L&S UPDATE
An e-update to clients from Lakshmikumaran & Sridharan

7 AUGUST 2022

INDIRECT TAX

Clarification regarding GST rates & classification of services

UPDATE NO. 47 OF 2022

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exceeding expectations
SINCE 1985

CIRCULAR NO. 177/09/2022-GST DATED 3 AUGUST 2022

Clarifications have been issued on various issues vide the Circular No. 177/09/2022-TRU dated 3 August 2022 in view of representations received by the Government.

Sl.No	Issue	L&S Comments
1)	**Supply of ice cream by ice-cream parlour** • Circular No. 164/20/2021-GST, dated 6 October 2021 clarified 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. Representations were received:- • Requesting GST @ 18% may be levied with effect from 6 October 2021. • It was represented that ice cream parlors which paid GST @ 5% without ITC did not avail ITC and paid 5% tax in cash. Such ice-cream parlors have thus foregone significant ITC benefit. It has now been clarified that:- • Past cases of payment of GST on supply of ice-cream by the ice-cream parlors@ 5% without ITC shall be treated as fully GST paid to avoid unnecessary litigation. • No refund of GST shall be allowed, if GST is already paid @ 18%. • With effect from 6 October 2021, the ice cream parlors are required to pay GST on supply of ice-cream @ 18% with ITC.	The circular has been issued with an intention to avoid any litigation on tax paid on sale of ice cream for the period prior to 6 October 2021.

2) **Exemption on various fee charged by educational institutions**

- Clarification have been issued in respect of exemption in respect of 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.

It has been clarified that:-

- All services supplied by an 'educational institution' to its students are exempt from GST under S. No. 66 of the Notification No. 12/2017-Central Tax (Rate) dated 28 June 2017 ['Exemption Notification']

- 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 shall be exempt.

- 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.

There were disputes as to the applicability of S. No. 66 of the Exemption Notification for various fee charged from students including fee charged from prospective and ex-students.

The circular has settled the disputes.

It has also been clarified that the scope of the exemption is wide and all services by 'educational institutions' are exempt.

It is to be examined whether any other fee charged from prospective and ex-students shall also get covered in entry no. 66. of Exemption Notification.

It may also be noted that in the 47th GCM it was clarified that application fee charged for entrance or for issuance of eligibility certificate for admission or issuance of migration certificate by universities is exempt from GST.

The clarification issued has covered all educational institutions. Thus, university and all educational institution shall be benefitted by this clarification.

3)	**Exemption on storage or warehousing of cotton in baled or ginned form, up to 17 July 2022** • Entry No. 24B of the Exemption Notification exempted services by way of storage and warehousing of, *inter alia*, raw vegetable fibers such as cotton, flax, jute etc. • It has been clarified that service by way of storage or warehousing of cotton in ginned and or baled form was covered under entry 24B of the Exemption Notification prior to 18 July 2022.	Notification No. 04/2022 -Central Tax (Rate) dated 13 July 2022 has amended S. No. 24B of the Exemption Notification. The amended entry now covers only services by way of storage or warehousing of cereals, pulses, fruits and vegetables. Thus, the clarification is only for the period upto 17 July 2022 and the exemption on storage or warehousing of cotton in ginned or baled form shall not be available from 18 July 2022.
4)	**Exemption on services associated with transit cargo both to and from Nepal and Bhutan** • S. No. 9B of the Exemption Notification exempts supply of services associated with transit cargo to Nepal and Bhutan (landlocked countries). • It has been clarified that exemption under Sl. No. 9B of the Exemption Notification covers services associated with transit cargo **both to and from** Nepal and Bhutan. • Further, following clarification has been issued in respect of movement of empty containers from Nepal and Bhutan, after delivery of goods there:- • It is a service associated with the transit cargo to Nepal and Bhutan and is therefore covered by the exemption.	Though the entry at S. No. 9B covers the supply of services associated with transit cargo "to" Nepal and Bhutan, it has been clarified that the same would cover services associated with transit cargo **both to and from** Nepal and Bhutan. The clarification has not shed any light on the nature of associated services in general. However, it seems that the benefit can be availed only for those activities which are performed while the electronic track and trace facility is in place. Any activity performed before or after this tracking and tracing facility would not be eligible for the exemption.

	• 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 from the track and trace facility.	
5)	**Sanitation and conservancy services supplied to Army and other Central and State Government Departments** • The Circular clarifies the applicability of GST on sanitation and conservancy services provided to the Government. • Effectively, the Circular draws a link between the nature of services and its usage in the hands of the recipient for performing a function entrusted to a Municipality and Panchayat under Article 243W and 243G respectively, of the Constitution. • In this regard, it has been clarified that the Central Government, State Government and Union Territories also perform functions entrusted to Panchayat and Municipality under 11th and 12th Schedule of the Constitution such as irrigation, public health etc. • Exemption under S. No. 3 and 3A of the Exemption Notification has been provided for pure services and composite supplies procured by the Central Government, State Government, Union Territory, or local authorities for performing the functions entrusted in 11th and 12th Schedule. • Accordingly, if Indian Army or any Ministry / Department of Government does not perform the functions listed in 11th and 12th Schedule, sanitation and conservancy services provided to such	This is a welcome clarification whereby the scope of S. No. 3/3A of Exemption Notification and its applicability has been explained. Effectively, Circular clarifies that unless the recipient of supply (Government/Union Territory and Local Authority) is engaged in performing the functions enlisted in 11th and 12th Schedule, the benefit of exemption will not be available even if the underlying service is covered under 11th and 12th Schedule.

	persons will not get exempt from payment of GST under S. No. 3 and 3A of the Exemption Notification.	
6)	**Selling of Space for Advertisement in Souvenirs** • The Circular clarifies that 'book' has been defined in an inclusive manner to cover souvenir book also. • Accordingly, in line with the recommendation of GST Council, it has been clarified that sale of space for advertisement in souvenir book is covered under S. No. (i) of Entry 21 of Notification No. 11/2017-C.T.R. dated 28.06.2017 ('Rate Notification') and attracts GST @ 5%.	This clarification throws light on the meaning of print media.
7)	**Taxability of transport of minerals by vehicles deployed with driver for a specific duration of time** • S. No. 18 of the Exemption Notification exempts services by way of transportation of goods by road except the services of a goods transportation agency and a courier agency. • Representations were made seeking clarification on whether 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 is exempted under the above entry. • It has been clarified that such services are not eligible for exemption and are taxable for the following reasons:-	It was recommended in the 47th GCM that renting of vehicle with operator for transportation of goods on time basis is classifiable under Heading 9966 (rental services of transport vehicles with operators) and attracts GST at 18%. GST on such renting where cost of fuel is included in the consideration charged was proposed to be prescribed at 12%. Consequently, a new entry vide clause (ia) was introduced in S. No.10 of the Rate Notification which prescribed that the rate of GST on renting of goods carriage where the cost of fuel is included in the consideration charged from the service recipient shall be 12%.

	• Such services are "rental services of transport vehicles with operator" which fall under Heading 9966. The same is for the reason that the vehicles with driver are given on hire to the mining lease operator and are at the disposal of the mining lease operator. Also, expenses for fuel are generally borne by the recipient of service. • The recipient defines how and when the vehicles will be operated, determines schedules, routes and other operational considerations. The supplier who gives the vehicles on rent with operator cannot be said to be supplying the service by way of transport of goods. • It has also been clarified that GST rate on renting services of goods carriages where the cost of fuel is included in the consideration charged from the recipient of service has been reduced from 18% to 12% with effect from 18 July 2022. Prior to 18 July 2022, it attracted GST at the rate of 18%.	The clarification apart from clarifying taxability of transport of minerals by vehicles deployed with driver for a specific duration of time, also throws light on difference between rental services and transport services. This clarification can be used for interpreting other entries also where reference of rental service or transportation service appears.
8)	**Taxability of Location Charges or Preferential Location Charges (PLC)** • The Circular clarifies the taxability of PLC which is collected in addition to premium payable for long term lease of industrial plots. • Premium payable for such lease of land by the specified category of suppliers such as SIDC is exempt from payment of GST under S. No. 41 of the Exemption Notification. • Hence, the issue arises whether such PLC is part of consideration charged towards long term lease of land or it represents consideration for independent supplies as held by the	This clarification seems to be issued in the light of ongoing disputes raised before the authorities since the department is demanding 18% GST on PLC as an independent supply. This is a benevolent clarification for the real estate sector wherein it has been stated that PLC is not an independent supply but inextricably linked with supply of long-term lease of plot. Accordingly, PLC charged towards lease of plot shall be subject to same rate of GST as applicable on lease of plot.

	the Authority / Appellate Authority of Advance Ruling in few cases • In this regard, it has been clarified that 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. • Hence, PLC will also get exempt from payment of GST.	This clarification may be applied for the taxability of PLC charged by the developer for sale of units pre or post OC / CC, sale of plots etc.
9)	**Payment of Honorarium to the Guest Anchors** • The Circular clarifies the applicability of GST on honorarium paid to guest anchors. • In this regard, it has been clarified that the services provided by the guest anchors in lieu of honorarium shall attract GST liability. However, guest anchors whose aggregate turnover in a financial year does not exceed INR 20 lakh (INR 10 lakh in case of special category states) shall not be liable to take registration and pay GST.	This clarification may help guest anchors registered under GST laws to collect tax from TV channels, in addition to the honorarium.
10)	**Additional toll fees collected from vehicles not having Fastag** • The Circular clarifies 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. • Therefore, such charges will get exempt from payment of GST as per S. No. 23 of Exemption Notification.	This clarification equates additional fees for not having Fastag at par with toll charges (which is exempt) and not as a service of toleration of an act, or penalty etc. This clarification may have a bearing on cases wherein the taxpayers contend various penal charges to be out of the GST net.

11)	**Assisted Reproductive Technology (ART)/ In Vitro Fertilization (IVF)** • The Circular clarifies that treatment of abnormality / disease / ailment of infertility using ART procedure such as IVF qualifies to be health care services and hence, exempt from payment of GST as per S. No. 74 of the Exemption Notification.	This is a welcome clarification clarifying services in the form of Assisted Reproductive Technology (ART) / In vitro fertilization (IVF) qualifies to be supply of healthcare services in view of ongoing disputes wherein the department is contending that such services cannot be treated as healthcare services.
12)	**Sale of land after levelling, laying down of drainage lines etc** • The Circular clarifies that land may be sold as such (bare land) or after some developments such as levelling, laying down of drainage lines, water lines, electricity lines, etc. • Sale of developed land is also 'sale of land' and will get covered under S. No. 5 of Schedule III of the CGST Act and accordingly does not attract GST. • However, Circular also stipulates that services 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.	This is a welcome clarification providing major relief to the real estate sector that sale of developed plot qualifies to be sale of land, and hence, such transaction will be outside the levy of GST as per S. No. 5 of Schedule III of the CGST Act. It will put to rest the ongoing dispute where department contends that sale of developed plot is not akin to sale of land to get excluded from the levy of GST. This clarification is also in line with the judgement of the Hon'ble Gujarat High Court in the case of Munjaal Mansihbhai Bhatt wherein the Court held that sale of land includes sale of developed plots. It has to be examined whether the clarification will cover the situation of sale of underdeveloped plot which will be developed subsequently. Also, it has to be examined whether the clarification will have impact on the plot sellers who charge separate amount for development activities treating it to be a separate service.

13)	**Situations in which corporate recipients are liable to pay GST on renting of motor vehicles designed to carry passengers** S. No. 15 of the Notification No. 13/2017-CTR dated 28 July 2017 ('Reverse Charge Notification'), states that services provided by a non-body corporate to a body corporate by way of renting of any motor vehicle for transport of passengers, where the cost of fuel is included in the consideration charged from the service recipient, the body corporate is liable to pay tax under reverse charge. In respect of scope of the above entry, following has been clarified:- • The hiring of motor vehicle for a period of time, during which the motor vehicle shall be at the disposal of the recipient body corporate, the service would fall under Heading 9966, and the body corporate shall be liable to pay GST on the same under RCM. • However, where the scope of services is to transport passengers/employee for specific journeys or voyages and vehicle is not given on rent for any particular period of time, the service would fall under Heading 9964. There is no liability on body corporate to pay under RCM in such case.	The circular has thrown light of the nature of rental on a time basis vis-à-vis transportation services. It is to be seen if this clarification can also be used for interpretation of provisions wherever references of rental service or transportation services are given on standalone basis like Section 17(5)(b) of the CGST Act and entries listed in Section 9(5) of the CGST Act.
14)	**Exemption on hiring of vehicles by firms for transportation of their employees to and from work** S. No. 15(b) of the Exemption Notification provides exemption on services of transport of passengers, with or without accompanied belongings by non-airconditioned contract carriage other than radio taxi, for transportation of passengers, excluding tourism, conducted tour, charter or hire.	The clarification has thrown light on the nature of transportation services in the similar manner as in above entries.

	It has been clarified that: • The exemption shall apply where transportation takes place over pre-determined route on a pre-determined schedule. • 'Charter or hire' excluded from the above exemption entry is charter or hire of a motor vehicle for a period of time, where the renter defines how and when the vehicles will be operated, determining schedules, routes and other operational considerations. • Thus, the exemption is not 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).	
15)	**Construction, supply, installation and commissioning of dairy plant on turn-key basis** The Circular has clarified that construction, supply, installation, and commissioning of a dairy plant on turn-key basis constitutes supply of works contract services for the reason diary plan which will come into existence will qualify to be an immovable property. Accordingly, such service will be subject to levy of GST at the rate of 12% as per S. No. 3(v)(f) of the Rate Notification. However, with effect from 18 July 2022, such works contract services would attract GST at the rate of 18% in view of amendment carried out in Rate Notification vide NN 03/2022- C.T.R.	This clarification seems to be issued in the light of ongoing disputes raised before the authorities since the Advance Ruling Authorities were of the view that the activity of construction, supply, installation, and commissioning of dairy plant on turn-key basis would attract 18% GST even for the period prior to 18 July 2022.

16)	**Applicability of GST on tickets of private ferry used for passenger transportation** In respect of GST on private ferry tickets which are used as means of transport from one island to another in Andaman and Nicobar Islands, the following has been clarified:- • As per Sl. No 17 (d) of the Exemption Notification "transportation of passengers by public transport, other than predominantly for tourism purpose, in a vessel between places located in India" is exempted. • This exemption would apply to tickets purchased for transportation from one point to another. • 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. • 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 would not be exempted.	The clarification has shed light on the meaning of 'public transport' which is not defined in the Exemption Notification.

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