

## Clarification on applicability of GST rates, exemption, and classification concerning various goods and services by the CBIC

6 August 2022



## Summary

To remove ambiguity and mitigate legal disputes on the taxability of various goods and services, pursuant to the recommendations of the Goods and Service Tax (GST) council in the 47th Meeting, the Central Board of Indirect Taxes & Customs (CBIC) has issued two circulars to provide clarifications concerning the applicability of GST rates, exemptions on various services, classification of goods.

The CBIC has examined various issues, including applicable GST rate on the supply of ice cream by ice cream parlours, electrically operated vehicles without any battery, taxability of additional toll fees collected from the vehicles not having Fastag, the tax treatment of preferential location charges, etc.

## Key clarifications

### A. Clarifications<sup>1</sup> regarding applicable rate and exemption on certain services

Issue	Clarification
<b>The applicable rate of GST on the supply of ice cream by ice cream parlours during the period from 1 July 2017 to 5 October 2021</b>	Till 5 October 2021, ice cream parlours have paid GST @ 5% without availing ITC <sup>2</sup> and thus, resulted in the loss of benefit of significant ITC. In this respect, it is clarified that to avoid litigation, such cases of GST payment @ 5% without ITC shall be treated as fully GST paid. Further, since the decision is only in order to regularise the past practice, thus GST refund shall not be allowed if tax is already paid at 18%. Besides, w.e.f. 6 October 2021, the ice cream parlours are required to pay GST on such supply at the rate of 18% with ITC benefit.
<b>Applicability of GST on fee charged for entrance or issuance of eligibility certificate for admission or issuance of migration certificate by</b>	<p>The educational services supplied by educational institutions to their students are exempt from GST<sup>3</sup>. The exemption widely covers the amount or fee charged for admission or entrance, the application fee for entrance, or the fee charged from prospective students for issuance of an eligibility certificate. It also includes the services supplied by way of issuance of migration certificates to the leaving or ex-students.</p> <p>Accordingly, it is clarified that the fee charged from prospective students for entrance or admission, or for issuance of eligibility certificate as well as the fee charged for</p>

<sup>1</sup> Circular No. 177/09/2022-TRU dated 3 August 2022

<sup>2</sup> Input tax credit

<sup>3</sup> vide entry 66 of the notification No. 12/2017 Central Tax (Rate) dated 28 June 2017

<b>educational institutions</b>	issuance of migration certificates by educational institutions to the leaving or ex-students, is covered by the exemption.
<b>Applicability of GST exemption on the service of storage or warehousing of cotton in baled or ginned form</b>	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 exemption notification <sup>4</sup> in raw vegetable fibres such as cotton. However, this exemption has been withdrawn w.e.f. 18 July 2022.
<b>Applicability of GST exemption on services associated with transit cargo both to and from Nepal and Bhutan</b>	The services associated with transit cargo to and from Nepal and Bhutan are covered under the exemption notification <sup>5</sup> , as recommended by the GST Council. Further, it is also clarified that the movement of empty containers from Nepal and Bhutan after delivery of goods is a service associated with the transit cargo to Nepal and Bhutan and is therefore covered by the exemption.
<b>Applicability of GST on sanitation and conservancy services supplied to army and other central and state government departments</b>	The exemption <sup>6</sup> has been given to pure services and composite supplies procured by the central government, state government, union territories, or local authorities to perform listed functions <sup>7</sup> . If such services are procured by the Indian Army or any other government ministry/department that does not perform any listed functions in the prescribed manner, then same are not eligible for such exemption.
<b>The applicable rate of GST on the activity of selling of space for advertisement in souvenirs</b>	The selling of space for advertisement in print media attracts GST @ 5%. The term “print media” <sup>8</sup> means book defined in the Act <sup>9</sup> , which would cover souvenir books also. Accordingly, it is clarified that the sale of space for advertisement in souvenir books is covered under the relevant entry <sup>10</sup> of the notification and attracts GST @ 5%.
<b>Taxability and the applicable rate of GST on the transport of minerals by vehicles deployed with drivers for a</b>	Usually, in these cases, the vehicles are given on hire to the mining lease operator, and the expenses for fuel are generally borne by the recipient of service. Further, the vehicles with a driver are used by the mining lease operator as per his requirement during the specified period. These services are “rental services of transport vehicles with operator” having HSN 9966 and will attract GST @18% <sup>11</sup> .

<sup>4</sup> 12/2017- Central Tax (Rate) dated 28 June 2017

<sup>5</sup> Sl. No. 9B of Notification 12/2017- Central Tax (Rate)

<sup>6</sup> under entry 3& 3A of notification 12/2017- Central Tax (Rate) dated 28 June 2017

<sup>7</sup> listed in the 11th and 12th schedule of the constitution

<sup>8</sup> clause (zt) of notification No.12/2017-Central Tax (Rate) dated 28 June 2017

<sup>9</sup> Press and Registration of Books Act, 1867

<sup>10</sup> serial number (i) of entry 21 of notification No. 11/2017-Central Tax (Rate) dated 28 June 2017

<sup>11</sup> under Sr. No. 10 part (iii) of notification No. 11/2017- Central Tax (Rate) dated 28 June 2017

<p><b>specific duration of time</b></p>	<p>The person who gives the vehicles cannot be considered as he is supplying the service by way of transport of goods. Thus, it is clarified that such renting of vehicles with driver for a specified period is a service of renting of transport vehicles with operator falling under Heading 9966. It is not a service of transportation of goods by road, and hence, it is not eligible for exemption<sup>12</sup>.</p> <p>Further, in the case where the cost of fuel is included in the consideration charged from the recipient of service of rental services of goods carriages, GST is applicable @12%<sup>13</sup> w.e.f. 18 July 2022.</p>
<p><b>Tax treatment of location charges or preferential location charges (PLC) collected in addition to the lease premium for long-term lease of land or of upfront amount charged for a long-term lease of land</b></p>	<p>The location charge is nothing, but part of the consideration charged for the long-term lease of the plot. The same is exempt from being charged upfront along with the basic amount for the lease.</p> <p>Accordingly, it is clarified that such amount paid in addition to the lease premium for the long-term lease of land constitutes part of the upfront amount and is eligible for the same tax treatment, and thus eligible for exemption<sup>14</sup>.</p>
<p><b>Applicability of GST on payment of honorarium to the guest anchors</b></p>	<p>It is clarified that the supply of all goods and services is taxable unless exempt or declared as “neither a supply of goods nor a supply of service”. The 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 INR 20 lakhs (INR10 lakhs in case of special category states) shall not be liable to take registration and pay GST.</p>
<p><b>Taxability of additional toll fees collected by the concessionaires from the vehicles not having Fastag</b></p>	<p>The additional amount collected from the users is in the nature of toll charges and should be treated as additional toll charges. It is clarified that such an additional fee is essentially the 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.</p>
<p><b>Applicability of GST on services in form of Assisted Reproductive</b></p>	<p>The abnormality/disease/ailment of infertility is treated using ART procedures 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 exemption notification<sup>15</sup></p>

<sup>12</sup> under Sl. No. 18 of notification No. 12/2017- Central Tax (Rate) dated 28 June 2017

<sup>13</sup> reduced from 18%

<sup>14</sup> under Sl. No. 41 of notification no. 12/2017- Central Tax (Rate) dated 28 June 2017

<sup>15</sup> Sl. No. 74 of notification No. 12/2017- Central Tax (Rate) dated 28 June 2017

<b>Technology (ART)/ In-vitro fertilisation (IVF)</b>	
<b>Applicability of GST on sale of land after levelling, laying down of drainage lines, etc.</b>	<p>As per Schedule III of the CGST Act, 2017, “sale of land” is neither a supply of goods nor a supply of services. Therefore, it does not attract GST. Further, land can either be sold as it is or after some development.</p> <p>In this respect, it is clarified that the sale of such developed land is also the sale of land; hence, it is covered under Schedule III<sup>16</sup> and accordingly does not attract GST. However, any service<sup>17</sup> provided for the development of land as may be received by developers shall attract GST at the applicable rate for such services.</p>
<b>Liability of corporate recipients to pay GST on renting motor vehicles designed to carry passengers</b>	<p>There exists a clear distinction between the service of transport of passengers and renting of a vehicle that is used for transport. Accordingly, it is clarified that when the body corporate hires the motor vehicle for a period of time and has a vehicle at its disposal, the service would fall under Heading 9966, and it shall be liable to pay GST under the reverse charge mechanism (RCM).</p> <p>However, if the body corporate avails the passenger transport service for specific journeys or voyages and does not take the vehicle on rent for any particular period of time, the service would fall under Heading 9964 and not liable to pay GST on the same under RCM.</p>
<b>Will the engagement of non-air-conditioned contract carriages by firms for transportation of their employees to and from work be exempt under GST?</b>	<p>It is clarified that “charter or hire” excluded from the exemption entry is charter or hire of a motor vehicle for a period of time, where the renter defines the operation of vehicles, determining schedules/ routes, etc.</p> <p>Thus, 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</p>
<b>Applicable GST rate on service of construction, supply, installation, and commissioning of</b>	<p>In this regard, it may be seen that prior to 18 July 2022, the notification<sup>18</sup> prescribed GST @12 % on the composite supply of works contract by way of construction, erection, commissioning, or installation of original works pertaining to mechanised food grain handling system, machinery or equipment for units processing agricultural produce as food</p>

<sup>16</sup> Sl. No. 5

<sup>17</sup> like levelling, laying of drainage lines

<sup>18</sup> serial number 3(v)(f) of notification no. 11/2017 Central Tax (Rate) dated 28 June 2017

<p><b>a dairy plant on a turn-key basis.</b></p>	<p>stuff excluding alcoholic beverages. It is clarified that a contract of the nature described here constitutes the supply of works contract. Further, the dairy plant which comes into existence as a result of such contracts is an immovable property.</p> <p>It is also clarified that such works contract services were eligible for a concessional rate of 12% GST prior to 18 July 2022. However, w.e.f. 18 July 2022, such works contract services would attract GST at the rate of 18%<sup>19</sup>.</p>
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## B. Clarification<sup>20</sup> regarding GST rates and classification of goods

Issue	Clarification
<p><b>The applicable rate of GST on the electrically operated vehicle without any battery fitted to it</b></p>	<p>As per the explanation<sup>21</sup> of “electrically operated vehicle”, it means a vehicle that runs solely on electrical energy derived from an external source or electrical batteries. Therefore, the fitting of batteries cannot be considered a connecting factor for defining a vehicle as an electrically operated electric vehicle. Hence, it is clarified that an 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 attracts GST at the rate of 5%<sup>22</sup>.</p>
<p><b>Applicable GST rates on Napa Stones, which are ready to use and polished in ways other than mirror-polished</b></p>	<p>Napa Stone is a brittle stone that cannot be subjected to extensive mirror polishing. Currently, as per Schedule I<sup>23</sup>, GST @ 5% is applicable for stones<sup>24</sup> other than mirror polished stone which is ready to use. Napa Stones are minor polished stones that do not qualify as mirror polished stones. Therefore, it is clarified that the relevant entry of schedule I<sup>25</sup> cover minor polished stones.</p>
<p><b>Applicable GST rate on different forms of mangoes, including mango pulp</b></p>	<p>It is clarified that mangoes, fresh falling under heading 0804 are exempt. Further, mangoes, sliced and dried, falling under 0804 are chargeable to a concessional rate of 5% and all other forms of dried mango, including mango pulp, attract GST at the rate of 12%.</p>
<p><b>Applicable GST rate on treated sewage water</b></p>	<p>Water<sup>26</sup>, with certain specified exclusions, is exempt from GST<sup>27</sup>. It includes the supply of treated sewage water.</p>

<sup>19</sup> Amendment carried out in notification No. 11/2017- Central Tax (Rate) vide notification No. 03/2022- Central Tax (Rate)

<sup>20</sup> Circular No. 179/11/2022-GST dated 3 August 2022

<sup>21</sup> in entry 242A of Schedule I of notification No. 1/2017-Central Tax (Rate)

<sup>22</sup> in terms of entry 242A of Schedule I of notification No. 1/2017-Central Tax (Rate).

<sup>23</sup> Sl. no. 123

<sup>24</sup> 'Ecaussine and other calcareous monumental or building stone;alabaster [other than marble and travertine

<sup>25</sup> S. No. 123 of the notification No. 1/2017-Central Tax (rate) dated 28 June 2017

<sup>26</sup> falling under heading 2201

<sup>27</sup> vide entry at S. No. 99 of notification No. 2/2017-Central Tax (Rate), dated 28 June 2017

	Further, the word “purified” is omitted from the relevant entry <sup>28</sup>
<b>Classification and applicable GST rate on Nicotine Polacrilex gum</b>	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 an applicable GST rate of 18% <sup>29</sup> .
<b>Applicable rate on the fly ash bricks and fly ash aggregates</b>	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. Therefore, it is clarified that the condition of 90% or more fly ash content is applied only to fly ash aggregates and not to fly ash bricks and fly ash blocks. Further, w.e.f. 18 July 2022, the condition is omitted from the description.
<b>Applicable GST rate on by-products of milling of <i>dall</i> pulses such as <i>chilka, khanda</i> and <i>churi</i></b>	It is clarified that the goods which are used as cattle feed ingredients are classified under heading 2302 and attract GST at the rate of 5% <sup>30</sup> . For the past cases, the matter would be regularised on an as-is basis.

## Our comments

The circulars issued by the CBIC should help mitigate disputes across industries/sectors and reduce litigation and tax demands.

Depending on the facts of the case, these clarifications will help determine the taxability of the goods or services. It is likely to provide uniformity in the interpretation of the taxpayers and the tax authorities for the transactions.

<sup>28</sup> vide notification No. 7/2022-Central Tax (Rate), dated 13 July 2022

<sup>29</sup> SI. No. 26B in Schedule III of notification no. 1/2017-Central Tax (Rate), dated 28 June 2017

<sup>30</sup> vide S. No. 103A of Schedule-I of notification no. 1/2017-Central Tax (Rate), dated 28 June 2017

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