST under forward charge. The nature of tax payable shall be IGST. However, if the service provider has already paid CGST / SGST / UTGST treating the supply as an intra-state supply, such lenders shall not be required to pay IGST again in lieu of such GST payments already made.

5.2 With effect from 1st October, 2019, the borrower of securities shall be liable to discharge GST as per Sl. No 16 of Notification No. 22/2019-Central Tax (Rate) dated 30.09.2019 under reverse charge mechanism (RCM). The nature of GST to be paid shall be IGST under RCM.

3.3.2.41 Departmental Clarifications - Clarification on the effective date of explanation inserted in notification No. 11/2017- CTR dated 28.06.2017, Sr. No. 3(vi) - Circular No. 120/39/2019- GST dated 11th October 2019

Representations have been received to amend the effective date of notification No. 17/2018-CTR dated 26.07.2018 whereby explanation was inserted in notification No. 11/2017- CTR dated 28.06.2017, Sr. No. 3(vi) to the effect that for the purpose of the said entry, the activities or transactions under taken by Government and Local Authority are excluded from the term 'business'.

2. The matter has been examined. Section 11(3) of CGST Act provides that the Government may insert an explanation in any notification issued under section 11, for the purpose of clarifying its scope or applicability, at any time within one year of issue of the notification and every such explanation shall have effect as if it had always been the part of the first such notification.

3. As recommended by GST Council, the explanation in question was inserted vide notification No. 17/2018-CTR dated 26.07.2018 in exercise of powers under section 11(3) within one year of the insertion of the original entry prescribing concessional rate, so that it would have effect from the date of inception of the entry i.e. 21.09.2017. However, like other notifications issued on 26.07.2018 to give effect to other recommendations of the GST Council, the said notification also contained a line in the last paragraph that the notification shall come into effect from 27.07.2018.

4. It is hereby clarified that the explanation having been inserted under section 11(3) of the CGST Act, is effective from the inception of the entry at Sl. No. 3(vi) of the notification No. 11/2017- CTR dated 28.06.2017, that is 21.09. 2017. The line in notification No. 17/2018-CTR dated 26.07.2018 which states that the notification shall come into effect from 27.07.2017 does not alter the operation of the notification in terms of Section 11(3) as explained in para 3 above.

3.3.2.42 Departmental Clarifications - Clarification on scope of the notification entry at item (id), related to job work, under heading 9988 of Notification No. 11/2017-Central Tax (Rate) dated 28-06-2017- Circular No. 126/45/2019-GST dated 22nd November, 2019

I am directed to say that doubts have been raised with regard to scope of the notification entry at item (id) under heading 9988 of Notification No. 11/2017-Central Tax (Rate) dated 28- 06-2017 inserted with effect from 01-10-2019 to implement the recommendation of the GST Council to reduce rate of GST on all job work services, which earlier attracted 18 % rate, to 12%. It has been stated that the entry at item (id) under heading 9988 of Notification No. 11/2017-Central Tax (Rate) dated 28-06-2017 inserted with effect from 01-10-2019, prescribes 12% GST rate for all services by way of job work. This makes the entry at item (iv) which covers "manufacturing services on physical inputs owned by others" with GST rate of 18%, redundant.

2. The matter has been examined. The entries at items (id) and (iv) under heading 9988 read as under:

(3)	(4)	(5)
(id) Services by way of job work other than (i), (ia), (ib) and (ic) above;	6	-
(iv) Manufacturing services on physical inputs (goods) owned by others, other than (i), (ia), (ib), (ic), (id), (ii), (iia) and (iii) above.	9	-

3. Job work has been defined in CGST Act as under.

"Job work means any treatment or processing undertaken by a person on goods belonging to another registered person and the expression 'job worker' shall be construed accordingly."

4. In view of the above, it may be seen that there is a clear demarcation between scope of the entries at item (id) and item (iv) under heading 9988 of Notification No. 11/2017-Central Tax (Rate) dated 28-06-2017. Entry at item (id) covers only job work services as defined in section 2 (68) of CGST Act, 2017, that is, services by way of treatment or processing undertaken by a person on goods belonging to another registered person. On the other hand, the entry at item (iv) specifically excludes the services covered by entry at item (id), and therefore, covers only such services which are carried out on physi ical inputs (goods) which are owned by persons other than those registered under the CGST Act.

3.3.2.43 Departmental Clarifications - Reverse Charge Mechanism (RCM) on renting of motor vehicles. - Circular No. 130/2019 – GST dated 31st December, 2019.

Suppliers of service by way of renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient have an option to pay GST either at 5% with limited ITC (of input services in the same line of business) or 12% with full ITC.

2. The GST Council in its 37th meeting dated 20.09.2019 examined the request to place the supply of renting of motor vehicles under RCM and recommended that the said supply when provided by suppliers paying GST @ 5% to corporate entities may be placed under RCM. RCM was not recommended for suppliers paying GST @12% with full ITC, so that they may have the option to continue to avail ITC. RCM otherwise would have blocked the ITC chain for them. Accordingly, the following entry was inserted in the RCM notification with effect from 1.10.19:

Sl. No.	Category of Supply of Services	Supplier of service	Recipient of Service
(1)	(2)	(3)	(4)
15	Services provided by way of renting of a motor vehicle provided to a body corporate.	Any person other than a body corporate, paying central tax at the rate of 2.5% on renting of motor vehicles with input tax credit only of input service in the same line of business	Any body corporate located in the taxable territory.

3. Post issuance of the notification, references have been received stating that when a service is covered by RCM, GST would be paid by the service recipient and not by the supplier.

Therefore, the wording of the notification that "any person other than a body corporate, paying central tax at the rate of 2.5%" is not free from doubt and needs amendment/ clarification from the perspective of drafting.

4. The matter has been examined. When any service is placed under RCM, the supplier shall not charge any tax from the service recipient as this is the settled procedure in law under RCM. There are only two rates applicable on the service of renting of vehicles, 5% with limited ITC and 12% with full ITC. The only interpretation of the notification entry in question which is not absurd would be that –

(i) where the supplier of the service charges GST @ 12% from the service recipient, the service recipient shall not be liable to pay GST under RCM; and,

(ii) where the supplier of the service doesn't charge GST @ 12% from the service recipient, the service recipient shall be liable to pay GST under RCM.

5. Though a supplier providing the service to a body corporate under RCM may still be paying GST @ 5% on the services supplied to other non body corporate clients, to bring in greater clarity, serial No. 15 of the notification No. 13/2017-CT (R) dated 28.6.17 has been amended vide notification No. 29/2019-CT (R) dated 31.12.19 to state that RCM shall be applicable on the service by way of renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient only if the supplier fulfils all the following conditions:–

(a) is other than a body-corporate;

(b) does not issue an invoice charging GST @12% from the service recipient; and

(c) supplies the service to a body corporate.

6. It may be noted that the present amendment of the notification is merely clarificatory in nature and therefore for the period 01.10.2019 to 31.12.2019 also, clarification given at para 5 above shall apply, as any other interpretation shall render the RCM notification for the said service unworkable for that period.

3.3.2.44 Departmental Clarifications - Clarification in respect of levy of GST on Director's remuneration- Circular No: 140/10/2020 – GST dated 10th June, 2020

Various references have been received from trade and industry seeking clarification whether the GST is leviable on Director's remuneration paid by companies to their directors. Doubts have been raised as to whether the remuneration paid by companies to their directors falls under the ambit of entry in Schedule III of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the CGST Act) i.e. "services by an employee to the employer in the course of or in relation to his employment" or whether the same are liable to be taxed in terms of notification No. 13/2017 – Central Tax (Rate) dated 28.06.2017 (entry no.6).

2. The issue of remuneration to directors has been examined under following two different categories:

(i) leviability of GST on remuneration paid by companies to the independent directors defined in terms of section 149(6) of the Companies Act, 2013 or those directors who are not the employees of the said company; and

(ii) leviability of GST on remuneration paid by companies to the whole-time directors including managing director who are employees of the said company.

3. In order to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under section 168(1) of the CGST Act hereby clarifies the issue as below:

Leviability of GST on remuneration paid by companies to the independent directors or those directors who are not the employee of the said company

4.1 The primary issue to be decided is whether or not a „Director" is an employee of the company. In this regard, from the perusal of the relevant provisions of the Companies Act, 2013, it can be inferred that:

a. the definition of a whole time-director under section 2(94) of the Companies Act, 2013 is an inclusive definition, and thus he may be a person who is not an employee of the company.

b. the definition of „independent directors" under section 149(6) of the Companies Act, 2013, read with Rule 12 of Companies (Share Capital and Debentures) Rules, 2014 makes it amply clear that such director should not have been an employee or proprietor or a partner of the said company, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed in the said company.

4.2 Therefore, in respect of such directors who are not the employees of the said company, the services provided by them to the Company, in lieu of remuneration as the consideration for the said services, are clearly outside the scope of Schedule III of the CGST Act and are therefore taxable. In terms of entry at Sl. No. 6 of the Table annexed to notification No. 13/2017 – Central Tax (Rate) dated 28.06.2017, the recipient of the said services i.e. the Company, is liable to discharge the applicable GST on it on reverse charge basis.

4.3 Accordingly, it is hereby clarified that the remuneration paid to such independent directors, or those directors, by whatever name called, who are not employees of the said company, is taxable in hands of the company, on reverse charge basis.

Leviability of GST on remuneration paid by companies to the directors, who are also an employee of the said company

5.1 Once, it has been ascertained whether a director, irrespective of name and designation, is an employee, it would be pertinent to examine whether all the activities performed by the director are in the course of employer-employee relation (i.e. a "contract of service") or is there any element of "contract for service". The issue has been deliberated by various courts and it has been held that a director who has also taken an employment in the company may be functioning in dual capacities, namely, one as a director of the company and the other on the basis of the contractual relationship of master and servant with the company, i.e. under a contract of service (employment) entered into with the company.

5.2 It is also pertinent to note that similar identification (to that in Para 5.1 above) and treatment of the Director's remuneration is also present in the Income Tax Act, 1961 wherein the salaries paid to directors are subject to Tax Deducted at Source ('TDS') under Section 192 of the Income Tax Act, 1961 ('IT Act'). However, in cases where the remuneration is in the nature of professional fees and not salary, the same is liable for deduction under Section 194J of the IT Act.

5.3. Accordingly, it is clarified that the part of Director's remuneration which are declared as „Salaries" in the books of a company and subjected to TDS under Section 192 of the IT Act, are not taxable being consideration for services by an employee to the employer in the course of or in relation to his employment in terms of Schedule III of the CGST Act, 2017.

5.4 It is further clarified that the part of employee Director's remuneration which is declared separately other than „salaries" in the Company's accounts and subjected to TDS under Section 194J of the IT Act as Fees for professional or Technical Services shall be treated as consideration for providing services which are outside the scope of Schedule III of the CGST Act, and is therefore, taxable. Further, in terms of notification No. 13/2017 – Central Tax (Rate) dated 28.06.2017, the recipient of the said services i.e. the Company, is liable to discharge the applicable GST on it on reverse charge basis.

3.3.2.45 Departmental Clarifications - Clarification regarding applicability of GST on supply of food in Anganwadis and Schools- Circular No. 149/05/2021-GST dated 17th June, 2021

Representations have been received seeking clarification regarding applicability of GST on the issues as to whether serving of food in schools under Mid-Day Meals Scheme would be exempt if such supplies are funded by government grants and/or corporate donations. The issue was examined by GST Council in its 43rd meeting held on 28th May, 2021.

2. Entry 66 clause (b)(ii) of notification No. 12/2017-Central Tax (Rate) dated 28th June, 2017, exempts Services provided to an educational institution, by way of catering, including any mid-day meals scheme sponsored by the Central Government, State Government or Union territory. This entry applies to pre-school and schools.

3. Accordingly, as per said entry 66, any catering service provided to an educational institution is exempt from GST. The entry further mention that such exempt service includes mid- day meal service as specified in the entry. The scope of this entry is thus wide enough to cover any serving of any food to a school, including pre-school. Further, an Anganwadi interalia provides pre-school nonformal education. Hence, aganwadi is covered by the definition of educational institution (as pre-school).

4. Accordingly, as per recommendation of the GST Council, it is clarified that services provided to an educational institution by way of serving of food (catering including mid- day meals) is exempt from levy of GST irrespective of its funding from government grants or corporate donations [under said entry 66 (b)(ii)]. Educational institutions as defined in the notification include aganwadi. Hence, serving of food to anganwadi shall also be covered by said exemption, whether sponsored by government or through donation from corporates.

3.3.2.46 Departmental Clarifications - Clarification regarding applicability of GST on the activity of construction of road where considerations are received in deferred payment (annuity)- Circular No.150/06/2021-GST dated 17th June, 2021

Certain representations have been received requesting for a clarification regarding applicability of GST on annuities paid for construction of road where certain portion of consideration is received upfront while remaining payment is made through deferred payment (annuity) spread over years.

2. This issue has been examined by the GST Council in its 43rd meeting held on 28th May, 2021.

2.1 GST is exempt on service, falling under heading 9967 (service code), by way of access to a road or a bridge on payment of annuity [entry 23A of notification No. 12/2017-Central Tax]. Heading 9967 covers “supporting services in transport” under which code 996742 covers “operation services of National Highways, State Highways, Expressways, Roads & streets; bridges and tunnel operation services”. Entry 23 of said notification exempts “service by way of access to a road or a bridge on payment of toll”. Together the entries 23 and 23A exempt access to road or bridge, whether the consideration are in the form of toll or annuity [heading 9967].

2.2 Services by way of construction of road fall under heading 9954. This heading inter alia covers general construction services of highways, streets, roads railways, airfield runways, bridges and tunnels. Consideration for construction of road service may be paid partially upfront and partially in deferred annual payments (and may be called annuities). Said entry 23A does not apply to services falling under heading 9954 (it specifically covers heading 9967 only). Therefore, plain reading of entry 23A makes it clear that it does not cover construction of road services (falling under heading 9954), even if deferred payment is made by way of instalments (annuities).

3. Accordingly, as recommended by the GST Council, it is hereby clarified that Entry 23A of notification No. 12/2017-CT(R) does not exempt GST on the annuity (deferred payments) paid for construction of roads.

3.3.2.47 Departmental Clarifications - Clarification regarding GST on supply of various services by Central and State Board (such as National Board of Examination)- Circular No. 151/07/2021-GST dated 17th June, 2021

Certain representations have been received seeking clarification in respect of taxability of various services supplied by Centre and State Boards such as National Board of Examination (NBE). These services include entrance examination (on charging a fee) for admission to educational institution, input services for conducting such entrance examination for students, accreditation of educational institutions or professional so as to authorise them to provide their respective services. The issue was examined by GST Council in its 43rd meeting held on 28th May, 2021.

2. Illustratively, NBE provides services of conducting entrance examinations for admission to courses including Diplomat National Board (DNB) and Fellow of National Board (FNB), prescribes courses and curricula for PG medical studies, holds examinations and grant degrees, diplomas and other academic distinctions. It carries out all functions as are normally carried out by central or state educational boards and is thus a central educational board.

3. According to explanation 3(iv) of the notification No. 12/ 2017 CTR, "Central and State Educational Boards" are treated as Educational Institution for the limited purpose of providing services by way of conduct of examination to the students.

Therefore, NBE is an 'Educational Institution' in so far as it provides services by way of conduct of examination, including any entrance examination, to the students.

3.1 Following services supplied by an educational institution are exempt from GST vide sl. No. 66 of the notification No. 12/ 2017- Central Tax (Rate) dated 28.06.2017,

> Services provided –
>
> (a) by an educational institution to its students, faculty and staff;
>
> (aa) by an educational institution by way of conduct of entrance examination against consideration in the form of entrance fee;

3.2 Similarly, services provided to an educational institution, relating to admission to, or conduct of examination is also exempt from GST [sl. No. 66 (b)(iv)- 12/2017-CT(r)].

3.3 Educational institutions are defined at 2(y) of the said notification as follows-

> "(y) educational institution" means an institution providing services by way of, -
>
> (i) pre-school education and education up to higher secondary school or equivalent;
>
> (ii) education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force;
>
> (iii) education as a part of an approved vocational education course;";
>
> Further, clause (iv) of Explanation of said notification reads as below:
>
> "(iv) For removal of doubts, it is clarified that the Central and State Educational Boards shall be treated as Educational Institution for the limited purpose of providing services by way of conduct of examination to the students"

4. Taking into account the above, the GST Council has recommended, to clarify as below:

> (i) GST is exempt on services provided by Central or State Boards (including the boards such as NBE) by way of conduct of examination for the students, including conduct of entrance examination for admission to educational institution [under S. No. 66 (aa) of notif No. 12/2017-CT(R)]. Therefore, GST shall not apply to any fee or any

amount charged by such Boards for conduct of such examinations including entrance examinations.

(ii) GST is also exempt on input services relating to admission to, or conduct of examination, such as online testing service, result publication, printing of notification for examination, admit card and questions papers etc, when provided to such Boards [under S. No. 66 (b) (iv) of notif No. 12/2017- CT(R)].

(iii) GST at the rate of 18% applies to other services provided by such Boards, namely of providing accreditation to an institution or to a professional (accreditation fee or registration fee such as fee for FMGE screening test) so as to authorise them to provide their respective services.

3.3.2.48 Departmental Clarifications - Clarification regarding rate of tax applicable on construction services provided to a Government Entity, in relation to construction such as of a Ropeway on turnkey basis- Circular No. 152/08/2021-GST dated 17th June, 2021

Reference has been received by the Board for a clarification whether services supplied to a Government Entity by way of construction such as of "a ropeway" are eligible for concessional rate of 12% GST under entry No. 3 (vi) of Notification No. 11/2017- CT (R) dt.28.06.2017. On the recommendation of the GST Council, this issue is clarified as below.

2. According to entry No. 3(vi) of notification No. 11/2017-CT (R) dated 28.06.2017, GST rate of 12% is applicable, inter alia, on-

"(vi) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, (other than that covered by items (i), (ia), (ib), (ic), (id), (ie) and (if) above) provided to the Central Government, State Government, Union Territory, a local authority a Governmental Authority or a Government Entity, by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of –

(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession; " ….

2.1 Thus, said entry No 3 (vi) does not apply to any works contract that is meant for the purposes of commerce, industry, business of profession, even if such service is provided to the Central Government, State Government, Union Territory, a local authority a Governmental Authority or a Government Entity. The doubt seems to have arisen in the instant cases as Explanation to the said entry states, the term 'business' shall not include any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities. However, this explanation does not apply to Governmental Authority or Government Entity, as defined in clause (ix) and (x) of the explanation to said notification. Further, civil constructions, such as rope way for tourism development shall not be covered by said entry 3(vi) not being a structure that is meant predominantly for purposes other than business. While road, bridge, terminal, or railways are covered by entry No. 3(iv) and 3(v) of said notification, structures like ropeway are not covered by these entries too. Therefore, works contract service provided by way of construction such as of rope way shall fall under entry at sl. No. 3(xii) of notification 11/2017-(CTR) and attract GST at the rate of 18%.

3.3.2.49 Departmental Clarifications - GST on milling of wheat into flour or paddy into rice for distribution by State Governments under PDS- Circular No. 153/09/2021-GST dated 17th June, 2021

Certain representations have been received seeking clarification whether composite supply of service by way of milling of wheat into wheat flour, alongwith fortification, by any person to a State Government for distribution of such wheat flour under Public Distribution System is eligible for exemption under entry No. 3A of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, and also as regards the rate of GST on such milling, if it does not fall in said entry No. 3A. The issue has been examined by GST Council in its 43rd meeting held on 28th May, 2021.

2. Entry at Sl. No. 3A of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 exempts "composite supply of goods and services in which the value of supply of goods constitutes not more than 25 per cent of the value of the said composite supply provided to the Central Government, State Government or Union territory or local authority or a Governmental authority or a Government Entity by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution".

3. As per the recommendation of the GST Council the issue is clarified as below.

3.1 Public Distribution specifically figures at entry 28 of the 11th Schedule to the constitution, which lists the activities that may be entrusted to a Panchayat under Article 243G of the Constitution. Hence, said entry No. 3A would apply to composite supply of milling of wheat and fortification thereof by miller, or of paddy into rice, provided that value of goods supplied in such composite supply (goods used for fortification, packing material etc) does not exceed 25% of the value of composite supply. It is a matter of fact as to whether the value of goods in such composite supply is up to 25% and requires ascertainment on case-to-case basis.

3.2 In case the supply of service by way of milling of wheat into flour or of paddy into rice, is not eligible for exemption under Sl. No. 3 A of Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 for the reason that value of goods supply in such a composite supply exceeds 25%, then the applicable GST rate would be 5% if such composite supply is provided to a registered person, being a job work service (entry No. 26 of notification No. 11/2017-Central Tax (Rate) dated 28.06.2017). Combined reading of the definition of job-work [section 2(68), 2(94), 22, 24, 25 and section 51] makes it clear that a person registered only for the purpose of deduction of tax under section 51 of the CGST Act is also a registered person for the purposes of the said entry No. 26, and thus said supply to such person is also entitled for 5% rate.

3.3.2.50 Departmental Clarifications - GST on service supplied by State Govt. to their undertakings or PSUs by way of guaranteeing loans taken by them- Circular No.154/10/2021-GST dated 17th June, 2021

Certain representations have been received requesting for clarification regarding applicability of GST on supply of service by State Govt. to their undertakings or PSUs by way of guaranteeing loans. The issue was examined by GST Council in its 43rd meeting held on 28th May, 2021.

2. Entry No. 34A of Notification no. 12/2017-Central Tax (Rate) dated 28.06.2017 exempts "Services supplied by Central Government, State Government, Union territory to their undertakings or Public Sector Undertakings (PSUs) by way of guaranteeing the loans taken by such undertakings or PSUs from the banking companies and financial institutions."

3. Accordingly, as recommended by the Council, it is re-iterated that guaranteeing of loans by Central or State Government for their undertaking or PSU is specifically exempt under said entry No. 34A.

3.3.2.51 Departmental Clarifications - Clarification regarding GST rate on laterals/parts of Sprinklers or Drip Irrigation System- Circular No. 155/11/2021-GST dated 17th June, 2021

Representations have been received seeking clarification regarding GST rate on parts of Sprinklers or Drip Irrigation System, when they are supplied separately (i.e. not along with entire sprinklers or drip irrigation system). This issue was examined in the 43rd meeting of GST Council held on the 28th May, 2021.

2. The GST rate on Sprinklers or Drip Irrigation System along with their laterals/parts are governed by S.No. '195B' under Schedule II of notification No. 1/2017- Central Tax (Rate), dated 28th June, 2017 which has been inserted vide notification No. 6/2018- Central Tax (Rate), dated 25th January, 2018 and reads as below:

S. No.	Chapter Heading / Sub-heading/Tariff Item	Description of Goods	CGST rate
195B	8424	Sprinklers; drip irrigation systems including laterals; mechanical sprayer	6%

3. The matter is examined. The intention of this entry has been to cover laterals (pipes to be used solely with with sprinklers/drip irrigation system) and such parts that are suitable for use solely or principally with 'sprinklers or drip irrigation system', as classifiable under heading 8424 as per Note 2 (b) to Section XVI to the HSN. Hence, laterals/parts to be used solely or principally with sprinklers or drip irrigation system, which are classifiable under heading 8424, would attract a GST of 12%, even if supplied separately. However, any part of general use, which gets classified in a heading other than 8424, in terms of Section Note and Chapter Notes to HSN, shall attract GST as applicable to the respective heading.

3.3.2.52 Departmental Clarifications - Clarification regarding GST rates & classification (goods) based on the recommendations of the GST Council in its 45th meeting held on

17th September, 2021 at Lucknow- Circular No. 163/19/2021-GST dated 6th October, 2021

Based on the recommendations of the GST Council in its 45th meeting held on 17th September, 2021, at Lucknow, clarification, with reference to GST levy, related to the following are being issued through this circular:

i. Fresh vs dried fruits and nuts;

ii. Classification and applicable GST rates on Tamarind seeds;

iii. Coconut vs Copra;

iv. Classification and applicable GST rate on Pure henna powder and leaves, having no additives;

v. Scented sweet supari and flavored and coated illaichi;

vi. Classification of Brewers' Spent Grain (BSG), Dried Distillers' Grains with Soluble [DDGS] and other such residues and applicable GST rate;

vii. GST rates on goods [miscellaneous pharmaceutical products] falling under heading 3006;

viii. Applicability of GST rate of 12% on all laboratory reagents and other goods falling under heading 3822;

ix. Requirement of Original/ import Essentiality certificate, issued by the Directorate General of Hydrocarbons (DGH) on each inter-State stock transfer of goods imported at concessional GST rate for petroleum operations;

x. External batteries sold along with UPS Systems/ Inverter;

xi. Specified Renewable Energy Projects; xii. Fiber Drums, whether corrugated or non-corrugated.

2. The issue-wise clarifications are discussed in detail below.

3. Applicability of GST on fresh and dried fruits and nuts:

3.1 Representations have been received seeking clarification regarding the distinction between fresh and dried fruits and nuts and applicable GST rates.

3.2 At present, fresh nuts (almond, walnut, hazelnut, pistachio etc) falling under heading 0801 and 0802 are exempt from GST, while dried nuts under these headings attract GST at the rate of 5%/ 12%. The general Explanatory Notes to chapter 08 mentions that this chapter covers fruit, nuts intended for human consumption. They may be fresh (including chilled), frozen (whether or not previously cooked by steaming or boiling in water or containing added sweetening matter) or dried (including dehydrated, evaporated or freeze-dried).Thus, HS chapter differentiates between fresh, frozen and dried fruits and nuts. Fresh fruit and nuts would thus cover fruit and nuts which are meant to be supplied in the state as plucked. They continue to be fresh even if chilled. However, fruit and nuts do not qualify as fresh, once frozen (cooked or otherwise), or intentionally dried to dehydrate including through sun drying, evaporation or freezing, for supply as dried fruits or nuts. It may be noted that in terms of note

3 to Chapter 8, dried fruits, even if partially re-hydrated, or subject to preservation say by moderate heat treatment, retain the character of dried fruits or dried nuts.

3.3. Therefore, exemption from GST to fresh fruits and nuts covers only such products which are not frozen or dried in any manner as stated above or otherwise processed. Supply of dried fruits and nuts, falling under heading 0801 and 0802 attract GST at the rate of 5%/12% as specified in the respective rate Schedules.

4. Applicability of GST on tamarind seeds:

4.1 Representations have been received seeking clarification regarding classification and applicable GST rates on tamarind seeds. The dispute is in classification of tamarind seeds between tariff heading 1207 and 1209.

4.2 As per general Explanatory Notes to HS 2017, heading 1209, covering seeds, fruit and spores, of a kind used for sowing, covers tamarind seeds. As per Chapter note 3 to Chapter 12, for the purposes of heading 1209, beet seeds, grass and other herbage seeds, seeds of ornamental flowers, vegetable seeds, seeds of forest trees, seeds of fruit trees, seeds of vetches (other than those of the species Vicia faba) or of lupines are to be regarded as "seeds of a kind used for sowing". Thus, tamarind seeds, even if used for any purpose other than sowing, is liable to be classified under heading 1209 and hitherto attracted nil GST rate, irrespective of its use (for the period 01.07.2017 to 30.09.2021).

4.3 The GST council in its 45th meeting recommended GST rate on seeds, falling under heading 1209, meant for any use other than sowing to 5% (S. No. 71A of schedule I of notification No. 1/2017- Central Tax (Rate) dated 28.06.2017) and Nil rate would apply only to seeds for this heading if used for sowing purposes (S. No. 86 of schedule of notification No. 2/2017- Central Tax (Rate) dated 28.06.2017). Hence, 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 at the rate of 5%.

5. Clarification of definition of Copra:

5.1. Representations have been received seeking clarification regarding the definition of Copra and applicable GST rates.

5.2 As per Explanatory Notes to HS (2017 edition) to heading 1203, Copra is dried flesh of coconut generally used for the extraction of coconut oil. Coconut kernel turns into copra, when it separates from the shell skin, while still being inside the shell. The whole unbroken kernel could be taken out of shell only when it converts to copra. Once taken out of shell, copra could be supplied either whole or broken.

5.3. As per the Explanatory Notes to HS, the heading 0801 covers coconut fresh or dried but excludes Copra. Thus, exemption available to Coconut, fresh or dried, whether or not shelled or peeled, vide entry at S. No. 47 of notification No. 2/2017- Central Tax (Rate) dated 28.6.2017, is not available to Copra. Accordingly, Copra, classified under heading 1203, attracts GST rate of 5% vide entry at S. No. 66 of Schedule I of 1/2017-Central Taxes (Rate) dated 28.06.2017, irrespective of use.

6. Applicability of GST on pure henna powder and leaves:

6.1 Representations have been received seeking clarification regarding classification and applicable GST rates on henna powder and henna leaves.

6.2 As per the Explanatory Notes to HS 2017, heading 1404 is vegetable products not elsewhere specified or included. Further, as per the said Explanatory Notes, heading 1404 includes raw vegetable materials of a kind used primarily in dyeing or tanning. Such products are used primarily in dyeing or tanning either directly or in preparation of dyeing or tanning extracts. The material may be untreated, cleaned, dried, ground or powdered (whether or not compressed).

6.3 Accordingly, it is clarified that pure henna powder and henna leaves, having no additives, is classifiable under tariff item 1404 90 90 and shall attract GST rate of 5% (S. No. 78 of schedule I of notification No. 1/2017-Central Tax (Rate) dated 28.06.2017).

6.4. Further, the GST rate on mehndi paste in cones falling under heading 1404 and 3305 shall be 5% (S. No. 78A of schedule I of notification No. 1/2017-Central Tax (Rate) dated 28.06.2017).

7. Applicability of GST on scented sweet supari & flavored and coated illaichi:

7.1 Representations have been received seeking clarification regarding classification and applicable GST rates on flavored and coated illaichi, and scented sweet supari.

7.2 Scented sweet supari falls under tariff item 2106 90 30 as “Betel nut product” known as “Supari” and attracts GST rate of 18% vide entry at S. No. 23 of Schedule III of notification No. 1/2017-Central Tax (Rate) dated 28.6.2017.

7.3 Flavored and coated illaichi generally consists of Cardamom Seeds, Aromatic Spices, Silver Leaf, Saffron, Artificial Sweeteners. It is distinct from illaichi or cardamom (which falls under heading 0908). It is clarified that flavored and coated illaichi is a value added product and falls under sub-heading 2106. It accordingly attract GST at the rate of 18% (S. No. 23 of schedule III of notification No. 1/2017-Central Tax (Rate) dated 28.06.2017).

8. Applicability of GST on Brewers' Spent Grain (BSG), Dried Distillers’ Grains with Soluble [DDGS] and other such residues:

8.1 Representations have been received seeking clarification regarding classification and applicable GST rates on Brewers' spent grain (BSG), Dried distillers' grains with soluble [DDGS] and other such residues of starch manufacture and similar residues, beet-pulp, bagasse and other waste of sugar manufacture, brewing or distilling dregs and waste, whether or not in the form of pellets.

8.2 As per the Explanatory Notes to the HSN, heading 2303 includes residues of starch manufacture and similar residues (from maize (corn), rice, potatoes, etc.); beetpulp; bagasse; other waste products of sugar manufacture; brewing or distilling dregs and waste, which comprises in particular - dregs of cereals obtained in the manufacture of beer and consisting of exhausted grains remaining after the wort has been drawn off; malts sprouts separated from the malted grain during the kilning process; spent hops; Dregs resulting from the distillation of spirits from grain, seeds, potatoes, etc; beet pulp wash (residues from the distillation of beet molasses).All these products remain classified in the heading whether presented in wet or dry.

8.3 Thus, Brewers' spent grain (BSG), Dried distillers' grains with soluble [DDGS] and other such residues are classifiable under heading 2303, attracting GST at the rate of 5% (S. No. 104 of schedule I of notification No. 1/2017-Central Tax (Rate) dated 28.06.2017).

9. Scope of GST rate on all pharmaceutical goods falling under heading 3006.

9.1 Entry at S. No. 65 of Schedule II of notification No. 1/2017-Central Tax (Rate) dated 28.6.2017, reads as "Pharmaceutical goods specified in Note 4 to this Chapter [i.e. Sterile surgical catgut, similar sterile suture materials (including sterile absorbable surgical or dental yarns) and sterile tissue adhesives for surgical wound closure; sterile laminaria and sterile laminaria tents; sterile absorbable surgical or dental haemostatics; sterile surgical or dental adhesion barriers, whether or not absorbable; Waste pharmaceuticals] [other than contraceptives]"

9.2 S. No. 65 of Second Schedule of Notification 1/2017- Central Tax (Rate) dated 28.6.2017 refers to the note 4 to Chapter 30 of the First schedule of the Customs Tariff Act, 1975 while mentioning an illustrative list. Certain representations were received seeking clarification on the applicable rate of goods falling under heading 3006 that are not specifically mentioned in the Entry at S. No. 65 of Schedule II of notification No. 1/2017-Central Tax (Rate) dated 28.6.2017.

9.3 Note 4 to Chapter 30 of the First schedule of the Custom Tariff Act, 1975 reads as follows:

> "(a) sterile surgical catgut, similar sterile suture materials (including sterile absorbable surgical or dental yarns) and sterile tissue adhesives for surgical wound closure;
>
> (b) sterile laminaria and sterile laminaria tents;
>
> (c) sterile absorbable surgical or dental haemostatics sterile surgical or dental adhesion barriers, whether or not absorbable;
>
> (d) opacifying preparations for X-ray examinations and diagnostic reagents designed to be administered to the patient, being unmixed products put up in measured doses or products consisting of two or more ingredients which have been mixed together for such uses;
>
> (e) blood-grouping reagents;
>
> (f) dental cements and other dental fillings; bone reconstruction cements;
>
> (g) first-aid boxes and kits;
>
> (h) chemical contraceptive preparations based on hormones, on other products of heading 2937 or on spermicides;
>
> (i) gel preparations designed to be used in human or veterinary medicine as a lubricant for parts of the body for surgical operations or physical examinations or as a coupling agent between the body and medical instruments; and
>
> (j) waste pharmaceuticals, that is, pharmaceutical products which are unfit for their original intended purpose due to, for example, expiry of shelf-life.
>
> (k) appliances identifiable for ostomy use, that is colostomy, ileostomy and urostomy pouches cut to shape and their adhesive wafers or faceplates."

9.4 Thus, it is clarified that said entry 65 covers all goods as specified in Chapter Note 4 and Chapter Note 4 in turn covers all goods covered under Heading 3006. Therefore, said entry 65 covers all goods falling under heading 3006, irrespective of the fact that such goods are specifically mentioned in said entry. Therefore, all goods falling under heading 3006 attract GST rate of 12% under entry 65 in the 12% rate schedule.

10. All laboratory reagents and other goods falling under heading 3822:

10.1 Entry at S. No. 80 of Schedule II of notification No.1/2017- Integrated Tax (Rate) dated 28.6.2017 prescribes GST rate of 12% for "All diagnostic kits and reagents".

10.2. Representations have been received whether the benefit of concessional rate of 12% would be available to laboratory agents and other goods falling under heading 3822.

10.3 Heading 3822 covers "Diagnostic or Laboratory Reagents, Certified Reference Materials etc.".

10.4 The issue was placed before the GST Council and on its recommendations, it is clarified that the intention of this entry was to prescribe GST rate of 12% to all goods, whether diagnostic or laboratory regents, falling under heading 3822.

10.5 It is accordingly clarified that concessional GST rate of 12% is applicable on all goods falling under heading 3822, vide Entry at S. No. 80 of Schedule II of notification No.1/2017-Integrated Tax (Rate) dated 28.6.2017.

11. Requirement of Original/ import Essentiality certificate, issued by the Directorate General of Hydrocarbons (DGH) on each inter-State stock transfer of goods imported at concessional GST rate for petroleum operations

11.1 Notification No. 3/2017-Central Tax (Rate) prescribes concessional rate of 5% for specified goods which are used in connection with specified petroleum operations. Condition 1 (d) in notification No. 03/2017-Central Tax dated 28.06.2017 prescribes that "whenever goods so supplied are transferred to other licensee or sub-contractor a certificate from Directorate General of Hydrocarbons (DGH) is to be produced that the goods may be transferred to the transferee".

11.2. As per Section 7 read with Schedule-I of the CGST Act 2017, inter-state stock transfer between distinct persons (establishment of same person located in two different states) is considered as 'supply 'of goods.

11.3. Representations have been received seeking clarification whether the original/ import Essentiality certificate can be used for such inter-state stock transfers or a fresh Essentiality certificate would be required for each inter-state stock transfer as it is being treated as supply subject to IGST.

11.4 GST Council deliberated upon this issue and a decision was taken that the original/ import Essentiality certificate, issued by the Directorate General of Hydrocarbons (DGH) is sufficient and there is no need for taking a certificate every time on inter-state movement of goods within the same company / stock transfer so long as the goods are the same as those imported by the company at concessional rate.

11.5. The importer is required to maintain records and should be able to establish nexus between the stock transfer of goods and the description in the essentiality certificate.

12. GST rates applicable on External batteries sold along with UPS Systems/ Inverter 12.1 References have been received seeking clarification about whether, 'UPS Systems/inverter sold along with batteries as integral part' are classified under heading 8507 at 28% GST or under heading 8504 at 18% GST. 12.2 The matter has been examined and it is observed that even if the UPS/inverter and external battery are sold on the same invoice, their price are separately known, and they are two separately identifiable items. Thus, this constitutes supply of two distinctly identifiable items on one invoice. Therefore, it is clarified that in such supplies, UPS/ inverter would attract GST rate of 18% under heading 8504, while external batteries

would attract the GST rate as applicable to it under heading 8507 (28% for all batteries except lithium-ion battery).

13. Applicability of GST rates on Solar PV Power Projects

13.1 Representations have been received seeking clarification regarding the GST rates applicable on Solar PV Power Projects on or before 1st January, 2019. The issue seems to have arisen in the context of Notification No.24/2018- Central Tax (Rate), dated 31st December, 2018. An explanation was inserted vide the said notification that GST on specified Renewable Energy Projects can be paid in terms of the 70:30 ratio for goods and services, respectively, with effect from 1st January, 2019. The request has been that same ratio (for deemed value) may be applied in respect of supplies made before 1.1.2019.

13.2 As per this explanation, if the goods specified in this entry are supplied, by a supplier, along with supplies of other goods and services, one of which being a taxable service specified in the entry at S. No. 38 of the Table mentioned in the notification No. 11/2017-Central Tax (Rate), dated 28th June, 2017, the value of supply of goods for the purposes of this entry shall be deemed as seventy per cent. of the gross consideration charged for all such supplies, and the remaining thirty per cent. of the gross consideration charged shall be deemed as value of the said taxable service. This mechanism for valuation of supply was recommended by the Council considering that it adequately represented the value of goods and services involved in the supply.

13.3 The GST Council has now decided to clarify that GST on such specified Renewable Energy Projects can be paid in terms of the 70:30 ratio for goods and services, respectively, for the period of 1st July, 2017 to 31st December, 2018, in the same manner as has been prescribed for the period on or after 1st January, 2019, as per the explanation in the Notification No.24/2018 dated 31st December, 2018. However, it is specified that, no refunds will be granted if GST already paid is more than the amount determined using this mechanism.

14. Applicability of GST rates on Fibre Drums, whether corrugated or noncorrugated

14.1 Hitherto, corrugated boxes and cartons, falling under heading 4819 attracted GST at the rate of 12% (entry 122 of 12% rate schedule), while other cartons falling under this heading attracted GST at the rate of 18%. Disputes have arisen as regards applicable GST on fibre drums, which is partially corrugated (as to whether it is be treated as corrugated or otherwise). This dispute gets resolved on account of the recommendation of the GST Council, in its 45th meeting, to prescribe a uniform GST rate of 18% on all goods classifiable under heading 4819 (with effect from 1st October, 2021 under S. No. 153A of Schedule III of notification No.1/2017-Central Tax (Rate) dated 28.6.2017).

14.2 For the period prior to 1.10.2021, the Council upon taking note of the fact that there was an ambiguity regarding the GST rates applicable on a Fibre Drums, because of its peculiar construction (partially corrugated), has decided that supplies of such Fibre Drums even if made at 12% GST (during the period from 1.7.2017 to 30.9.2021), would be treated as fully GST-paid. Therefore, no action for recovery of differential tax (over and above 12% already paid) would arise. However, as this decision has only been taken to regularize the past practice in view of certain ambiguity, as detailed in para 14.1, no refund of GST already paid shall be allowed if already paid at 18%.

3.3.2.53 Departmental Clarifications - Clarifications regarding applicable GST rates & exemptions on certain services- Circular No. 164 /20 /2021-GST dated 6th October, 2021

Representations have been received seeking clarification in respect of applicable GST rates on the following activities:

1. Services by cloud kitchens/central kitchens,

2. Supply of ice cream by ice cream parlors,

3. Coaching services to students provided by coaching institutions and NGOs under the central sector scheme of “Scholarships for students with Disabilities”,

4. Satellite launch services provided by NSIL.

5. Overloading charges at toll plaza,

6. Renting of vehicles by State Transport Undertakings and Local Authorities,

7. Services by way of grant of mineral exploration and mining rights attracted GST,

8. Admission to amusement parks having rides etc. ,

9. Services supplied by contract manufacture to brand owners or others for manufacture of alcoholic liquor for human consumption.

2. The issues have been examined by GST Council in the 45rd meeting of the Council held on 17th September, 2021. The issue-wise clarifications are given below:

3. Services by cloud kitchens/central kitchens:

3.1 Representations have been received requesting for clarification regarding the classification and rate of GST on services rendered by Cloud kitchen or Central Kitchen.

3.2 The word „restaurant service‟ is defined in Notification No. 11/2017 – CTR as below: -

> “Restaurant service” means supply, by way of or as part of any service, of goods, being food or any other article for human consumption or any drink, provided by a restaurant, eating joint including mess, canteen, whether for consumption on or away from the premises where such food or any other article for human consumption or drink is supplied.”

3. 3 The explanatory notes to the classification of service state that „restaurant service‟ includes services provided by Restaurants, Cafes and similar eating facilities including takeaway services, room services and door delivery of food. Therefore, it is clear that takeaway services and door delivery services for consumption of food are also considered as restaurant service and, accordingly, service by an entity, by way of cooking and supply of food, even if it is exclusively by way of takeaway or door delivery or through or from any restaurant would be covered by restaurant service. This would thus cover services provided by cloud kitchens/central kitchens.

3.4 Accordingly, as recommended by the Council, it is clarified that service provided by way of cooking and supply of food, by cloud kitchens/central kitchens are covered under „restaurant service‟, as defined in notification No. 11/2017- Central Tax (Rate) and attract 5% GST [without ITC].

4. Supply of ice cream by ice cream parlors

4.1 Representations have been received requesting for clarification regarding the supplies provided in an ice cream outlet.

4.2 Ice cream parlors sell already manufactured ice- cream and they do not have a character of a restaurant. Ice-cream parlors do not engage in any form of cooking at any stage, whereas, restaurant service involves the aspect of cooking/preparing during the course of providing service. Thus, supply of ice-cream parlor stands on a different footing than restaurant service. Their activity entails supply of ice cream as goods (a manufactured item) and not as a service, even if certain ingredients of service are present.

4.3 Accordingly, as recommended by the Council, it is clarified that 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, it is clarified that ice cream sold by a parlor or any similar outlet would attract GST at the rate of 18%.

5. Coaching services supplied by coaching institutions and NGOs under the central sector scheme of 'Scholarships for students with Disabilities"

5.1 Representations have been received seeking clarification regarding applicability of GST on free coaching services provided by coaching institutions and NGOs under the central scheme of "Scholarships for students with Disabilities" where entire expenditure is provided by Government to coaching institutions by way of grant in aid.

5.2 In this regard, it is to mention that entry 72 of notification No. 12/2017- Central Tax (Rate) dated 28th June, 2017, exempts services provided to the Central Government, State Government, Union territory administration under any training programme for which total expenditure is borne by the Central Government, State Government, Union territory administration.

5.3 The scope of this entry is wide enough to cover coaching services provided by coaching institutions and NGOs under the central scheme of "Scholarships for students with Disabilities" where total expenditure is borne by the Government by way of funding to institute providing such coaching.

5.4 Accordingly, as recommended by the GST Council, it is clarified that 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 covered under entry 72 of notification No. 12/2017-Central Tax (Rate) dated 28th June, 2017 and hence exempt from GST.

6. Satellite launch services provided by NSIL.

6.1 Representation has been received for issuance of a clarification recognizing Satellite Launch Services supplied by M/s New Space India Limited (NSIL), a wholly-owned Government of India Company under the administrative control of Department of Space (DoS), to international customers as "Export of Service".

6.2 It has been clarified vide Circular No. 2/1/2017-IGST dated 27.09.2017 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.

6.3 As recommended by the Council, it is clarified that as the satellite launch services supplied by NSIL are similar to those supplied by ANTRIX Corporation Ltd, the said circular No. 2/1/2017-IGST dated 27.09.2017, is applicable to them.

7. GST on overloading charges at toll plaza.

7.1 Representations have been received seeking clarification regarding applicability of GST on Overloading charges collected at Toll Plazas.

7.2 Entry 23 of 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.

7.3 Vide notification dated 25th Sep. 2018, issued by Ministry of Road Transport And Highways, overloaded vehicles were allowed to ply on the national highways after payment of fees with multiplying factor of 2/4/6/8/10 times the base rate of toll. Therefore, it essence overloading fees are effectively higher toll charges.

7.4 As recommended by the GST Council, it is clarified that overloading charges at toll plazas would get the same treatment as given to toll charges.

8. Renting of vehicles to State Transport Undertakings and Local Authorities

8.1 Representations have been received seeking clarification regarding eligibility of the service of renting of vehicles to State Transport Undertakings (STUs) and Local Authorities for exemption from GST under notification No. 12/2017-Central Tax (Rate) dated 28.06.2017. Sl. No. 22 of this notification exempts “services by way of giving on hire (a) to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers; or (aa) to a local authority, an Electrically Operate vehicle meant to carry more than twelve passengers”.

8.2 This issue has arisen in the wake of ruling issued by an Authority for Advance Ruling that the entry at Sl. No. 22 of notification No. 12/2017-Central Tax (Rate) exempts services by way of giving on hire vehicles to a State Transport Undertaking or a local authority and not renting of vehicles to them. The ruling referred to certain case laws pertaining to erstwhile positive list based service tax regime.

8.3 It is relevant to note in this context that Schedule II of CGST Act, 2017 declares supply of any goods without transfer of title as supply of service even if right to use is transferred. Transfer of right to use has been declared as a supply of service [Schedule II, Entry 5(f) refers]

8.4 The issue was placed before the 45th GST Council Meeting held on 17.09.2021. As recommended by the GST Council, it is clarified that 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 .

9. Services by way of grant of mineral exploration and mining rights

9.1 Representations have been received requesting for clarification as to the rate of GST applicable on supply of services by way of granting mineral exploration and mining rights during the period from 1.07.2017 to 31.12.2018. With effect from 1.1.2019, the rate schedule has been specifically amended and it is undisputed since then that such service attracts GST at the rate of 18%.

9.2 For the disputed period [1.7.2017 to 31.12.2018], divergent rulings have been issued by Authorities for Advance Ruling (AAR) and Appellate Authorities for Advance Ruling (AAAR) of various States on the GST rate applicable on the same. AAR, Haryana in case of M/s Pioneer Partners and AAR, Chhattisgarh in case of M/s NMDC have ruled that the service of grant of mining leases is classifiable under Service Code 997337 (licensing services for the right to use minerals including its exploration and evaluation) and attracted, prior to 01.01.2019, the same rate of GST as applicable to minerals, that is, 5% as prescribed against Sl. No. 17, item (viii) of Notification No. 11/2017-Central Tax (Rate). The rate prescribed against this entry prior to 01.01.2019 was "the same rate as applicable on supply of like goods involving transfer of title in goods". In certain other advance rulings, a view has been taken that grant of rights for mineral exploration and mining would be covered under heading 9991 and would attract GST at the rate of 18%.

9.2.1 AAAR, Odisha, on the other hand has ruled vide Order dated 5.11.2019 in the case of M/s Penguin Trading and Agencies Limited that grant of mining lease was taxable @ 18% prior to 01.01.2019. The Appellate Authority in this case observed that GST rate applicable against Sl. No. 17 item (viii) of Notification No. 11/2017-Central Tax (Rate) prior to 01.01.2019 was not implementable. Unlike leasing or renting of goods, there are no underlying goods in case of leasing of mining area. The rate prescribed for goods cannot be made applicable to leasing of mining area, which confers the right to extract and appropriate minerals. The mining lease by Government, not being a lease of any goods, cannot attract the rate applicable to sale of like goods. Appellate Authority for Advance Ruling, Odisha has further held that the amendment carried out vide Notification No. 27/2018-Central Tax (Rate), dated 31.12.2018, which restricted the "same rate as applicable to supply of goods involving transfer of title in goods" only to leasing or renting of goods was to clarify the legislative intent as well as to resolve the unintended interpretation. It is a settled law that interpretation which defeats the intention of legislature cannot be adopted. It accordingly upheld that "licensing services for the right to use minerals including its exploration and evaluation" falling under service code 997337 were taxable @ 18% during 01.07.2017 to 31.12.2018.

9.2.2 It may be noted that the expression "same rate of tax as applicable on supply of like goods involving transfer of title in goods" applies in case of leasing or renting of goods. In case of grant of mining rights, there is no leasing or renting of goods. Hence, the said entry does not extend to grant of mining rights which is an entirely different activity.

9.3 The issue was place before the GST Council in its 45th meeting held on 17.9.2021.

9.3.1 As regards classification of service, it was recommended by the Council that 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".

9.3.2 As regards the applicable rate for the period from 1.7.2017 to 31.12.2018, the council took note of the following facts, namely,-

(i) GST Council in its 4th meeting held on 3rd & 4th November, 2016 had decided that supply of services shall be generally taxed at the rate of 18%.

(ii) More importantly, the GST Council in its 14th meeting held on 18th & 19th May, 2019, while recommending the rate schedules of services (5%, 12%, 18% and 28%), specifically recommended that all the residuary services would attract GST at the rate of 18%.

(iii) The rate applicable on the service of grant of mineral exploration license and mining lease under Service Tax was also the standard rate of 15.5%. Services under this category have been standard rated in GST at 18%

(iv) Therefore, the intention has always been to tax this activity / supply at standard rate of 18%

9.3.3 Accordingly, as recommended by the Council, it is clarified that even if the rate schedule did not specifically mention the service by way of grant of mining rights, during the period 1.7.2017 to 31.12.2018, it was taxable at 18% in view of principle laid down in the 14th meeting of the Council for residuary GST rate. Post, 1st January, 2019 no dispute remains as stated above.

10. Admission to indoor amusement parks having rides etc.

10.1 Representations have been received requesting for clarification regarding applicable rate of GST on services provided by Indoor Amusement Parks/Family Entertainment Centers, and scope of the word „amusement park" under entry 34(iii) of Notification No. 11/2017-CTR.

10.2 Entry 34(iii) notification No.11/2017-CTR, prior to 01.10.2021, prescribed 18% GST on the services by way of admission to amusement parks including theme parks, water parks, joy rides, merry-go rounds, go-carting and ballet. On the other hand, Entry No. 34(iiia) in Notification No. 11/2017- CT(R) dated 28.06.2017 prescribed GST rate of 28% on the services by way of admission to entertainment events or access to amusement facilities including casinos, race club, any sporting event such as Indian Premier League and the like.

10.3 On the recommendations of the Council, it is clarified that 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.

10.4 The entries in question have been suitably amended vide notification No. 6/2021- Central Tax(Rate) dated 30.09.2021 to make them clearer.

11. Services supplied by contract manufacturers to brand owners for manufacture of alcoholic liquor for human consumption

11.1 Representations have been received requesting for issuing a clarification that the job work services supplied by contract manufacturers to brand owners for manufacture of alcoholic liquor for human consumption attract GST @ 5% prescribed for job work services in relation to food and food products, in terms of Sl. No. 26 [Item 1(i)f] of notification No. 11/2017-Central Tax (R) dated 28-6-2017. This entry prescribes GST rate of 5% on services by way of job work in relation to food and food products falling under chapters 1 to 22 in the first Schedule to the Customs Tariff Act, 1975.

11.2 The issue was placed before the GST Council in its 45th meeting held on 17th September, 2021. The Council had also deliberated upon this issue in its 39th and 40th meeting.

11.3 As recommended by GST Council, it is clarified that the expression "food and food products" in the said entry 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%.

3.3.2.54 Departmental Clarifications - Clarifications regarding applicable GST rates & exemptions on certain services- Circular No. 177/09/2022-TRU dated 3rd August, 2022

Representations have been received seeking clarification on the following issues:

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

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;

3. Whether storage or warehousing of cotton in baled or ginned form is covered under entry 24B of 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;

4. Whether exemption under Sl. No. 9B of notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 covers services associated with transit cargo both to and from Nepal and Bhutan;

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

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

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;

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 upfront amount charged for long term lease of land and are eligible for the same tax treatment;

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

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

11. Applicability of GST on services in the form of Assisted Reproductive Technology (ART)/ In vitro fertilization (IVF);

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

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

14. 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-Central Tax (Rate) transport of passengers by non-air conditioned contract carriage;

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;

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

2. The issues have been examined by GST Council in the 47th meeting held on 28th and 29th June, 2022. The issue-wise clarifications as recommended by the GST Council are below:

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

3.1 On the recommendation of the GST Council in its 45th meeting, 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.

3.2 Representations have been received requesting that GST at 18% may be levied on supply of ice-cream by ice-cream parlors with effect from 06.10.2021. 3.3 It has been represented that ice cream parlors which paid GST @ 5% without ITC in view of prevailing doubt before the issuance of the Circular dated 6.10.2021 did not avail ITC and paid 5% in cash. Such ice-cream parlors have thus foregone significant ITC benefit.

3.4 Considering the overall circumstances of the case, it is clarified that past cases of payment of GST on supply of ice-cream by ice-cream parlors @ 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 parlors are required to pay GST on supply of ice-cream at the rate of 18% with ITC.

4. 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

4.1 Representations have been received regarding 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.

4.2 In this regard, it is stated that educational services supplied by educational institutions to its students are exempt from GST vide entry 66 of the notification No. 12/2017 Central Tax (Rate) dated 28.06.2017 relevant portion of which reads as under, -

"Services provided –

a. by an educational institution to its students, faculty and staff;

[(aa) by an educational institution by way of conduct of entrance examination against consideration in the form of entrance fee;]..."

4.3 Therefore, it can be seen that all services supplied by an 'educational institution' to its students are exempt from GST. Consideration charged by the educational institutes by way of entrance fee for conduct of entrance examination is also exempt. The exemption is wide

enough to cover 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. Services supplied by an educational institution by way of issuance of migration certificate to the leaving or ex students are also covered by the exemption. Accordingly, such activities of educational institution are also exempt.

4.4 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 Sl. No. 66 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017.

5. Whether storage or warehousing of cotton in baled or ginned form is covered under entry 24B of 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.

5.1 Representations have been received regarding applicability of GST exemption on the service of storage or warehousing of cotton in baled or ginned form.

5.2 Prior to 18.07.2022, entry 24 B of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 exempted services by way of storage and warehousing of, inter alia, raw vegetable fibers such as cotton, flax, jute etc. Cotton Fiber glossary by barnhardtcotton.net defines 'cotton staple, virgin cotton or raw cotton' as cotton fibers that are removed from the cotton seed by the gin. Further, CESTAT Chandigarh in the case of R.K.& Sons vs CCE, Rohtak dated 14th July 2016 has observed as under:

> "Cotton (with seeds) as plucked from cotton plants can hardly be called cotton fibre in which case cotton fibre would come into existence only after the seeds are ginned away from cotton plucked from cotton plants. Cotton fibre obtained by ginning cotton plucked cotton plants is nothing but raw cotton fibre because there cannot be rawer form of cotton fibre obtained from cotton-with-seeds plucked from cotton plants."

5.3 Accordingly, it is 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. It may however be noted that this exemption has been withdrawn w.e.f 18.07.2022.

6. Whether exemption under Sl. No. 9B of notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 covers services associated with transit cargo both to and from Nepal and Bhutan

6.1 Representations have been received regarding applicability of GST on transportation of empty containers returning from Nepal and Bhutan after delivery of transit cargo, to India.

6.2 GST on supply of services associated with transit cargo to Nepal and Bhutan was exempted w.e.f 29.09.2017 based on recommendations of the 20th GST Council Meeting. The opening sentence of the Agenda Item 7(ix) placed before the GST Council on this issue, makes it clear that the proposal was to exempt supply of services associated with transit cargo both to and from Nepal and Bhutan.

6.3 Accordingly, as recommended by the GST Council, it is clarified that exemption under Sl. No. 9B of Notification 12/2017- Central Tax (Rate) covers services associated with transit cargo both to and from Nepal and Bhutan.

6.4 It is also 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.

6.5 Needless to say 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. Under the regulations/procedures, the container number, which is a unique alpha numeric identifier for the container, is declared. Further, the Customs broker / shipping line / carrier is responsible for making available a track and trace facility for locating goods brought for transhipment.

6.6 With respect to transit or transhipment of cargo to Nepal, specific regulations namely Transhipment of Cargo to Nepal under Electronic Cargo Tracking System Regulations, 2019 have been notified. It is relevant to mention here that as per these regulations also, the authorized carrier has to execute a general bond for an amount as directed by the proper officer. The authorized carrier also has to procure ECTS (Electronic Cargo Tracking System) from a bi-laterally appointed managed service provider. In order to discharge the bond, the proper officer of customs has to extract trip reports from the ECTS web application as proof of completion of transhipment. The reconciliation of transhipment of consignments shall be carried out on the basis of trip report, by the proper officer at the Ports of Kolkata, Haldia or Visakhapatnam, as the case may be, and then only the general bond submitted by the authorised carrier will be re-credited or discharged.

6.7 As can be seen from the above, the regulations governing transit / transhipment have to be followed in addition to the 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.

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

7.1 Representations have been received regarding taxability of sanitation and conservancy services supplied to Army and other Central and State Government departments.

7.2 Municipalities and Panchayats and other local authorities such as Cantonment Boards listed in Section 2(69) of the Central Goods and Services Tax act, 2017 carry out functions entrusted to them under articles 243W & 243G of the Constitution respectively. Functions that may be entrusted to panchayats and municipalities are listed in Schedule 11 & 12 of the Constitution. Central Government, State Governments & Union Territories also perform functions listed in Schedule 11 & 12 such as irrigation, public health etc.

7.3 Services by Central Government, State Government, Union Territory or any local authority by way of any activity in relation to a function entrusted to a Panchayat under article 243G of the constitution or to a municipality under article 243W of the constitution have been declared as ‘neither a supply of goods nor a supply of service’ vide notification no. 14/2017- Central Tax (Rate) dated 28.06.2017.

7.4 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.

7.5 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 Sl. No. 3 and 3A of Notification 12/2017- Central Tax (Rate).

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

8.1 Representation has been received regarding the GST rate 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 etc.

8.2 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 as under:

> "print media" means, —
>
> i. '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;
>
> ii. …….

8.3 Further, sub-section (1) of section 1 of the Press and Registration of Books Act, 1867 defines 'book' as follows: "Book" includes every volume, part or division of a volume, and pamphlet, in any language and every sheet of music, map, chart or plan separately printed.

8.4 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.

8.5 Accordingly, as recommended by the GST Council, it is clarified 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) and attracts GST @ 5%.

9. 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.

9.1 Representations have been received to clarify the taxability of transport of minerals within a mining area, say from mining pit head to railway siding, beneficiation plant etc., by vehicles deployed with driver for a specific duration of time and whether the same would be covered under Sr. No. 18 of notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 which exempts transport of goods by road except by a GTA.

9.2 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.

9.3 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 can not be said to be supplying the service by way of transport of goods.

9.4 Accordingly, as recommended by the GST Council, 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 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 in 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%.

10. 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;

10.1 Representation has been received seeking clarification 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 upfront amount charged for long term lease of land and are eligible for the same tax treatment.

10.2 As per entry 41 of the notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 upfront amount, which is defined as “upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable in respect of service by way of granting of long term lease (of thirty years, or more) of industrial plots or plots for development of infrastructure for financial business, provided by the State Government Industrial Development Corporations or Undertakings or by any other entity having 20 per cent or more ownership of Central Government, State Government, Union territory to the industrial units or the developers in any industrial or financial business area”, is exempt from GST

10.3 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.

10.4 Accordingly, as per recommendation of the GST Council, 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 Sl. No. 41 of notification no. 12/2017- Central Tax (Rate) dated 28.06.2017.

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

11.1 Representation has been received regarding applicability of GST on honorarium paid to Guest Anchors. Sansad TV and other 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.

11.2 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. 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.

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

12.1 Representation has been received regarding taxability of additional toll fees collected by the Concessionaires from the vehicles which is not having Fastag.

12.2 Entry 23 of 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.

12.3 Ministry of Road Transport & Highways (MORTH) vide circular dated 16.02.2021 has directed to collect additional amount from the users of the road to the extent of two times of the fees applicable to that category of vehicle which is not having a valid functional Fastag.

12.4 Essentially, 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.

12.5 On a similar issue of collection of overloading charges in the form of a higher toll (2/4/6/7 times of the base rate of toll), it has already been clarified vide circular number 164/20/2021-GST dated 06.10.2021, which was issued on the basis of recommendation of GST Council that overloading charges at toll plazas would get the same treatment as given to toll charges.

12.6 Therefore, 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.

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

13.1 Representations have been received to clarify whether GST is applicable on services by way of Assisted Reproductive Technology (ART) procedures such as In vitro fertilization (IVF).

13.2 Health care services provided by a clinical establishment, an authorized medical practitioner or para-medics are exempt. [Sl. No. 74 of notification No. 12/2017- Central Tax (Rate) dated 28.06. 2017].

13.3 Health care services is defined vide 2(zg) of the notification No. 12/2017- Central Tax (Rate) dated 28.06. 2017 as –

> "health care services" means any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India and includes services by way of transportation of the patient to and from a clinical establishment, but does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma."

13.4 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.

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

14.1 Representation has been received requesting for clarification regarding applicability of GST on sale of land after levelling, laying down of drainage lines etc.

14.2 As per Sl no. (5) of Schedule III of the Central Goods and Services Tax Act, 2017, 'sale of land' is neither a supply of goods nor a supply of services, therefore, sale of land does not attract GST.

14.3 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 Sr. No. 5 of Schedule III of the Central Goods and Services Tax Act, 2017 and accordingly does not attract GST.

14.4 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.

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

15.1 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.

15.2 Representations have been received to clarify whether RCM is applicable on service of transportation of passengers (Heading 9964) or on renting of motor vehicle designed to carry passengers (Heading 9966).

15.3 Renting of motor vehicle with operator for transport of passengers falls under Heading 9966. According to the explanatory notes to heading 9966, the service covered here is 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.

15.4 'Passenger transport services' on the other hand fall under Heading 9964. According to the explanatory notes Heading 9964 covers passenger transport services over pre-determined routes on pre-determined schedules.

15.5 Therefore, a clear distinction exists in service of transport of passengers and renting of a vehicle that is used for transport.

15.6 Accordingly, as recommended by the GST Council, 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 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.

15.7 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.

16. 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-Central Tax (Rate) transport of passengers by non-air conditioned contract carriage

16.1 Representations have been received to clarify whether the engagement of non-air conditioned contract carriages by firms for transportation of their employees to and from work is exempt under entry at Sr. No. 15(b) of notification No. 12/2017-Central Tax (Rate) dated 28.06.2017.

16.2 Sr. No. 15 (b) of notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 exempts "transport of passengers, with or without accompanied belongings, by non-air conditioned contract carriage, other than radio taxi, for transport of passengers, excluding tourism, conducted tour, charter or hire."

16.3 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.

16.4 In other words, the said exemption would apply to passenger transportation services by non-air conditioned contract carriages 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.

17. 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.

17.1 Representation has been received seeking clarification regarding the applicable GST rate on service of construction, supply, installation and commissioning of a 2.00 LLPD dairy plant on turn-key basis.

17.2 In case of a turn key project for construction, supply, installation and commissioning of a 2.00 LLPD dairy plant, it has been held by Advance Ruling Authorities of Bihar and Gujarat that the same does not result into an immovable property and is therefore not a supply of works contract. This being so, such supply is not eligible for concessional rate of 12% applicable on works contract supplied by way of construction, erection, commissioning, or installation of original works pertaining to mechanized food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages.

17.3 In this regard, it may be seen that prior to 18.07.2022.serial number 3(v)(f) of notification no. 11/2017 Central Tax (Rate) dated 28.06.2017 prescribes GST rate of 12 % on the composite supply of works contract by way of construction, erection, commissioning, or installation of original works pertaining to mechanized food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages.

17.4 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. There is no doubt that dairy plant which comes into existence as a result of such contracts is an immovable property.

17.5 It is also 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).

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

18.1 Representations have been received seeking clarification on applicability of GST on private ferry tickets. It has been stated that these private ferries are used as means of transport from one island to another in Andaman and Nicobar Islands.

18.2 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.

18.3 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. 18.4 It is 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.

3.3.2.55 Departmental Clarifications - GST applicability on liquidated damages, compensation and penalty arising out of breach of contract or other provisions of law- Circular No. 178/10/2022-GST dated 3rd August, 2022

In certain cases/instances, questions have been raised regarding taxability of an activity or transaction as the supply of service of agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act. Applicability of GST on payments in the nature of liquidated damage, compensation, penalty, cancellation charges, late payment surcharge etc. arising out of breach of contract or otherwise and scope of the entry at para 5 (e) of Schedule II of Central Goods and Services Tax Act, 2017 (hereinafter referred to as, "CGST Act") in this context has been examined in the following paragraphs.

2. "Agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act" has been specifically declared to be a supply of service in para 5 (e) of Schedule II of CGST Act if the same constitutes a "supply" within the meaning of the Act. The said expression has following three limbs: -

a. Agreeing to the obligation to refrain from an actExample of activities that would be covered by this part of the expression would include non-compete agreements, where one party agrees not to compete with the other party in a product, service or geographical area against a consideration paid by the other party.

Another example of such activities would be a builder refraining from constructing more than a certain number of floors, even though permitted to do so by the municipal authorities, against a compensation paid by the neighbouring housing project, which wants to protect its sunlight, or an industrial unit refraining from manufacturing activity

during certain hours against an agreed compensation paid by a neighbouring school, which wants to avoid noise during those hours.

b. Agreeing to the obligation to tolerate an act or a situationThis would include activities such a shopkeeper allowing a hawker to operate from the common pavement in front of his shop against a monthly payment by the hawker, or an RWA tolerating the use of loud speakers for early morning prayers by a school located in the colony subject to the school paying an agreed sum to the RWA as compensation.

c. Agreeing to the obligation to do an actThis would include the case where an industrial unit agrees to install equipment for zero emission/discharge at the behest of the RWA of a neighbouring residential complex against a consideration paid by such RWA, even though the emission/discharge from the industrial unit was within permissible limits and there was no legal obligation upon the individual unit to do so.

3. The description “agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act” was intended to cover services such as described above. However, over the years doubts have persisted regarding various transactions being classified under the said description.

3.1. Some of the important examples of such cases are Service Tax/GST demands on –

i. Liquidated damages paid for breach of contract;

ii. Compensation given to previous allottees of coal blocks for cancellation of their licenses pursuant to Supreme Court Order;

iii. Cheque dishonour fine/penalty charged by a power distribution company from the customers;

iv. Penalty paid by a mining company to State Government for unaccounted stock of river bed material;

v. Bond amount recovered from an employee leaving the employment before the agreed period;

vi. Late payment charges collected by any service provider for late payment of bills;

vii. Fixed charges collected by a power generating company from State Electricity Boards (SEBs) or by SEBs/DISCOMs from individual customer for supply of electricity;

viii. Cancellation charges recovered by railways for cancellation of tickets, etc.

In some of these cases, tax authorities have initiated investigation and in some advance ruling authorities have upheld taxability.

4. In Service Tax law, ‘Service’ was defined as any activity carried out by a person for another for consideration. As discussed in service tax education guide, the concept ‘activity for a consideration’ involves an element of contractual relationship wherein the person doing an activity does so at the desire of the person for whom the activity is done in exchange for a consideration. An activity done without such a relationship i.e., without the express or implied contractual reciprocity of a consideration would not be an ‘activity for consideration’. The element of contractual relationship, where one supplies goods or services at the desire or another, is an essential element of supply.

5. The description of the declared service in question, namely, agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act in para 5 (e) of Schedule II of CGST Act is strikingly similar to the definition of contract in the Contract Act, 1872. The Contract Act defines 'Contract' as a set of promises, forming consideration for each other. 'Promise' has been defined as willingness of the 'promisor' to do or to abstain from doing anything. 'Consideration' has been defined in the Contract Act as what the 'promisee' does or abstains from doing for the promises made to him. 6. This goes to show that the service of agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act is nothing but a contractual agreement. A contract to do something or to abstain from doing something cannot be said to have taken place unless there are two parties, one of which expressly or impliedly agrees to do or abstain from doing something and the other agrees to pay consideration to the first party for doing or abstaining from such an act. There must be a necessary and sufficient nexus between the supply (i.e. agreement to do or to abstain from doing something) and the consideration.

6.1 A perusal of the entry at serial 5(e) of Schedule II would reveal that it comprises the aforementioned three different sets of activities viz. (a) the obligation to refrain from an act, (b) obligation to tolerate an act or a situation and (c) obligation to do an act. All the three activities must be under an "agreement" or a "contract" (whether express or implied) to fall within the ambit of the said entry. In other words, one of the parties to such agreement/contract (the first party) must be under a contractual obligation to either (a) refrain from an act, or (b) to tolerate an act or a situation or (c) to do an act. Further some "consideration" must flow in return from the other party to this contract/agreement (the second party) to the first party for such (a) refraining or (b) tolerating or (c) doing. Such contractual arrangement must be an independent arrangement in its own right. Such arrangement or agreement can take the form of an independent stand- alone contract or may form part of another contract. Thus, a person (the first person) can be said to be making a supply by way of refraining from doing something or tolerating some act or situation to another person (the second person) if the first person was under an obligation to do so and then performed accordingly.

Agreement to do or refrain from an act should not be presumed to exist

7. There has to be an express or implied agreement; oral or written, to do or abstain from doing something against payment of consideration for doing or abstaining from such act, for a taxable supply to exist. An agreement to do an act or abstain from doing an act or to tolerate an act or a situation cannot be imagined or presumed to exist just because there is a flow of money from one party to another. Unless there is an express or implied promise by the recipient of money to agree to do or abstain from doing something in return for the money paid to him, it cannot be assumed that such payment was for doing an act or for refraining from an act or for tolerating an act or situation. Payments such as liquidated damages for breach of contract, penalties under the mining act for excess stock found with the mining company, forfeiture of salary or payment of amount as per the employment bond for leaving the employment before the minimum agreed period, penalty for cheque dishonour etc. are not a consideration for tolerating an act or situation. They are rather amounts recovered for not tolerating an act or situation and to deter such acts; such amounts are for preventing breach of contract or non-performance and are thus mere 'events' in a contract. Further, such amounts do not constitute payment (or consideration) for tolerating an act, because there cannot be any contract: (a) for breach thereof, or (b) for holding more stock than permitted under the mining contract, or (c) for leaving the employment before the agreed minimum period or (d) for doing something leading to the dishonour of a cheque. As has already been stated, unless payment has been made for an independent activity of tolerating an act under

an independent arrangement entered into for such activity of tolerating an act, , such payments will not constitute 'consideration' and hence such activities will not constitute "supply" within the meaning of the Act. Taxability of these transactions is discussed in greater detail in the following paragraphs.

Liquidated Damages

7.1 Breach or non-performance of contract by one party results in loss and damages to the other party. Therefore, the law provides in Section 73 of the Contract Act, 1972 that when a contract has been broken, the party which suffers by such breach is entitled to receive from the other party compensation for any loss or damage caused to him by such breach. The compensation is not by way of consideration for any other independent activity; it is just an event in the course of performance of that contract.

7.1.1 It is common for the parties entering into a contract, to specify in the contract itself, the compensation that would be payable in the event of the breach of the contract. Such compensation specified in a written contract for breach of non-performance of the contract or parties of the contract is referred to as liquidated damages. Black's Law Dictionary defines 'Liquidated Damages' as cash compensation agreed to by a signed, written contract for breach of contract, payable to the aggrieved party.

7.1.2 Section 74 of the Contract Act, 1972 provides that when a contract is broken, if a sum has been named or a penalty stipulated in the contract as the amount or penalty to be paid in case of breach, the aggrieved party shall be entitled to receive reasonable compensation not exceeding the amount so named or the penalty so stipulated.

7.1.3 It is argued that performance is the essence of a contract. Liquidated damages cannot be said to be a consideration received for tolerating the breach or non-performance of contract. They are rather payments for not tolerating the breach of contract. Payment of liquidated damages is stipulated in a contract to ensure performance and to deter non-performance, unsatisfactory performance or delayed performance. Liquidated damages are a measure of loss and damage that the parties agree would arise due to breach of contract. They do not act as a remedy for the breach of contract. They do not restitute the aggrieved person. It is further argued that a contract is entered into for execution and not for its breach. The liquidated damages or penalty are not the desired outcome of the contract. By accepting the liquidated damages, the party aggrieved by breach of contract cannot be said to have permitted or tolerated the deviation or non-fulfilment of the promise by the other party.

7.1.4 In this background a reasonable view that can be taken with regard to taxability of liquidated damages is that 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.

7.1.5 Examples of such cases are damages resulting from damage to property, negligence, piracy, unauthorized use of trade name, copyright, etc. Other examples that may be covered here are the penalty stipulated in a contract for delayed construction of houses. It is a penalty paid by the builder to the buyers to compensate them for the loss that they suffer due to such delayed construction and not for getting anything in return from the buyers. Similarly, forfeiture of earnest money by a seller in case of breach of 'an agreement to sell' an immovable property

by the buyer or 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. Forfeiture of Earnest money is stipulated in such cases not as a consideration for tolerating the breach of contract but as a compensation for the losses suffered and as a penalty for discouraging the non-serious buyers or bidders. Such payments being merely flow of money are not a consideration for any supply and are not taxable. The key in such cases is to consider whether the impugned payments constitute consideration for another independent contract envisaging tolerating an act or situation or refraining from doing any act or situation or simply doing an act. If the answer is yes, then it constitutes a 'supply' within the meaning of the Act, otherwise it is not a "supply".

7.1.6 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'. For example, a contract may provide that payment by the recipient of goods or services shall be made before a certain date and failure to make payment by the due date shall attract late fee or penalty. A contract for transport of passengers may stipulate that the ticket amount shall be partly or wholly forfeited if the passenger does not show up. A contract for package tour may stipulate forfeiture of security deposit in the event of cancellation of tour by the customer. Similarly, a contract for lease of movable or immovable property may stipulate that the lessee shall not terminate the lease before a certain period and if he does so he will have to pay certain amount as early termination fee or penalty. Some banks similarly charge pre- payment penalty if the borrower wishes to repay the loan before the maturity of the loan period. Such 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 prepayment of loan and of making arrangements for the intended supply by the tour operator respectively. Therefore, such payments, even though they may be referred to as fine or penalty, are actually payments that amount to consideration for supply, and are subject to GST, in cases where such 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, as discussed in detail in the later paragraphs. Naturally, such payments will not be taxable if the principal supply is exempt.

Compensation for cancellation of coal blocks

7.2 In the year 2014, coal block/mine allocations were cancelled by the Hon'ble Supreme Court vide order dated 24.09.2014. Subsequently, Coal Mines (Special Provisions) Act, 2015 was enacted to provide for allocation of coal mines and vesting of rights, title and interest in and over the land and mines infrastructure together with mining leases to successful bidders and allottees. In accordance with section 16 of the said Act, prior (old) allottee of mines were given compensation in the year 2016 towards the transfer of their rights/ titles in the land, mine infrastructure, geological reports, consents, approvals etc. to the new entity (successful bidder) as per the directions of Hon'ble Supreme Court.

7.2.1 There was no agreement between the prior allottees of coal blocks 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. No such promise or offer was made by the prior allottees to the Government. 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 would be incorrect to say 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 for such cancellation in pursuance to the order of the Supreme Court 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.

Cheque dishonor fine/ penalty

7.3 No supplier wants a cheque given to him to be dishonoured. It entails extra administrative cost to him and disruption of his routine activities and cash flow. The promise made by any supplier of goods or services is to make supply against payment within an agreed time (including the agreed permissible time with late payment) through a valid instrument. There is never an implied or express offer or willingness on part of the supplier that he would tolerate deposit of an invalid, fake or unworthy instrument of payment against consideration in the form of cheque dishonour fine or 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.

Penalty imposed for violation of laws

7.4 Penalty imposed for violation of laws such as traffic violations, or for violation of pollution norms or other laws are also not consideration for any supply received and are not taxable, which are also not taxable. Same is the case with fines, penalties imposed by the mining Department of a Central or State Government or a local authority on discovering mining of excess mineral beyond the permissible limit or of mining activities in violation of the mining permit. Such 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.

7.4.1 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.

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

7.5 An employer carries out an elaborate selection process and incurs expenditure in recruiting an employee, invests in his training and makes him a part of the organization, privy to its

processes and business secrets in the expectation that the recruited employee would work for the organization for a certain minimum period. Premature leaving of the employment results in disruption of work and an undesirable situation. 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 to discourage non-serious candidates from taking up employment. 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. Further, 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.

Compensation for not collecting toll charges

8. In the wake of demonetization, NHAI directed the concessionaires (toll operators) to allow free access of toll roads to the users from 8.11.2016 to 1.12.2016 for which the loss of toll charge was paid as compensation by NHAI as per the instructions of Ministry of Road Transportation and Highways. The toll reimbursements were calculated based on the average monthly collection of toll. A question arose whether the compensation paid to the concessionaire by project authorities (NHAI) in lieu of suspension of toll collection during the demonetization period (from 8.11.2016 to 1.12.2016) was taxable as a service by way of agreeing to refrain from collection of toll from users.

8.1 It has been clarified vide Circular No. 212/2/2019-ST dated 21.05.2019 that the service that is provided by toll operators is that of access to a road or bridge, toll charges being merely a consideration for that service. 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.

Late payment surcharge or fee

9. 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. It is not uncommon or unnatural for customers to sometimes miss the last date of payment of electricity, water, telecommunication services etc. Almost all service providers across the world provide the facility of accepting late payments with late fine or penalty. Even if this service is described as a service of tolerating the act of late payment, it is an ancillary supply naturally bundled and supplied in conjunction with the principal supply, and therefore should be assessed as the principal supply. Since it is ancillary to and naturally bundled with the principal supply such as of electricity, water, telecommunication, cooking gas, insurance etc. it should be assessed at the same rate as the principal supply. However, the same cannot be said of cheque dishonor fine or penalty as discussed in the preceding paragraphs.

Fixed Capacity charges for Power

10. The price charged for electricity by the power generating companies from the State Electricity Boards (SEBs)/DISCOMS or by SEBs/DISCOMs from individual customers has two components, namely, a minimum fixed charge (or capacity charge) and variable per unit charge. The minimum fixed charges have to be paid by the SEBs/DISCOMS/individual customers irrespective of the quantity of electricity scheduled or purchased by them during a

month. They take care of the fixed cost of generating/ supplying electricity. The variable charges are charged per unit of electricity purchased and increase or decrease every month depending on the quantity of electricity consumed.

10.1 The fact that the minimum fixed charges remain the same whether electricity is consumed or not or it is scheduled/consumed below the contracted or available capacity or a minimum threshold, does not mean that minimum fixed charge or part of it is a charge for tolerating the act of not scheduling or consuming the minimum the contracted or available capacity or a minimum threshold.

10.2 Both the components of the price, the minimum fixed charges/capacity charges and the variable/energy charges are charged for sale of electricity and are thus not taxable as electricity is exempt from GST. Power purchase agreements may have provisions that the power producer shall not supply electricity to a third party without approval of buyer. Such agreements which ensure assured supply of power to State Electricity Boards/DISCOMS are ancillary arrangements; the contract is essentially for supply of electricity.

Cancellation charges

11. A supply contracted for, such as booking of hotel accommodation, an entertainment event or a journey, may be cancelled by a customer or may not proceed as intended due to his failure to show up for availing the same at the designated place and time. The supplier may allow cancelation of supply by the customer within a certain specified time period on payment of cancellation fee as per commercial terms of the contract. In case the customer does not show up for availing the service, the supplier may retain or forfeit part of the consideration or security deposit or earnest money paid by the customer for the intended supply.

11.1 It is a common business practice for suppliers of services such as hotel accommodation, tour and travel, transportation etc. to provide the facility of cancellation of the intended supplies within a certain time period on payment of cancellation fee. 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.

11.2 Services such as transportation travel and tour constitute a bundle of services. The transportation service, for instance, starts with booking of the ticket for travel and lasts at least till exit of the passenger from the destination terminal. All services such as making available an online portal or convenient booking counters with basic facilities at the transportation terminal or in the city, to reserve the seats and issue tickets for reserved seats much in advance of the travel, giving preferred seats with or without extra cost, lounge and waiting room facilities at airports, railway stations and bus terminals, provision of basic necessities such as soap and other toiletries in the wash rooms, clean drinking water in the waiting area etc. form part and parcel of the transportation service; they constitute the various elements of passenger transportation service, a composite supply.. The facilitation service of allowing cancellation against payment of cancellation charges is also a natural part of this bundle. It is invariably supplied by all suppliers of passenger transportation service as naturally bundled and in conjunction with the principal supply of transportation in the ordinary course of business.

11.3 Therefore, 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 in such cases 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 (i.e., 5% GST on first class or air-conditioned coach ticket and nil for other classes such as second sleeper class). Same is the case for air travel.

11.4 Accordingly, 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.

11.5 However, as discussed above, 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. Forfeiture of earnest money is stipulated in such cases not as a consideration for tolerating the breach of contract but as a compensation for the losses suffered and as a penalty for discouraging the non-serious buyers or bidders. Such payments being merely flow of money are not a consideration for any supply and are not taxable.

12. Field formations are advised that while the taxability in each case shall depend on facts of that case, the above guidelines may be followed in determining whether tax on an activity or transaction needs to be paid treating the same as service by way of agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act.

3.3.2.56 Departmental Clarifications - Clarification regarding GST rates & classification (goods) based on the recommendations of the GST Council in its 47th meeting held on 28th – 29th June, 2022 at Chandigarh- Circular No. 179/11/2022-GST dated 3rd August, 2022

Based on the recommendations of the GST Council in its 47th meeting held on 28th - 29th June at Chandigarh, clarifications, with reference to GST levy, related to the following are being issued through this circular:

2. Electric vehicles whether or not fitted with a battery pack, attract GST rate of 5%:

2.1. Representations have been received seeking clarification regarding the applicable rate of GST on electrically operated vehicle without any battery fitted to it.

2.2. The explanation of 'Electrically operated vehicles' in entry 242A of Schedule I of notification No. 1/2017-Central Tax (Rate) reads as: 'Electrically operated vehicles which run solely on electrical energy derived from an external source or from one or more electrical batteries fitted to such road vehicles and shall include E-bicycles.'

2.3. As is evident from the explanation above, electrically operated vehicle including three wheeled electric vehicle means vehicle that runs 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 electric vehicle.

2.4. It is also pertinent to state that the WCO's HSN Explanatory notes have also not considered batteries to be a component, whose absence changes the essential character of an incomplete, unfinished or unassembled vehicle.

2.5. Also, the HSN explanatory notes for Chapter 87 have clearly stated that Motor Chassis fitted with cabs i.e. the chassis fitted with cabin body falls under 87.02 to 87.04 and not in heading 87.06.

2.6. 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).

3. 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:

3.1. Representations have been received seeking clarification regarding the applicable GST rates on building stones, in particular Napa Stones, which are ready to use and polished in ways other than mirror-polished.

3.2. 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.

3.3. 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.

4. Mangoes under CTH 0804 including mango pulp, but other than fresh mangoes and sliced, dried mangoes, attract GST at 12% rate:

4.1. Representations have been received seeking clarification regarding the applicable GST rate on different forms of Mangoes including Mango Pulp.

4.2. On the basis of the recommendation of the GST Council in its 22nd Meeting, the GST rate on 'Mangoes sliced, dried', falling under heading 0804, was reduced from 12% to 5% [S. No. 30A of Schedule I of notification No. 1/2017-Central Tax (Rate) dated the 28th June, 2017]. However, the GST rate on all forms of dried mangoes (other than sliced and dried mangoes), falling under heading 0804, including mango pulp, was always meant to be at the rate of 12%.

4.3. Accordingly, it is hereby clarified that mangoes, fresh falling under heading 0804 are exempt; 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, attract GST at the rate of 12%. To bring absolute clarity, the relevant entry at S. No. 16 of Schedule-II of notification no. 1/2017-Central Tax (Rate), dated 28th June, 2017, has been amended vide notification No. 6/2022-Central Tax (Rate), dated the 13th July, 2022.

4.4. Fresh mangoes, falling under heading 0804, continue to remain exempt from GST [S. No. 51 of notification No. 2/2017-Central Tax (Rate), dated the 28th June, 2017].

5. Treated sewage water attracts Nil rate of GST:

5.1. Representations have been received seeking clarification regarding the applicable GST rate on treated sewage water. Treated sewage water was not meant to be construed as falling under “purified” water for the purpose of levy of GST.

5.2. 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.

5.3. Accordingly, it is hereby 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.

6. Nicotine Polacrilex Gum attracts a GST rate of 18%:

6.1. Representations have been received seeking clarification regarding the classification and applicable GST rate on Nicotine Polacrilex gum.

6.2. The WCO 2022 HS Codes has inter alia introduced a new entry 2404 91 00 comprising of products for oral application containing nicotine and intended to assist tobacco use cessation with effect from 01.01.2022. Accordingly, a technical change, without any consequential rate change, has been made vide notification No. 18/2021 – Central Tax (Rate), dated the 28th December, 2021, wherein S. No. 26B in Schedule III of notification no. 1/2017-Central Tax (Rate), dated the 28th June, 2017, has been inserted to include products for oral application containing nicotine and intended to assist in cessation of use of tobacco, and falling under tariff item 2404 91 00. The same is supplemented by the HS Explanatory notes 2022 which states that heading 2404 includes nicotine containing products for recreational use, as well as nicotine replacement therapy (NRT) products intended to assist tobacco use cessation, which are taken as part of a nicotine intake reduction programme in order to lessen the human body’s dependence on this substance.

6.3. Accordingly, it is hereby clarified that the 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].

7. Fly ash bricks and aggregate - condition of 90% fly ash content applied only to fly ash aggregate, and not fly ash bricks:

7.1. Representations have been received seeking clarification regarding the applicable rate on the fly ash bricks and fly ash aggregates.

7.2. 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 per cent. or more fly ash content; Fly ash blocks” attracts a GST rate of 12%. Confusion has arisen about the applicability of 90 per cent. condition on fly ash aggregates and fly ash bricks. As per the recommendations of the GST Council in the 23rd Meeting, the condition of 90% or more fly ash content was applicable only for fly ash aggregate.

7.3. Therefore, it is clarified that the condition of 90 per cent. 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.

8. Applicability of GST on by-products of milling of Dal/ Pulses such as Chilka, Khanda and Churi:

8.1. Representations have been received seeking clarification regarding the applicable GST rate on by-products of milling of Dal/ Pulses such as Chilka, Khanda and Churi.

8.2. The by-products of milling of pulses/ dal such as Chilka, Khanda and Churi are appropriately classifiable under heading 2302 that consists of goods having description as bran, sharps and other residues, whether or not in the form of pellets, derived from the sifting, milling or other working of cereals or of leguminous plants.

8.3. The applicable GST rate on goods falling under heading 2302 is detailed in the Table below:

Entry and notification No.	Description	GST Rate
S. No. 102 of notification No. 2/2017-Central Tax (Rate), dated the 28th June, 2017	Aquatic feed including shrimp feed and prawn feed, poultry feed & cattle feed, including grass, hay & straw, supplement & husk of pulses, concentrates & additives, wheat bran & de-oiled cake[other than rice bran]	Nil
S. No. 103A of Schedule-I of notification No. 1/2017-Central Tax (Rate), dated 28th June, 2017	Bran, sharps and other residues, whether or not in the form of pellets, derived from the sifting, milling or other working of cereals or of leguminous plants [other than aquatic feed including shrimp feed and prawn feed, poultry feed and cattle feed, including grass, hay and straw, supplement and husk of pulses, concentrates and additives, wheat bran and de-oiled cake]	5%
S. No. 103B of Schedule-I of notification No. 1/2017-Central Tax (Rate), dated 28th June, 2017	Rice bran (other than de-oiled rice bran)	5%

8.4. The dispute in applicable GST rate revolves around the central argument as to whether the above-mentioned by-products are meant for direct consumption as cattle feed and therefore attract exemption under S. No. 102 of notification No. 2/2017-Central Tax (Rate) dated 28th June, 2017 or are otherwise not meant for direct consumption and thus covered under S. No. 103A of notification No. 1/2017- Central Tax (Rate) dated 28th June, 2017 attracting a GST rate of 5%.

8.5. While milling of pulses/ dal, a wide range of by-products such as chilka, khanda, churi, among others, are obtained which are preferred 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 color, 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). Further, as per the Indian Standards 2052:2009 -Compounded Feeds for Cattle — Specification, issued by the Bureau of Indian Standards, Ministry of Consumer Affairs, Food & Public Distribution, Government of India, grain by-products have been categorized as one of the ingredients of the compounded cattle feed.

8.6. The GST Council examined the issue and recommended that a clarification be issued in this regard. It also recommended that in view of the prevailing multiple interpretations and genuine doubts regarding the applicability of GST, the issue for past periods may be regularized on as is basis.

8.7. Accordingly, 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 as mentioned in para 8.6.

3.3.2.57 Departmental Clarifications - Clarification on various issue pertaining to GST- Circular No. 186/18/2022-GST dated 27th December, 2022

Representations have been received from the field formations seeking clarification on certain issues with respect to –

i. taxability of No Claim Bonus offered by Insurance companies;

ii. applicability of e-invoicing w.r.t an entity.

2. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby clarifies the issues as under:

Sl. No.	Issue	Clarification
Taxability of No Claim Bonus offered by Insurance companies		
1.	Whether the deduction on account of No Claim Bonus allowed by the insurance company from the insurance premium payable by the insured, can be considered as consideration for the supply provided by the insured to the insurance company, for agreeing to the obligation to refrain from the act of lodging insurance claim during the previous year(s)?	As per practice prevailing in the insurance sector, the insurance companies deduct No Claim Bonus from the gross insurance premium amount, when no claim is made by the insured person during the previous insurance period(s). The customer/ insured procures insurance policy to indemnify himself from any loss/ injury as per the terms of the policy, and is not under any contractual obligation not to claim insurance claim during any period covered under the policy, in lieu of No Claim Bonus. It is, therefore, clarified that there is no supply provided by the insured to the insurance company in form of agreeing to the obligation to refrain from the act of lodging insurance claim during the previous year(s) and No Claim Bonus cannot be considered as a

		consideration for any supply provided by the insured to the insurance company.
2.	Whether No Claim Bonus provided by the insurance company to the insured can be considered as an admissible discount for the purpose of determination of value of supply of insurance service provided by the insurance company to the insured?	As per clause (*a*) of sub-section (3) of section 15 of the CGST Act, value of supply shall not include any discount which is given before or at the time of supply if such discount has been duly recorded in the invoice issued in respect of such supply. The insurance companies make the disclosure of the fact of availability of discount in form of No Claim Bonus, subject to certain conditions, to the insured in the insurance policy document itself and also provide the details of the no claim Bonus in the invoices also. The pre-disclosure of NCB amount in the policy documents and specific mention of the discount in form of No Claim Bonus in the invoice is in consonance with the conditions laid down for deduction of discount from the value of supply under clause (*a*) of sub-section (3) of section 15 of the CGST Act. It is, therefore, clarified that No Claim Bonus (NCB) is a permissible deduction under clause (*a*) of sub-section (3) of section 15 of the CGST Act for the purpose of calculation of value of supply of the insurance services provided by the insurance company to the insured. Accordingly, where the deduction on account of No claim bonus is provided in the invoice issued by the insurer to the insured, GST shall be leviable on actual insurance premium amount, payable by the policy holders to the insurer, after deduction of No Claim Bonus mentioned on the invoice.
Clarification on applicability of e-invoicing w.r.t an entity		

3.	Whether the exemption from mandatory generation of e-invoices in terms of Notification No. 13/2020-Central Tax, dated 21st March, 2020, as amended, is available for the entity as whole, or whether the same is available only in respect of certain supplies made by the said entity?	In terms of Notification No. 13/2020-Central Tax, dated 21st March, 2020, as amended, certain entities/sectors have been exempted from mandatory generation of e-invoices as per sub-rule (4) of rule 48 of Central Goods and Services Tax Rules, 2017. It is hereby clarified that the said exemption from generation of e-invoices is for the entity as a whole and is not restricted by the nature of supply being made by the said entity. **Illustration**: A Banking Company providing banking services, may also be involved in making supply of some goods, including bullion. The said banking company is exempted from mandatory issuance of e-invoice in terms of Notification No. 13/2020-Central Tax, dated 21st March, 2020, as amended, for all supplies of goods and services and thus, will not be required to issue e-invoice with respect to any supply made by it.

3.3.2.58 Departmental Clarifications - Clarification regarding GST rates and classification of certain goods based on the recommendations of the GST Council in its 48th meeting held on 17th December, 2022- Circular No. 189/01/2023-GST dated 13th January, 2023

Based on the recommendations of the GST Council in its 48th meeting held on 17th December, 2022, clarifications, with reference to GST levy, related to the following are being issued through this circular:

2. Rab -classifiable under Tariff heading 1702:

2.1 Representation has been received seeking clarification regarding the classification of "Rab". It has been stated that under the U.P. Rab (Movement Control Order), 1967, "Rab" means ‘massecuite prepared by concentrating sugarcane juice on open pan furnaces, and includes Rab Galawat and Rab Salawat, but does not include khandsari molasses or lauta gur.’ Although, a product of sugarcane, Rab exists in semi-solid/liquid form, and is thus not covered under heading 1701. The Hon’ble Supreme Court in its order in Krishi Utpadan Mandi Samiti vs. M/s Shankar Industries and others [1993 SCR (1)1037] has distinguished Rab from Molasses. Thus, Rab being distinguishable from molasses is not classifiable under heading 1703.

2.2 Accordingly, it is hereby clarified that Rab is appropriately classifiable under heading 1702 attracting GST rate of 18% (S. No. 11 in Schedule III of notification No. 1/2017-Central Tax (Rate), dated the 28th June, 2017).

3. Applicability of GST on by-products of milling of Dal/ Pulses such as Chilka, Khanda and Churi/Chuni:

3.1 Representations have been received seeking clarification regarding the applicable GST rate on by-products of milling of Dal/ Pulses such as Chilka, Khanda and Churi/Chuni.

3.2 The GST council in its 48th meeting has recommended to fully exempt the supply of subject goods, irrespective of its end use. Hence, with effect from the 1st January, 2023, the said goods shall be exempt under GST vide S. No. 102C of schedule of notification No. 2/2017- Central Tax (Rate), dated 28.06.2017.

3.3 Further, as per recommendation of the GST Council, in view of genuine doubts regarding the applicability of GST on subject goods, matters that arose during the intervening period are hereby regularized on "as is" basis from the date of issuance of Circular No. 179/11/2022-GST, dated the 3rd August, 2022, till the date of coming into force of the abovesaid S. No. 102C and the entries relating thereto. This is in addition to the matter regularized on as is basis vide para 8.6 of the said Circular.

4. Clarification regarding 'Carbonated Beverages of Fruit Drink' or 'Carbonated Beverages with Fruit Juice':

4.1 Representations have been received seeking clarification regarding the applicable sixdigit HS code for 'Carbonated Beverages of Fruit Drink' or 'Carbonated Beverages with Fruit Juice'.

4.2 On the basis of the recommendation of the GST council in its 45th meeting, a specific entry has been created in notification No. 1/2017-Central Tax (Rate), dated the 28th June, 2017 and notification No. 1/2017- Compensation Cess (Rate), dated the 28th June, 2017, vide S. No. 12B in Schedule IV and S. No. 4B in Schedule respectively, with effect from the 1st October, 2021, for goods with description 'Carbonated Beverages of Fruit Drink' or 'Carbonated Beverages with Fruit Juice'.

4.3 It is hereby clarified that the applicable six-digit HS code for the aforesaid goods with description 'Carbonated Beverages of Fruit Drink' or 'Carbonated Beverages with Fruit Juice' is HS 2202 99. The said goods attract GST at the rate of 28% and Compensation Cess at the rate of 12%. The S. Nos. 12B and 4B mentioned in Para 4.2 cover all such carbonated beverages that contain carbon dioxide, irrespective of whether the carbon dioxide is added as a preservative, additive, etc.

4.4 In order to bring absolute clarity, an exclusion for the above-said goods has been provided in the entry at S. No. 48 of Schedule-II of notification No. 1/2017-Central Tax (Rate), dated 28th June, 2017, vide notification No. 12/2022-Central Tax (Rate), dated the 30th December, 2022.

5. Applicability of GST on Snack pellets manufactured through extrusion process (such as 'fryums'):

5.1 Representations have been received seeking clarification regarding classification and applicable GST rate on snack pellets manufactured through the process of extrusion (such as 'fryums').

5.2 It is hereby clarified that the snack pellets (such as 'fryums'), which are manufactured through the process of extrusion, are appropriately classifiable under tariff item 1905 90 30, which covers goods with description 'Extruded or expanded products, savoury or salted', and thereby attract GST at the rate of 18% vide S. No. 16 of Schedule-III of notification No. 1/2017-Central Tax (Rate), dated the 28th June, 2017.

6. Applicability of Compensation cess on Sports Utility Vehicles (SUVs):

6.1 Representations have been received seeking clarification about the specifications of motor vehicles, which attract compensation cess at the rate of 22% vide entry at S. No. 52B of notification No. 01/2017 Compensation Cess (Rate), dated 28th June, 2017.

6.2 In this regard, it is clarified that Compensation Cess at the rate of 22% is applicable on Motor vehicles, falling under heading 8703, which satisfy all four specifications, namely: - these are popularly known as SUVs; the engine capacity exceeds 1,500 cc; the length exceeds 4,000 mm; and the ground clearance is 170 mm and above.

6.3 This clarification is confined to and is applicable only to Sports Utility Vehicles (SUVs).

7. Applicability of IGST rate on goods specified under notification No. 3/2017- Integrated Tax (Rate):

7.1 Representations have been received expressing doubts regarding the applicable IGST rate on goods specified in the list annexed to notification No. 3/2017-Integrated Tax (Rate), dated the 28th June, 2017.

7.2 On the basis of the recommendation of the GST Council in its 47th Meeting, held in June 2022, the IGST rate has been increased from 5% to 12% on goods, falling under any Chapter, specified in the list annexed to the notification No. 3/2017-Integrated Tax (Rate), dated the 28th June, 2017, when imported for the specified purpose (like Petroleum operations/Coal bed methane operations) and subject to the relevant conditions prescribed in the said notification. However, some goods specified in the list annexed to notification No. 3/2017-Integrated Tax (Rate), dated the 28th June, 2017, are also eligible for a lower schedule rate of 5% by virtue of their entry in Schedule I of notification No. 1/2017-Integrated Tax (Rate), dated the 28th June, 2017.

7.3 Accordingly, it is hereby clarified that on goods specified in the list annexed to the notification No. 3/2017-Integrated Tax (Rate), dated the 28th June, 2017, which are eligible for IGST rate of 12% under the said notification and are also eligible for the benefit of lower rate under Schedule I of the notification No. 1/2017-Integrated Tax (Rate), dated the 28th June, 2017 or any other IGST rate notification, the importer can claim the benefit of the lower rate.

3.3.2.59 Departmental Clarifications - Clarifications regarding applicability of GST on certain services- Circular No. 190/02/2023- GST dated 13th January, 2023

Representations have been received seeking clarifications on the following issues:

1. Applicability of GST on accommodation services supplied by Air Force Mess to its personnel;

2. Applicability of GST on incentive paid by Ministry of Electronics and Information Technology (MeitY) to acquiring banks under Incentive scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions.

The above issues have been examined by GST Council in the 48th meeting held on 17th December, 2022. The issue -wise clarifications are given below:

2. Applicability of GST on accommodation services supplied by Air Force Mess to its personnel:

2.1 Reference has been received requesting for clarification on whether GST is payable on accommodation services supplied by Air Force Mess to its personnel.

2.2 All services supplied by Central Government, State Government, Union Territory or local authority to any person other than business entities (barring a few specified services such as services of postal department, transportation of goods and passengers etc.) are exempt from GST vide Sl. No. 6 of notification No. 12/2017 – Central Tax (Rate) dated 28.06.2017. Therefore, as recommended by the GST Council, it is hereby clarified that accommodation services provided by Air Force Mess and other similar messes, such as, Army mess, Navy mess, Paramilitary and Police forces mess to their personnel or any person other than a business entity are covered by Sl. No. 6 of notification No. 12/2017 – Central Tax (Rate) dated 28.06.2017 provided the services supplied by such messes qualify to be considered as services supplied by Central Government, State Government, Union Territory or local authority.

3. Applicability of GST on incentive paid by MeitY to acquiring banks under Incentive scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions:

3.1 Representations have been received requesting for clarification on whether GST is applicable on the incentive paid by MeitY to acquiring banks under the Incentive scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions.

3.2 Under the Incentive scheme for promotion of RuPay Debit Cards and low value BHIMUPI transactions, the Government pays the acquiring banks an incentive as a percentage of value of RuPay Debit card transactions and low value BHIM-UPI transactions up to Rs.2000/-.

3.3 The Payments and Settlements Systems Act, 2007 prohibits banks and system providers from charging any amount from a person making or receiving a payment through RuPay Debit cards or BHIM-UPI.

3.4 The service supplied by the acquiring banks in the digital payment system in case of transactions through RuPay/BHIM UPI is the same as the service that they provide in case of transactions through any other card or mode of digital payment. The only difference is that the consideration for such services, instead of being paid by the merchant or the user of the card, is paid by the central government in the form of incentive. However, it is not a consideration paid by the central government for any service supplied by the acquiring bank to the Central Government. The incentive is in the nature of a subsidy directly linked to the price of the

service and the same does not form part of the taxable value of the transaction in view of the provisions of section 2(31) and section 15 of the CGST Act, 2017.

3.5 As recommended by the Council, it is hereby clarified that incentives paid by MeitY to acquiring banks under the Incentive scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions are in the nature of subsidy and thus not taxable.

3.3.3.1 Order - Incidence of GST on providing catering services in train - Order No. 2/2018 – Central Tax dated 31st day of March, 2018

Kind reference is invited to your letter No. 2012/TG.III/631/2 dated 01.02.2018 requesting therein to clarify the rate of GST applicable to supply of food and drink in trains.

2. Different GST rates are being applied for mobile and static catering in Indian Railways which is presently leading to a situation whereby the same licensee (selected by Indian Railways/IRCTC) supplying the same food would be subjected to different GST rates depending on whether it is mobile or static catering, as also which variant of mobile catering it is [pre-paid (without option), pre-paid (with option) or post-paid]. The rate difference is resulting in the same food being supplied at two different rates to the railway passengers, which is anomalous.

3. The passenger is not aware as to the GST rate applicable to the food ordered by him/her. This may also lead to unnecessary litigation and thus further strengthens the need for uniform application of tax rate in respect of food and drinks in/by Railways.

4. With a view to remove any doubt or uncertainty in the matter and bring uniformity in the rate of GST applicable for all kinds of supply of food and drinks made available in trains, platforms or stations, it is clarified with the approval of GST Implementation Committee, that the GST rate on supply of food and/or drinks by the Indian Railways or Indian Railways Catering and Tourism Corporation Ltd. or their licensees, whether in trains or at platforms (static units), will be 5% without ITC.

3.3.3.1A Departmental Clarifications - Withdrawal of Circular No. 28/02/2018-GST, dated 08.01.2018 as amended vide Corrigendum dated 18.01.2018 and Order No 02/2018–Central Tax dated 31.03.2018- Circular No. 50/24/2018-GST dated 31th July 2018

The Circular No. 28/02/2018-GST, dated 08.01.2018 as amended vide Corrigendum dated 18.01.2018 was issued to clarify GST rate applicable on catering services, i.e., supply of food or drink in a mess or canteen in an educational institute. Also, Order No 02/2018- Central Tax dated 31.03.2018, was issued to clarify GST rate on supply of food and/or drinks by the Indian Railways or Indian Railways Catering and Tourism Corporation Ltd. or their licensees, in trains or at platforms (static units).

2. Consequent to the decisions of 28th GST Council Meeting held on 21.07.2018, the contents of the Circular No. 28/02/2018-GST dated 08.01.2018 as amended vide Corrigendum dated 18.01.2018 have been incorporated in Sl. No. 7 (i) of the Notification No. 13/2018-Central Tax (Rate), dated 26.07.2018 amending the Notification No. 11/2017- Central Tax (Rate) dated 28th June 2017.

3. Also, the contents of the Order No 02/2018-Central Tax dated 31.03.2018 have been incorporated in Sl. No. 7(ia) of the Notification No. 13/2018-Central Tax (Rate), dated 26.07.2018 amending the Notification No. 11/2017-Central Tax (Rate) dated 28th June 2017.

4. Hence, Circular No. 28/02/2018-GST, dated 08.01.2018 as amended vide Corrigendum dated 18.01.2018 and Order No 02/2018-Central Tax dated 31.03.2018 is withdrawn w.e.f 27.07.2018.

3.4 Composition levy. [Section 10]

<table>
<tr><td rowspan="2">Section 10(1)</td><td>22.06.2017 to 31.01.2019</td><td>Threshold limit and maximum effective tax rate for Composition supply
Notwithstanding anything to the contrary contained in this Act but subject to the provisions of sub-sections (3) and (4) of section 9, a registered person, whose aggregate turnover in the preceding financial year did not exceed fifty lakh rupees, may opt to pay, in lieu of the tax payable by him, an amount calculated at such rate as may be prescribed, but not exceeding,—<table><tr><td>(a)</td><td>one per cent. of the turnover in State or turnover in Union territory in case of a manufacturer,</td></tr><tr><td>(b)</td><td>two and a half per cent. of the turnover in State or turnover in Union territory in case of persons engaged in making supplies referred to in clause (b) of paragraph 6 of Schedule II, and</td></tr><tr><td>(c)</td><td>half per cent. of the turnover in State or turnover in Union territory in case of other suppliers,</td></tr></table>subject to such conditions and restrictions as may be prescribed:</td></tr>
<tr><td>01.02.2019 to till date</td><td>Threshold limit and maximum effective tax rate for Composition supply
Notwithstanding anything to the contrary contained in this Act but subject to the provisions of sub-sections (3) and (4) of section 9, a registered person, whose aggregate turnover in the preceding financial year did not exceed fifty lakh rupees, may opt to pay, [1][in lieu of the tax payable by him under sub-section (1) of section 9, an amount of tax</td></tr>
</table>

<table>
<tr><td></td><td></td><td>calculated at such rate] as may be prescribed, but not exceeding,—

<table><tr><td>(a)</td><td>one per cent. of the turnover in State or turnover in Union territory in case of a manufacturer,</td></tr><tr><td>(b)</td><td>two and a half per cent. of the turnover in State or turnover in Union territory in case of persons engaged in making supplies referred to in clause (b) of paragraph 6 of Schedule II, and</td></tr><tr><td>(c)</td><td>half per cent. of the turnover in State or turnover in Union territory in case of other suppliers,</td></tr></table>
subject to such conditions and restrictions as may be prescribed:

1. Substituted for the words “in lieu of the tax payable by him, an amount calculated at such rate”, w.e.f. 01.02.2019 vide clause (a) (i) of Section 5 of the Central Goods and Services Tax (Amendment) Act, 2018 which comes into force on 1st February 2019 vide Notification No. 02/2019 – Central Tax dated 29th January, 2019.</td></tr>
<tr><td>First Proviso</td><td>22.06.2017 to 31.01.2019</td><td>Power to increase threshold limit for Composition supply
Provided that the Government may, by notification, increase the said limit of fifty lakh rupees to such higher amount, not exceeding one crore rupees, as may be recommended by the Council.</td></tr>
<tr><td></td><td>01.02.2019 to till date</td><td>Power to increase threshold limit for Composition supply
Provided that the Government may, by notification, increase the said limit of fifty lakh rupees to such higher amount, not exceeding [1][one crore and fifty lakh rupees], as may be recommended by the Council.

1 Substituted for the words “one crore rupees”, w.e.f. 01.02.2019 vide clause (a) (ii) of Section 5 of the Central Goods and Services Tax (Amendment) Act, 2018 which</td></tr>
</table>

		comes into force on 1st February 2019 vide Notification No. 02/2019 – Central Tax dated 29th January, 2019.

Second Proviso	01.02.2019 to till date	**A person who opts to pay tax under clause (a) or clause (b) or clause (c) may supply services (other than those referred to in clause (b) of paragraph 6 of Schedule II), up to specified limits.** [1]**[Provided further that** a person who opts to pay tax under clause (a) or clause (b) or clause (c) may supply services (other than those referred to in clause (b) of paragraph 6 of Schedule II), of value not exceeding ten per cent. of turnover in a State or Union territory in the preceding financial year or five lakh rupees, whichever is higher.] 1 Inserted w.e.f. 01.02.2019 vide clause (a) (iii) of Section 5 of the Central Goods and Services Tax (Amendment) Act, 2018 which comes into force on 1st February 2019 vide Notification No. 02/2019 – Central Tax dated 29th January, 2019.
[1]**[Explanation**	01.01.2020 to till date	**The value of exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount shall not be taken into account for determining the value of turnover in a State or Union territory.** For the purposes of second proviso, the value of exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount shall not be taken into account for determining the value of turnover in a State or Union territory.] 1. Inserted w.e.f 01.01.2020 vide clause (a) of Section 93 of Finance Act 2019 which comes into force vide Notification No. 01/2020 – Central Tax dated 01st January 2020.
Section 10(2)	22.06.2017 to 31.01.2019	**The eligible registered person to opt for composition levy**

		The registered person shall be eligible to opt under sub-section (*1*), if:— (*a*) he is not engaged in the supply of services other than supplies referred to in clause (*b*) of paragraph 6 of Schedule II; (*b*) he is not engaged in making any supply of goods which are not leviable to tax under this Act; (*c*) he is not engaged in making any inter-State outward supplies of goods; (*d*) he is not engaged in making any supply of goods through an electronic commerce operator who is required to collect tax at source under section 52; and (*e*) he is not a manufacturer of such goods as may be notified by the Government on the recommendations of the Council:
	01.02.2019 to 31.12.2019	**The eligible registered person to opt for composition levy** The registered person shall be eligible to opt under sub-section (*1*), if:— (*a*) [1][save as provided in sub-section (1), he is not engaged in the supply of services;] (*b*) he is not engaged in making any supply of goods which are not leviable to tax under this Act; (*c*) he is not engaged in making any inter-State outward supplies of goods; (*d*) he is not engaged in making any supply of goods through an electronic commerce operator who is required to collect tax at source under section 52; and (*e*) he is not a manufacturer of such goods as may be notified by the Government on the recommendations of the Council:

1 Substituted w.e.f. 01.02.2019 for the clause "(a) he is not engaged in the supply of services other than supplies

		referred to in clause (b) of paragraph 6 of Schedule II;" vide clause (b) of Section 5 of the Central Goods and Services Tax (Amendment) Act, 2018 which comes into force on 1st February 2019 vide Notification No. 02/2019 – Central Tax dated 29th January, 2019.
	01.01.2020 to 31.12.2020	**The eligible registered person to opt for composition levy** The registered person shall be eligible to opt under sub-section (*1*), if:—

(*a*)	[save as provided in sub-section (1), he is not engaged in the supply of services;]
(*b*)	he is not engaged in making any supply of goods which are not leviable to tax under this Act;
(*c*)	he is not engaged in making any inter-State outward supplies of goods;
(*d*)	he is not engaged in making any supply of goods through an electronic commerce operator who is required to collect tax at source under section 52; [1][*****]
(*e*)	he is not a manufacturer of such goods as may be notified by the Government on the recommendations of the [2][Council; and]
[3][(*f*)	he is neither a casual taxable person nor a non-resident taxable person:]

1. The word ''and'' occurring at the end omitted w.e.f 01.01.2020 vide clause (b) (i) of Section 93 of Finance Act 2019 which comes into force vide Notification No. 01/2020 – Central Tax dated 01st January 2020.
2. Substituted for the word ''Council:'', w.e.f 01.01.2020 vide clause (b) (ii) of Section 93 of Finance Act 2019 which comes into force vide Notification No. 01/2020 – Central Tax dated 01st January 2020.
3. Inserted, w.e.f 01.01.2020 vide clause (b) (iii) of Section 93 of Finance Act 2019 which comes into force vide Notification No. 01/2020 – Central Tax dated 01st January 2020.

<table>
<tr>
<td></td>
<td>01.01.2021 to 30.09.2023</td>
<td>The eligible registered person to opt for composition levy
The registered person shall be eligible to opt under sub-section (1), if:—
<table>
<tr><td>(a)</td><td>[save as provided in sub-section (1), he is not engaged in the supply of services;]</td></tr>
<tr><td>(b)</td><td>he is not engaged in making any supply of goods [1][or services] which are not leviable to tax under this Act;</td></tr>
<tr><td>(c)</td><td>he is not engaged in making any inter-State outward supplies of goods [2][or services];</td></tr>
<tr><td>(d)</td><td>he is not engaged in making any supply of goods [3][or services] through an electronic commerce operator who is required to collect tax at source under section 52; [*****]</td></tr>
<tr><td>(e)</td><td>he is not a manufacturer of such goods as may be notified by the Government on the recommendations of the [Council; and]</td></tr>
<tr><td>[(f)</td><td>he is neither a casual taxable person nor a non-resident taxable person:]</td></tr>
</table>
1. Inserted w.e.f. 01.01.2021 vide Section 119 of the Finance Act, 2020 NO. 12 of 2020 dated 27th March, 2020 which comes into force vide Notification No. 92/2020 – Central Tax dated 22nd December 2020.
2. Inserted w.e.f. 01.01.2021 vide Section 119 of the Finance Act, 2020 NO. 12 of 2020 dated 27th March, 2020 which comes into force vide Notification No. 92/2020 – Central Tax dated 22nd December 2020.
3. Inserted w.e.f. 01.01.2021 vide Section 119 of the Finance Act, 2020 NO. 12 of 2020 dated 27th March, 2020 which comes into force vide Notification No. 92/2020 – Central Tax dated 22nd December 2020.</td>
</tr>
<tr>
<td></td>
<td>01.10.2023 to till date</td>
<td>The eligible registered person to opt for composition levy
The registered person shall be eligible to opt under sub-section (1), if:—</td>
</tr>
</table>

		(*a*) [save as provided in sub-section (1), he is not engaged in the supply of services;] (*b*) he is not engaged in making any supply of goods or services which are not leviable to tax under this Act; (*c*) he is not engaged in making any inter-State outward supplies of goods or services; (*d*) he is not engaged in making any supply of [1]{*****} services through an electronic commerce operator who is required to collect tax at source under section 52; [*****] (*e*) he is not a manufacturer of such goods as may be notified by the Government on the recommendations of the [Council; and] [(*f*) he is neither a casual taxable person nor a non-resident taxable person:] 1. The words "goods or" omitted vide Section 137(a) of the Finance Act 2023 and has come into force w.e.f. 01.10.2023 as the Central Government has appointed the 1st day of October, 2023, as the date on which the provisions have come into force vide Notification No. 28/2023–Central Tax dated 31.07.2023.
First Proviso	22.06.2017 to till date	**All registered persons must opt to pay tax under composition levy where more than one registered persons are having the same Permanent Account Number (issued under the Income-tax Act, 1961)** **Provided** that where more than one registered persons are having the same Permanent Account Number (issued under the Income-tax Act, 1961), the registered person shall not be eligible to opt for the scheme under sub-section (*1*) unless all such registered persons opt to pay tax under that sub-section.
Section [1][10(2A)	01.01.2020 to 30.09.2023	**A registered person, not eligible to opt to pay tax under composition scheme, may opt to pay, in lieu of the tax payable by him under sub-section (*1*) of section 9 -**

Threshold limit and maximum effective tax rate for Composition supply – Eligibility criteria - All registered persons must opt to pay tax under composition levy where more than one registered persons are having the same Permanent Account Number (issued under the Income-tax Act, 1961)

Notwithstanding anything to the contrary contained in this Act, but subject to the provisions of sub-sections (*3*) and (*4*) of section 9, a registered person, not eligible to opt to pay tax under sub-section (*1*) and sub-section (*2*), whose aggregate turnover in the preceding financial year did not exceed fifty lakh rupees, may opt to pay, in lieu of the tax payable by him under sub-section (*1*) of section 9, an amount of tax calculated at such rate as may be prescribed, but not exceeding three per cent. of the turnover in State or turnover in Union territory, if he is not—

(*a*)	engaged in making any supply of goods or services which are not leviable to tax under this Act;
(*b*)	engaged in making any inter-State outward supplies of goods or services;
(*c*)	engaged in making any supply of goods or services through an electronic commerce operator who is required to collect tax at source under section 52;
(*d*)	a manufacturer of such goods or supplier of such services as may be notified by the Government on the recommendations of the Council; and
(*e*)	a casual taxable person or a non-resident taxable person:

Provided that where more than one registered person are having the same Permanent Account Number issued under the Income-tax Act, 1961, the registered person shall not be eligible to opt for the scheme under this sub-section unless all such registered persons opt to pay tax under this sub-section.]

		1. Inserted, w.e.f 01.01.2020 vide clause (c) of Section 93 of Finance Act 2019 which comes into force vide Notification No. 01/2020 – Central Tax dated 01st January 2020.
	01.10.2023 to till date	**A registered person, not eligible to opt to pay tax under composition scheme, may opt to pay, in lieu of the tax payable by him under sub-section (*1*) of section 9 - Threshold limit and maximum effective tax rate for Composition supply – Eligibility criteria - All registered persons must opt to pay tax under composition levy where more than one registered persons are having the same Permanent Account Number (issued under the Income-tax Act, 1961)** Notwithstanding anything to the contrary contained in this Act, but subject to the provisions of sub-sections (*3*) and (*4*) of section 9, a registered person, not eligible to opt to pay tax under sub-section (*1*) and sub-section (*2*), whose aggregate turnover in the preceding financial year did not exceed fifty lakh rupees, may opt to pay, in lieu of the tax payable by him under sub-section (*1*) of section 9, an amount of tax calculated at such rate as may be prescribed, but not exceeding three per cent. of the turnover in State or turnover in Union territory, if he is not—

(*a*)	engaged in making any supply of goods or services which are not leviable to tax under this Act;
(*b*)	engaged in making any inter-State outward supplies of goods or services;
(*c*)	engaged in making any supply of [1][*****] services through an electronic commerce operator who is required to collect tax at source under section 52;
(*d*)	a manufacturer of such goods or supplier of such services as may be notified by the Government on the recommendations of the Council; and
(*e*)	a casual taxable person or a non-resident taxable person:

		Provided that where more than one registered person are having the same Permanent Account Number issued under the Income-tax Act, 1961, the registered person shall not be eligible to opt for the scheme under this sub-section unless all such registered persons opt to pay tax under this sub-section.] 1. The words "goods or" omitted vide Section 137(b) of the Finance Act 2023 and has come into force w.e.f. 01.10.2023 as the Central Government has appointed the 1st day of October, 2023, as the date on which the provisions have come into force vide Notification No. 28/2023–Central Tax dated 31.07.2023.
Section 10(3)	22.06.2017 to 31.12.2019	**The option of composition levy shall lapse with effect from the day on which his aggregate turnover during a financial year exceeds the limit specified.** The option availed of by a registered person under sub-section (*1*) shall lapse with effect from the day on which his aggregate turnover during a financial year exceeds the limit specified under sub-section (*1*).
	01.01.2020 to till date	**The option of composition levy shall lapse with effect from the day on which his aggregate turnover during a financial year exceeds the limit specified.** The option availed of by a registered person under sub-section (1) [1] [or sub-section (*2A*), as the case may be] shall lapse with effect from the day on which his aggregate turnover during a financial year exceeds the limit specified under sub-section (1) [2][or sub-section (*2A*), as the case may be]. 1. Inserted, w.e.f 01.01.2020 vide clause (d) of Section 93 of Finance Act 2019 which comes into force vide Notification No. 01/2020 – Central Tax dated 01st January 2020. 2. Inserted, w.e.f 01.01.2020 vide clause (d) of Section 93 of Finance Act 2019 which comes into force vide Notification No. 01/2020 – Central Tax dated 01st January 2020.

Section 10(4)	22.06.2017 to 31.12.2019	**A taxable person who opts composition levy, shall not collect any tax from the recipient on supplies made by him nor shall he be entitled to any credit of input tax.** A taxable person to whom the provisions of sub-section (*1*) apply shall not collect any tax from the recipient on supplies made by him nor shall he be entitled to any credit of input tax.
	01.01.2020 to till date	**A taxable person who opts composition levy, shall not collect any tax from the recipient on supplies made by him nor shall he be entitled to any credit of input tax.** A taxable person to whom the provisions of sub-section (1) [1][or, as the case may be, sub-section (*2A*)] apply shall not collect any tax from the recipient on supplies made by him nor shall he be entitled to any credit of input tax. 1. Inserted, w.e.f 01.01.2020 vide clause (e) of Section 93 of Finance Act 2019 which comes into force vide Notification No. 01/2020 – Central Tax dated 01st January 2020.
Section 10(5)	22.06.2017 to 31.12.2019	**Application of the provisions of section 73 or section 74 for determination of tax and penalty in case of wrong availment of composition scheme** If the proper officer has reasons to believe that a taxable person has paid tax under sub-section (*1*) despite not being eligible, such person shall, in addition to any tax that may be payable by him under any other provisions of this Act, be liable to a penalty and the provisions of section 73 or section 74 shall, *mutatis mutandis*, apply for determination of tax and penalty.
	01.01.2020 to till date	**Application of the provisions of section 73 or section 74 for determination of tax and penalty in case of wrong availment of composition scheme** If the proper officer has reasons to believe that a taxable person has paid tax under sub-section (1) [1] [or sub-section (*2A*), as the case may be,] despite not being eligible, such person shall, in addition to any tax that may be payable by him under any other provisions of this Act, be liable to a

		penalty and the provisions of section 73 or section 74 shall, mutatis mutandis, apply for determination of tax and penalty. 1. Inserted, w.e.f 01.01.2020 vide clause (f) of Section 93 of Finance Act 2019 which comes into force vide Notification No. 01/2020 – Central Tax dated 01st January 2020.
[1][Explanation 1	01.01.2020 to till date	**Inclusions and exclusions for computing aggregate turnover of a person for determining his eligibility to pay tax under composition levy.** For the purposes of computing aggregate turnover of a person for determining his eligibility to pay tax under this section, the expression "aggregate turnover" shall include the value of supplies made by such person from the 1st day of April of a financial year up to the date when he becomes liable for registration under this Act, but shall not include the value of exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.] 1. Inserted, w.e.f 01.01.2020 vide clause (g) of Section 93 of Finance Act 2019 which comes into force vide Notification No. 01/2020 – Central Tax dated 01st January 2020.
[1][Explanation 2	01.01.2020 to till date	**Exclusions for the expression "turnover in State or turnover in Union territory" for the purposes of determining the tax payable under composition levy.** For the purposes of determining the tax payable by a person under this section, the expression "turnover in State or turnover in Union territory" shall not include the value of following supplies, namely:— (*i*) supplies from the first day of April of a financial year up to the date when such person becomes liable for registration under this Act; and (*ii*) exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.']

		1. Inserted, w.e.f 01.01.2020 vide clause (g) of Section 93 of Finance Act 2019 which comes into force vide Notification No. 01/2020 – Central Tax dated 01st January 2020.

3.4.1.1 Departmental Notifications - The turnover limit for Composition Levy for CGST

Notification No. 8/2017-Central Tax dated 27th June, 2017 prescribes that an eligible registered person, whose aggregate turnover in the preceding financial year did not exceed seventy five lakh rupees, may opt to pay, in lieu of the tax payable by him, an amount calculated at the rate of,—

(i)	one per cent. of the turnover in State in case of a manufacturer,
(ii)	two and a half per cent. of the turnover in State in case of persons engaged in making supplies referred to in clause (b) of paragraph 6 of Schedule II of the said Act, and
(iii)	half per cent. of the turnover in State in case of other suppliers:

Provided that the aggregate turnover in the preceding financial year shall be fifty lakh rupees in the case of an eligible registered person, registered under section 25 of the said Act, in any following States, namely: -

(i) Arunachal Pradesh, (ii) Assam, (iii) Manipur, (iv) Meghalaya, (v) Mizoram, (vi) Nagaland, (vii) Sikkim, (viii) Tripura, (ix) Himachal Pradesh:

Provided further that the registered person shall not be eligible to opt for composition levy under sub-section (1) of section 10 of the said Act if such person is a manufacturer of the goods, the description of which is specified in column (3) of the Table below and falling under the tariff item, sub-heading, heading or Chapter, as the case may be, as specified in the corresponding entry in column (2) of the said Table:-

Table

S. No	Tariff item, subheading, heading or Chapter	Description
(1)	(2)	(3)
1.	2105 00 00	Ice cream and other edible ice, whether or not containing cocoa.
2.	2106 90 20	Pan masala
3.	24	All goods, i.e. Tobacco and manufactured tobacco substitutes

Explanation. – (1) In this Table, “tariff item”, “sub-heading”, “heading” and “chapter” shall mean respectively a tariff item, sub-heading, heading and chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).

(2) The rules for the interpretation of the First Schedule to the said Customs Tariff Act, 1975 (51 of 1975), including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of this notification.

Further, Notification No. 46/2017- Central Tax dated 13th October, 2017 has been notified for the following amendments in Notification No. 8/2017-Central Tax dated 27th June, 2017:

(i) for the words “seventy-five lakh rupees”, the words, “one crore rupees” shall be substituted;

(ii) for the words “fifty lakh rupees”, the words, “seventy-five lakh rupees” shall be substituted;

Further, Notification No.1/2018- Central Tax dated 1st January, 2018 has been notified for the following amendments in Notification No. 8/2017-Central Tax dated 27th June, 2017:

In the notification, in the opening paragraph, -

(a) in clause (i), for the words “one per cent.”, the words “half per cent.” shall be substituted;

(b) in clause (iii), for the words “half per cent. of the turnover”, the words “half per cent. of the turnover of taxable supplies of goods” shall be substituted.

Further, Notification No. 05/2019 – Central Tax dated 29th January, 2019 effective from 1st day of February, 2019 has been notified for the following amendment in Notification No. 8/2017-Central Tax dated 27th June, 2017::

In the said notification, for the portion beginning with the words “an amount calculated at the rate of” and ending with the words “half per cent. of the turnover of taxable supplies of goods in State in case of other suppliers”, the words and figures, “an amount of tax calculated at the rate specified in rule 7 of the Central Goods and Services Tax Rules, 2017:” shall be substituted.

Further, Notification No. 14/2019 – Central Tax dated 7th March, 2019 has superseded Notification No. 8/2017-Central Tax dated 27th June, 2017 with effect from 1st day of April, 2019 and the Central Government, on the recommendations of the Council, has specified that an eligible registered person, whose aggregate turnover in the preceding financial year did not exceed one crore and fifty lakh rupees, may opt to pay, in lieu of the tax payable by him under sub-section (1) of section 9 of the said Act, an amount of tax as prescribed under rule 7 of the Central Goods and Services Tax Rules, 2017:

Provided that the said aggregate turnover in the preceding financial year shall be seventyfive lakh rupees in the case of an eligible registered person, registered under section 25 of the said Act, in any of the following States, namely: –

(i) Arunachal Pradesh, (ii) Manipur, (iii) Meghalaya, (iv) Mizoram, (v) Nagaland, (vi) Sikkim, (vii) Tripura, (viii) Uttarakhand:

Provided further that the registered person shall not be eligible to opt for composition levy under sub-section (1) of section 10 of the said Act if such person is a manufacturer of the goods, the description of which is specified in column (3) of the Table below and falling under the tariff item, sub-heading, heading or Chapter, as the case may be, as specified in the corresponding entry in column (2) of the said Table, namely:-

S. No	**Tariff item, subheading, heading or Chapter**	**Description**
(1)	(2)	(3)
1.	2105 00 00	Ice cream and other edible ice, whether or not containing cocoa.
2.	2106 90 20	Pan masala
3.	24	All goods, i.e. Tobacco and manufactured tobacco substitutes

Explanation. – (i) In this Table, “tariff item”, “sub-heading”, “heading” and “chapter” shall mean respectively a tariff item, sub-heading, heading and chapters as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).

(ii) The rules for the interpretation of the First Schedule to the said Customs Tariff Act, 1975 (51 of 1975), including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of this notification.

Further, Notification No.43/2019-Central Tax dated 30th September, 2019 effective from 1st day of October, 2019 has been notified for the following amendment in Notification No. 14/2019 – Central Tax dated 7th March, 2019.

In the said notification, in the table, after Sl. No. 2 and the entries thereto, the following Sl. No. and entries shall be inserted, namely: -

2A.	2202 10 10	Aerated Water

Further, Notification No. 04/2022-Central Tax dated 31st March, 2022 effective from 1st day of April, 2022 has been notified for the following amendment in Notification No. 14/2019 – Central Tax dated 7th March, 2019:

In the said notification, in the Table, after serial number 3 and the entries relating thereto, the following serial numbers and entries shall be inserted, namely: -

4	6815	Fly ash bricks or fly ash aggregate with 90 per cent or more fly ash content; Fly ash blocks
5.	6901 00 10	Bricks of fossil meals or similar siliceous earths
6.	6904 10 00	Building bricks
7.	6905 10 00	Earthen or roofing tiles"

Further, Notification No. 16/2022-Central Tax dated 13th July, 2022 effective from 18th July, 2022 has been notified for the following amendment in Notification No. 14/2019 – Central Tax dated 7th March, 2019:

In the said notification, in the TABLE, against serial number 4, for the entry in column (3), the entry “Fly ash bricks; Fly ash aggregates; Fly ash blocks” shall be substituted.

3.4.1.2 Departmental Notifications –Composition scheme for supplier of services with a tax rate of 6% having annual turn over in preceding year upto Rs 50 lakhs. - Notification No. 2/2019-Central Tax (Rate) dated 7th March, 2019.

Notification No. 2/2019-Central Tax (Rate) dated 7th March, 2019 effective from 1st day of April, 2019.- the Central Government, on the recommendations of the Council, and on being satisfied that it is necessary in the public interest so to do, hereby notifies that the central tax, on the intra-State supply of goods or services or both as specified in column (1) of the Table below, shall be levied at the rate specified in the corresponding entry in column (2), subject to

the conditions as specified in the corresponding entry in column (3) of the said table below, namely:-

Table

<table>
<tr><th>Description of supply</th><th>Rate (per cent)</th><th>Conditions</th></tr>
<tr><td>(1)</td><td>(2)</td><td>(3)</td></tr>
<tr><td>First supplies of goods or services or both upto an aggregate turnover of fifty lakh rupees made on or after the 1st day of April in any financial year, by a registered person.</td><td>3</td><td>1. Supplies are made by a registered person,—<table><tr><td>(i)</td><td>whose aggregate turnover in the preceding financial year was fifty lakh rupees or below;</td></tr><tr><td>(ii)</td><td>who is not eligible to pay tax under sub-section (1) of section 10 of the said Act;</td></tr><tr><td>(iii)</td><td>who is not engaged in making any supply which is not leviable to tax under the said Act;</td></tr><tr><td>(iv)</td><td>who is not engaged in making any inter-State outward supply;</td></tr><tr><td>(v)</td><td>who is neither a casual taxable person nor a non-resident taxable person;</td></tr><tr><td>(vi)</td><td>who is not engaged in making any supply through an electronic commerce operator who is required to collect tax at source under section 52; and</td></tr><tr><td>(vii)</td><td>who is not engaged in making supplies of the goods, the description of which is specified in column (3) of the Annexure below and falling under the tariff item, sub-heading, heading or Chapter, as the case may be, as specified in the corresponding entry in column (2) of the said annexure.</td></tr></table>2. Where more than one registered persons are having the same Permanent Account Number, issued under the Income-tax Act, 1961(43 of 1961), central tax on supplies by all such registered persons is paid at the rate specified in column (2) under this notification.
3. The registered person shall not collect any tax from the recipient on supplies made by him nor shall he be entitled to any credit of input tax.
4. The registered person shall issue, instead of tax invoice, a bill of supply as referred to in clause (c) of sub-section (3) of section 31 of the said Act</td></tr>
</table>

		with particulars as prescribed in rule 49 of Central Goods and Services Tax Rules. *5.* The registered person shall mention the following words at the top of the bill of supply, namely: — 'taxable person paying tax in terms of Notification No. 2/2019-Central Tax (Rate) dated 7-3-2019, not eligible to collect tax on supplies'. 6. The registered person opting to pay central tax at the rate of three per cent under this notification shall be liable to pay central tax at the rate of three per cent on all outward supplies specified in column (1) notwithstanding any other notification issued under sub-section (1) of section 9 or under section 11 of said Act. 7. The registered person opting to pay central tax at the rate of three per cent under this notification shall be liable to pay central tax on inward supplies on which he is liable to pay tax under sub-section (3) or, as the case may be, under sub-section (4) of section 9 of said Act at the applicable rates. *Explanation.*—For the purposes of this notification, the expression "first supplies of goods or services or both" shall, for the purposes of determining eligibility of a person to pay tax under this notification, include the supplies from the first day of April of a financial year to the date from which he becomes liable for registration under the said Act but for the purpose of determination of tax payable under this notification shall not include the supplies from the first day of April of a financial year to the date from which he becomes liable for registration under the Act.

ANNEXURE

Sl. No.	Tariff item, sub-heading, heading or Chapter	Description
(1)	**(2)**	**(3)**
1	2105 00 00	Ice cream and other edible ice, whether or not containing cocoa.
2	2106 90 20	Pan masala

3	24	All goods, *i.e.* Tobacco and manufactured tobacco substitutes

2. In computing aggregate turnover in order to determine eligibility of a registered person to pay central tax at the rate of three percent under this notification, value of supply of exempt services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount, shall not be taken into account.

3. Explanation. –For the purpose of this notification, -

(i) "tariff item", "sub-heading", "heading" and "chapter" shall mean respectively a tariff item, sub-heading, heading and chapters specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).

(ii) the rules for the interpretation of the First Schedule to the said Customs Tariff Act, 1975 (51 of 1975), including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of this notification.

Further, Notification No. 9/2019-Central Tax (Rate) dated 29th March, 2019 effective from 1st day of April, 2019. - The Central Government has amended Notification No. 2/2019-Central Tax (Rate) dated 7th March, 2019, namely:-

In the said notification, -

(i) in the Table, in column 3, after clause 7, the following clause shall be inserted, namely: -

"8. Where any registered person who has availed of input tax credit opts to pay tax under this notification, he shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock and on capital goods as if the supply made under this notification attracts the provisions of section 18(4) of the said Act and the rules made there-under and after payment of such amount, the balance of input tax credit, if any, lying in his electronic credit ledger shall lapse.";

(ii) in paragraph 3, in the Explanation, after clause (ii), the following clause shall be inserted, namely: -

"(iii) the Central Goods and Services Tax Rules, 2017, as applicable to a person paying tax under section 10 of the said Act shall, mutatis mutandis, apply to a person paying tax under this notification.".

Further, Notification No. 18/2019-Central Tax (Rate) dated 30th September, 2019 effective from 1st day of October, 2019.- The Central Government has further amended Notification No. 2/2019-Central Tax (Rate) dated 7th March, 2019, namely:-

In the said notification, in the Annexure, after Sl. No. 2 and the entries thereto, the following Sl. No. and entries shall be inserted, namely: -

"2A.	2202 10 10	Aerated Water".

3.4.1.3 Departmental Notifications – Class of registered persons who shall follow the special procedure for furnishing of return and payment of tax - Special procedure for

the registered persons paying tax under the provisions of section 10 of the said Act or by availing the benefit of notification of the Government of India, Ministry of Finance, Department of Revenue No. 02/2019– Central Tax (Rate), dated the 7th March, 2019

Notification No.21 /2019 – Central Tax dated 23rd April, 2019 - the Central Government, on the recommendations of the Council, hereby notifies the registered persons paying tax under the provisions of section 10 of the said Act or by availing the benefit of notification of the Government of India, Ministry of Finance, Department of Revenue No. 02/2019– Central Tax (Rate), dated the 7th March, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Subsection (i) vide number G.S.R. 189 , dated the 7th March, 2019, (hereinafter referred to as —the said notification‖) as the class of registered persons who shall follow the special procedure as mentioned below for furnishing of return and payment of tax.

2. The said persons shall furnish a statement, every quarter or, as the case may be, part thereof containing the details of payment of self-assessed tax in FORM GST CMP-08 of the Central Goods and Services Tax Rules, 2017, till the 18th day of the month succeeding such quarter.

3. The said persons shall furnish a return for every financial year or, as the case may be, part thereof in FORM GSTR-4 of the Central Goods and Services Tax Rules, 2017, on or before the 30th day of April following the end of such financial year.

4. The registered persons paying tax by availing the benefit of the said notification, in respect of the period for which he has availed the said benefit, shall be deemed to have complied with the provisions of section 37 and section 39 of the said Act if they have furnished FORM GST CMP-08 and FORM GSTR-4 as provided in para 2 and para 3 above.

Further, Notification No. 34/2019 – Central Tax dated 18th July, 2019 has been notified for the following amendment in Notification No.21 /2019 – Central Tax dated 23rd April, 2019, namely:–

In the said notification, in paragraph 2, the following proviso shall be inserted, namely: –

“Provided that the due date for furnishing the statement containing the details of payment of self-assessed tax in said FORM GST CMP-08, for the quarter April, 2019 to June, 2019, or part thereof, shall be the 31st day of July, 2019.”

Further, Notification No. 35/2019 – Central Tax dated 29th July, 2019 has been notified for the following amendment in Notification No.21 /2019 – Central Tax dated 23rd April, 2019, namely:–

In the said notification, in paragraph 2, in the proviso, for the figures, letters and words “31st day of July, 2019”, the figures, letters and word, “31st day of August, 2019” shall be substituted.

Further, Notification No. 50/2019 – Central Tax dated 24th October, 2019 effective from 18th day of October, 2019 has been notified for the following amendment in Notification No.21 /2019 – Central Tax dated 23rd April, 2019, namely:–

In the said notification, in paragraph 2, after the first proviso, the following proviso shall be inserted, namely: –

"Provided further that the due date for furnishing the statement containing the details of payment of self-assessed tax in said FORM GST CMP-08, for the quarter July, 2019 to September, 2019, or part thereof, shall be the 22nd day of October, 2019."

Further, Notification No. 12/2020 – Central Tax dated 21st March, 2020 has been notified for the following amendment in Notification No.21 /2019 – Central Tax dated 23rd April, 2019, namely:–

In the said notification, in paragraph 2, the following proviso shall be inserted, namely: –

"Provided that the said persons who have, instead of furnishing the statement containing the details of payment of self-assessed tax in FORM GST CMP-08 have furnished a return in FORM GSTR-3Bunder the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the said rules) for the tax periods in the financial year 2019-20, suchtaxpayers shall not be required to furnish the statement in outward supply of goods or services or both in FORM GSTR1 of the said rules or the statement containing the details of payment of self-assessed tax in FORM GST CMP-08 for all the tax periods in the financial year 2019-20."

Further, Notification No. 34/2020 – Central Tax dated 3rd April, 2020 has been notified for the following amendment in Notification No.21 /2019 – Central Tax dated 23rd April, 2019, namely:–

In the said notification,-

(i) in the second paragraph, the following proviso shall be inserted, namely: –

"Provided that the said persons shall furnish a statement, containing the details of payment of self-assessed tax in FORM GST CMP-08 of the Central Goods and Services Tax Rules, 2017, for the quarter ending 31st March, 2020, till the 7 th day of July, 2020.";

(ii) in the third paragraph, the following proviso shall be inserted, namely: –

"Provided that the said persons shall furnish the return in FORM GSTR-4 of the Central Goods and Services Tax Rules, 2017, for the financial year ending 31st March, 2020, till the 15th day of July, 2020.".

Further, Notification No. 59/2020 – Central Tax dated 13th July, 2020 has been notified for the following amendment in Notification No.21 /2019 – Central Tax dated 23rd April, 2019, namely:–

In the said notification, in the third paragraph, in the first proviso, for the figures, letters and words "15th day of July, 2020", the figures, letters and words "31st day of August, 2020" shall be substituted.

Further, Notification No. 64/2020 – Central Tax dated 31st August, 2020 has been notified for the following amendment in Notification No.21 /2019 – Central Tax dated 23rd April, 2019, namely:–

In the said notification, in the third paragraph, in the first proviso, for the figures, letters and words "31st day of August, 2020", the figures, letters and words "31st day of October, 2020" shall be substituted.

Further, Notification No. 10/2021 – Central Tax dated 1st May, 2021 effective from 30th day of April, 2021 has been notified for the following amendment in Notification No.21 /2019 – Central Tax dated 23rd April, 2019, namely:–

In the said notification, in the third paragraph, after the first proviso, the following proviso shall be inserted, namely: –

"Provided further that the said persons shall furnish the return in FORM GSTR-4 of the Central Goods and Services Tax Rules, 2017, for the financial year ending 31st March, 2021, upto the 31st day of May, 2021.".

Further, Notification No. 25/2021 – Central Tax dated 1st June, 2021 effective from 31 st day of May, 2021 has been notified for the following amendment in Notification No.21 /2019 – Central Tax dated 23rd April, 2019, namely:–

In the said notification, in the third paragraph, in the second proviso, for the figures, letters and words "31st day of May, 2021", the figures, letters and words "31st day of July, 2021" shall be substituted.

Further, NOTIFICATION No. 11/2022 – Central Tax dated 5th July, 2022 has been notified for the following amendment in Notification No.21 /2019 – Central Tax dated 23rd April, 2019, namely:–

In the said notification, in the second paragraph, after the fourth proviso, the following proviso shall be inserted, namely: –

"Provided also that the said persons shall furnish a statement, containing the details of payment of self-assessed tax in FORM GST CMP-08 of the Central Goods and Services Tax Rules, 2017 for the quarter ending 30th June, 2022 till the 31st day of July, 2022."

3.4.2.1 CGST (Removal of Difficulties) Order - To remove difficulties in implementing provisions of composition scheme.

The Central Goods and Services Tax (Removal of Difficulties) Order, 2017 dated 13th October, 2017 -

For the removal of difficulties,-

(i) it is hereby clarified that if a person supplies goods and/or services referred to in clause (b) of paragraph 6 of Schedule II of the said Act and also supplies any exempt services including services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount, the said person shall not be ineligible for the composition scheme under section 10 subject to the fulfilment of all other conditions specified therein.

(ii) it is further clarified that in computing his aggregate turnover in order to determine his eligibility for composition scheme, value of supply of any exempt services including services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount, shall not be taken into account.

Further, the Central Goods and Services Tax (Removal of Difficulties) Order, 2019 dated 1st February, 2019 has superseded The Central Goods and Services Tax (Removal of Difficulties) Order, 2017 dated 13th October, 2017 and for the removal of difficulties, it is clarified that the value of supply of exempt services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount, shall not be taken into account –

(i) for determining the eligibility for composition scheme under second proviso to sub-section (1) of section 10;

(ii) in computing aggregate turnover in order to determine eligibility for composition scheme.

3.4.3.1 Departmental Clarifications - Denial of composition option by tax authorities and effective date thereof- Circular No. 77/51/2018-GST dated 31st December, 2018

Rule 6 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the "CGST Rules") deals with the validity of the composition levy. As per the said rule, the option exercised by a registered person to pay tax under the composition scheme shall remain valid so long as he satisfies the conditions mentioned in section 10 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the "CGST Act") and the CGST Rules. The rule lays down the procedure for withdrawal from the composition scheme by a taxpayer who intends to withdraw from the said scheme and also the procedure for denial of option to the taxpayer to pay tax under the said scheme where he has contravened the provisions of the CGST Act or the CGST Rules.

2. In this connection, doubts have been raised as to the date from which withdrawal from the composition scheme shall take effect in a case where the composition taxpayer has exercised such option to withdraw. Doubts have also been raised regarding the effective date of denial of the option to pay tax under the composition scheme where action has been initiated by the tax authorities to deny such option to the composition taxpayer. Further, clarification has been sought regarding the follow up action to be taken by the tax authorities when the composition option is denied to the taxpayer retrospectively. In order to clarify these issues and to ensure uniformity in the implementation of the provisions of the law across field formations, the Board, in exercise of its powers conferred by section 168 (1) of the CGST Act, hereby clarifies the issues raised as below.

3. Sub-rule (2) of rule 6 of the CGST Rules provides that the composition taxpayer shall pay tax under sub-section (1) of section 9 of the CGST Act as a normal taxpayer from the day he ceases to satisfy any of the conditions of the composition scheme and shall issue tax invoice for every taxable supply made thereafter. Sub-rule (3) of rule 6 of the CGST Rules provides that the registered person who intends to withdraw from the composition scheme shall, before the date of such withdrawal, file an application in FORM GST CMP-04 on the common portal. He shall file intimation for withdrawal from the scheme in FORM GST CMP-04 within seven days of the occurrence of such event.

4. As per sub-rule (4) of rule 6 of the CGST Rules, where the proper officer has reasons to believe that the registered person was not eligible to pay tax under section 10 of the CGST Act or has contravened the provisions of the CGST Act or the CGST Rules, he may issue a notice to such person in FORM GST CMP-05 to show cause as to why the option to pay tax under section 10 of the CGST Act shall not be denied. Upon receipt of the reply to the show cause notice from the registered person in FORM GST CMP-06, the proper officer shall, in accordance with the provisions of sub-rule (5) of rule 6 of the CGST Rules, issue an order in FORM GST CMP-07 within a period of thirty days of the receipt of such reply, either accepting the reply, or denying the option to pay tax under section 10 of the CGST Act from the date of the option or from the date of the event concerning such contravention, as the case may be.

5. It is clarified that in a case where the taxpayer has sought withdrawal from the composition scheme, the effective date shall be the date indicated by him in his intimation/application filed in FORM GST CMP-04 but such date may not be prior to the commencement of the financial year in which such intimation/application for withdrawal is being filed. If at any stage it is found that he has contravened any of the provisions of the CGST Act or the CGST Rules, action may be initiated for recovery of tax, interest and penalty. In case of denial of option by the tax authorities, the effective date of such denial shall be from a date, including any retrospective date as may be determined by tax authorities, but shall not be prior to the date of contravention of the provisions of the CGST Act or the CGST Rules. In such cases, as provided under sub-section (5) of section 10 of the CGST Act, the proceedings would have to be initiated under the provisions of section 73 or section 74 of the CGST Act for determination of tax, interest and penalty for the period starting from the date of contravention of provisions till the date of issue of order in FORM GST CMP-07. It is also clarified that the registered person shall be liable to pay tax under section 9 of the CGST Act from the date of issue of the order in FORM GST CMP-07.

Provisions of section 18(1)(c) of the CGST Act shall apply for claiming credit on inputs held in stock, inputs contained in semi-finished or finished goods held in stock and on capital goods on the date immediately preceding the date of issue of the order.

3.4.3.2 Departmental Clarifications - Clarification regarding exercise of option to pay tax under notification No. 2/2019- CT(R) dt 07.03.2019- Circular No. 97/16/2019-GST dated 5th April 2019

Attention is invited to notification No. 02/2019-Central Tax (Rate) dated 07.03.2019 (hereinafter referred to as "the said notification") which prescribes rate of central tax of 3% on first supplies of goods or services or both upto an aggregate turnover of fifty lakh rupees made on or after the 1st day of April in any financial year, by a registered person whose aggregate annual turnover in the preceding financial year was fifty lakh rupees or below. The said notification, as amended by notification No. 09/2019-Central Tax (Rate) dated 29.03.2019, provides that Central Goods and Services Tax Rules, 2017 (hereinafter referred to as "the said rules"), as applicable to a person paying tax under section 10 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "the said Act") shall, mutatis mutandis, apply to a person paying tax under the said notification.

2. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of the law across field formations, the Board, in exercise of its powers conferred by section 168 (1) of the said Act, hereby clarifies the issues raised as below:–

(i) a registered person who wants to opt for payment of central tax @ 3% by availing the benefit of the said notification, may do so by filing intimation in the manner specified in sub-rule 3 of rule 3 of the said rules in FORM GST CMP-02 by selecting the category of registered person as "Any other supplier eligible for composition levy" as listed at Sl. No. 5(iii) of the said form, latest by 30th April, 2019. Such person shall also furnish a statement in FORM GST ITC03 in accordance with the provisions of sub-rule (3) of rule 3 of the said rules.

(ii) any person who applies for registration and who wants to opt for payment of central tax @ 3% by availing the benefit of the said notification, if eligible, may do so by indicating the option

at serial no. 5 and 6.1(iii) of FORM GST REG-01 at the time of filing of application for registration.

(iii) the option of payment of tax by availing the benefit of the said notification in respect of any place of business in any State or Union territory shall be deemed to be applicable in respect of all other places of business registered on the same Permanent Account Number.

(iv) the option to pay tax by availing the benefit of the said notification would be effective from the beginning of the financial year or from the date of registration in cases where new registration has been obtained during the financial year.

3. It may be noted that the provisions contained in Chapter II of the said Rules shall mutatis mutandis apply to persons paying tax by availing the benefit of the said notification, except to the extent specified in para 2 above.

3.5 Power to grant exemption from tax. [Section 11]

Section 11(1)	01.07.2017 to till date	**Power to government to issue notification to grant exemption from the whole or any part of the tax** Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by notification, exempt generally, either absolutely or subject to such conditions as may be specified therein, goods or services or both of any specified description from the whole or any part of the tax leviable thereon with effect from such date as may be specified in such notification.
Section 11(2)	01.07.2017 to till date	**Power to government to issue order to grant exemption from the whole or any part of the tax under circumstances of an exceptional nature** Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by special order in each case, under circumstances of an exceptional nature to be stated in such order, exempt from payment of tax any goods or services or both on which tax is leviable.
Section 11(3)	01.07.2017 to till date	**The Government may issue notification to clarify the scope or applicability of any notification issued under sub-section (1) or order issued under sub-section (2), by inserting an explanation in such notification or order, as the case may be, within one year of issue of such notification or order, and every such explanation shall**

		have effect as if it had always been the part of the first such notification or order. The Government may, if it considers necessary or expedient so to do for the purpose of clarifying the scope or applicability of any notification issued under sub-section (1) or order issued under sub-section (2), insert an explanation in such notification or order, as the case may be, by notification at any time within one year of issue of the notification under sub-section (1) or order under sub-section (2), and every such explanation shall have effect as if it had always been the part of the first such notification or order, as the case may be.
Explanation	01.07.2017 to till date	**The registered person, supplying goods or services or both exempted from the whole or part of the tax leviable thereon, shall not collect the tax, in excess of the effective rate, on such supply of goods or services or both.** For the purposes of this section, where an exemption in respect of any goods or services or both from the whole or part of the tax leviable thereon has been granted absolutely, the registered person supplying such goods or services or both shall not collect the tax, in excess of the effective rate, on such supply of goods or services or both.

3.5.1.1 Departmental Notifications – EXEMPTION / CONCESSIONAL RATE NOTIFICATIONS FOR GOODS AND SERVICES– Section 11

1. **Exemption to specified goods of Chapter 1 to 98 from CGST - Nil rated goods.—** Notification No. 2/2017-Central Tax (Rate), dated 28-6-2017 as amended from time to time.

2. **Exemption from the central tax on the intra-State supply of services -** Notification No. 12/2017-Central Tax (Rate), dated 28-6-2017 as amended from time to time.

3. **Concessional rate of CGST for supplies of goods required in connection with specified petroleum operations under taken under petroleum exploration licenses or mining leases or specified contracts or specified contracts under**

various policies—Notification No. 3/2017-Central Tax (Rate), dated 28-6-2017.

4. **Refund of 50% of CGST on all inward supplies of goods received by Canteen Stores Department (CSD) for the purposes of subsequent supply of such goods to the Unit Run Canteens of the CSD or to the authorized customers of the CSD.**—Notification No. 6/2017-Central Tax (Rate), dated 28-6-2017.

5. **Exemption to Supplies of Goods by Canteen Stores Department (CSD) to Unit Run Canteens and Supplies of Goods by CSD/Unit Run Canteens to authorized customers.** — Notification No. 7/2017-Central Tax (Rate), dated 28-6-2017.

6. **Exemption to intra-State supplies of goods or services or both received by a deductor under section 51, from any supplier, who is not registered.**—Notification No. 9/2017-Central Tax (Rate), dated 28-6-2017.

7. **Exemption to intra-State supplies of second hand goods received by a registered person,** dealing in buying and selling of second hand goods and who pays the central tax on the value of outward supply of such second hand goods as determined under sub-rule (5) of rule 32 of the CGST Rules 2017,from any supplier, who is not registered**.**—Notification No. 10/2017-Central Tax (Rate), dated 28-6-2017.

8. **Services by way of any activity in relation to a function entrusted to a Panchayat under article 243G of the Constitution undertaken by the Central Government or State Government or any local authority in which they are engaged as public authority shall be treated neither as a supply of goods nor as a supply of services.**—Notification No. 14/2017-Central Tax (Rate), dated 28-6-2017.

9. **United Nations or a specified international organisation and Foreign diplomatic mission or consular post in India, or diplomatic agents or career consular officers posted therein, entitled to claim a refund of taxes paid on supplies of goods or services or both received by them.—**Notification No. 16/2017-Central Tax (Rate), dated 28-6-2017.

10. **Exemption on supply of heavy water and nuclear fuels falling in Chapter 28 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) by the Department of Atomic Energy to the Nuclear Power Corporation of India Ltd** - Notification No. 26/2017-Central Tax (Rate) dated 21st September, 2017.

11. **Concessional rate of Tax till 30.06.2020 on Leasing of Motor Vehicles before 1st July 2017 where the supplier of Motor Vehicle is a registered person and Such supplier (the lesser) had purchased the Motor Vehicle prior to 1st July, 2017 and has not availed input tax credit of central excise duty, Value Tax or any other taxes paid on such vehicles** - Notification No. 37/2017-Central Tax (Rate) dated 13th October, 2017.

12. **Concessional rate of Tax on supplies of Food preparations put up in unit containers and intended for free distribution to economically weaker sections of the society under a programme duly approved by the Central Government or any State Government. -** Notification No. 39/2017-Central Tax (Rate) dated 18th October, 2017.

13. **Exemption to intra-State/inter-State supply of taxable goods by a registered supplier to a registered recipient for export** from so much of the tax leviable in excess of the amount calculated at the rate of 0.05 per cent**.**—Notification No. 40/2017-Central Tax (Rate), dated 23-10-2017.

14. **Exemption on supply of Scientific and technical instruments, apparatus, equipment, accessories, parts, consumables and live animals, computer software, Compact Disc-Read Only Memory (CD-ROM), recorded magnetic tapes, microfilms, microfiches and Prototypes etc. to certain institutions for experimental and research purposes.**—Notification No. 45/2017-Central Tax (Rate), dated 14-11-2017. Please note that the Central Government, on the recommendations of the Council, has rescinded these notifications vide Notification No. 11/2022-Central Tax (Rate) dated 13.07.2022 to withdraw the exemption.

15. **Exemption to Composite supply of goods and services in which the value of supply of goods constitutes not more than 25 per cent. of the value of the said composite supply provided to the Central Government, State Government or Union territory or local authority or a Governmental authority or a Government Entity by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.** Notification No. 12/2017-Central Tax (Rate), dated 28-6-2017 as amended by Notification No. 2/2018- Central Tax (Rate) dated 25th January, 2018.

16. **Concessional rate of Tax on supplies of Old and used motor vehicles on the value that represent margin of the supplier, on supply of such goods. -** Notification No. 8/2018 -Central Tax (Rate) dated 25th January, 2018.

17. **Concessional rate of Tax on specified "handicraft goods" predominantly made by hand even though some tools or machinery may also have been used in the process; such goods are graced with visual appeal in the nature of ornamentation or in-lay work or some similar work of a substantial nature; possess distinctive features, which can be aesthetic, artistic, ethnic or culturally attached and are amply different from mechanically produced goods of similar utility.** - Notification No. 21/2018 -Central Tax (Rate) dated 26th July, 2018.

18. **Exemption on supply of gold in heading 7108 when supplied by Nominated Agency under the scheme for "Export against Supply by Nominated Agency" as**

referred to in paragraph 4.41 of the Foreign Trade Policy to a registered person. - Notification No. 26/2018- Central Tax (Rate) dated 31st December, 2018 .

19. **New Composition Scheme for intra-State supply of goods or services or both - First supplies of goods or services or both upto an aggregate turnover of fifty lakh rupees made on or after the 1st day** of **April in any financial year, by a registered person subject to the specified conditions** - Notification No. 2/2019-Central Tax (Rate), dated 7-3-2019.

20. **Exemption from obtaining registration to a person, who is engaged in exclusive supply of goods and whose aggregate turnover in the financial year does not exceed forty lakh rupees except specified category of persons**.- Notification No. 10/2019-Central Tax dated 7-3-2019.

21. **Composition Scheme for eligible registered person, whose aggregate turnover in the preceding financial year did not exceed one crore and fifty lakh rupees, to pay, in lieu of the tax payable by him under sub-section (1) of section 9 of the said Act, an amount of tax as prescribed under rule 7 of the Central Goods and Services Tax Rules, 2017**. - Notification No. 14/2019-Central Tax dated 7-3-2019 read with rule 7 of the Central Goods and Services Tax Rules, 2017

22. **Refund of applicable Tax to retail outlets established in the departure area of an international airport, beyond the immigration counters, making tax free supply of goods to an outgoing international tourist, paid on inward supply of such goods.** —Notification No. 11/2019-Central Tax (Rate), dated 29-6-2019 .

23. **Exemption of goods supplied to Food and Agricultural Organisation (FAO) of the United Nations for execution of specified projects.** — Notification No. 19/2019-Central Tax (Rate), dated 30-9-2019.

24. **Service by way of grant of alcoholic liquor licence, against consideration in the form of licence fee or application fee or by whatever name it is called shall be treated neither as supply of goods nor as supply of services.—**Notification No. 25/2019-Central Tax (Rate), dated 30-9-2019 .

25. **Exemption on specified Covid-19 relief supplies up to and inclusive of the 30th September, 2021. -** Notification No. 05/2021-Central Tax (Rate) dated 14th June, 2021.

26. **Exemption on specified medicines used in COVID-19, up to 31st December, 2021 -** Notification No. 12/2021-Central Tax (Rate) dated 30th September, 2021 .

27. **Concessional rate on intra state supply of Fly ash bricks or fly ash aggregate with 90 per cent. or more fly ash content; Fly ash blocks subject to credit of input tax charged on goods or services used exclusively in supplying such goods has**

not been taken; – Exemption on the intra-state supplies of goods from so much of the central tax leviable thereon under section 9 of the Central Goods and Services Tax Act, 2017 (12 of 2017) as is in excess of the amount calculated at the rate of 3%. Notification No. 02/2022-Central Tax (Rate) dated 31st March, 2022 .

28. **Concessional rate on intra state supply of Bricks of fossil meals or similar siliceous earths, Building bricks and Earthen or roofing tiles subject to credit of input tax charged on goods or services used exclusively in supplying such goods has not been taken;** – Exemption on the intra-state supplies of goods from so much of the central tax leviable thereon under section 9 of the Central Goods and Services Tax Act, 2017 (12 of 2017) as is in excess of the amount calculated at the rate of 3%. Notification No. 02/2022-Central Tax (Rate) dated 31st March, 2022 .

3.5.2.1 Departmental Clarifications - Clarification regarding applicability of GST on the superior kerosene oil [SKO] retained for the manufacture of Linear Alkyl Benzene [LAB] - Circular No. 12/12/2017-GST dated 26th October, 2017

Briefly stated, references have been received related to applicability of GST on the superior kerosene oil [SKO] retained for the manufacture of Linear Alkyl Benzene [LAB].

2. In this context, LAB manufacturers have stated that they receive superior Kerosene oil (SKO) from, a refinery, say, Indian Oil Corporation (IOC). They extract n-Paraffin (C9-C13 hydrocarbons) from SKO and return back the remaining of SKO to the refinery. In this context, the issue has arisen as to whether in this transaction GST would be levied on SKO sent by IOC for extracting n-paraffin or only on the n-paraffin quantity extracted by the LAB manufactures. Further, doubt have also been raised as to whether the return of remaining Kerosene by LAB manufactures would separately attract GST in such transaction.

3. The matter was examined. LAB manufacturers generally receive superior kerosene oil [SKO] from a refinery through a dedicated pipeline; on an average about 15 to 17% of the total quantity of SKO received from refinery is retained and balance quantity ranging from 83%-85% is returned back to refinery. The retained SKO is towards extraction of Normal Paraffin, which is used in the manufacturing of LAB. In this transaction consideration is paid by LAB manufactures only on the quantity of retained SKO (n-paraffin).

4. In this context, the GST Council in its 22nd meeting held on 06.10.2017 discussed the issue and recommended for issuance of a clarification that in this transaction GST will be payable

by the refinery on the value of net quantity of superior kerosene oil (SKO) retained for the manufacture of Linear Alkyl Benzene (LAB).

5. Accordingly, it is here by clarified that, in aforesaid case, GST will be payable by the refinery only on the net quantity of superior kerosene oil (SKO) retained for the manufacture of Linear Alkyl Benzene (LAB). Though, refinery would be liable to pay GST on such returned quantity of SKO, when the same is supplied by it to any other person.

6. This clarification is issued in the context of Goods & Service Tax (GST) law only and past issues, if any, will be dealt in accordance with the law prevailing at the material time.

3.5.2.2 Departmental Clarifications - Clarifications regarding applicability of GST and availability of ITC in respect of certain services - Circular No. 16/16/2017-GST dated 15th November 2017

I am directed to issue clarification with regard to certain issues brought to the notice of Board as under:

S. No.	Issue	Comment
1.	Is GST applicable on warehousing of agricultural produce such as tea (i.e. black tea, white tea etc.), processed coffee beans or powder, pulses (de-husked or split), jaggery, processed spices, processed dry fruits, processed cashew nuts etc.?	1. As per GST notification No. 11/2017-Central Tax (Rate), S.No. 24 and notification No. 12/2017-Central Tax (Rate), S.No. 54, dated 28thJune 2017, the GST rate on loading, unloading packing, storage or warehousing of agricultural produce is Nil. 2. Agricultural produce in the notification has been defined to mean “any produce out of cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products, on which either no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market” 3. Tea used for making the beverage, such as black tea, green tea, white tea is a processed product made in tea factories after carrying out several processes, such as drying, rolling, shaping, refining, oxidation,

		packing etc. on green leaf and is the processed output of the same. 4. Thus, green tea leaves and not tea is the "agricultural produce" eligible for exemption available for loading, unloading, packing, storage or warehousing of agricultural produce. Same is the case with coffee obtained after processing of coffee beans. 5. Similarly, processing of sugarcane into jaggery changes its essential characteristics. Thus, jaggery is also not an agricultural produce. 6. Pulses commonly known as dal are obtained after dehusking or splitting or both. The process of dehusking or splitting is usually not carried out by farmers or at farm level but by the pulse millers. Therefore pulses (dehusked or split) are also not agricultural produce. However whole pulse grains such as whole gram, rajma etc. are covered in the definition of agricultural produce. 7. In view of the above, it is hereby clarified that processed products such as tea (i.e. black tea, white tea etc.), processed coffee beans or powder, pulses (dehusked or split), jaggery, processed spices, processed dry fruits, processed cashew nuts etc. fall outside the definition of agricultural produce given in notification No. 11/2017-CT (Rate) and 12/2017-CT(Rate) and corresponding notifications issued under IGST and UGST Acts and therefore the exemption from GST is not available to their loading, packing, warehousing etc. and that any clarification issued in the past to the contrary in the context of Service Tax or VAT/ Sales Tax is no more relevant.
2.	Is GST leviable on inter-state transfer of aircraft engines, parts and	1. Under Schedule I of the CGST Act, supply of goods or services or both between related persons or between distinct persons as specified in Section 25,

	accessories for use by their own airlines?	when made in the course or furtherance of business, even if, without consideration, attracts GST. 2. It is hereby clarified that credit of GST paid on aircraft engines, parts & accessories will be available for discharging GST on inter–state supply of such aircraft engines, parts & accessories by way of inter-state stock transfers between distinct persons as specified in section 25 of the CGST Act, notwithstanding that credit of input tax charged on consumption of such goods is not allowed for supply of service of transport of passengers by air in economy class at GST rate of 5%.
3	Is GST leviable on General Insurance policies provided by a State Government to employees of the State government/ Police personnel, employees of Electricity Department or students of colleges/ private schools etc. (a) where premium is paid by State Government and (b) where premium is paid by employees, students etc.?	It is hereby clarified that services provided to the Central Government, State Government, Union territory under any insurance scheme for which total premium is paid by the Central Government, State Government, Union territory are exempt from GST under Sl. No. 40 of notification No. 12/2017-Central Tax (Rate). Further, services provided by State Government by way of general insurance (managed by government) to employees of the State government/ Police personnel, employees of Electricity Department or students are exempt vide entry 6 of notification No. 12/2017- CT(R) which exempts Services by Central Government, State Government, Union territory or local authority to individuals.

3.5.2.3 Departmental Clarifications - Clarification on taxability of custom milling of paddy.- Circular No. 19/19/2017-GST dated 20th November 2017

Representations have been received seeking clarification on whether custom milling of paddy by Rice millers for Civil Supplies Corporation is liable to GST or is exempted under S. No 55 of Notification 12/2017 - Central Tax (Rate) dated 28th June 2017.

2. The matter has been examined. S. No 55 of Notification 12/2017- Central Tax (Rate) exempts carrying out an intermediate production process as job work in relation to cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products or agricultural produce. Agricultural produce has been defined in the notification to mean, any produce out of cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products, on which either no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market. Job work has been defined under section 2 (68) of the CGST Act to mean any treatment or process undertaken by a person on goods belonging to another registered person. Further, under Schedule II (para 3) of the CGST Act, any treatment or process which is applied to another person's goods is a supply of service.

3. Milling of paddy is not an intermediate production process in relation to cultivation of plants. It is a process carried out after the process of cultivation is over and paddy has been harvested. Further, processing of paddy into rice is not usually carried out by cultivators but by rice millers. Milling of paddy into rice also changes its essential characteristics. Therefore, milling of paddy into rice cannot be considered as an intermediate production process in relation to cultivation of plants for food, fibre or other similar products or agricultural produce.

4. In view of the above, it is clarified that milling of paddy into rice is not eligible for exemption under S. No 55 of Notification 12/2017 - Central Tax (Rate) dated 28th June 2017 and corresponding notifications issued under IGST and UTGST Acts.

5. GST rate on services by way of job work in relation to all food and food products falling under Chapters 1 to 22 has been reduced from 18% to 5% vide notification No. 31/2017-CT(R) [notification No. 11/2017-CT (Rate) dated 28.6.17, S.No. 26 refers]. Therefore, it is hereby clarified that milling of paddy into rice on job work basis, is liable to GST at the rate of 5%, on the processing charges (and not on the entire value of rice).

3.5.2.4 Departmental Clarifications - Issue related to classification and GST rate on Terracotta idols.- Circular No. 20/20/2017-IGST dated 22nd of November, 2017

The GST rate on Idols made of clay is nil. (S.No. 135A of Schedule notification 2/2017 dated 28.06.2017).

2. In this connection, references have been received as to whether this entry would cover idols made of terracotta.

3. The matter has been examined. As terracotta is clay based, terracotta idols will be eligible for Nil rate under Sl. No.135A of notification 2/2017 dated 28.06.2017.

maybe, is leviable on repairs and maintenance done for such goods.

3.5.2.5 Departmental Clarifications - Issue related to taxability of 'tenancy rights' under GST- Circular No.44/18/2018-CGST dated 2nd May, 2018

Doubts have been raised as to,-

(i) Whether transfer of tenancy rights to an incoming tenant, consideration for which is in form of tenancy premium, shall attract GST when stamp duty and registration charges is levied on the said premium, if yes what would be the applicable rate?

(ii) Further, in case of transfer of tenancy rights, a part of the consideration for such transfer accrues to the outgoing tenant, whether such supplies will also attract GST?

2. The issue has been examined. The transfer of tenancy rights against tenancy premium which is also known as "pagadi system" is prevalent in some States. In this system the tenant acquires, tenancy rights in the property against payment of tenancy premium(pagadi). The landlord may be owner of the property but the possession of the same lies with the tenant. The tenant pays periodic rent to the landlord as long as he occupies the property. The tenant also usually has the option to sell the tenancy right of the said property and in such a case has to share a percentage of the proceed with owner of land, as laid down in their tenancy agreement. Alternatively, the landlord pays to tenant the prevailing tenancy premium to get the property vacated. Such properties in Maharashtra are governed by Maharashtra Rent Control Act, 1999.

3. As per section 9(1) of the CGST Act there shall be levied central tax on the intra-State supplies of services. The scope of supply includes all forms of supply of goods and 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 and also includes the activities specified in Schedule II. The activity of transfer of tenancy right against consideration in the form of tenancy premium is a supply of service liable to GST. It is a form of lease or renting of property and such activity is specifically declared to be a service in para 2 of Schedule II i.e. any lease, tenancy, easement, licence to occupy land is a supply of services.

4. The contention that stamp duty and registration charges is levied on such transfers of tenancy rights, and such transaction thus should not be subjected to GST, is not relevant. Merely because a transaction or a supply involves execution of documents which may require registration and payment of registration fee and stamp duty, would not preclude them from the scope of supply of goods and services and from payment of GST. The transfer of tenancy rights cannot be treated as sale of land or building declared as neither a supply of goods nor of services in para 5 of Schedule III to CGST Act, 2017. Thus a consideration for the said activity shall attract levy of GST.

5. To sum up, the activity of transfer of 'tenancy rights' is squarely covered under the scope of supply and taxable per-se. Transfer of tenancy rights to a new tenant against consideration in the form of tenancy premium is taxable. However, renting of residential dwelling for use as a residence is exempt[Sl. No. 12 of notification No. 12/2017-Central Tax(Rate)]. Hence, grant of

tenancy rights in a residential dwelling for use as residence dwelling against tenancy premium or periodic rent or both is exempt. As regards services provided by outgoing tenant by way of surrendering the tenancy rights against consideration in the form of a portion of tenancy premium is liable to GST.

3.5.2.6 Departmental Clarifications - Applicability of GST on ambulance services provided to Government by private service providers under National Health Mission (NHM)- Circular No. 51/25/2018-GST dated 31st July 2018

I am directed to invite your attention to the Circular No. 210/2/2018-Service Tax, dated 30th May, 2018. The said Circular has been issued in the context of service tax exemption contained in Notification No. 25/2012- Service Tax dated 20.06.2012 at Sl. No. 2 and 25(a). The Circular states, *inter alia*, that the service of transportation in ambulance provided by State Governments and private service providers (PSPs) to patients are exempt under Notification No. 25/2012- Service Tax dated 20.06.2012 and that ambulance service provided by PSPs to State Governments under National Health Mission is a service provided to Government by way of public health and hence exempted under Notification No. 25/2012-Service Tax dated 20.06.2012.

2. The service tax exemption at Sl. No.2 of Notification No. 25/2012 dated 20.06.2012 has been carried forward under GST in the identical form vide Sl. No. 74 of Notification No. 12/2017-CT (R) dated 28.06.2017. The service tax exemption at serial No. 25(a) of notification No. 25/2012 dated 20.06.2012 has also been substantially, although not in the same form, continued under GST *vide* Sl. Nos. 3 and 3 A of the Notification No. 12/2017-CT (R) dated 28.06.2017. The said exemption entries under Service Tax and GST notification read as under.

Service Tax	GST
Sl. No. 2: (*i*) Health care services by a clinical establishment, an authorized medical practitioner or para-medics; (*ii*) Services provided by way of transportation of a patient in an ambulance, other than those specified in (i) above.	Sl. No. 74: Services by way of- (a) health care services by a clinical establishment, an authorized medical practitioner or para-medics; (b) services provided by way of transportation of a patient in an ambulance, other than those specified in (a) above.
Sl. No. 25(a): Services provided to Government, a local authority or a governmental authority by way of water supply, public health, sanitation conservancy, solid waste management or slum improvement and upgradation	Sl. No. 3: Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union territory or local authority or a Governmental authority or a Government Entity by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.
	Sl. No. 3A:

	Composite supply of goods and services in which the value of supply of goods constitutes not more than 25 per cent, of the value of the said composite supply provided to the Central Government, State Government or Union territory or local authority or a Governmental authority or a Government Entity by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243 W of the Constitution.

3. Functions of 'Health and sanitation' is entrusted to Panchayats under Article 243G of the Constitution of India read with Eleventh Schedule. Function of 'Public health' is entrusted to Municipalities under Article 243 W of the Constitution read with Twelfth schedule to the Constitution. Thus ambulance services are an activity in relation to the functions entrusted to Panchayats and Municipalities under Articles 243G and 243W of the Constitution.

4. In view of the above, it is clarified that the clarification contained in the Circular No. 210/2/2018- Service Tax dated 30th May, 2018 with regard to the services provided by Government and PSPs by way of transportation of patients in an ambulance is applicable for the purpose of GST also, as the said services are specifically exempt under Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 vide Sl. No. 74.

5. As regards the services provided by PSPs to the State Governments by way of transportation of patients on behalf of the State Governments against consideration in the form of fee or otherwise charged from the State Government, it is clarified that the same would be exempt under—

a.	Sl. No. 3 of Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 if it is a pure service and not a composite supply involving supply of any goods, and
b.	Sl. No. 3A of Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 if it is a composite supply of goods and services in which the value of supply of goods constitutes not more than 25 per cent of the value of the said composite supply.

3.5.2.7 Departmental Clarifications - Clarification regarding applicability of GST on various goods and services- Circular No.52/26/2018-GST dated 9th August, 2018

Representations have been received seeking clarification in respect of applicable GST rates on the following items:

(i) Fortified Toned Milk

(ii) Refined beet and cane sugar

(iii) Tamarind Kernel Powder (Modified & Un Modified form)

(iv) Drinking water

(v) Plasma products

(vi) Wipes using spun lace non-woven fabric

(vii) Real Zari Kasab (Thread)

(viii) Marine Engine

(ix) Quilt and comforter

(x) Bus body building as supply of motor vehicle or job work

(xi) Disc Brake Pad

2. The matter has been examined. The issue-wise clarifications are discussed below:

3.1 Applicability of GST on Fortified Toned Milk: Representations have been received seeking clarification regarding applicability of GST on Fortified Toned Milk.

3.2 Milk is classified under heading 0401 and as per S.No. 25 of notification No. 2/2017-Central Tax (Rate) dated 28.06.2017, fresh milk and pasteurised milk, including separated milk, milk and cream, not concentrated nor containing added sugar or other sweetening matter, excluding Ultra High Temperature (UHT) milk falling under tariff head 0401 attracts NIL rate of GST. Further, as per HSN Explanatory Notes, milk enriched with vitamins and minerals is classifiable under HSN code 0401. Thus, it is clarified that toned milk fortified (with vitamins 'A' and 'D') attracts NIL rate of GST under HSN Code 0401.

4.1 Applicable GST rate on refined beet and cane sugar: Doubts have been raised regarding GST rate applicable on refined beet and cane sugar. Vide S. No. 91 of schedule I of notification No. 1/2017-Central Tax (Rate) dated 28.06.2017, 5% GST rate has been prescribed on all kinds of beet and cane sugar falling under heading 1701.

4.2 Doubts seem to have arisen in view of S. No. 32 A of the Schedule II of notification No. 1/2017-Central Tax (Rate) dated 28.06.2017, which prescribes 12% GST rate on "All goods, falling under tariff items 1701 91 and 1701 99 including refined sugar containing added flavouring or colouring matter, sugar cubes (other than those which attract 5% or Nil GST)".

4.3 It is clarified that by virtue of specific exclusion in S. No. 32 A, any sugar that falls under 5% category [at the said S. No. 91 of schedule I of notification No.1/2017-Central Tax (Rate) dated 28.06.2017] gets excluded from the S. No. 32 A of Schedule II. As all kinds of beet and cane sugar falling under heading 1701 are covered by the said entry at S. No. 91 of Schedule I, these would get excluded from S. No. 32 A of Schedule II, and thus would attract GST @ 5%.

4.4 Accordingly, it is clarified that beet and cane sugar, including refined beet and cane sugar, will fall under heading 1701 and attract 5% GST rate.

5.1 Applicable GST rate on treated (modified) tamarind kernel powder and plain (unmodified) tamarind kernel powder : Representation have been received seeking clarification regarding GST rate applicable on treated (modified) tamarind kernel powder and plain (unmodified) tamarind kernel powder.

5.2 There are two grades of Tamarind Kernel Powder (TKP):- Plain (unmodified) form (hot, water soluble) and Chemically treated (modified) form (cold, water soluble).

5.3 As per S. No. 76 A of schedule I of notification No. 1/2017-Central Tax (Rate) dated 28.06.2017, 5% GST rate was prescribed on Tamarind Kernel powder falling under chapter 13. However, certain doubts have been expressed regarding GST rate on Tamarind kernel powder, as the said notification does not specifically mention the word "modified".

5.4 As both plain (unmodified) tamarind kernel powder and treated (modified) tamarind kernel powder fall under chapter 13, it is hereby clarified that both attract 5% GST in terms of the said notification.

6.1 Applicability of GST on supply of safe drinking water for public purpose: Representations have been received seeking clarification regarding applicability of GST on supply of safe drinking water for public purpose.

6.2 Attention is drawn to the entry at S. No. 99 of notification No. 2/2017-Central Tax (Rate) dated 28.06.2017, by virtue of which water [other than aerated, mineral, purified, distilled, medicinal, ionic, battery, de-mineralized and water sold in sealed container] falling under HS code 2201 attracts NIL rate of GST.

6.3 Accordingly, supply of water, other than those excluded from S. No. 99 of notification No. 2/2017-Central Tax (Rate) dated 28.06.2017, would attract GST at "NIL" rate. Therefore, it is clarified that supply of drinking water for public purposes, if it is not supplied in a sealed container, is exempt from

GST. 7.1 GST rate on Human Blood Plasma: References have been received about the varying practices being followed in different parts of the country regarding the GST rates on "human blood plasma".

7.2 Plasma is the clear, straw coloured liquid portion of blood that remains after red blood cells, white blood cells, platelets and other cellular components have been removed. As per the explanatory notes to the Harmonized System of Nomenclature (HSN), plasma would fall under the description antisera and other blood fractions, whether or not modified or obtained by means of biotechnological processes and would fall under HS code 3002.

7.3 Normal human plasma is specifically mentioned at S. No. 186 of List I under S. No. 180 of Schedule I of the notification No. 1/2017-Central Tax (Rate) dated 28th June, 2017, and attracts 5% GST. Other items falling under HS Code 3002 (including plasma products) would attract 12% GST under S. No. 61 of Schedule II of the said notification, not specifically covered in the said List I.

7.4 Thus, a harmonious reading of the two entries would mean that normal human plasma would attract 5% GST rate under List I (S. No. 186), whereas plasma products would attract 12% GST rate, if otherwise not specifically covered under the said List.

8.1 Appropriate classification of baby wipes, facial tissues and other similar products: Varied practices are being followed regarding the classification of baby wipes, facial tissues and other similar products, and references have been received requesting for correct classification of these products. As per the references, these products are currently being classified under different HS codes namely 3307, 3401 and 5603 by the industry.

8.2 Commercially, wipes are categorized into various types such as baby wipes, facial wipes, disinfectant wipes, make-up remover wipes etc. These products are generally made by using non-woven fabrics of viscose and polyviscous blend and are sprinkled with demineralized water and various chemicals and fragrances, which impart the essential character to the product. The base raw materials are moisturising and cleansing agents, preservatives, aqua base, cooling agents, perfumes etc. The textile material is present as a carrying medium of these cleaning/wiping components.

8.3 According to the General Rules for Interpretation [GRI- 3(b)] of the First Schedule to the Customs Tariff Act (CTA), 1975, "Mixtures, composite goods consisting of different materials

or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3 (a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable." Since primary function of the article should be taken into consideration while deciding the classification, it is clear that the essential character of the wipes in the instant case is imparted by the components which are to be mixed with the textile material.

8.4 As per the explanatory notes to the HSN, the HS code 5603 clearly excludes nonwoven, impregnated, coated or covered with substances or preparations such as perfumes or cosmetics, soaps or detergents, polishes, creams or similar preparations. The HSN is reproduced as follows : "The heading also excludes:

Nonwoven, impregnated, coated or covered with substances or preparations [i.e. perfumes or cosmetics (Chapter 33), soaps or detergents (heading 3401), polishes, creams, or similar preparations (heading 3405), fabric, softeners (heading 3809)] where the textile material is present merely as a carrying medium. Further, HS code 3307 covers wadding, felt and non-woven, impregnated, coated or covered with perfumes or cosmetics. The HS code 3401, would cover paper, wadding, felt and non-woven impregnated, coated or covered with soap or detergent whether or not perfumed"

8.5 Further, as per the explanatory notes to the HSN, the heading 3307 includes wadding, felt and nonwovens impregnated, coated or covered with perfume or cosmetics. Similarly, as per explanatory notes to the HSN, the heading 3401 includes wipes made of paper, wadding, felt and nonwovens, impregnated, coated or covered with soap or detergent, whether or not perfumed or put up for retail sale.

8.6 Thus, the wipes of various kinds (as stated above) are classifiable under heading 3307 or 3401 depending upon their constituents as discussed above. Therefore, if the baby wipes are impregnated with perfumes or cosmetics, then the same would fall under HS code 3307 and would attract 18% GST rate. Similarly, if they are coated with soap or detergent, then it would fall under HS code 3401 and would attract 18% GST.

9.1 Classification and applicable GST rate on real zari Kasab (thread): Certain doubts have been raised regarding the classification and applicable GST rate on Kasab thread (a metallised yarn) as yarn falling under heading 5605 attracts 12% GST, as per entry 137 of the Schedule-II-12% of the notification No.01/2017-Central Tax (rate) dated 28.06.2017, while specified embroidery product falling under 5809 and 5810 attracts GST @ 5%, as per entry no. 220 of the Schedule-I-5% of the above-mentioned notification.

9.2 The heading 5809 and 5810 cover embroidery and zari articles. These heading do not cover yarn of any kinds. Hence, while these headings apply to embroidery articles, embroidery in piece, in strips, or in motifs, they do not apply to yarn, including Kasab yarn.

9.3 Further all types of metallised yarns or threads are classifiable under tariff heading 5605. Kasab (yarn) falls under this heading. Under heading 5605, real zari manufactured with silver wire gimped (vitai) on core yarn namely pure silk and cotton and finally gilted with gold would attract 5% GST under tariff item 5605 00 10, as specified at entry no. 218A of ScheduleI-5% of the GST rate schedule. Other goods falling under this heading attract 12% GST. Accordingly, kasab (yarn) would attract 12% GST along with other metallised yarn, whether or not gimped, being textile yarn, combined with metal in the form of thread, strip or powder or covered with metal including imitation zari thread (S. No. 137 of the Schedule-II-12%). Therefore, it is clarified that imitation zari thread or yarn known as "Kasab" or by any other name in trade parlance, would attract a uniform GST rate of 12% under tariff heading 5605.

10.1 Applicability of GST on marine engine: Reference has been received seeking clarification regarding GST rates on Marine Engine. The fishing vessels are classifiable under heading 8902, and attract GST @ 5%, as per S. No. 247 of Schedule I of the notification No. 01/2017-Central Tax (rate) dated 28.06.2017. Further, parts of goods of heading 8902, falling under any chapter also attracts GST rate of 5%, vide S. No. 252 of Schedule I of the said notification. The Marine engine for fishing vessel falling under Tariff item 8408 1093 of the Customs Tariff Act, 1975 would attract a GST rate of 5% by virtue of S. No. 252 of Schedule I of the notification No. 01/2017-Central Tax (rate) dated 28.06.2017.

10.2 Therefore, it is clarified that the supplies of marine engine for fishing vessel (being a part of the fishing vessel), falling under tariff item 8408 10 93 attracts 5% GST.

11.1 Applicable GST rate on cotton quilts under tariff heading 9404-Scope of the term “Cotton Quilt”.

11.2 Cotton quilts falling under tariff heading 9404 attract a GST rate of 5% if the sale value of such cotton quilts does not exceed Rs. 1000 per piece [as per S. No. 257 A of Schedule I of the notification No. 01/2017-Central Tax (rate) dated 28.06.2017]. However, such cotton quilts, with sale value exceeding Rs.1000 per piece attract a GST rate of 12% (as per S. No. 224A of Schedule II of the said notification). Doubts have been raised as to what constitutes cotton quilt, i.e. whether a quilt filled with cotton with cover of cotton, or filled with cotton but cover made of some other material, or filled with material other than cotton.

11.3 The matter has been examined. The essential character of the cotton quilt is imparted by the filling material. Therefore, a quilt filled with cotton constitutes a cotton quilt, irrespective of the material of the cover of the quilt. The GST rate would accordingly apply.

12.1 Applicable GST rate for bus body building activity: Representations have been received seeking clarifications on GST rates on the activity of bus body building. The doubts have arisen on account of the fact that while GST applicable on job work services is 18%, the supply of motor vehicles attracts GST @ 28%.

12.2 Buses [motor vehicles for the transport of ten or more persons, including the driver] fall under headings 8702 and attract 28% GST. Further, chassis fitted with engines [8705] and whole bodies (including cabs) for buses [8707] also attract 28% GST. In this context, it is mentioned that the services of bus body fabrication on job work basis attracts 18% GST on such service. Thus, fabrication of buses may involve the following two situations:

a) Bus body builder builds a bus, working on the chassis owned by him and supplies the built-up bus to the customer, and charges the customer for the value of the bus.

b) Bus body builder builds body on chassis provided by the principal for body building, and charges fabrication charges (including certain material that was consumed during the process of job-work).

12.3 In the above context, it is hereby clarified that in case as mentioned at Para 12.2(a) above, the supply made is that of bus, and accordingly supply would attract GST @28%. In the case as mentioned at Para 12.2(b) above, fabrication of body on chassis provided by the principal (not on account of body builder), the supply would merit classification as service, and 18% GST as applicable will be charged accordingly.

13.1 Applicable GST rate on Disc Brake Pad: Representations have been received seeking clarification on disc brake pad for automobiles. It is stated that divergent practices of

classifying these products, in Chapter 68 or heading 8708 are being followed. Chapter 68 attracts a GST rate of 18%, while heading 8708 attracts a GST rate of 28%.

13.2 Parts and accessories of motor vehicles of headings 8701 to 8705 are classified under heading 8708 and attract 28% GST. Further, friction material and articles thereof (for example, sheets, rolls, strips, segments, discs, washers, pads), not mounted, for brakes, for clutches or the like, with a basis of asbestos, of other mineral substances or of cellulose, whether or not combined with textiles or other mineral substances or of cellulose, whether or not combined with textiles or other materials are classifiable under heading 6813 and attract 18% GST.

13.3 In the above context, it is mentioned that as per HSN Explanatory Notes, heading 8708 covers “Brakes (shoe, segment, disc, etc.) and parts thereof (plates, drums, cylinders, mounted linings, oil reservoirs for hydraulic brakes, etc.); servo-brakes and parts thereof, while Chapter 68 covers articles of Stone, Plaster, Cement, Asbestos, Mica or similar materials. Further, HSN Explanatory Notes to the heading 6813 specifically excludes:

i) Friction materials not containing mineral materials or cellulose fibre (e.g., those of cork);

ii) Mounted brake linings (including friction material fixed to a metal plate provided with circular cavities, perforated tongues or similar fittings, for disc brakes) which are classified as parts of the machines or vehicles for which they are designed (e.g. heading 8708).

13.4 Thus, it is clear, in view of the HSN Explanatory Notes that the said goods, namely “Disc Brake pad” for automobiles, are appropriately classifiable under heading 8708 of the Customs Tariff Act, 1975 and would attract 28% GST.

3.5.2.8 Departmental Clarifications - Clarification regarding applicability of GST on the petroleum gases retained for the manufacture of petrochemical and chemical products - Circular No.53/27/2018-GST dated 9th August, 2018

References have been received regarding the applicability of GST on the petroleum gases retained for the manufacture of petrochemical and chemical products during the course of continuous supply, such as Methyl Ethyl Ketone (MEK) feedstock, petroleum gases etc.

2. In this context, it may be recalled that clarifications on similar issues for specific products have already been issued vide circular Nos. 12/12/2017-GST dated 26th October, 2017 and 29/3/2018-GST dated 25th January, 2018. These circulars apply mutatis mutandis to other cases involving same manner of supply as mentioned in these circulars. However, references have again been received from some of the manufacturers of other petrochemical and chemical products for issue of clarification on applicability of GST on petroleum gases, which are supplied by oil refineries to them on a continuous basis through dedicated pipelines, while a portion of the raw material is retained by these manufacturers (recipient of supply), and the remaining quantity is returned to the oil refineries. In this regard, an issue has arisen as to whether in this transaction GST would be leviable on the whole quantity of the principal raw materials supplied by the oil refinery or on the net quantity retained by the manufacturers of petrochemical and chemical products.

3. The GST Council in its 28th meeting held on 21.7.2018 discussed this issue and recommended for issuance of a general clarification for petroleum sector that in such

transactions, GST will be payable by the refinery on the value of net quantity of petroleum gases retained for the manufacture of petrochemical and chemical products.

4. Accordingly, it is hereby clarified that, in the aforesaid cases, GST will be payable by the refinery only on the net quantity of petroleum gases retained by the recipient manufacturer for the manufacture of petrochemical and chemical products. Though, the refinery would be liable to pay GST on such returned quantity of petroleum gases, when the same is supplied by it to any other person. It is reiterated that this clarification would be applicable mutatis mutandis on other cases involving supply of goods, where feed stock is retained by the recipient and remaining residual material is returned back to the supplier. The net billing is done on the amount retained by the recipient.

5. This clarification is issued in the context of the Goods and Service Tax (GST) law only and past issues, if any, will be dealt in accordance with the law prevailing at the material time.

3.5.2.9 Departmental Clarifications - Taxability of services provided by Industrial Training Institutes (ITI) .- Circular No.55/29/2018-GST dated 10th August, 2018

Representations have been received requesting to clarify the following:

(*a*)	Whether GST is payable on vocational training provided by private it is in designated trades and in other than designated trades.
(*b*)	Whether GST is payable on the service, provided by a private Industrial Training Institute for conduct of examination against consideration in the form of entrance fee and also on the services relating to admission to or conduct of examination.

2. With regard to the first issue, [Para 1(a) above], it is clarified that Private ITIs qualify as an educational institution as defined under para 2(y) of notification No. 12/2017-CT(Rate) if the education provided by these ITIs is approved as vocational educational course. The approved vocational educational course has been defined in para 2(h) of notification *ibid* to mean a course run by an ITI or an Industrial Training Centre affiliated to NCVT (National Council for Vocational Training) or SCVT (State Council for Vocational Training) offering courses in designated trade notified under the Apprenticeship Act, 1961; or a Modular employable skill course, approved by NCVT, run by a person registered with DG Training in Ministry of Skill Development. Therefore, services provided by a private ITI in respect of designated trades notified under Apprenticeship Act, 1961 are exempt from GST under Sr. No. 66 of Notification No. 12/2017-CT(Rate). As corollary, services provided by a private ITI in respect of other than designated trades would be liable to pay GST and are not exempt.

3. With regard to the second issue, [Para 1(b) above], it is clarified that in case of designated trades, services provided by a private ITI by way of conduct of entrance examination against consideration in the form of entrance fee will also be exempt from GST [Entry (aa) under Sr. No. 66 of Notification No. 12/2017-CT(Rate) refers]. Further, in respect of such designated trades, services provided to an educational institution, by way of, services relating to admission to or conduct of examination by a private ITI will also be exempt [Entry (b(iv)) under Sr. No. 66 of notification No. 12/2017-CT(Rate) refers]. It is further clarified that in case of other than designated trades in private ITIs, GST shall be payable on the service of conduct of examination against consideration in the form of entrance fee and also on the services

relating to admission to or conduct of examination by such institutions, as these services are not covered by the exemption ibid.

4. As far as Government ITIs are concerned, services provided by a Government ITI to individual trainees/students, is exempt under Sl. No. 6 of 12/2017-CT(R) dated 28.06.2017 as these are in the nature of services provided by the Central or State Government to individuals. Such exemption in relation to services provided by Government ITI would cover both - vocational training and examinations conducted by these Government ITIs.

3.5.2.10 Departmental Clarifications - Clarification regarding GST rates & classification (goods)- Circular No. 80/54 /2018-GST dated 31st December, 2018

Representations have been received seeking clarification in respect of applicable GST rates on the following items:

(i) Chhatua or Sattu

(ii) Fish meal and other raw materials used for making cattle/poultry/aquatic feed

(iii) Animal Feed Supplements/ feed additives from drugs

(iv) Liquefied Petroleum Gas for Domestic Use

(v) Polypropylene Woven and Non-Woven Bags and PP Woven and NonWoven Bags laminated with BOPP

(vi) Wood logs for pulping

(vii) Bagasse based laminated particle board

(viii) Embroidered fabric sold in three pieces cloth for lady suits

(ix) Waste to Energy Plant-scope of entry No. 234 of Schedule I of notification No.1/2017-Central Tax (Rate) dated 28.6.2017

(x) Turbo Charger for railways

(xi) Rigs, tools & Spares moving inter-state for provision of service

2. The matter has been examined. The issue-wise clarifications are discussed below:

3. Applicability of GST on Chhatua or Sattu:

3.1 Doubts have been raised regarding applicability of GST on Chhatua (Known as “Sattu” in Hindi Belt).

3.2 Chhatua or Sattu is a mixture of flour of ground pulses and cereals. HSN code 1106 includes the flour, meal and powder made from peas, beans or lentils (dried leguminous vegetables falling under 0713). Such flour improved by the addition of very small amounts of additives continues to be classified under HSN code 1106. If unbranded, it attracts Nil GST (S. No. 78 of notification No. 2/2017- Central Tax (Rate) dated 28.06.2017) and if branded and packed it attracts 5% GST (S. No. 59 of schedule I of notification No. 1/2017-Central Taxes (Rate) dated 28.06.2017).

4. Applicable GST rate on Fish meal and other raw materials used for making cattle/poultry/aquatic feed:

4.1. Representations have been received seeking clarification regarding GST rate applicable on the other raw materials/inputs used for making cattle/poultry/aquatic feed. The classification dispute here is between the following two entries in the two notifications. The details are as under:

Notification	Tariff Line	Description	Rate
S. No. 102 of notification No. 2/2017- Central Tax (Rate) dated 28.6.2017	**2301**, 2302, 2308, **2309**	**Aquatic feed** including shrimp feed and prawn feed, **poultry feed & cattle feed**, including grass, hay & straw, supplement & husk of pulses, concentrates & additives, wheat bran & de-oiled cake	NIL
S. No. 103 of notification No. 1/2017- Central Tax (Rate) dated 28.6.2017	**2301**	Flours, **meals** and pellets, of meat or meat offal, **of fish** or of crustaceans, molluscs or other aquatic invertebrates, **unfit for human consumption**; greaves	5%

4.2 A number of raw materials such as fish meal falling under heading 2301, meat and bone meal also falling under heading 2301, oil cakes of various oil seeds, soya seeds, bran, sharps, residue of starch and all other goods falling under headings 2302, 2303, 2304, etc are used to manufacture/formulation of, aquatic feed, animal feed, cattle feed, poultry feed etc. These raw materials/inputs cannot be directly used for feeding animal and cattle. The Larger Bench of the Hon'ble Supreme Court in the Commissioner of Customs (Import), Mumbai vs. Dilip Kumar [2018 (361) E.L.T 577] has laid down that inputs for animal feed are different from the animal feed. Said S. No. 102 covers the prepared aquatic/ poultry/cattle feed falling under headings 2309 and 2301. This entry does not apply to raw material/inputs like fish meals or meat cum bone meal (MBM) falling under heading 2301.

4.3 It is accordingly clarified that fish meals, meat cum bone meal (MBM) etc., attract 5% GST under S. No. 103 in notification No. 1/2017- Central Tax (Rate) dated 28.6.2017.

5. Applicable GST rate on Animal Feed Supplements/feed additives from drugs:

5.1. Representations have been received seeking clarification regarding GST rate applicable on Animal Feed Supplements/feed additives from drugs. The dispute is in classification of Animal Feed Supplements/feed additives from drugs between tariff heading 2309 and 2936.

5.2 As per the HSN, 2309 interalia covers reading vitamins and provitamins which improve digestion and, more generally, ensure that the animal makes good use of the feeds and safeguard its health. On the other hand, HS code 2936 coves vitamins and provitamins which are medicinal in nature and have much higher concentration of active substance.

5.4 Thus while deciding the classification of the products claimed to be animal feed supplements, it may be necessary to ensure that the said animal feed supplements are ordinarily or commonly known to the trade as products for a specific use in animal feeding.

5.5 A product deserves classification chapter 29 (equally applicable to heading 2936), if it is an item of general use, e.g., if a product is of specific use, say dietary supplement for human being product particularly suitable for a specific use rather than for general use. Vitamins and provitamins are normally covered under code heading 2936, but if they're prepared as food supplements in the form of tablets, etc. they would not be classifiable under this heading as

the way they are presented, they are suitable for a specific use. Heading 2309 would cover items like feed supplements for animals that contain vitamins and other ingredients - such as cereals and proteins. These are covered in chapter 23 under heading code 2309, or antibiotic preparations used in animal feeding - for example a dried antibiotic mass on a carrier like cereal middling. The antibiotic content in these items is usually between 8% and 16%. Thus, HS code 2309 would cover only such product, which in the form supplied, are capable of specific use as food supplement for animals and not capable of any general use. If the vitamins, provitamins are supplied in a form in which they are capable of general use, i.e. in the form in which it could be used as inputs or raw materials for further processing, instead of being ready to use, then these would be classifiable under heading 2936.

6. Applicability of GST on supply of Liquefied Petroleum Gas for Domestic Use:

6.1 Representations have been received seeking clarification regarding applicability of GST rate at 5% on LPG supplied by refiners/fractionators (like GAIL / ONGC) to Oil Marketing Companies (OMC) for ultimate supply to household domestic consumers in terms of Ministry of Petroleum and Natural Gas (MoPNG) letter No. P 20023/2/2011-PP dated 23.07.2013. The references point to the fact that refiners/ fractionators like GAIL and ONGC are supplying LPG for domestic use to OMCs and this supply is not being treated as a supply for domestic use by field formations.

6.2 The issue seems to have arisen in the context of addition of S. No. 165A to notification No.1/2017-Central Tax (Rate) dated 28.6.2017, vide notification No. 6/2018 dated 25.01.2018. This entry was added on the recommendations of the GST Council in its 25th meeting, extending 5% GST rate for supply of LPG to household domestic consumers.

6.3 It is observed that the LPG stream for domestic LPG is differentially priced and packed differently from commercial LPG. The usage of LPG for domestic supply is known at the time of supply being made by refiner/fractionators to OMCs.

6.4 Therefore, it is being clarified that LPG supplied in bulk, whether by a refiner/fractionator to an OMC or by one OMC to another for bottling and further supply for domestic use will fall under the S. No. 165A of the notification No. 1/2017- Central Tax (Rate) dated 28.06.2017 and shall, accordingly, attract a GST rate of 5%, with effect from 25.1.2018.

7. Applicability of GST on supply of Polypropylene Woven and NonWoven Bags and PP Woven and Non-Woven Bags laminated with BOPP:

7.1 Representations have been received seeking the classification and GST rates on Polypropylene Woven and Non-Woven Bags and Polypropylene Woven and Non-Woven Bags laminated with BOPP

7.2 As per the explanatory notes to the HSN to HS code 39.23, the heading covers all articles of plastics commonly used for the packing or conveyance of all kinds of products and includes boxes, crates, cases, sacks and bags.

7.3 Further as per the Chapter note to Chapter 39, the expression "plastics" means those materials of headings 39.01 to 39.14 which are or have been capable, either at the moment of polymerization or at some subsequent stage, of being formed under external influence (usually heat and pressure, if necessary with a solvent or plasticizer) by moulding, casting, extruding, rolling or other process into shapes which are retained on the removal of the external influence.

7.4 Thus it is clarified that Polypropylene Woven and Non-Woven Bags and PP Woven and Non-Woven Bags laminated with BOPP would be classified as plastic bags under HS code 3923 and would attract 18% GST.

7.5 Non-laminated woven bags would be classified as per their constituting materials.

8. Applicability of GST on supply of wood logs for pulping:

8.1. Representation has been received seeking clarification on applicability of GST rate on wood log for pulping. Wood in the rough (whether or not stripped of bark or sapwood, or roughly squared) is classified under heading 4403 and attracts 18% GST.

8.2 As per HSN, heading 4403 also covers.

“timber for sawing; poles for telephone, telegraph or electrical power transmission lines; unpointed and unsplit piles, pickets, stakes, poles and props; round pit-props; logs, whether or not quarter-split, for pulping; round logs for the manufacture of veneer sheets, etc.; logs for the manufacture of match sticks, wood ware, etc.”.

8.3 Thus, it is clarified that wood logs or any kind of wood in the rough/timber, including the wood in rough/log/timber used for pulping falls under heading 4403 and attract GST at the rate of 18%.

9. Applicability of GST on supply of Bagasse based laminated particle board

9.1 Representation has been received seeking clarification on applicability of GST rate on Bagasse based laminated particle board. In this context, it is sated that the Bagasse Board has specific entry at S. No. 92 in Schedule II to the Notification 1/2017-Central Tax (Rate). Accordingly, the said entry covers Bagasse boards falling under 44 or any other chapter and 12% GST. Further, it is also stated the description “Bagasse board” in the said entry also covers Bagasse board [whether plain or laminated].

9.2 Thus, it is clarified Bagasse board [whether plain or laminated] falling under chapter 44 will attract concessional GST rate of 12%.

10. Applicability of GST on supply of embroidered fabric sold in three piece for lady suits:

10.1. Representations have been received seeking clarification regarding GST rate applicable on supply of embroidered fabric sold in three pieces fabric pack/set for lady suits (fabric for suit, salwar and dupatta). It has been informed that before becoming readymade articles or an apparel, the fabric is cut from bundles or thans and sold in that unstitched state with certain embellishment like gota etc. The consumers buy these sets or pieces and get it tailored which entails cutting of fabric in shape and stitching thereof. Doubts have arisen as regards applicable rates on such three fabric pieces in sets/packs.

10.2 Fabrics are classifiable under chapters 50 to 55 and 60 of the First Schedule to the Customs Tariff Act, 1975 on the basis of their constituent materials and attract a uniform GST rate of 5%. Garments and made up articles of textiles under chapters 61, 62 and 63 attract GST at the rate of 5% when value is upto Rs 1000 per piece and 12% when the value exceeds Rs. 1000 per piece.

10.3 Earlier, vide Circular no. 13/13/2017-CGST dated 27th October 2017, it has been clarified that mere packing of fabrics into pieces of different lengths will not change the nature of these goods and such pieces of fabrics would continue to be classifiable under the respective

heading as the fabric and attract the 5% GST rate. This clarification would equally apply to three pieces of fabrics sold in a pack as ladies salwar suit. Any embroidery on a fabric piece or certain embellishment thereon does not change the basic nature of their being a fabric. The chapter 63 covers garment, including the unstitched garments which may or may not be sufficiently completed to be identifiable as garments or parts of garments. However, heading 6307 would not cover a fabric pieces or a set of pre-packed fabric pieces, even if embroidered or embellished. Such set of fabric pieces would attract GST at the rate of 5%.

11. Applicability of GST on supply of Waste to Energy Plant:

11.1. Representations have been received regarding applicable GST rate on the goods used in the setting up of Waste to Energy plants (WTEP) in term of Sr. No. 234 of Schedule I of Notification No 1/2017-Central Tax (Rates) dated 28th June, 2018. The said entry 234 prescribes 5% rate on the following renewable energy devices & parts for their manufacture:

(a) Bio-gas plant

(b) Solar power based devices

(c) Solar power generating system

(d)Wind mills, Wind Operated Electricity Generator (WOEG)

(e) Waste to energy plants / devices

(f) Solar lantern / solar lamp

(g) Ocean waves/tidal waves energy devices/plant

(h)Photo voltaic cells, whether or not assembled in modules or made up into panels

11.2 The notification specifically applies only the goods falling under chapters 84, 85 and 94 of the Tariff. Therefore, this concession would be available only to such machinery, equipment etc., which fall under Chapter 84, 85 and 94 and used in the initial setting up of renewable energy plants and devices including WTEP. This entry does not cover goods falling under other chapters, say a transport vehicle falling under Chapter 87 that may be used for movement of waste to WTEP.

11.3 Another related doubt raised is as to how would a supplier satisfy himself that goods falling under Chapter 84, 85 and 94, say a turbine or a boiler, required in a WTEP, would be used in the WTEP. In this context it is clarified that GST is to be self-assessed by a taxpayer. Therefore, he needs to satisfy himself with the requisite document from a buyer such as supply contracts/order for WTEP from the concerned authorities before supplying goods claiming concession under said entry 234.

12. Applicability of GST on supply of Turbo Charger for railways:

12.1. Representations have been received seeking clarification regarding classification and applicable GST rate on Turbo Chargers supplied to railways. It is stated that some of the supplier are classifying turbo charges supplied to Railways under Chapter 86 and paying GST at the rate of 5% .

12.2 The turbocharger is a turbine-driven forced induction device that increases an internal combustion engine's efficiency and power output by forcing extra compressed air into the combustion chamber. It has the compressor powered by a turbine. The turbine is driven by the exhaust gas from the engine.

12.3 Turbo charger is specifically classified under chapter HS code 8414 80 30. It continues to remain classified under this code irrespective of its use by Railways. Therefore, it is clarified that the turbo charger is classified under heading 8414 and attracts 18% GST.

13. Applicability of GST on supply of cranes, rigs, tools & Spares and other machinery when moved from one state to another by a person on his account for there use for supply of service

13.1 As per Circular No. 21/21/2017-GST dated 22.11.2017, it was clarified that no IGST would be applicable on such interstate movements of rigs, tools & spares and all goods on wheels. Doubts have been raised regarding applicability of GST on inter-state movement of machinery like tower cranes, rigs, batching plants, concrete pumps and mixers which are not mounted on wheels, but require regular means of conveyance (used by companies in Infrastructure business).

13.2 Any inter-state movement of goods for provision of service on own account by a service provider, where no transfer of title in such goods or transfer of goods to the distinct person by way of stock transfer is not involved, does not constitute a supply of such goods. Hence, it is clarified that any such movement on own account (not involving distinct person in terms of section 25), where such movement is not intended for further supply of such goods does not constitute a supply and would not be liable to GST.

3.5.2.11 Departmental Clarifications - Applicability of GST on various programmes conducted by the Indian Institutes of Managements (IIMs)- Circular No. 82/01/2019- GST dated 1st January, 2019

I am directed to invite your attention to the Indian Institutes of Management Act, 2018 which came into force on 31 st January, 2018. According to provisions of the IIM Act, all the IIMs listed in the schedule to the IIM Act are “institutions of national importance”. They are empowered to (i) grant degrees, diplomas, and other academic distinctions or titles, (ii) specify the criteria and process for admission to courses or programmes of study, and (iii) specify the academic content of programmes. Therefore, with effect from 31st January, 2018, all the IIMs are “educational institutions” as defined under notification No. 12/ 2017- Central Tax (Rate) dated 28.06.2017 as they provide education as a part of a curriculum for obtaining a qualification recognised by law for the time being in force.

2. At present, Indian Institutes of Managements are providing various long duration programs (one year or more) for which they award diploma/ degree certificate duly recommended by Board of Governors as per the power vested in them under the IIM Act, 2017. Therefore, it is clarified that services provided by Indian Institutes of Managements to their students- in all such long duration programs (one year or more) are exempt from levy of GST. As per information received from IIM Ahmedabad, annexure 1 to this circular provides a sample list of programmes which are of long duration (one year or more), recognized by law and are exempt from GST.

3. For the period from 1st July, 2017 to 30th January, 2018, IIMs were not covered by the definition of educational institutions as given in notification No. 12/ 2017 Central Tax (Rate) dated 28.06.2017. Thus, they were not entitled to exemption under Sl. No. 66 of the said

notification. However, there was specific exemption to following three programs of IIMs under Sl. No. 67 of notification No. 12/2017- Central Tax (Rate): –

(i) two-year full time Post Graduate Programmes in Management for the Post Graduate Diploma in Management, to which admissions are made on the basis of Common Admission Test (CAT) conducted by the Indian Institute of Management,

(ii) fellow programme in Management,

(iii) five years integrated programme in Management.

Therefore, for the period from 1st July, 2017 to 30th January, 2018, GST exemption would be available only to three long duration programs specified above.

4. It is further, clarified that with effect from 31st January, 2018, all IIMs have become eligible for exemption benefit under Sl. No. 66 of notification No. 12/ 2017- Central Tax (Rate) dated 28.06.2017. As such, specific exemption granted to IIMs vide Sl. No. 67 has become redundant. The same has been deleted vide notification No. 28/2018- Central Tax (Rate) dated, 31st December, 2018 w.e.f. 1st January 2019.

5. For the period from 31st January, 2018 to 31st December, 2018, two exemptions, i.e. under Sl. No. 66 and under Sl. No. 67 of notification No. 12/ 2017- Central Tax (Rate), dated 28.06.2017 are available to the IIMs. The legal position in such situation has been clarified by Hon'ble Supreme Court in many cases that if there are two or more exemption notifications available to an assessee, the assessee can claim the one that is more beneficial to him. Therefore, from 31st January, 2018 to 31st December, 2018, IIMs can avail exemption either under Sl. No 66 or Sl. No. 67 of the said notification for the eligible programmes. In this regard following case laws may be referred

i. H.C.L. Limited vs Collector of Customs [2001 (130) ELT 405 (SC)]

ii. Collector of Central Excise, Baroda vs Indian Petro Chemicals [1997 (92) ELT 13 (SC)]

iii. Share Medical Care vs Union of India reported at 2007 (209) ELT 321 (SC)

iv. CCE vs Maruthi Foam (P) Ltd. [1996 (85) RLT 157 (Tri.) as affirmed by Hon'ble Supreme Court vide 2004 (164) ELT 394 (SC)

6. Indian Institutes of Managements also provide various short duration/ short term programs for which they award participation certificate to the executives/ professionals as they are considered as "participants" of the said programmes. These participation certificates are not any qualification recognized by law. Such participants are also not considered as students of Indian Institutes of Management. Services provided by IIMs as an educational institution to such participants is not exempt from GST. Such short duration executive programs attract standard rate of GST @ 18% (CGST 9% + SGST 9%). As per information received from IIM Ahmedabad, annexure 2 to this circular provides a sample list of programmes which are short duration executive development programs, available for participants other than students and are not exempt from GST.

7. Following summary table may be referred to while determining eligibility of various programs conducted by Indian Institutes of Managements for exemption from GST.

<table>
<tr><th>Sl. No.</th><th>Periods</th><th>Programmes offered by Indian Institutes of Management</th><th>Whether exempt from GST</th></tr>
<tr><td>(1)</td><td>(2)</td><td colspan="2">(3)</td><td>(4)</td></tr>
<tr><td rowspan="2">1</td><td rowspan="2">1st July, 2017 to 30th January, 2018</td><td colspan="2"><table>
<tr><td>i.</td><td>two-year full time Post Graduate Programmes in Management for the Post Graduate Diploma in Management, to which admissions are made on the basis of Common Admission Test (CAT) conducted by the Indian Institute of Management,</td></tr>
<tr><td>ii.</td><td>fellow programme in Management,</td></tr>
<tr><td>iii.</td><td>five years integrated programme in Management.</td></tr>
</table></td><td>Exempt from GST</td></tr>
<tr><td colspan="2"><table>
<tr><td>i.</td><td>One- year Post Graduate Programs for Executives,</td></tr>
<tr><td>ii.</td><td>Any programs other than those mentioned at Sl. No. 67 of notification No. 12/2017- Central Tax (Rate), dated 28.06.2017.</td></tr>
<tr><td>iii.</td><td>All short duration executive development programs or need based specially designed programs (less than one year).</td></tr>
</table></td><td>Not exempt from GST</td></tr>
<tr><td>2</td><td>31st January, 2018 onwards</td><td colspan="2">All long duration programs (one year or more) conferring degree/diploma as recommended by Board of Governors as per the power vested in them under the IIM Act, 2017 including one- year Post Graduate Programs for Executives.
All short duration executive development programs or need based specially designed programs (less than one year) which are not a qualification recognized by law.</td><td>Exempt from GST
Not exempt from GST</td></tr>
</table>

8. This clarification applies, mutatis mutandis, to corresponding entries of respective IGST, UTGST, SGST exemption notifications.

3.5.2.12 Departmental Clarifications - Applicability of GST on Asian Development Bank (ADB) and International Finance Corporation (IFC)- Circular No. 83/02/2019- GST dated 1st January, 2019

Representations have been received seeking clarification regarding applicability of GST on Asian Development Bank (ADB) and International Finance Corporation (IFC). The matter has been examined.

2. The ADB Act, 1966 provides that notwithstanding anything to the contrary contained in any other law, the Bank, its assets, properties, income and its operations and transactions shall

be exempt from all the taxation and from all customs duties. The Bank shall also be exempt from any obligation for payment, withholding or collection of any tax or duty [Section 5 (1) of the ADB Act, 1966 read with Article 56 (1) of the schedule thereto refers]. DEA has already conveyed vide letter No. 1/28/2002-ADB dated 22-01-2004 addressed to ADB that taxable services provided by ADB are exempted from service tax.

2.1 Similarly, IFC Act, 1958 also provides that notwithstanding anything to the contrary contained in any other law, the Corporation, its assets, properties, income and its operations and transactions authorised by the Agreement, shall be immune from all taxation and from all customs duties. The Corporation shall also be immune from liability for the collection or payment of any tax or duty [Section 3 (1) of IFC Act, 1958 read with Article VI, Section 9 (a) of the Schedule thereto refers].

3. CESTAT Mumbai vide final order dated 17-10-2016 in the case of M/s Coastal Gujarat Power Ltd. has held that when the enactments that honour international agreements specifically immunize the operations of the service provider from taxability, a law contrary to that in the form of Section 66A of Finance Act, 1994 will not prevail. With the provider being not only immune from taxation but also absolved of any obligation to collect and deposit any tax, there is no scope for subjecting the recipient to tax. There is no need for a separate exemption and existing laws enacted by the sovereign legislature of the Union suffice for the purpose of giving effect to Agreements.

4. Accordingly, it is clarified that the services provided by IFC and ADB are exempt from GST in terms of provisions of IFC Act, 1958 and ADB Act. The exemption will be available only to the services provided by ADB and IFC and not to any entity appointed by or working on behalf of ADB or IFC.

3.5.2.13 Departmental Clarifications - Clarification on GST rate applicable on supply of food and beverage services by educational institution- Circular No. 85/04/2019- GST dated 1st January, 2019

Representations have been received seeking clarification as to the rate of GST applicable on supply of food and beverages services by educational institution to its students. It has been stated that the words “school, college” appearing in Explanation 1 to Entry 7 (i) of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 give rise to doubt whether supply of food and drinks by an educational institution to its students is eligible for exemption under Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 Sl. No 66, which exempts services provided by an educational institution to its students, faculty and staff.

2. The matter has been examined. Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, Sl. No. 7(i) prescribes GST rate of 5% on supply of food and beverages services. Explanation 1 to the said entry states that such supply can take place at canteen, mess, cafeteria of an institution such as school, college, hospitals etc. On the other hand, Notification No. 12/2017-Central Tax (Rate), Sl. No. 66 (a) exempts services provided by an educational institution to its students, faculty and staff. There is no conflict between the two entries. Entries in Notification No. 11/2017-Central Tax (Rate) prescribing GST rates on service have to be read together with entries in exemption Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017. A supply which is specifically covered by any entry of Notification No. 12/2017-Central Tax (Rate) dated 28-06-2017 is exempt from GST notwithstanding the fact that GST

rate has been prescribed for the same under Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017.

2.1 Supply of all services by an educational institution to its students, faculty and staff is exempt under Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, Sl. No. 66. Such services include supply of food and beverages by an educational institution to its students, faculty and staff. As stated in explanation 3 (ii) to Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 Chapter, Section, Heading, Group or Service Codes mentioned in column (2) of the table in Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 are only indicative. A supply is eligible for exemption under an entry of the said notification where the description given in column (3) of the table leaves no room for any doubt. Accordingly, it is clarified that supply of food and beverages by an educational institution to its students, faculty and staff, where such supply is made by the educational institution itself, is exempt under Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, vide Sl. No. 66 w.e.f. 01-07-2017 itself. However, such supply of food and beverages by any person other than the educational institutions based on a contractual arrangement with such institution is leviable to GST@ 5%.

3. In order to remove any doubts on the issue, Explanation 1 to Entry 7(i) of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 has been amended vide Notification No. 27/2018-Central Tax (Rate) dated 31.12.2018 to omit from it the words “school, college”. Further, heading 9963 has been added in Column (2) against entry at Sl. No. 66 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, vide Notification No. 28/2018-Central Tax (Rate) dated 31.12.2018.

3.5.2.14 Departmental Clarifications - GST on Services of Business Facilitator (BF) or a Business Correspondent (BC) to Banking Company- Circular No. 86/05/2019- GST dated 1st January, 2018

Representations have been received seeking clarification on following two issues:

(i) What is the value to be adopted for the purpose of computing GST on services provided by BF/BC to a banking company?

(ii) What is the scope of services provided by BF/BC to a banking company with respect to accounts in its rural area branch that are eligible for existing GST exemption?

2. The matter has been examined. The issues involved are clarified as follows:

2.1 Issue 1: Clarification on value of services by BF/BC to a banking company: As per RBI’s Circular No. DBOD.No.BL.BC. 58/22.01.001/2005-2006 dated 25.01.2006 and subsequent instructions on the issue (referred to as ‘guidelines’ hereinafter), banks may pay reasonable commission/fee to the BC, the rate and quantum of which may be reviewed periodically. The agreement of banks with the BC specifically prohibits them from directly charging any fee to the customers for services rendered by them on behalf of the bank. On the other hand, banks (and not BCs) are permitted to collect reasonable service charges from the customers for such service in a transparent manner. The arrangements of banks with the Business Correspondents specify the requirement that the transactions are accounted for and reflected in the bank's books by end of the day or the next working day, and all agreements/ contracts

with the customer shall clearly specify that the bank is responsible to the customer for acts of omission and commission of the Business Facilitator/Correspondent.

2.3 Hence, banking company is the service provider in the business facilitator model or the business correspondent model operated by a banking company as per RBI guidelines. The banking company is liable to pay GST on the entire value of service charge or fee charged to customers whether or not received via business facilitator or the business correspondent.

3. Issue 2: Clarification on the scope of services by BF/BC to a banking company with respect to accounts in rural areas: It has also been requested that the scope of exemption to services provided in relation to "accounts in its rural area branch" vide Sl. No. 39 of Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 be clarified. This clarification has been requested as the exemption from tax on services provided by BF/BC is dependent on the meaning of the expression "accounts in its rural area branch".

3.1 It is clarified that for the purpose of availing exemption from GST under Sl. No. 39 of said notification, the conditions flowing from the language of the notification should be satisfied. These conditions are that the services provided by a BF/BC to a banking company in their respective individual capacities should fall under the Heading 9971 and that such services should be with respect to accounts in a branch located in the rural area of the banking company. The procedure for classification of branch of a bank as located in rural area and the services which can be provided by BF/BC, is governed by the RBI guidelines. Therefore, classification adopted by the bank in terms of RBI guidelines in this regard should be accepted.

3.5.2.15 Departmental Clarifications - GST applicability on Seed Certification Tags- Circular No. 100/19/2019-GST dated 30th April, 2019

Representations have been received by the Board seeking clarification regarding applicability of GST on supply of Seed Certification Tags. Reference in this regard has also been received from the State of Tamil Nadu.

2. The matter has been examined. It is seen that the process of seed testing and certification followed in the state of Tamil Nadu, as prescribed in the Seeds Act, 1966 and elaborated in the Manual on Seed Production and Certification, published by Centre for Indian Knowledge Systems, Chennai, involves the following steps:

a. Application for seed production

b. Registration of sowing report

c. Field inspection

d. Seed processing

e. Seed sample and seed analysis

f. Tagging and sealing

i. Application for seed production

Any person who wants to take up certified seed production should submit a sowing report in triplicate to the Assistant Director of Seed Certification to register the crop and season with a registration fee of Rs. 25/- (Rupees twenty-five only) and prescribed certification charges. The fee is for a single crop variety for an area up to 25 acres and for a single season.

ii. Registration of sowing report

After receiving the application of the sowing report, the Assistant Director of Seed Certification scrutinizes and registers the seed farm and duly assigns a Seed certification number for each sowing report.

iii. Field inspection

Field inspections to check for the factors that may affect the genetic purity and physical health of the seeds are conducted by the Seed Certification Officer (SCO) to whom the specific seed farm has been allocated. Number of field inspections differ from crop to crop. Generally field inspections are carried out during the following growth stages of the crop.

- Pre flowering stage
- Flowering stage
- Post flowering and Pre harvest stage
- Harvest time

iv. Seed processing

Once the seeds are harvested from the seed farm by following the required field standards, it is taken to the approved seed processing units. Each seed lot should accompany the processing report and each seed lot in the unit is verified with this report. Processing includes cleaning, drying, grading, treating and other operations to improve the seed quality. Seed Certification Officer inspects the processing plant to check the possibility of mechanical mixtures.

v. Seed sampling and analysis

Seed sample should be sent to the seed testing laboratory for analysis through the Assistant Director of Seed Certification. The fee of Rs.30/- (Rupees thirty only) for seed analysis should be paid during the registration of the seed farm. To analyse the genetic purity of the seed sample, the producer should pay a fee of Rs. 200/- (Rupees two hundred only) to the Assistant Director of Seed Certification. Seed lots which meet the prescribed seed standards like purity, free of inert matter, moisture percentage and germination capacity alone will be allotted the certification label. White colour label for foundation seeds and blue colour label for certified seeds should be bought from the Assistant Director of Seed Certification by paying Rs. 3/- and Rs. 2/- respectively.

vi. Tagging and sealing

Approved seed lots should be tagged with certification tag within two months from the date of the receipt of seed analysis report or within 30 days from the date of genetic purity test performed. On receipt of the seed tags, it is verified by the Seed Certification Officer. All the prescribed details are entered in the tag without any omission. The green colour (10 – 15 cm size) producer tag should also be attached to the seed lot along with the certification tag. Avoid stitching more than once on the tags. All the tagging operations should be done in the presence of the Seed Certification Officer. If tagging has not been done within the specific time limit, confirmation samples can be taken with prior permission from the Assistant Director of Seed Certification. In such cases the validity of the seed lot will be fixed from the initial date of seed analysis and tagged. The fee for the delayed tagging is Rs. 50/- (Rupees fifty only) and seed analysis fee of Rs. 30/- (Rupees thirty only) has to be paid in such cases.

3. Similarly, in the state of Uttarakhand, the process of seed testing and certification as prescribed in the Seeds Act, 1966 and the rules made thereunder is that a seed producing company/organization which wants to produce certified seeds applies to the Seed Certification Agency of the State Government (Uttarakhand State Seed and Organic Production Certification Agency) for certification of the seeds produced by it in collaboration with seed farmers as certified seeds. The Seed Certification Agency carries out field inspections of the seed farms at various stages: planting, pre harvest and harvest stage to see that the seed is being produced as per the prescribed standards. At the harvest stage, Seed Certification Agency estimates the quantity of seed that will be produced at the seed farm. Depending on the number of packets into which the seed shall be packed for marketing, the seed certification agency issues to the seed company signed seed certificates/tags to be attached to each packet of certified seed. The fee for such testing and certification is charged at three stages:

(i) At field inspection level: On per hectare basis, (Rs. 300/ha by Uttarakhand State Seed Certification Agency)

(ii) At the post processing stage at the seed processing plant:inspection and shift charges

(iii) Issue of seed certificates: After the seed samples pass all the tests, seed certification agency issues the required number of seed certificates to be attached to each packet: amount is charged according to number of tags issued (Rs. 3 to Rs. 8/tag)

4. It may be seen from the above that seed testing and certification is a multi-stage process, the charges for which are collected from the seed producers at different stages. Supply of seed tags to the seed producer is nothing but an element of the one integrated supply of seed testing and certification. All the above charges, including those for issue of seed certificates/tags by the Seed Certification Agency of Tamil Nadu and Uttarakhand to the seed producing organization/ companies are collected for the composite supply of seed testing and certification, which is exempt under Notification No. 12/2017-Central Tax (Rate) Sl. No. 47 (services by Central/State Governments by way of testing/certification relating to safety of consumers and public at large, required under any law). This clarification would apply to supply of seed tags by seed testing and certification agencies of other states also following similar seed testing and certification procedure.

5. However, the State Governments/Seed Certification Agencies may get the tags used in seed certification printed from other departments/ manufacturers outside. Supply of seed tags by the other departments/manufacturers to the State Government/Seed Certification Agencies is a supply of goods liable to tax. Whether such tags would be classified under Chapter 49 as tags made of paper or in Textile chapters as tags made of textile would depend upon the predominant material used in the tags.

3.5.2.16 Departmental Clarifications - GST exemption on the upfront amount payable in installments for long term lease of plots, under Notification No. 12/2017 – Central Tax (R) S. No.41 dated 28.06.2017- Circular No. 101/20/2019-GST dated 30th April, 2019

Representations have been received by the Board seeking clarification regarding admissibility of GST exemption on the upfront amount which is determined upfront but is paid or payable in installments for long term (thirty years, or more) lease of industrial plots or plots for

development of financial infrastructure under Notification 12/2017 – Central Tax (R) S. No.41 dated 28.06.2017.

2. The matter has been examined. The entry at S. No.41 of Notification 12/2017 – Central Tax (R) dated 28.06.2017 reads as under:

Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent.)	Condition
(1)	(2)	(3)	(4)	(5)
41	Heading 9972	Upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable in respect of service by way of granting of long term lease (of thirty years, or more) of industrial plots or plots for development of infrastructure for financial business, provided by the State Government Industrial Development Corporations or Undertakings or by any other entity having 50 per cent. or more ownership of Central Government, State Government, Union territory to the industrial units or the developers in any industrial or financial business area.	NIL	NIL

3. It is hereby clarified that GST exemption on the upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable for long term lease (of thirty years, or more) of industrial plots or plots for development of infrastructure for financial business under Entry No. 41 of Exemption Notification 12/2017 – Central Tax (R) dated 28.06.2017 is admissible irrespective of whether such upfront amount is payable or paid in one or more instalments, provided the amount is determined upfront.

3.5.2.17 Departmental Clarifications - Issues related to GST on monthly subscription/contribution charged by a Residential Welfare Association from its members - Circular No.109/28/2019- GST dated 22nd July, 2019

A number of issues have been raised regarding the GST payable on the amount charged by a Residential Welfare Association for providing services and goods for the common use of its members in a housing society or a residential complex. The same have been examined and are being clarified below.

Sl. No.	Issue	Clarification

<table>
<tr><td>1.</td><td>Are the maintenance charges paid by residents to the Resident Welfare Association (RWA) in a housing society exempt from GST and if yes, is there an upper limit on the amount of such charges for the exemption to be available?</td><td>Supply of service by RWA (unincorporated body or a non-profit entity registered under any law) to its own members by way of reimbursement of charges or share of contribution up to an amount of Rs. 7500 per month per member for providing services and goods for the common use of its members in a housing society or a residential complex are exempt from GST.

Prior to 25th January 2018, the exemption was available if the charges or share of contribution did not exceed Rs 5000/- per month per member. The limit was increased to Rs. 7500/- per month per member with effect from 25th January 2018. [Refer clause (c) of Sl. No. 77 to the Notification No. 12/2018- Central Tax (Rate) dated 28-6-2019]</td></tr>
<tr><td>2.</td><td>A RWA has aggregate turnover of Rs. 20 lakh or less in a financial year. Is it required to take registration and pay GST on maintenance charges if the amount of such charges is more than Rs. 7500/- per month per member?</td><td>No. If aggregate turnover of an RWA does not exceed Rs. 20 Lakh in a financial year, it shall not be required to take registration and pay GST even if the amount of maintenance charges exceeds Rs. 7500/- per month per member.

RWA shall be required to pay GST on monthly subscription/ contribution charged from its members, only if such subscription is more than Rs. 7500/- per month per member and the annual aggregate turnover of RWA by way of supplying of services and goods is also Rs. 20 lakhs or more.
<table>
<tr><th>Annual turnover of RWA</th><th>Monthly maintenance charge</th><th>Whether exempt?</th></tr>
<tr><td rowspan="2">More than Rs. 20 lakhs</td><td>More than Rs. 7500/-</td><td>No</td></tr>
<tr><td>Rs. 7500/- or less</td><td>Yes</td></tr>
<tr><td rowspan="2">Rs. 20 lakhs or less</td><td>More than Rs. 7500/-</td><td>Yes</td></tr>
<tr><td>Rs. 7500/- or less</td><td>Yes</td></tr>
</table></td></tr>
<tr><td>3.</td><td>Is the RWA entitled to take input tax credit of GST paid on input and services used by it for making supplies to its members and use such ITC for discharge of GST liability on such supplies where the amount charged for such supplies is more than Rs. 7,500/- per month per member?</td><td>RWAs are entitled to take ITC of GST paid by them on capital goods (generators, water pumps, lawn furniture etc.), goods (taps, pipes, other sanitary/hardware fillings etc.) and input services such as repair and maintenance services.</td></tr>
</table>

4.	Where a person owns two or more flats in the housing society or residential complex, whether the ceiling of Rs. 7500/- per month per member on the maintenance for the exemption to be available shall be applied per residential apartment or per person?	As per general business sense, a person who owns two or more residential apartments in a housing society or a residential complex shall normally be a member of the RWA for each residential apartment owned by him separately. The ceiling of Rs. 7500/- per month per member shall be applied separately for each residential apartment owned by him. For example, if a person owns two residential apartments in a residential complex and pays Rs. 15000/- per month as maintenance charges towards maintenance of each apartment to the RWA (Rs. 7500/- per month in respect of each residential apartment), the exemption from GST shall be available to each apartment.
5.	How should the RWA calculate GST payable where the maintenance charges exceed Rs. 7500/- per month per member? Is the GST payable only on the amount exceeding Rs. 7500/- or on the entire amount of maintenance charges?	The exemption from GST on maintenance charges charged by a RWA from residents is available only if such charges do not exceed Rs. 7500/- per month per member. In case the charges exceed Rs. 7500/- per month per member, the entire amount is taxable. For example, if the maintenance charges are Rs. 9000/- per month per member, GST @18% shall be payable on the entire amount of Rs. 9000/- and not on [Rs. 9000 - Rs. 7500] = Rs. 1500/- .

3.5.2.18 Departmental Clarifications - Clarification regarding GST rates & classification (goods)- Circular No. 113/32/2019-GST dated 11th October, 2019

Representations have been received seeking clarification in respect of applicable GST rates on the following items:

(i) Classification of leguminous vegetables such as grams when subjected to mild heat treatment

(ii) Almond Milk

(iii) Applicable GST rate on Mechanical Sprayer

(iv) Taxability of imported stores by the Indian Navy

(v) Taxability of goods imported under lease.

(vi) Applicable GST rate on parts for the manufacture solar water heater and system

(vii) Applicable GST on parts and accessories suitable for use solely or principally with a medical device

2. The issue wise clarifications are discussed below:

3. Classification of leguminous vegetables when subject to mild heat treatment (parching):

3.1. Doubts have been raised whether mild heat treatment of leguminous vegetables (such as gram) would lead to change in classification.

3.2. Dried leguminous vegetables are classified under HS code 0713. As per the explanatory memorandum to the HS 2017, the heading 0713 covers leguminous vegetables of heading 0708 which have been dried, and shelled, of a kind used for human or animal consumption (e.g., peas, chickpeas etc.). They may have undergone moderate heat treatment designed mainly to ensure better preservation by inactivating the enzymes (the peroxidases in particular) and eliminating part of the moisture.

3.3. Thus, it is clarified that such leguminous vegetables which are subjected to mere heat treatment for removing moisture, or for softening and puffing or removing the skin, and not subjecting to any other processing or addition of any other ingredients such as salt and oil, would be classified under HS code 0713. Such goodsif branded and packed in a unit container would attract GST at the rate of 5% [S. No. 25 of notification No. 1/2017- Central Tax (Rate) dated 28.06.2017]. In all other cases such goods would be exempted from GST [S. No. 45 of notification No. 2/2017- Central Tax (Rate) dated 28.06.2017].

3.4. However, if the above dried leguminous vegetable is mixed with other ingredients (such as oil, salt etc) or sold as namkeens then the same would be classified under Sub heading 2106 90 as namkeens, bhujia, chabena and similar edible preparations and attract applicable GST rate.

4. Classification and applicable GST rate on Almond Milk:

4.1. References have been received as to whether “almond milk” would be classified as “Fruit Pulp or fruit juice-based drinks” and attract 12% GST under tariff item 2202 99 20.

4.2. Almond Milk is made by pulverizing almonds in a blender with water and is then strained. As such almond milk neither constitutes any fruit pulp or fruit juice. Therefore, it is not classifiable under tariff item 2202 99 20.

4.3. Almond milk is classified under the residual entry in the tariff item 2202 99 90 and attract GST rate of 18%.

5. Applicable GST rate on Mechanical Sprayer:

5.1 Representations have been received seeking clarification on the scope and applicable GST rate on “mechanical sprayers” of entry No. 195B of the Schedule II to notification No. 1/2017- Central Tax (Rate), dated 28.06.2017. The entry No. 195B was inserted vide notification No. 6/2018- Central Tax (Rate), dated 25th January, 2018.

5.2 All goods of heading 8424 i.e. [Mechanical appliances (whether or not hand-operated) for projecting, dispersing or spraying liquids or powders; spray guns and similar appliances; steam or sand blasting machines and similar jet projecting machines (other than fire extinguishers, whether or not charged)] attracted GST @18% [S.No.325 of Schedule III] till 25th January, 2018. Subsequently, keeping in view various requests/ representations, the GST Council in its 25th meeting recommended 12% GST on mechanical sprayers. Accordingly, vide amending notification No. 6/2018- Central Tax (Rate), dated 25thJanuary, 2018, GST at the rate of 12% was prescribed (entry No. 195B I Schedule II of notification No. 1/2017-Central Tax (Rate) dated 28.6.2017) Simultaneously, mechanical sprayers were excluded from the ambit of the said S. No. 325 of Schedule III.

5.3 Accordingly, it is clarified that the S. No. 195B of the Schedule II to notification No. 1/2017-Central Tax (Rate), dated 28.06.2017 covers “mechanical sprayers” of all types whether or not hand operated (like hand operated sprayer, power operated sprayers, battery operated sprayers, foot sprayer, rocker etc.).

6. Clarification regarding taxability of imported stores by the Indian Navy:

6.1 Representation has been received from the Indian Navy seeking clarification on the taxability of imported stores for use of a ship of Indian Navy.

6.2 Briefly stated, in accordance with letter No. 21/31/63-Cus-IV dated 17 Aug 1966 of the then Department of Revenue and Insurance, the Indian Naval ships were treated as "foreign going vessels" for the purposes of Customs Act, 1962, and the naval personnel serving on board these naval ships were entitled to duty-free supplies of imported stores even when the ships were in Indian harbour. However, in the GST era, no such circular has been issued regarding exemption from IGST on purchase of imported stores by Indian Naval ships. The doubt has arisen as there is a no specific exemption, while there is a specific exemption for the Coast Guard (vide S. No. 4 of notification No. 37/2017-Customs dated 30.6.2017). Similar exemption has not been specifically provided for Navy.

6.3 Indian Naval ship stores are exempted from import duty in terms of section 90(1) of the Customs Act, 1962. Further, as per section 90(2), goods "taken on board a ship of the Indian Navy" shall be construed as exported to any place outside India. Also, section 90(1) and 90(3) of the Customs Act, 1962 provides that imported stores for the use of a ship of the Indian Navy and stores supplied free by the Government for the use of the crew of a ship of the Indian Navy in accordance with their conditions of service will be exempted from duty.

6.4 Accordingly, it is clarified that imported stores for use in navy ships are entitled to exemption from GST.

7. Clarification regarding taxability of goods imported under lease:

7.1 Representations have been received seeking clarification on the taxability of goods imported under lease.

7.2 In respect of goods imported on temporary basis, aircrafts, aircraft engines and other aircraft parts imported into India under a transaction covered by item 1(b) or 5(f) of Schedule II of the Central Goods and Service Tax Act, 2017 are exempted from IGST vide S. No. 547A of notification No. 50/2017-Customs dated 30.06.2017, subject to condition No. 102, which reads as under :-

The importer, by the execution of bond, in such form and for such sum as may be specified by the Commissioner of Customs, binds himself, -

> (i) to pay integrated tax leviable under section 5(1) of the IGST Act, 2017 on supply of service covered by item 1(b) or 5 (f) of Schedule II of the Central Goods and Services Act, 2017;
>
> (ii) not to sell or part with the goods, without the prior permission of the Commissioner of Customs of the port of importation;
>
> (iii) to re-export the goods within three months of the expiry of the period for which they were supplied under a transaction covered by item 1(b) or 5 (f) of Schedule II of the Central Goods and Services Act, 2017;
>
> (iv) to pay on demand an amount equal to the integrated tax payable on the said goods but for the exemption under this notification in the event of violation of any of the above conditions.

7.3 Similarly, rigs and ancillary items imported for oil or gas exploration and production taken on lease by the importer for use after import have also been exempted from IGST vide S. No. 557A of the said notification. Subsequently, all goods, vessels, ships (other than motor vehicles) imported under lease, by the importer for use after import, were also exempted from IGST vide S. No. 557B of the said notification. Both these entries are subject to the same condition No. 102 of the said notification.

7.4 The intention of S. No. 557 A and 557 B is to exempt from IGST the imports of goods under an arrangement of supply of service covered by item 1(b) or 5(f) of Schedule II of the CGST Act, 2017 so as to avoid double taxation.

7.5 Accordingly, it is hereby clarified that the expression “taken on lease/imported under lease” (in S. No. 557A and 557B respectively of notification No. 50/2017-Customs dated 30.06.2017) covers imports under an arrangement so as to supply services covered by item 1(b) or 5(f) of Schedule II of the CGST Act, 2017 to avoid double taxation. The above clarification holds forsuch transactions in the past.

7.6 Further, wordings of S. No. 557A and 557B of notification No. 50/2017-Customs dated 30.6.2017, have been aligned with Condition No. 102 of the said notification [vide notification No. 34/2019-Customs dated 30.09.2019 w.e. f 01.10.2019] to address the concerns raised.

8. Applicability of GST rate on parts for the manufacture solar water heater and system:

8.1 Representations have been received seeking clarification on applicable GST rate on Solar Evacuated Tubes used in manufacture of solar water heater. While 5% GST rate applies to parts used in manufacture of Solar Power based devices (S.No. 234 of Notification No. 1/2017 -Central tax (Rate) dated 28.06.2017), doubtshave been raised in respect of parts of Solar water heaters on the ground that Solar Based Devices are being considered only as devices which run on Solar Electricity.

8.2 As per entry No 232, solar water heater and system attracts 5% GST. Further, as per S. No. 234 of the notification No. 1/2017-Central Tax (Rate) dated 28.6.2017, solar power-based devices and parts for their manufacture falling under chapter 84, 85 and 94 attract 5% concessional GST. Solar Power based devices function on the energy derived from Sun (in form of electricity or heat). Thus, solar water heater and system would also be covered under S. No 234 as solar power device. Thus, Solar Evacuated Tubes which falls under Chapter 84 and other parts falling under chapter 84, 85 and 94, used in manufacture of solar water heater and system would be eligible for 5% GST under S. No. 234.

8.3 Accordingly, it is clarified that parts including Solar Evacuated Tube falling under chapter 84, 85 and 94 for the manufacture of solar water heater and system will attract 5% GST.

9. Applicability of GST on the parts and accessories suitable for use solely or principally with a medical device:

9.1 Representations have been received seeking clarification on applicability of GST on the parts of ophthalmic equipment suitable for use solely or principally with an ophthalmic equipment.

9.2 Briefly stated, medical equipment falling under HS 9018, 9019, 9021 and 9022 attract 12% GST. The imports of parts of ophthalmic equipment suitable for use solely or principally with an ophthalmic equipment, were being assessed at 12% GST by classifying it under heading 9018. However, objection has been raised by Comptroller and Auditor General of India (CAG) on the said practice, suggesting that since such goods were not specifically mentioned in the

GST rate notification, they fall under tariff item 9033 00 00 [residual entry] and should be assessed at 18% IGST. In this background, representations have been received from trade and industry, seeking clarification in this matter

9.3 The matter has been examined. As per chapter note 2(b) of the Chapter 90, parts and accessories of the instruments used mainly and principally for the medical instrument of chapter 90 shall be classified with the machine only. Chapter note 2(b) (of Chapter 90) reads as below: -

"2 (b): other parts and accessories, if suitable for use solely or principally with a particular kind of machine, instruments or apparatus, or with a number of machines, instruments or apparatus of the same heading (including a machine, instrument or apparatus of heading 9010, 9013 or 9031) are to be classified with the machines, instruments or apparatus of that kind;"

9.4 Thus, as per chapter note 2(b), parts of ophthalmic equipment suitable for use solely or principally with an ophthalmic equipment should be classified with the ophthalmic equipment only and shall attract 12%.

9.5 In view of the above, it is clarified that 12% IGST would be applicable on the parts and accessories suitable for use solely or principally with a medical device falling under heading 9018, 9019, 9021 or 9022 in terms of chapter note 2 (b).

3.5.2.19 Departmental Clarifications - Clarification on applicability of GST exemption to the DG Shipping approved maritime courses conducted by Maritime Training Institutes of Indi - Circular No. 117/36/2019-GST dated 11th October, 2019

A representation has been received regarding applicability of GST exemption to the Directorate General of Shipping approved maritime courses conducted by the Maritime Training Institutes of India. The same has been examined and following is clarified.

2. Under GST Law, vide Sl. No. 66 of the notification No. 12/2017- Central Tax (Rate) dated 28.06.2017, services provided by educational institutions to its students, faculty and staff are exempt from levy of GST. In the above notification, "educational institution" has been defined to mean an institution providing services by way of education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force.

3. GST exemption on services supplied by an educational institution would be available, if it fulfils the criteria that the education is provided as part of a curriculum for obtaining a qualification/ degree recognized by law.

4. Section 76 of the Merchant Shipping Act, 1958 (44 of 1958) provides for the certificates of competency to be held by the officers of ships. It states that every Indian ship, when going to sea from any port or place, shall be provided with officers duly certificated under this Act in accordance with such manning scales as may be prescribed. Section 78 of the Act provides for several Grades of certificates of competency. Further, Section 79 provides that the Central Government or a person duly authorised by it shall appoint persons for the purpose of examining the qualifications of persons desirous of obtaining certificate of competency under section 78 of the Act.

5. In order to streamline and monitor the maritime education and trainings by maritime institutes and to administer the assessment agencies, the Merchant Shipping (standards of training, certification and watch-keeping for Seafarers) Rules, 2014 has been notified. Under Rule 9 of the said Rules, the Director General of Shipping is empowered to designate assessment centres. Further the provisions of sub- rules (6), (7) and (8) of the Rule 4 of the said Rules, empowers the Director General of Shipping, to approve (i) the training course, (ii) training, examination and assessment programme, and (iii) approved training institute etc.

6. From the above discussion, it is seen that the Maritime Training Institutes and their training courses are approved by the Director General of Shipping which are duly recognised under the provisions of the Merchant Shipping Act, 1958 read with the Merchant Shipping (standards of training, certification and watch-keeping for Seafarers) Rules, 2014. Therefore, the Maritime Institutes are educational institutions under GST Law and the courses conducted by them are exempt from levy of GST. The exemption is subject to meeting the conditions specified at Sl. No. 66 of the notification No. 12/ 2017- Central Tax (Rate) dated 28.06.2017.

7. This clarification applies, mutatis mutandis, to corresponding entries of respective IGST, UTGST, SGST exemption notifications.

3.5.2.20 Departmental Clarifications - Clarification on the effective date of explanation inserted in notification No. 11/2017- CTR dated 28.06.2017, Sr. No. 3(vi) - Circular No. 120/39/2019- GST dated 11th October 2019

Representations have been received to amend the effective date of notification No. 17/2018-CTR dated 26.07.2018 whereby explanation was inserted in notification No. 11/2017- CTR dated 28.06.2017, Sr. No. 3(vi) to the effect that for the purpose of the said entry, the activities or transactions under taken by Government and Local Authority are excluded from the term 'business'.

2. The matter has been examined. Section 11(3) of CGST Act provides that the Government may insert an explanation in any notification issued under section 11, for the purpose of clarifying its scope or applicability, at any time within one year of issue of the notification and every such explanation shall have effect as if it had always been the part of the first such notification.

3. As recommended by GST Council, the explanation in question was inserted vide notification No. 17/2018-CTR dated 26.07.2018 in exercise of powers under section 11(3) within one year of the insertion of the original entry prescribing concessional rate, so that it would have effect from the date of inception of the entry i.e. 21.09.2017. However, like other notifications issued on 26.07.2018 to give effect to other recommendations of the GST Council, the said notification also contained a line in the last paragraph that the notification shall come into effect from 27.07.2018.

4. It is hereby clarified that the explanation having been inserted under section 11(3) of the CGST Act, is effective from the inception of the entry at Sl. No. 3(vi) of the notification No. 11/2017- CTR dated 28.06.2017, that is 21.09. 2017. The line in notification No. 17/2018-CTR dated 26.07.2018 which states that the notification shall come into effect from 27.07.2017 does not alter the operation of the notification in terms of Section 11(3) as explained in para 3 above.

3.5.2.21 Departmental Clarifications - GST on license fee charged by the States for grant of Liquor licences to vendors - Circular No. 121/40/2019-GST dated 11th October, 2019

Services proved by the Government to business entities including by way of grant of privileges, licences, mining rights, natural resources such as spectrum etc. against payment of consideration in the form of fee, royalty etc. are taxable under GST. Same was the position under Service Tax regime also with effect from 1st April, 2016. Tax is required to be paid by the business entities on such services under reverse charge.

2. GST Council in its 26th meeting held on 10.03.2018, recommended that GST was not leviable on license fee and application fee, by whatever name it is called, payable for alcoholic liquor for human consumption and that this would apply mutatis mutandis to the demand raised by Service Tax/Excise authorities on license fee for alcoholic liquor for human consumption in the pre-GST era, i.e. for the period from 01-04-2016 to 30-06-2017.

3. Grant of liquor licences by State Government against payment of consideration in the form of licence fee, application fee etc. was a taxable service under Service Tax, therefore to implement GST Council's recommendation, Central Government decided to exempt service provided or agreed to be provided by way of grant of liquor licence by the State Government, against consideration in the form of licence fee or application fee, by whatever name called, during the period from 01.04.2016 to 30.06.2017. Clause No. 117 of Finance (No. 2) Act, 2019 may be referred in this regard.

4. GST Council in its 37th meeting held on 20.09.2019 further recommended that the decision of the 26th GST Council meeting be implemented by notifying service by way of grant of alcoholic liquor licence, against consideration in the form of licence fee or application fee or by whatever name it is called, by State Government as neither a supply of goods nor a supply of service. Therefore, in exercise of powers conferred under sub-section 2 (b) of section 7 of CGST Act, 2017, Notification No. 25/2019-Central Tax (Rate) dated 30th September, 2019 has been issued.

5. GST Council further decided in the 37th meeting held on 20.09.2019, to clarify that this special dispensation applies only to supply of service by way of grant of liquor licenses by the State Governments as an agreement between the Centre and States and has no applicability or precedence value in relation to grant of other licenses and privileges for a fee in other situations, where GST is payable.

3.5.2.22 Departmental Clarifications - Clarification in respect of certain challenges faced by the registered persons in implementation of provisions of GST Laws - Circular No. 138/08/2020-GST dated 06th May, 2020

Circular No.136/06/2020-GST, dated 03.04.2020 and Circular No.137/07/2020-GST, dated 13.04.2020 had been issued to clarify doubts regarding relief measures taken by the Government for facilitating taxpayers in meeting the compliance requirements under various provisions of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the "CGST Act") on account of the measures taken to prevent the spread of Novel Corona Virus

(COVID-19). Post issuance of the said clarifications, certain challenges being faced by taxpayers in adhering to the compliance requirements under various other provisions of the CGST Act were brought to the notice of the Board, and need to be clarified.

2. The issues raised have been examined and in order to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under section 168(1) of the CGST Act hereby clarifies as under:

Sl. No.	Issue	Clarification
	Issues related to Insolvency and Bankruptcy Code, 2016	
1.	1. Notification No. 11/2020 - Central Tax dated 21.03.2020, issued under section 148 of the CGST Act provided that an IRP / CIRP is required to take a separate registration within 30 days of the issuance of the notification. It has been represented that the IRP/RP are facing difficulty in obtaining registrations during the period of the lockdown and have requested to increase the time for obtaining registration from the present 30 days limit.	Vide notification No. 39/2020- Central Tax, dated 05.05.2020, the time limit required for obtaining registration by the IRP/RP in terms of special procedure prescribed vide notification No. 11/2020 - Central Tax dated 21.03.2020 has been extended. Accordingly, IRP/RP shall now be required to obtain registration within thirty days of the appointment of the IRP/RP or by 30th June, 2020, whichever is later.
2.	The notification No. 11/2020- Central Tax dated 21.03.2020 specifies that the IRP/RP, in respect of a corporate debtor, has to take a new registration with effect from the date of appointment. Clarification has been sought whether IRP would be required to take a fresh registration even when they are complying with all the provisions of the GST Law under the registration of Corporate Debtor (earlier GSTIN) i.e. all the GSTR-3Bs have been filed by the Corporate debtor / IRP prior to the period of appointment of	i. The notification No. 11/2020- Central Tax dated 21.03.2020 was issued to devise a special procedure to overcome the requirement of sequential filing of FORM GSTR-3B under GST and to align it with the provisions of the IBC Act, 2016. The said notification has been amended vide notification No. 39/2020 - Central Tax, dated 05.05.2020 so as to specifically provide that corporate debtors who have not defaulted in furnishing the return under GST would not be required to obtain a separate registration with effect from the date of appointment of IRP/RP.

	IRPs and they have not been defaulted in return filing.	ii. Accordingly, it is clarified that IRP/RP would not be required to take a fresh registration in those cases where statements in FORM GSTR-1 under section 37 and returns in FORM GSTR-3B under section 39 of the CGST Act, for all the tax periods prior to the appointment of IRP/RP, have been furnished under the registration of Corporate Debtor (earlier GSTIN).
3.	Another doubt has been raised that the present notification has used the terms IRP and RP interchangeably, and in cases where an appointed IRP is not ratified and a separate RP is appointed, whether the same new GSTIN shall be transferred from the IRP to RP, or both will need to take fresh registration.	i. In cases where the RP is not the same as IRP, or in cases where a different IRP/RP is appointed midway during the insolvency process, the change in the GST system may be carried out by an amendment in the registration form. Changing the authorized signatory is a non- core amendment and does not require approval of tax officer. However, if the previous authorized signatory does not share the credentials with his successor, then the newly appointed person can get his details added through the Jurisdictional authority as Primary authorized signatory. ii. The new registration by IRP/RP shall be required only once, and in case of any change in IRP/RP after initial appointment under IBC, it would be deemed to be change of authorized signatory and it would not be considered as a distinct person on every such change after initial appointment. Accordingly, it is clarified that such a change would need only change of authorized signatory which can be done by the authorized signatory of the Company who can add IRP /RP as new authorized signatory or failing that it can be added by the concerned jurisdictional officer on request by IRP/RP.
	Other COVID-19 related representations.	
4.	As per notification no. 40/2017-Central Tax (Rate) dated 23.10.2017, a registered supplier is allowed to supply the goods to a registered recipient (merchant exporter) at 0.1% provided, *inter-alia,* that the merchant exporter exports the goods within a period of ninety days from the date of issue of a tax invoice by the registered supplier. Request has been made to clarify the provision vis-a-vis the exemption provided vide notification no. 35/2020-Central Tax dated 03.04.2020.	i. Vide notification No. 35/2020-Central Tax dated 03.04.2020, time limit for compliance of any action by any person which falls during the period from 20.03.2020 to 29.06.2020 has been extended up to 30.06.2020, where completion or compliance of such action has not been made within such time. ii. Notification no. 40/2017-Central Tax (Rate) dated 23.10.2017 was issued under powers conferred by section 11 of the CGST Act, 2017. The exemption provided in notification No. 35/2020-Central Tax dated 03.04.2020~is applicable for section 11 as well. iii. Accordingly, it is clarified that the said requirement of exporting the goods by the merchant exporter within 90 days from the date of issue of tax invoice by the registered supplier gets extended to 30th June, 2020,

		provided the completion of such 90 days period falls within 20.03.2020 to 29.06.2020.
5.	Sub-rule (3) of that rule 45 of CGST Rules requires furnishing of FORM GST ITC-04 in respect of goods dispatched to a job worker or received from a job worker during a quarter on or before the 25th day of the month succeeding that quarter. Accordingly, the due date of filing of FORM GST ITC-04 for the quarter ending March, 2020 falls on 25.04.2020. Clarification has been sought as to whether the extension of time limit as provided in terms of notification No. 35/2020-Central Tax dated 03.04.2020 also covers furnishing of FORM GST ITC-04 for quarter ending March, 2020	Time limit for compliance of any action by any person which falls during the period from 20.03.2020 to 29.06.2020 has been extended up to 30.06.2020 where completion or compliance of such action has not been made within such time. Accordingly, it is clarified that the due date of furnishing of FORM GST ITC-04 for the quarter ending March, 2020 stands extended up to 30.06.2020.

3.5.2.23 Departmental Clarifications - Clarification regarding applicability of GST on supply of food in Anganwadis and Schools- Circular No. 149/05/2021-GST dated 17th June, 2021

Representations have been received seeking clarification regarding applicability of GST on the issues as to whether serving of food in schools under Mid-Day Meals Scheme would be exempt if such supplies are funded by government grants and/or corporate donations. The issue was examined by GST Council in its 43rd meeting held on 28th May, 2021.

2. Entry 66 clause (b)(ii) of notification No. 12/2017-Central Tax (Rate) dated 28th June, 2017, exempts Services provided to an educational institution, by way of catering, including any mid-day meals scheme sponsored by the Central Government, State Government or Union territory. This entry applies to pre-school and schools.

3. Accordingly, as per said entry 66, any catering service provided to an educational institution is exempt from GST. The entry further mention that such exempt service includes mid- day meal service as specified in the entry. The scope of this entry is thus wide enough to cover any serving of any food to a school, including pre-school. Further, an Anganwadi interalia provides pre-school nonformal education. Hence, aganwadi is covered by the definition of educational institution (as pre-school).

4. Accordingly, as per recommendation of the GST Council, it is clarified that services provided to an educational institution by way of serving of food (catering including mid- day meals) is exempt from levy of GST irrespective of its funding from government grants or corporate

donations [under said entry 66 (b)(ii)]. Educational institutions as defined in the notification include aganwadi. Hence, serving of food to anganwadi shall also be covered by said exemption, whether sponsored by government or through donation from corporates.

3.5.2.24 Departmental Clarifications - Clarification regarding applicability of GST on the activity of construction of road where considerations are received in deferred payment (annuity)- Circular No.150/06/2021-GST dated 17th June, 2021

Certain representations have been received requesting for a clarification regarding applicability of GST on annuities paid for construction of road where certain portion of consideration is received upfront while remaining payment is made through deferred payment (annuity) spread over years.

2. This issue has been examined by the GST Council in its 43rd meeting held on 28th May, 2021.

2.1 GST is exempt on service, falling under heading 9967 (service code), by way of access to a road or a bridge on payment of annuity [entry 23A of notification No. 12/2017-Central Tax]. Heading 9967 covers "supporting services in transport" under which code 996742 covers "operation services of National Highways, State Highways, Expressways, Roads & streets; bridges and tunnel operation services". Entry 23 of said notification exempts "service by way of access to a road or a bridge on payment of toll". Together the entries 23 and 23A exempt access to road or bridge, whether the consideration are in the form of toll or annuity [heading 9967].

2.2 Services by way of construction of road fall under heading 9954. This heading inter alia covers general construction services of highways, streets, roads railways, airfield runways, bridges and tunnels. Consideration for construction of road service may be paid partially upfront and partially in deferred annual payments (and may be called annuities). Said entry 23A does not apply to services falling under heading 9954 (it specifically covers heading 9967 only). Therefore, plain reading of entry 23A makes it clear that it does not cover construction of road services (falling under heading 9954), even if deferred payment is made by way of instalments (annuities).

3. Accordingly, as recommended by the GST Council, it is hereby clarified that Entry 23A of notification No. 12/2017-CT(R) does not exempt GST on the annuity (deferred payments) paid for construction of roads.

3.5.2.25 Departmental Clarifications - Clarification regarding GST on supply of various services by Central and State Board (such as National Board of Examination)- Circular No. 151/07/2021-GST dated 17th June, 2021

Certain representations have been received seeking clarification in respect of taxability of various services supplied by Centre and State Boards such as National Board of Examination (NBE). These services include entrance examination (on charging a fee) for admission to educational institution, input services for conducting such entrance examination for students,

accreditation of educational institutions or professional so as to authorise them to provide their respective services. The issue was examined by GST Council in its 43rd meeting held on 28th May, 2021.

2. Illustratively, NBE provides services of conducting entrance examinations for admission to courses including Diplomat National Board (DNB) and Fellow of National Board (FNB), prescribes courses and curricula for PG medical studies, holds examinations and grant degrees, diplomas and other academic distinctions. It carries out all functions as are normally carried out by central or state educational boards and is thus a central educational board.

3. According to explanation 3(iv) of the notification No. 12/ 2017 CTR, "Central and State Educational Boards" are treated as Educational Institution for the limited purpose of providing services by way of conduct of examination to the students.

Therefore, NBE is an 'Educational Institution' in so far as it provides services by way of conduct of examination, including any entrance examination, to the students.

3.1 Following services supplied by an educational institution are exempt from GST vide sl. No. 66 of the notification No. 12/ 2017- Central Tax (Rate) dated 28.06.2017,

> Services provided –
>
> (a) by an educational institution to its students, faculty and staff;
>
> (aa) by an educational institution by way of conduct of entrance examination against consideration in the form of entrance fee;

3.2 Similarly, services provided to an educational institution, relating to admission to, or conduct of examination is also exempt from GST [sl. No. 66 (b)(iv)- 12/2017-CT(r)].

3.3 Educational institutions are defined at 2(y) of the said notification as follows-

> "(y) educational institution" means an institution providing services by way of, -
>
> (i) pre-school education and education up to higher secondary school or equivalent;
>
> (ii) education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force;
>
> (iii) education as a part of an approved vocational education course;";
>
> Further, clause (iv) of Explanation of said notification reads as below:
>
> "(iv) For removal of doubts, it is clarified that the Central and State Educational Boards shall be treated as Educational Institution for the limited purpose of providing services by way of conduct of examination to the students"

4. Taking into account the above, the GST Council has recommended, to clarify as below:

> (i) GST is exempt on services provided by Central or State Boards (including the boards such as NBE) by way of conduct of examination for the students, including conduct of entrance examination for admission to educational institution [under S. No. 66 (aa) of notif No. 12/2017-CT(R)]. Therefore, GST shall not apply to any fee or any amount charged by such Boards for conduct of such examinations including entrance examinations.

(ii) GST is also exempt on input services relating to admission to, or conduct of examination, such as online testing service, result publication, printing of notification for examination, admit card and questions papers etc, when provided to such Boards [under S. No. 66 (b) (iv) of notif No. 12/2017- CT(R)].

(iii) GST at the rate of 18% applies to other services provided by such Boards, namely of providing accreditation to an institution or to a professional (accreditation fee or registration fee such as fee for FMGE screening test) so as to authorise them to provide their respective services.

3.5.2.26 Departmental Clarifications - Clarification regarding rate of tax applicable on construction services provided to a Government Entity, in relation to construction such as of a Ropeway on turnkey basis- Circular No. 152/08/2021-GST dated 17th June, 2021

Reference has been received by the Board for a clarification whether services supplied to a Government Entity by way of construction such as of "a ropeway" are eligible for concessional rate of 12% GST under entry No. 3 (vi) of Notification No. 11/2017- CT (R) dt.28.06.2017. On the recommendation of the GST Council, this issue is clarified as below.

2. According to entry No. 3(vi) of notification No. 11/2017-CT (R) dated 28.06.2017, GST rate of 12% is applicable, inter alia, on-

> "(vi) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, (other than that covered by items (i), (ia), (ib), (ic), (id), (ie) and (if) above) provided to the Central Government, State Government, Union Territory, a local authority a Governmental Authority or a Government Entity, by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of –
>
> (a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession; " ….

2.1 Thus, said entry No 3 (vi) does not apply to any works contract that is meant for the purposes of commerce, industry, business of profession, even if such service is provided to the Central Government, State Government, Union Territory, a local authority a Governmental Authority or a Government Entity. The doubt seems to have arisen in the instant cases as Explanation to the said entry states, the term 'business' shall not include any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities. However, this explanation does not apply to Governmental Authority or Government Entity, as defined in clause (ix) and (x) of the explanation to said notification. Further, civil constructions, such as rope way for tourism development shall not be covered by said entry 3(vi) not being a structure that is meant predominantly for purposes other than business. While road, bridge, terminal, or railways are covered by entry No. 3(iv) and 3(v) of said notification, structures like ropeway are not covered by these entries too. Therefore, works contract service provided by way of construction such as of rope way shall fall under entry at sl. No. 3(xii) of notification 11/2017-(CTR) and attract GST at the rate of 18%.

3.5.2.27 Departmental Clarifications - GST on milling of wheat into flour or paddy into rice for distribution by State Governments under PDS- Circular No. 153/09/2021-GST dated 17th June, 2021

Certain representations have been received seeking clarification whether composite supply of service by way of milling of wheat into wheat flour, alongwith fortification, by any person to a State Government for distribution of such wheat flour under Public Distribution System is eligible for exemption under entry No. 3A of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, and also as regards the rate of GST on such milling, if it does not fall in said entry No. 3A. The issue has been examined by GST Council in its 43rd meeting held on 28th May, 2021.

2. Entry at Sl. No. 3A of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 exempts "composite supply of goods and services in which the value of supply of goods constitutes not more than 25 per cent of the value of the said composite supply provided to the Central Government, State Government or Union territory or local authority or a Governmental authority or a Government Entity by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution".

3. As per the recommendation of the GST Council the issue is clarified as below.

3.1 Public Distribution specifically figures at entry 28 of the 11th Schedule to the constitution, which lists the activities that may be entrusted to a Panchayat under Article 243G of the Constitution. Hence, said entry No. 3A would apply to composite supply of milling of wheat and fortification thereof by miller, or of paddy into rice, provided that value of goods supplied in such composite supply (goods used for fortification, packing material etc) does not exceed 25% of the value of composite supply. It is a matter of fact as to whether the value of goods in such composite supply is up to 25% and requires ascertainment on case-to-case basis.

3.2 In case the supply of service by way of milling of wheat into flour or of paddy into rice, is not eligible for exemption under Sl. No. 3 A of Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 for the reason that value of goods supply in such a composite supply exceeds 25%, then the applicable GST rate would be 5% if such composite supply is provided to a registered person, being a job work service (entry No. 26 of notification No. 11/2017-Central Tax (Rate) dated 28.06.2017). Combined reading of the definition of job-work [section 2(68), 2(94), 22, 24, 25 and section 51] makes it clear that a person registered only for the purpose of deduction of tax under section 51 of the CGST Act is also a registered person for the purposes of the said entry No. 26, and thus said supply to such person is also entitled for 5% rate.

3.5.2.28 Departmental Clarifications - GST on service supplied by State Govt. to their undertakings or PSUs by way of guaranteeing loans taken by them- Circular No.154/10/2021-GST dated 17th June, 2021

Certain representations have been received requesting for clarification regarding applicability of GST on supply of service by State Govt. to their undertakings or PSUs by way of

guaranteeing loans. The issue was examined by GST Council in its 43rd meeting held on 28th May, 2021.

2. Entry No. 34A of Notification no. 12/2017-Central Tax (Rate) dated 28.06.2017 exempts "Services supplied by Central Government, State Government, Union territory to their undertakings or Public Sector Undertakings (PSUs) by way of guaranteeing the loans taken by such undertakings or PSUs from the banking companies and financial institutions."

3. Accordingly, as recommended by the Council, it is re-iterated that guaranteeing of loans by Central or State Government for their undertaking or PSU is specifically exempt under said entry No. 34A.

3.5.2.29 Departmental Clarifications - Clarification regarding GST rates & classification (goods) based on the recommendations of the GST Council in its 45th meeting held on 17th September, 2021 at Lucknow- Circular No. 163/19/2021-GST dated 6th October, 2021

Based on the recommendations of the GST Council in its 45th meeting held on 17th September, 2021, at Lucknow, clarification, with reference to GST levy, related to the following are being issued through this circular:

i. Fresh vs dried fruits and nuts;

ii. Classification and applicable GST rates on Tamarind seeds;

iii. Coconut vs Copra;

iv. Classification and applicable GST rate on Pure henna powder and leaves, having no additives;

v. Scented sweet supari and flavored and coated illaichi;

vi. Classification of Brewers' Spent Grain (BSG), Dried Distillers' Grains with Soluble [DDGS] and other such residues and applicable GST rate;

vii. GST rates on goods [miscellaneous pharmaceutical products] falling under heading 3006;

viii. Applicability of GST rate of 12% on all laboratory reagents and other goods falling under heading 3822;

ix. Requirement of Original/ import Essentiality certificate, issued by the Directorate General of Hydrocarbons (DGH) on each inter-State stock transfer of goods imported at concessional GST rate for petroleum operations;

x. External batteries sold along with UPS Systems/ Inverter;

xi. Specified Renewable Energy Projects; xii. Fiber Drums, whether corrugated or non-corrugated.

2. The issue-wise clarifications are discussed in detail below.

3. Applicability of GST on fresh and dried fruits and nuts:

3.1 Representations have been received seeking clarification regarding the distinction between fresh and dried fruits and nuts and applicable GST rates.

3.2 At present, fresh nuts (almond, walnut, hazelnut, pistachio etc) falling under heading 0801 and 0802 are exempt from GST, while dried nuts under these headings attract GST at the rate of 5%/ 12%. The general Explanatory Notes to chapter 08 mentions that this chapter covers fruit, nuts intended for human consumption. They may be fresh (including chilled), frozen (whether or not previously cooked by steaming or boiling in water or containing added sweetening matter) or dried (including dehydrated, evaporated or freeze-dried).Thus, HS chapter differentiates between fresh, frozen and dried fruits and nuts. Fresh fruit and nuts would thus cover fruit and nuts which are meant to be supplied in the state as plucked. They continue to be fresh even if chilled. However, fruit and nuts do not qualify as fresh, once frozen (cooked or otherwise), or intentionally dried to dehydrate including through sun drying, evaporation or freezing, for supply as dried fruits or nuts. It may be noted that in terms of note 3 to Chapter 8, dried fruits, even if partially re-hydrated, or subject to preservation say by moderate heat treatment, retain the character of dried fruits or dried nuts.

3.3. Therefore, exemption from GST to fresh fruits and nuts covers only such products which are not frozen or dried in any manner as stated above or otherwise processed. Supply of dried fruits and nuts, falling under heading 0801 and 0802 attract GST at the rate of 5%/12% as specified in the respective rate Schedules.

4. Applicability of GST on tamarind seeds:

4.1 Representations have been received seeking clarification regarding classification and applicable GST rates on tamarind seeds. The dispute is in classification of tamarind seeds between tariff heading 1207 and 1209.

4.2 As per general Explanatory Notes to HS 2017, heading 1209, covering seeds, fruit and spores, of a kind used for sowing, covers tamarind seeds. As per Chapter note 3 to Chapter 12, for the purposes of heading 1209, beet seeds, grass and other herbage seeds, seeds of ornamental flowers, vegetable seeds, seeds of forest trees, seeds of fruit trees, seeds of vetches (other than those of the species Vicia faba) or of lupines are to be regarded as “seeds of a kind used for sowing”. Thus, tamarind seeds, even if used for any purpose other than sowing, is liable to be classified under heading 1209 and hitherto attracted nil GST rate, irrespective of its use (for the period 01.07.2017 to 30.09.2021).

4.3 The GST council in its 45th meeting recommended GST rate on seeds, falling under heading 1209, meant for any use other than sowing to 5% (S. No. 71A of schedule I of notification No. 1/2017- Central Tax (Rate) dated 28.06.2017) and Nil rate would apply only to seeds for this heading if used for sowing purposes (S. No. 86 of schedule of notification No. 2/2017- Central Tax (Rate) dated 28.06.2017). Hence, 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 at the rate of 5%.

5. Clarification of definition of Copra:

5.1. Representations have been received seeking clarification regarding the definition of Copra and applicable GST rates.

5.2 As per Explanatory Notes to HS (2017 edition) to heading 1203, Copra is dried flesh of coconut generally used for the extraction of coconut oil. Coconut kernel turns into copra, when it separates from the shell skin, while still being inside the shell. The whole unbroken kernel

could be taken out of shell only when it converts to copra. Once taken out of shell, copra could be supplied either whole or broken.

5.3. As per the Explanatory Notes to HS, the heading 0801 covers coconut fresh or dried but excludes Copra. Thus, exemption available to Coconut, fresh or dried, whether or not shelled or peeled, vide entry at S. No. 47 of notification No. 2/2017- Central Tax (Rate) dated 28.6.2017, is not available to Copra. Accordingly, Copra, classified under heading 1203, attracts GST rate of 5% vide entry at S. No. 66 of Schedule I of 1/2017-Central Taxes (Rate) dated 28.06.2017, irrespective of use.

6. Applicability of GST on pure henna powder and leaves:

6.1 Representations have been received seeking clarification regarding classification and applicable GST rates on henna powder and henna leaves.

6.2 As per the Explanatory Notes to HS 2017, heading 1404 is vegetable products not elsewhere specified or included. Further, as per the said Explanatory Notes, heading 1404 includes raw vegetable materials of a kind used primarily in dyeing or tanning. Such products are used primarily in dyeing or tanning either directly or in preparation of dyeing or tanning extracts. The material may be untreated, cleaned, dried, ground or powdered (whether or not compressed).

6.3 Accordingly, it is clarified that pure henna powder and henna leaves, having no additives, is classifiable under tariff item 1404 90 90 and shall attract GST rate of 5% (S. No. 78 of schedule I of notification No. 1/2017-Central Tax (Rate) dated 28.06.2017).

6.4. Further, the GST rate on mehndi paste in cones falling under heading 1404 and 3305 shall be 5% (S. No. 78A of schedule I of notification No. 1/2017-Central Tax (Rate) dated 28.06.2017).

7. Applicability of GST on scented sweet supari & flavored and coated illaichi:

7.1 Representations have been received seeking clarification regarding classification and applicable GST rates on flavored and coated illaichi, and scented sweet supari.

7.2 Scented sweet supari falls under tariff item 2106 90 30 as “Betel nut product” known as “Supari” and attracts GST rate of 18% vide entry at S. No. 23 of Schedule III of notification No. 1/2017-Central Tax (Rate) dated 28.6.2017.

7.3 Flavored and coated illaichi generally consists of Cardamom Seeds, Aromatic Spices, Silver Leaf, Saffron, Artificial Sweeteners. It is distinct from illaichi or cardamom (which falls under heading 0908). It is clarified that flavored and coated illaichi is a value added product and falls under sub-heading 2106. It accordingly attract GST at the rate of 18% (S. No. 23 of schedule III of notification No. 1/2017-Central Tax (Rate) dated 28.06.2017).

8. Applicability of GST on Brewers' Spent Grain (BSG), Dried Distillers’ Grains with Soluble [DDGS] and other such residues:

8.1 Representations have been received seeking clarification regarding classification and applicable GST rates on Brewers' spent grain (BSG), Dried distillers' grains with soluble [DDGS] and other such residues of starch manufacture and similar residues, beet-pulp, bagasse and other waste of sugar manufacture, brewing or distilling dregs and waste, whether or not in the form of pellets.

8.2 As per the Explanatory Notes to the HSN, heading 2303 includes residues of starch manufacture and similar residues (from maize (corn), rice, potatoes, etc.); beetpulp; bagasse; other waste products of sugar manufacture; brewing or distilling dregs and waste, which comprises in particular - dregs of cereals obtained in the manufacture of beer and consisting of exhausted grains remaining after the wort has been drawn off; malts sprouts separated from the malted grain during the kilning process; spent hops; Dregs resulting from the distillation of spirits from grain, seeds, potatoes, etc; beet pulp wash (residues from the distillation of beet molasses).All these products remain classified in the heading whether presented in wet or dry.

8.3 Thus, Brewers' spent grain (BSG), Dried distillers' grains with soluble [DDGS] and other such residues are classifiable under heading 2303, attracting GST at the rate of 5% (S. No. 104 of schedule I of notification No. 1/2017-Central Tax (Rate) dated 28.06.2017).

9. Scope of GST rate on all pharmaceutical goods falling under heading 3006.

9.1 Entry at S. No. 65 of Schedule II of notification No. 1/2017-Central Tax (Rate) dated 28.6.2017, reads as “Pharmaceutical goods specified in Note 4 to this Chapter [i.e. Sterile surgical catgut, similar sterile suture materials (including sterile absorbable surgical or dental yarns) and sterile tissue adhesives for surgical wound closure; sterile laminaria and sterile laminaria tents; sterile absorbable surgical or dental haemostatics; sterile surgical or dental adhesion barriers, whether or not absorbable; Waste pharmaceuticals] [other than contraceptives]”

9.2 S. No. 65 of Second Schedule of Notification 1/2017- Central Tax (Rate) dated 28.6.2017 refers to the note 4 to Chapter 30 of the First schedule of the Customs Tariff Act, 1975 while mentioning an illustrative list. Certain representations were received seeking clarification on the applicable rate of goods falling under heading 3006 that are not specifically mentioned in the Entry at S. No. 65 of Schedule II of notification No. 1/2017-Central Tax (Rate) dated 28.6.2017.

9.3 Note 4 to Chapter 30 of the First schedule of the Custom Tariff Act, 1975 reads as follows:

> “(a) sterile surgical catgut, similar sterile suture materials (including sterile absorbable surgical or dental yarns) and sterile tissue adhesives for surgical wound closure;
>
> (b) sterile laminaria and sterile laminaria tents;
>
> (c) sterile absorbable surgical or dental haemostatics sterile surgical or dental adhesion barriers, whether or not absorbable;
>
> (d) opacifying preparations for X-ray examinations and diagnostic reagents designed to be administered to the patient, being unmixed products put up in measured doses or products consisting of two or more ingredients which have been mixed together for such uses;
>
> (e) blood-grouping reagents;
>
> (f) dental cements and other dental fillings; bone reconstruction cements;
>
> (g) first-aid boxes and kits;
>
> (h) chemical contraceptive preparations based on hormones, on other products of heading 2937 or on spermicides;

(i) gel preparations designed to be used in human or veterinary medicine as a lubricant for parts of the body for surgical operations or physical examinations or as a coupling agent between the body and medical instruments; and

(j) waste pharmaceuticals, that is, pharmaceutical products which are unfit for their original intended purpose due to, for example, expiry of shelf-life.

(k) appliances identifiable for ostomy use, that is colostomy, ileostomy and urostomy pouches cut to shape and their adhesive wafers or faceplates."

9.4 Thus, it is clarified that said entry 65 covers all goods as specified in Chapter Note 4 and Chapter Note 4 in turn covers all goods covered under Heading 3006. Therefore, said entry 65 covers all goods falling under heading 3006, irrespective of the fact that such goods are specifically mentioned in said entry. Therefore, all goods falling under heading 3006 attract GST rate of 12% under entry 65 in the 12% rate schedule.

10. All laboratory reagents and other goods falling under heading 3822:

10.1 Entry at S. No. 80 of Schedule II of notification No.1/2017- Integrated Tax (Rate) dated 28.6.2017 prescribes GST rate of 12% for "All diagnostic kits and reagents".

10.2. Representations have been received whether the benefit of concessional rate of 12% would be available to laboratory agents and other goods falling under heading 3822.

10.3 Heading 3822 covers "Diagnostic or Laboratory Reagents, Certified Reference Materials etc.".

10.4 The issue was placed before the GST Council and on its recommendations, it is clarified that the intention of this entry was to prescribe GST rate of 12% to all goods, whether diagnostic or laboratory regents, falling under heading 3822.

10.5 It is accordingly clarified that concessional GST rate of 12% is applicable on all goods falling under heading 3822, vide Entry at S. No. 80 of Schedule II of notification No.1/2017-Integrated Tax (Rate) dated 28.6.2017.

11. Requirement of Original/ import Essentiality certificate, issued by the Directorate General of Hydrocarbons (DGH) on each inter-State stock transfer of goods imported at concessional GST rate for petroleum operations

11.1 Notification No. 3/2017-Central Tax (Rate) prescribes concessional rate of 5% for specified goods which are used in connection with specified petroleum operations. Condition 1 (d) in notification No. 03/2017-Central Tax dated 28.06.2017 prescribes that "whenever goods so supplied are transferred to other licensee or sub-contractor a certificate from Directorate General of Hydrocarbons (DGH) is to be produced that the goods may be transferred to the transferee".

11.2. As per Section 7 read with Schedule-I of the CGST Act 2017, inter-state stock transfer between distinct persons (establishment of same person located in two different states) is considered as 'supply 'of goods.

11.3. Representations have been received seeking clarification whether the original/ import Essentiality certificate can be used for such inter-state stock transfers or a fresh Essentiality certificate would be required for each inter-state stock transfer as it is being treated as supply subject to IGST.

11.4 GST Council deliberated upon this issue and a decision was taken that the original/ import Essentiality certificate, issued by the Directorate General of Hydrocarbons (DGH) is sufficient and there is no need for taking a certificate every time on inter-state movement of goods within the same company / stock transfer so long as the goods are the same as those imported by the company at concessional rate.

11.5. The importer is required to maintain records and should be able to establish nexus between the stock transfer of goods and the description in the essentiality certificate.

12. GST rates applicable on External batteries sold along with UPS Systems/ Inverter 12.1 References have been received seeking clarification about whether, 'UPS Systems/inverter sold along with batteries as integral part' are classified under heading 8507 at 28% GST or under heading 8504 at 18% GST. 12.2 The matter has been examined and it is observed that even if the UPS/inverter and external battery are sold on the same invoice, their price are separately known, and they are two separately identifiable items. Thus, this constitutes supply of two distinctly identifiable items on one invoice. Therefore, it is clarified that in such supplies, UPS/ inverter would attract GST rate of 18% under heading 8504, while external batteries would attract the GST rate as applicable to it under heading 8507 (28% for all batteries except lithium-ion battery).

13. Applicability of GST rates on Solar PV Power Projects

13.1 Representations have been received seeking clarification regarding the GST rates applicable on Solar PV Power Projects on or before 1st January, 2019. The issue seems to have arisen in the context of Notification No.24/2018- Central Tax (Rate), dated 31st December, 2018. An explanation was inserted vide the said notification that GST on specified Renewable Energy Projects can be paid in terms of the 70:30 ratio for goods and services, respectively, with effect from 1st January, 2019. The request has been that same ratio (for deemed value) may be applied in respect of supplies made before 1.1.2019.

13.2 As per this explanation, if the goods specified in this entry are supplied, by a supplier, along with supplies of other goods and services, one of which being a taxable service specified in the entry at S. No. 38 of the Table mentioned in the notification No. 11/2017-Central Tax (Rate), dated 28th June, 2017, the value of supply of goods for the purposes of this entry shall be deemed as seventy per cent. of the gross consideration charged for all such supplies, and the remaining thirty per cent. of the gross consideration charged shall be deemed as value of the said taxable service. This mechanism for valuation of supply was recommended by the Council considering that it adequately represented the value of goods and services involved in the supply.

13.3 The GST Council has now decided to clarify that GST on such specified Renewable Energy Projects can be paid in terms of the 70:30 ratio for goods and services, respectively, for the period of 1st July, 2017 to 31st December, 2018, in the same manner as has been prescribed for the period on or after 1st January, 2019, as per the explanation in the Notification No.24/2018 dated 31st December, 2018. However, it is specified that, no refunds will be granted if GST already paid is more than the amount determined using this mechanism.

14. Applicability of GST rates on Fibre Drums, whether corrugated or noncorrugated

14.1 Hitherto, corrugated boxes and cartons, falling under heading 4819 attracted GST at the rate of 12% (entry 122 of 12% rate schedule), while other cartons falling under this heading attracted GST at the rate of 18%. Disputes have arisen as regards applicable GST on fibre drums, which is partially corrugated (as to whether it is be treated as corrugated or otherwise).

This dispute gets resolved on account of the recommendation of the GST Council, in its 45th meeting, to prescribe a uniform GST rate of 18% on all goods classifiable under heading 4819 (with effect from 1st October, 2021 under S. No. 153A of Schedule III of notification No.1/2017-Central Tax (Rate) dated 28.6.2017).

14.2 For the period prior to 1.10.2021, the Council upon taking note of the fact that there was an ambiguity regarding the GST rates applicable on a Fibre Drums, because of its peculiar construction (partially corrugated), has decided that supplies of such Fibre Drums even if made at 12% GST (during the period from 1.7.2017 to 30.9.2021), would be treated as fully GST-paid. Therefore, no action for recovery of differential tax (over and above 12% already paid) would arise. However, as this decision has only been taken to regularize the past practice in view of certain ambiguity, as detailed in para 14.1, no refund of GST already paid shall be allowed if already paid at 18%.

3.5.2.30 Departmental Clarifications - Clarifications regarding applicable GST rates & exemptions on certain services- Circular No. 164 /20 /2021-GST dated 6th October, 2021

Representations have been received seeking clarification in respect of applicable GST rates on the following activities:

1. Services by cloud kitchens/central kitchens,

2. Supply of ice cream by ice cream parlors,

3. Coaching services to students provided by coaching institutions and NGOs under the central sector scheme of “Scholarships for students with Disabilities”,

4. Satellite launch services provided by NSIL.

5. Overloading charges at toll plaza,

6. Renting of vehicles by State Transport Undertakings and Local Authorities,

7. Services by way of grant of mineral exploration and mining rights attracted GST,

8. Admission to amusement parks having rides etc. ,

9. Services supplied by contract manufacture to brand owners or others for manufacture of alcoholic liquor for human consumption.

2. The issues have been examined by GST Council in the 45rd meeting of the Council held on 17th September, 2021. The issue-wise clarifications are given below:

3. Services by cloud kitchens/central kitchens:

3.1 Representations have been received requesting for clarification regarding the classification and rate of GST on services rendered by Cloud kitchen or Central Kitchen.

3.2 The word „restaurant service‟ is defined in Notification No. 11/2017 – CTR as below: -

> “Restaurant service” means supply, by way of or as part of any service, of goods, being food or any other article for human consumption or any drink, provided by a restaurant, eating joint including mess, canteen, whether for consumption on or away from the

premises where such food or any other article for human consumption or drink is supplied."

3. 3 The explanatory notes to the classification of service state that „restaurant service" includes services provided by Restaurants, Cafes and similar eating facilities including takeaway services, room services and door delivery of food. Therefore, it is clear that takeaway services and door delivery services for consumption of food are also considered as restaurant service and, accordingly, service by an entity, by way of cooking and supply of food, even if it is exclusively by way of takeaway or door delivery or through or from any restaurant would be covered by restaurant service. This would thus cover services provided by cloud kitchens/central kitchens.

3.4 Accordingly, as recommended by the Council, it is clarified that service provided by way of cooking and supply of food, by cloud kitchens/central kitchens are covered under „restaurant service", as defined in notification No. 11/2017- Central Tax (Rate) and attract 5% GST [without ITC].

4. Supply of ice cream by ice cream parlors

4.1 Representations have been received requesting for clarification regarding the supplies provided in an ice cream outlet.

4.2 Ice cream parlors sell already manufactured ice- cream and they do not have a character of a restaurant. Ice-cream parlors do not engage in any form of cooking at any stage, whereas, restaurant service involves the aspect of cooking/preparing during the course of providing service. Thus, supply of ice-cream parlor stands on a different footing than restaurant service. Their activity entails supply of ice cream as goods (a manufactured item) and not as a service, even if certain ingredients of service are present.

4.3 Accordingly, as recommended by the Council, it is clarified that 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, it is clarified that ice cream sold by a parlor or any similar outlet would attract GST at the rate of 18%.

5. Coaching services supplied by coaching institutions and NGOs under the central sector scheme of 'Scholarships for students with Disabilities"

5.1 Representations have been received seeking clarification regarding applicability of GST on free coaching services provided by coaching institutions and NGOs under the central scheme of "Scholarships for students with Disabilities" where entire expenditure is provided by Government to coaching institutions by way of grant in aid.

5.2 In this regard, it is to mention that entry 72 of notification No. 12/2017- Central Tax (Rate) dated 28th June, 2017, exempts services provided to the Central Government, State Government, Union territory administration under any training programme for which total expenditure is borne by the Central Government, State Government, Union territory administration.

5.3 The scope of this entry is wide enough to cover coaching services provided by coaching institutions and NGOs under the central scheme of "Scholarships for students with Disabilities" where total expenditure is borne by the Government by way of funding to institute providing such coaching.

5.4 Accordingly, as recommended by the GST Council, it is clarified that 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 covered under entry 72 of notification No. 12/2017-Central Tax (Rate) dated 28th June, 2017 and hence exempt from GST.

6. Satellite launch services provided by NSIL.

6.1 Representation has been received for issuance of a clarification recognizing Satellite Launch Services supplied by M/s New Space India Limited (NSIL), a wholly-owned Government of India Company under the administrative control of Department of Space (DoS), to international customers as "Export of Service".

6.2 It has been clarified vide Circular No. 2/1/2017-IGST dated 27.09.2017 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.

6.3 As recommended by the Council, it is clarified that as the satellite launch services supplied by NSIL are similar to those supplied by ANTRIX Corporation Ltd, the said circular No. 2/1/2017-IGST dated 27.09.2017, is applicable to them.

7. GST on overloading charges at toll plaza.

7.1 Representations have been received seeking clarification regarding applicability of GST on Overloading charges collected at Toll Plazas.

7.2 Entry 23 of 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.

7.3 Vide notification dated 25th Sep. 2018, issued by Ministry of Road Transport And Highways, overloaded vehicles were allowed to ply on the national highways after payment of fees with multiplying factor of 2/4/6/8/10 times the base rate of toll. Therefore, it essence overloading fees are effectively higher toll charges.

7.4 As recommended by the GST Council, it is clarified that overloading charges at toll plazas would get the same treatment as given to toll charges.

8. Renting of vehicles to State Transport Undertakings and Local Authorities

8.1 Representations have been received seeking clarification regarding eligibility of the service of renting of vehicles to State Transport Undertakings (STUs) and Local Authorities for exemption from GST under notification No. 12/2017-Central Tax (Rate) dated 28.06.2017. Sl. No. 22 of this notification exempts "services by way of giving on hire (a) to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers; or (aa) to a local authority, an Electrically Operate vehicle meant to carry more than twelve passengers".

8.2 This issue has arisen in the wake of ruling issued by an Authority for Advance Ruling that the entry at Sl. No. 22 of notification No. 12/2017-Central Tax (Rate) exempts services by way of giving on hire vehicles to a State Transport Undertaking or a local authority and not renting of vehicles to them. The ruling referred to certain case laws pertaining to erstwhile positive list based service tax regime.

8.3 It is relevant to note in this context that Schedule II of CGST Act, 2017 declares supply of any goods without transfer of title as supply of service even if right to use is transferred. Transfer of right to use has been declared as a supply of service [Schedule II, Entry 5(f) refers]

8.4 The issue was placed before the 45th GST Council Meeting held on 17.09.2021. As recommended by the GST Council, it is clarified that 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 .

9. Services by way of grant of mineral exploration and mining rights

9.1 Representations have been received requesting for clarification as to the rate of GST applicable on supply of services by way of granting mineral exploration and mining rights during the period from 1.07.2017 to 31.12.2018. With effect from 1.1.2019, the rate schedule has been specifically amended and it is undisputed since then that such service attracts GST at the rate of 18%.

9.2 For the disputed period [1.7.2017 to 31.12.2018], divergent rulings have been issued by Authorities for Advance Ruling (AAR) and Appellate Authorities for Advance Ruling (AAAR) of various States on the GST rate applicable on the same. AAR, Haryana in case of M/s Pioneer Partners and AAR, Chhattisgarh in case of M/s NMDC have ruled that the service of grant of mining leases is classifiable under Service Code 997337 (licensing services for the right to use minerals including its exploration and evaluation) and attracted, prior to 01.01.2019, the same rate of GST as applicable to minerals, that is, 5% as prescribed against Sl. No. 17, item (viii) of Notification No. 11/2017-Central Tax (Rate). The rate prescribed against this entry prior to 01.01.2019 was "the same rate as applicable on supply of like goods involving transfer of title in goods". In certain other advance rulings, a view has been taken that grant of rights for mineral exploration and mining would be covered under heading 9991 and would attract GST at the rate of 18%.

9.2.1 AAAR, Odisha, on the other hand has ruled vide Order dated 5.11.2019 in the case of M/s Penguin Trading and Agencies Limited that grant of mining lease was taxable @ 18% prior to 01.01.2019. The Appellate Authority in this case observed that GST rate applicable against Sl. No. 17 item (viii) of Notification No. 11/2017-Central Tax (Rate) prior to 01.01.2019 was not implementable. Unlike leasing or renting of goods, there are no underlying goods in case of leasing of mining area. The rate prescribed for goods cannot be made applicable to leasing of mining area, which confers the right to extract and appropriate minerals. The mining lease by Government, not being a lease of any goods, cannot attract the rate applicable to sale of like goods. Appellate Authority for Advance Ruling, Odisha has further held that the amendment carried out vide Notification No. 27/2018-Central Tax (Rate), dated 31.12.2018, which restricted the "same rate as applicable to supply of goods involving transfer of title in goods" only to leasing or renting of goods was to clarify the legislative intent as well as to resolve the unintended interpretation. It is a settled law that interpretation which defeats the intention of legislature cannot be adopted. It accordingly upheld that "licensing services for the right to use minerals including its exploration and evaluation" falling under service code 997337 were taxable @ 18% during 01.07.2017 to 31.12.2018.

9.2.2 It may be noted that the expression “same rate of tax as applicable on supply of like goods involving transfer of title in goods” applies in case of leasing or renting of goods. In case of grant of mining rights, there is no leasing or renting of goods. Hence, the said entry does not extend to grant of mining rights which is an entirely different activity.

9.3 The issue was place before the GST Council in its 45th meeting held on 17.9.2021.

9.3.1 As regards classification of service, it was recommended by the Council that 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”.

9.3.2 As regards the applicable rate for the period from 1.7.2017 to 31.12.2018, the council took note of the following facts, namely,-

(i) GST Council in its 4th meeting held on 3rd & 4th November, 2016 had decided that supply of services shall be generally taxed at the rate of 18%.

(ii) More importantly, the GST Council in its 14th meeting held on 18th & 19th May, 2019, while recommending the rate schedules of services (5%, 12%, 18% and 28%), specifically recommended that all the residuary services would attract GST at the rate of 18%.

(iii) The rate applicable on the service of grant of mineral exploration license and mining lease under Service Tax was also the standard rate of 15.5%. Services under this category have been standard rated in GST at 18%

(iv) Therefore, the intention has always been to tax this activity / supply at standard rate of 18%

9.3.3 Accordingly, as recommended by the Council, it is clarified that even if the rate schedule did not specifically mention the service by way of grant of mining rights, during the period 1.7.2017 to 31.12.2018, it was taxable at 18% in view of principle laid down in the 14th meeting of the Council for residuary GST rate. Post, 1st January, 2019 no dispute remains as stated above.

10. Admission to indoor amusement parks having rides etc.

10.1 Representations have been received requesting for clarification regarding applicable rate of GST on services provided by Indoor Amusement Parks/Family Entertainment Centers, and scope of the word „amusement park" under entry 34(iii) of Notification No. 11/2017-CTR.

10.2 Entry 34(iii) notification No.11/2017-CTR, prior to 01.10.2021, prescribed 18% GST on the services by way of admission to amusement parks including theme parks, water parks, joy rides, merry-go rounds, go-carting and ballet. On the other hand, Entry No. 34(iiia) in Notification No. 11/2017- CT(R) dated 28.06.2017 prescribed GST rate of 28% on the services by way of admission to entertainment events or access to amusement facilities including casinos, race club, any sporting event such as Indian Premier League and the like.

10.3 On the recommendations of the Council, it is clarified that 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.

10.4 The entries in question have been suitably amended vide notification No. 6/2021- Central Tax(Rate) dated 30.09.2021 to make them clearer.

11. Services supplied by contract manufacturers to brand owners for manufacture of alcoholic liquor for human consumption

11.1 Representations have been received requesting for issuing a clarification that the job work services supplied by contract manufacturers to brand owners for manufacture of alcoholic liquor for human consumption attract GST @ 5% prescribed for job work services in relation to food and food products, in terms of Sl. No. 26 [Item 1(i)f] of notification No. 11/2017-Central Tax (R) dated 28-6-2017. This entry prescribes GST rate of 5% on services by way of job work in relation to food and food products falling under chapters 1 to 22 in the first Schedule to the Customs Tariff Act, 1975.

11.2 The issue was placed before the GST Council in its 45th meeting held on 17th September, 2021. The Council had also deliberated upon this issue in its 39th and 40th meeting.

11.3 As recommended by GST Council, it is clarified that the expression "food and food products" in the said entry 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%.

3.5.2.31 Departmental Clarifications - Clarifications regarding applicable GST rates & exemptions on certain services- Circular No. 177/09/2022-TRU dated 3rd August, 2022

Representations have been received seeking clarification on the following issues:

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

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;

3. Whether storage or warehousing of cotton in baled or ginned form is covered under entry 24B of 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;

4. Whether exemption under Sl. No. 9B of notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 covers services associated with transit cargo both to and from Nepal and Bhutan;

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

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

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;

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 upfront amount charged for long term lease of land and are eligible for the same tax treatment;

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

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

11. Applicability of GST on services in the form of Assisted Reproductive Technology (ART)/ In vitro fertilization (IVF);

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

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

14. 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-Central Tax (Rate) transport of passengers by non-air conditioned contract carriage;

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;

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

2. The issues have been examined by GST Council in the 47th meeting held on 28th and 29th June, 2022. The issue-wise clarifications as recommended by the GST Council are below:

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

3.1 On the recommendation of the GST Council in its 45th meeting, 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.

3.2 Representations have been received requesting that GST at 18% may be levied on supply of ice-cream by ice-cream parlors with effect from 06.10.2021. 3.3 It has been represented that ice cream parlors which paid GST @ 5% without ITC in view of prevailing doubt before the issuance of the Circular dated 6.10.2021 did not avail ITC and paid 5% in cash. Such ice-cream parlors have thus foregone significant ITC benefit.

3.4 Considering the overall circumstances of the case, it is clarified that past cases of payment of GST on supply of ice-cream by ice-cream parlors @ 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 parlors are required to pay GST on supply of ice-cream at the rate of 18% with ITC.

4. 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

4.1 Representations have been received regarding 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.

4.2 In this regard, it is stated that educational services supplied by educational institutions to its students are exempt from GST vide entry 66 of the notification No. 12/2017 Central Tax (Rate) dated 28.06.2017 relevant portion of which reads as under, -

> "Services provided –
>
> a. by an educational institution to its students, faculty and staff;
>
> [(aa) by an educational institution by way of conduct of entrance examination against consideration in the form of entrance fee;]..."

4.3 Therefore, it can be seen that all services supplied by an 'educational institution' to its students are exempt from GST. Consideration charged by the educational institutes by way of entrance fee for conduct of entrance examination is also exempt. The exemption is wide enough to cover 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. Services supplied by an educational institution by way of issuance of migration certificate to the leaving or ex students are also covered by the exemption. Accordingly, such activities of educational institution are also exempt.

4.4 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 Sl. No. 66 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017.

5. Whether storage or warehousing of cotton in baled or ginned form is covered under entry 24B of 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.

5.1 Representations have been received regarding applicability of GST exemption on the service of storage or warehousing of cotton in baled or ginned form.

5.2 Prior to 18.07.2022, entry 24 B of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 exempted services by way of storage and warehousing of, inter alia, raw vegetable fibers such as cotton, flax, jute etc. Cotton Fiber glossary by barnhardtcotton.net defines 'cotton staple, virgin cotton or raw cotton' as cotton fibers that are removed from the cotton seed by the gin. Further, CESTAT Chandigarh in the case of R.K.& Sons vs CCE, Rohtak dated 14th July 2016 has observed as under:

> "Cotton (with seeds) as plucked from cotton plants can hardly be called cotton fibre in which case cotton fibre would come into existence only after the seeds are ginned away from cotton plucked from cotton plants. Cotton fibre obtained by ginning cotton plucked cotton plants is nothing but raw cotton fibre because there cannot be rawer form of cotton fibre obtained from cotton-with-seeds plucked from cotton plants."

5.3 Accordingly, it is 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. It may however be noted that this exemption has been withdrawn w.e.f 18.07.2022.

6. Whether exemption under Sl. No. 9B of notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 covers services associated with transit cargo both to and from Nepal and Bhutan

6.1 Representations have been received regarding applicability of GST on transportation of empty containers returning from Nepal and Bhutan after delivery of transit cargo, to India.

6.2 GST on supply of services associated with transit cargo to Nepal and Bhutan was exempted w.e.f 29.09.2017 based on recommendations of the 20th GST Council Meeting. The opening sentence of the Agenda Item 7(ix) placed before the GST Council on this issue, makes it clear that the proposal was to exempt supply of services associated with transit cargo both to and from Nepal and Bhutan.

6.3 Accordingly, as recommended by the GST Council, it is clarified that exemption under Sl. No. 9B of Notification 12/2017- Central Tax (Rate) covers services associated with transit cargo both to and from Nepal and Bhutan.

6.4 It is also 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.

6.5 Needless to say 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. Under the regulations/procedures, the container number, which is a unique alpha numeric identifier for the container, is declared. Further, the Customs broker / shipping line / carrier is responsible for making available a track and trace facility for locating goods brought for transhipment.

6.6 With respect to transit or transhipment of cargo to Nepal, specific regulations namely Transhipment of Cargo to Nepal under Electronic Cargo Tracking System Regulations, 2019 have been notified. It is relevant to mention here that as per these regulations also, the authorized carrier has to execute a general bond for an amount as directed by the proper officer. The authorized carrier also has to procure ECTS (Electronic Cargo Tracking System) from a bi-laterally appointed managed service provider. In order to discharge the bond, the proper officer of customs has to extract trip reports from the ECTS web application as proof of completion of transhipment. The reconciliation of transhipment of consignments shall be carried out on the basis of trip report, by the proper officer at the Ports of Kolkata, Haldia or Visakhapatnam, as the case may be, and then only the general bond submitted by the authorised carrier will be re-credited or discharged.

6.7 As can be seen from the above, the regulations governing transit / transhipment have to be followed in addition to the 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.

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

7.1 Representations have been received regarding taxability of sanitation and conservancy services supplied to Army and other Central and State Government departments.

7.2 Municipalities and Panchayats and other local authorities such as Cantonment Boards listed in Section 2(69) of the Central Goods and Services Tax act, 2017 carry out functions entrusted to them under articles 243W & 243G of the Constitution respectively. Functions that may be entrusted to panchayats and municipalities are listed in Schedule 11 & 12 of the Constitution. Central Government, State Governments & Union Territories also perform functions listed in Schedule 11 & 12 such as irrigation, public health etc.

7.3 Services by Central Government, State Government, Union Territory or any local authority by way of any activity in relation to a function entrusted to a Panchayat under article 243G of the constitution or to a municipality under article 243W of the constitution have been declared as 'neither a supply of goods nor a supply of service' vide notification no. 14/2017- Central Tax (Rate) dated 28.06.2017.

7.4 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.

7.5 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 Sl. No. 3 and 3A of Notification 12/2017- Central Tax (Rate).

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

8.1 Representation has been received regarding the GST rate 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 etc.

8.2 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 as under:

> "print media" means, —
>
> i. '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;
>
> ii. …….

8.3 Further, sub-section (1) of section 1 of the Press and Registration of Books Act, 1867 defines 'book' as follows: "Book" includes every volume, part or division of a volume, and pamphlet, in any language and every sheet of music, map, chart or plan separately printed.

8.4 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.

8.5 Accordingly, as recommended by the GST Council, it is clarified 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) and attracts GST @ 5%.

9. 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.

9.1 Representations have been received to clarify the taxability of transport of minerals within a mining area, say from mining pit head to railway siding, beneficiation plant etc., by vehicles deployed with driver for a specific duration of time and whether the same would be covered under Sr. No. 18 of notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 which exempts transport of goods by road except by a GTA.

9.2 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.

9.3 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 can not be said to be supplying the service by way of transport of goods.

9.4 Accordingly, as recommended by the GST Council, 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 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 in 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%.

10. 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;

10.1 Representation has been received seeking clarification 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 upfront amount charged for long term lease of land and are eligible for the same tax treatment.

10.2 As per entry 41 of the notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 upfront amount, which is defined as “upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable in respect of service by way of granting of long term lease (of thirty years, or more) of industrial plots or plots for development of infrastructure for financial business, provided by the State Government Industrial Development Corporations or Undertakings or by any other entity having 20 per cent or more ownership of Central Government, State Government, Union territory to the industrial units or the developers in any industrial or financial business area”, is exempt from GST

10.3 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.

10.4 Accordingly, as per recommendation of the GST Council, 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 Sl. No. 41 of notification no. 12/2017- Central Tax (Rate) dated 28.06.2017.

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

11.1 Representation has been received regarding applicability of GST on honorarium paid to Guest Anchors. Sansad TV and other 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.

11.2 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. 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.

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

12.1 Representation has been received regarding taxability of additional toll fees collected by the Concessionaires from the vehicles which is not having Fastag.

12.2 Entry 23 of 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.

12.3 Ministry of Road Transport & Highways (MORTH) vide circular dated 16.02.2021 has directed to collect additional amount from the users of the road to the extent of two times of the fees applicable to that category of vehicle which is not having a valid functional Fastag.

12.4 Essentially, 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.

12.5 On a similar issue of collection of overloading charges in the form of a higher toll (2/4/6/7 times of the base rate of toll), it has already been clarified vide circular number 164/20/2021-GST dated 06.10.2021, which was issued on the basis of recommendation of GST Council that overloading charges at toll plazas would get the same treatment as given to toll charges.

12.6 Therefore, 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.

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

13.1 Representations have been received to clarify whether GST is applicable on services by way of Assisted Reproductive Technology (ART) procedures such as In vitro fertilization (IVF).

13.2 Health care services provided by a clinical establishment, an authorized medical practitioner or para-medics are exempt. [Sl. No. 74 of notification No. 12/2017- Central Tax (Rate) dated 28.06. 2017].

13.3 Health care services is defined vide 2(zg) of the notification No. 12/2017- Central Tax (Rate) dated 28.06. 2017 as –

> "health care services" means any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India and includes services by way of transportation of the patient to and from a clinical establishment, but does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma."

13.4 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.

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

14.1 Representation has been received requesting for clarification regarding applicability of GST on sale of land after levelling, laying down of drainage lines etc.

14.2 As per Sl no. (5) of Schedule III of the Central Goods and Services Tax Act, 2017, 'sale of land' is neither a supply of goods nor a supply of services, therefore, sale of land does not attract GST.

14.3 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 Sr. No. 5 of Schedule III of the Central Goods and Services Tax Act, 2017 and accordingly does not attract GST.

14.4 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.

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

15.1 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.

15.2 Representations have been received to clarify whether RCM is applicable on service of transportation of passengers (Heading 9964) or on renting of motor vehicle designed to carry passengers (Heading 9966).

15.3 Renting of motor vehicle with operator for transport of passengers falls under Heading 9966. According to the explanatory notes to heading 9966, the service covered here is 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.

15.4 'Passenger transport services' on the other hand fall under Heading 9964. According to the explanatory notes Heading 9964 covers passenger transport services over pre-determined routes on pre-determined schedules.

15.5 Therefore, a clear distinction exists in service of transport of passengers and renting of a vehicle that is used for transport.

15.6 Accordingly, as recommended by the GST Council, 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 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.

15.7 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.

16. 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-Central Tax (Rate) transport of passengers by non-air conditioned contract carriage

16.1 Representations have been received to clarify whether the engagement of non-air conditioned contract carriages by firms for transportation of their employees to and from work is exempt under entry at Sr. No. 15(b) of notification No. 12/2017-Central Tax (Rate) dated 28.06.2017.

16.2 Sr. No. 15 (b) of notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 exempts "transport of passengers, with or without accompanied belongings, by non-air conditioned contract carriage, other than radio taxi, for transport of passengers, excluding tourism, conducted tour, charter or hire."

16.3 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.

16.4 In other words, the said exemption would apply to passenger transportation services by non-air conditioned contract carriages 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.

17. 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.

17.1 Representation has been received seeking clarification regarding the applicable GST rate on service of construction, supply, installation and commissioning of a 2.00 LLPD dairy plant on turn-key basis.

17.2 In case of a turn key project for construction, supply, installation and commissioning of a 2.00 LLPD dairy plant, it has been held by Advance Ruling Authorities of Bihar and Gujarat that the same does not result into an immovable property and is therefore not a supply of works contract. This being so, such supply is not eligible for concessional rate of 12% applicable on works contract supplied by way of construction, erection, commissioning, or installation of original works pertaining to mechanized food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages.

17.3 In this regard, it may be seen that prior to 18.07.2022.serial number 3(v)(f) of notification no. 11/2017 Central Tax (Rate) dated 28.06.2017 prescribes GST rate of 12 % on the composite supply of works contract by way of construction, erection, commissioning, or installation of original works pertaining to mechanized food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages.

17.4 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. There is no doubt that dairy plant which comes into existence as a result of such contracts is an immovable property.

17.5 It is also 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).

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

18.1 Representations have been received seeking clarification on applicability of GST on private ferry tickets. It has been stated that these private ferries are used as means of transport from one island to another in Andaman and Nicobar Islands.

18.2 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.

18.3 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. 18.4 It is 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.

3.5.2.32 Departmental Clarifications - Clarification regarding GST rates & classification (goods) based on the recommendations of the GST Council in its 47th meeting held on 28th – 29th June, 2022 at Chandigarh- Circular No. 179/11/2022-GST dated 3rd August, 2022

Based on the recommendations of the GST Council in its 47th meeting held on 28th - 29th June at Chandigarh, clarifications, with reference to GST levy, related to the following are being issued through this circular:

2. Electric vehicles whether or not fitted with a battery pack, attract GST rate of 5%:

2.1. Representations have been received seeking clarification regarding the applicable rate of GST on electrically operated vehicle without any battery fitted to it.

2.2. The explanation of 'Electrically operated vehicles' in entry 242A of Schedule I of notification No. 1/2017-Central Tax (Rate) reads as: 'Electrically operated vehicles which run solely on electrical energy derived from an external source or from one or more electrical batteries fitted to such road vehicles and shall include E-bicycles.'

2.3. As is evident from the explanation above, electrically operated vehicle including three wheeled electric vehicle means vehicle that runs 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 electric vehicle.

2.4. It is also pertinent to state that the WCO's HSN Explanatory notes have also not considered batteries to be a component, whose absence changes the essential character of an incomplete, unfinished or unassembled vehicle.

2.5. Also, the HSN explanatory notes for Chapter 87 have clearly stated that Motor Chassis fitted with cabs i.e. the chassis fitted with cabin body falls under 87.02 to 87.04 and not in heading 87.06.

2.6. 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).

3. 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:

3.1. Representations have been received seeking clarification regarding the applicable GST rates on building stones, in particular Napa Stones, which are ready to use and polished in ways other than mirror-polished.

3.2. 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.

3.3. 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.

4. Mangoes under CTH 0804 including mango pulp, but other than fresh mangoes and sliced, dried mangoes, attract GST at 12% rate:

4.1. Representations have been received seeking clarification regarding the applicable GST rate on different forms of Mangoes including Mango Pulp.

4.2. On the basis of the recommendation of the GST Council in its 22nd Meeting, the GST rate on 'Mangoes sliced, dried', falling under heading 0804, was reduced from 12% to 5% [S. No. 30A of Schedule I of notification No. 1/2017-Central Tax (Rate) dated the 28th June, 2017]. However, the GST rate on all forms of dried mangoes (other than sliced and dried mangoes), falling under heading 0804, including mango pulp, was always meant to be at the rate of 12%.

4.3. Accordingly, it is hereby clarified that mangoes, fresh falling under heading 0804 are exempt; 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, attract GST at the rate of 12%. To bring absolute clarity, the relevant entry at S. No. 16 of Schedule-II of notification no. 1/2017-Central Tax (Rate), dated 28th June, 2017, has been amended vide notification No. 6/2022-Central Tax (Rate), dated the 13th July, 2022.

4.4. Fresh mangoes, falling under heading 0804, continue to remain exempt from GST [S. No. 51 of notification No. 2/2017-Central Tax (Rate), dated the 28th June, 2017].

5. Treated sewage water attracts Nil rate of GST:

5.1. Representations have been received seeking clarification regarding the applicable GST rate on treated sewage water. Treated sewage water was not meant to be construed as falling under "purified" water for the purpose of levy of GST.

5.2. 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.

5.3. Accordingly, it is hereby 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.

6. Nicotine Polacrilex Gum attracts a GST rate of 18%:

6.1. Representations have been received seeking clarification regarding the classification and applicable GST rate on Nicotine Polacrilex gum.

6.2. The WCO 2022 HS Codes has inter alia introduced a new entry 2404 91 00 comprising of products for oral application containing nicotine and intended to assist tobacco use cessation with effect from 01.01.2022. Accordingly, a technical change, without any consequential rate change, has been made vide notification No. 18/2021 – Central Tax (Rate), dated the 28th December, 2021, wherein S. No. 26B in Schedule III of notification no. 1/2017-Central Tax (Rate), dated the 28th June, 2017, has been inserted to include products for oral application containing nicotine and intended to assist in cessation of use of tobacco, and falling under tariff item 2404 91 00. The same is supplemented by the HS Explanatory notes 2022 which states that heading 2404 includes nicotine containing products for recreational use, as well as nicotine replacement therapy (NRT) products intended to assist tobacco use cessation, which are taken as part of a nicotine intake reduction programme in order to lessen the human body's dependence on this substance.

6.3. Accordingly, it is hereby clarified that the 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].

7. Fly ash bricks and aggregate - condition of 90% fly ash content applied only to fly ash aggregate, and not fly ash bricks:

7.1. Representations have been received seeking clarification regarding the applicable rate on the fly ash bricks and fly ash aggregates.

7.2. 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 per cent. or more fly ash content; Fly ash blocks" attracts a GST rate of 12%. Confusion has arisen about the applicability of 90 per cent. condition on fly ash aggregates and fly ash bricks. As per the recommendations of the GST Council in the 23rd Meeting, the condition of 90% or more fly ash content was applicable only for fly ash aggregate.

7.3. Therefore, it is clarified that the condition of 90 per cent. 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.

8. Applicability of GST on by-products of milling of Dal/ Pulses such as Chilka, Khanda and Churi:

8.1. Representations have been received seeking clarification regarding the applicable GST rate on by-products of milling of Dal/ Pulses such as Chilka, Khanda and Churi.

8.2. The by-products of milling of pulses/ dal such as Chilka, Khanda and Churi are appropriately classifiable under heading 2302 that consists of goods having description as bran, sharps and other residues, whether or not in the form of pellets, derived from the sifting, milling or other working of cereals or of leguminous plants.

8.3. The applicable GST rate on goods falling under heading 2302 is detailed in the Table below:

Entry and notification No.	Description	GST Rate
S. No. 102 of notification No. 2/2017-Central Tax (Rate), dated the 28th June, 2017	Aquatic feed including shrimp feed and prawn feed, poultry feed & cattle feed, including grass, hay & straw, supplement & husk of pulses, concentrates & additives, wheat bran & de-oiled cake[other than rice bran]	Nil
S. No. 103A of Schedule-I of notification No. 1/2017-Central Tax (Rate), dated 28th June, 2017	Bran, sharps and other residues, whether or not in the form of pellets, derived from the sifting, milling or other working of cereals or of leguminous plants [other than aquatic feed including shrimp feed and prawn feed, poultry feed and cattle feed, including grass, hay and straw, supplement and husk of pulses, concentrates and additives, wheat bran and de-oiled cake]	5%
S. No. 103B of Schedule-I of notification No. 1/2017-Central Tax	Rice bran (other than de-oiled rice bran)	5%

(Rate), dated 28th June, 2017		

8.4. The dispute in applicable GST rate revolves around the central argument as to whether the above-mentioned by-products are meant for direct consumption as cattle feed and therefore attract exemption under S. No. 102 of notification No. 2/2017-Central Tax (Rate) dated 28th June, 2017 or are otherwise not meant for direct consumption and thus covered under S. No. 103A of notification No. 1/2017- Central Tax (Rate) dated 28th June, 2017 attracting a GST rate of 5%.

8.5. While milling of pulses/ dal, a wide range of by-products such as chilka, khanda, churi, among others, are obtained which are preferred 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 color, 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). Further, as per the Indian Standards 2052:2009 -Compounded Feeds for Cattle — Specification, issued by the Bureau of Indian Standards, Ministry of Consumer Affairs, Food & Public Distribution, Government of India, grain by-products have been categorized as one of the ingredients of the compounded cattle feed.

8.6. The GST Council examined the issue and recommended that a clarification be issued in this regard. It also recommended that in view of the prevailing multiple interpretations and genuine doubts regarding the applicability of GST, the issue for past periods may be regularized on as is basis.

8.7. Accordingly, 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 as mentioned in para 8.6.