L&S UPDATE

An e-update to clients from Lakshmikumaran & Sridharan

11 OCTOBER 2021

INDIRECT TAX

Update on recent CBIC Circulars

UPDATE NO. 32 OF 2021

Lakshmikumaran & Sridharan attorneys

exceeding expectations
SINCE 1985

The Update is divided into following topics:

A. Goods – Clarifications on GST rates and classification

B. Services – Clarifications on applicable GST rates and exemptions

A. GOODS – CLARIFICATIONS ON GST RATES AND CLASSIFICATION

[CBIC CIRCULAR NO. 163/19/2021-GST, DATED 6 OCTOBER 2021]

Description	Rate	Clarification
Fresh and dried fruits and nuts	Nil / 5% / 12%	• 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%. • Exemption applicable in case of fresh fruits and nuts which are not frozen or dried in any manner. It covers 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.
Tamarind Seeds	Nil / 5%	• Tamarind seeds, even if used for any purpose other than sowing, is classified under Heading 1209 and attracted nil GST rate, irrespective of its use (for the period 1 July 2017 to 30 September 2021). • W.e.f. 1 October 2021, tamarind and other seeds falling under Heading 1209, (i.e. including tamarind seeds), if not supplied as seeds for sowing, attract GST at the rate of 5%.
Copra	5%	• 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) (**'Goods Rate Notification'**). • 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) (**'Goods Exemption Notification'**) is not available to Copra.
Pure Henna Powder and Leaves	5%	• Pure henna powder and henna leaves, having no additives, is classifiable under Tariff Item 1404 90 90 and shall attract GST rate of 5% as per S. No. 78 of Schedule I of Goods Rate Notification. • GST rate on mehndi paste in cones falling under Heading 1404 and 3305 shall be 5% as per S. No. 78A of Schedule I of Goods Rate Notification.

Description	Rate	Clarification
Scented sweet supari & flavored and coated illaichi	18%	• 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 Goods Rate Notification. • Flavored and coated illaichi is a value-added product and falls under sub-heading 2106. It accordingly attracts GST at the rate of 18% as per S. No. 23 of Schedule III of Goods Rate Notification.
Brewers' Spent Grain ('BSG'), Dried Distillers' Grains with Soluble ('DDGS') and other such residues	5%	• BSG, DDGS and other such residues are classifiable under Heading 2303, attracting GST at the rate of 5% as per S. No. 104 of schedule I of Goods Rate Notification.
Pharmaceutical goods falling under Heading 3006.	12%	• All goods falling under Heading 3006 attract GST rate of 12% as per S. No. 65 of schedule II of Goods Rate Notification.
All laboratory reagents and other goods falling under Heading 3822	12%	• Concessional GST rate of 12% is applicable on all goods falling under Heading 3822, *vide* S. No. 80 of Schedule II of Goods Rate Notification.
Goods imported at concessional GST rate for petroleum operations	-	• Notification No. 3/2017-Central Tax (Rate) prescribes concessional rate of 5% for specified goods which are used in connection with specified petroleum operations subject to some conditions. • It is clarified 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. • 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.

Description	Rate	Clarification
External batteries sold along with UPS Systems / Inverter	18% / 28%	• 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, 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). **L&S Comments** Implications need to be examined in case where single price is charged.
Solar PV Power Projects	-	• 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 1 July 2017 to 31 December 2018, in the same manner as has been prescribed for the period on or after 1 January 2019, as per the explanation in the Notification No.24/2018 dated 31 December 2018. • However, no refunds will be granted if GST already paid is more than the amount determined using this mechanism.
Fibre Drums, whether corrugated or noncorrugated	18% / 12%	• W.e.f. 1 October 2021, uniform GST rate of 18% on all goods classifiable under Heading 4819 as per S. No. 153A of Schedule III of Goods Rate Notification. • For period prior to 1 October 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 July 2017 to 30 September 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, no refund of GST already paid shall be allowed if already paid at 18%.

B. SERVICES – CLARIFICATIONS ON APPLICABLE GST RATES AND EXEMPTIONS

[CBIC CIRCULAR NO. 164/20/2021-GST, DATED 6 OCTOBER 2021]

Description	Rate	Clarification
Services by cloud kitchens / central kitchens	5% without ITC	• 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. • Accordingly, 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) ('**Service Rate Notification**') and attract 5% GST [without ITC].
Supply of ice cream by ice cream parlours	18%	• Ice cream parlours sell already manufactured ice- cream and they do not have a character of a restaurant. Ice-cream parlours 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 parlour stands on a different footing than restaurant service. • It is clarified that where ice cream parlours 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 parlour or any similar outlet would attract GST at the rate of 18%.

Description	Rate	Clarification
Coaching services supplied by coaching institutions and NGOs under the central sector scheme of 'Scholarships for students with Disabilities'	Nil	• 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) ('**Service Exemption Notification**') and hence exempt from GST. **L&S Comments** S. 72 of Service Exemption Notification has been amended *vide* Notification No. 07/2021-Central tax (Rate) w.e.f. 1 October 2021 to provide that 75% or more of the total expenditure shall be borne by Government.
Satellite launch services provided by NSIL	-	• The satellite launch services supplied by NSIL are similar to those supplied by ANTRIX Corporation Ltd. Accordingly, Circular No. 2/1/2017-IGST, dated 27 September 2017, is applicable to them.
Overloading charges at toll plaza	Nil	• Overloading fees are effectively higher toll charges and would get the same treatment as given to toll charges (exempt).
Renting of vehicles to State Transport Undertakings and Local Authorities	Nil	• It is clarified that the expression "giving on hire" in Sl. No. 22 of the Service Exemption Notification 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.

Description	Rate	Clarification
Services by way of grant of mineral exploration and mining rights	18%	• 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, Sl. No. 17 item (viii) of Service Rate Notification prior to 1 January 2019 does not extend to grant of mining rights which is an entirely different activity. • 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"* • 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 July 2017 to 31 December 2018, it was taxable at 18% in view of principle laid down in the 14th meeting of the Council for residuary GST rate. • W.e.f. 1 January 2019, the rate schedule has been specifically amended and it is undisputed since then that such service attracts GST at the rate of 18%. **L&S Comments** • Contradictory to various Advance Rulings. • Tax Demand may be raised for the past periods. • Eligibility of ITC can be disputed.

Description	Rate	Clarification
Admission to indoor amusement parks having rides etc.	28% / 18%	• 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. • 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 for the period prior to 1 October 2021. • The entries in question have been suitably amended *vide* notification No. 6/2021-Central Tax (Rate), dated 30 September 2021 to make them clearer.
Services supplied by contract manufacturers to brand owners for manufacture of alcoholic liquor for human consumption	18%	• 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 Service Rate Notification will not be applicable. • 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%.

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