

Summary of Clarificatory Circulars issued post recommendations of 47th GST Council Meeting

Pursuant to the recommendations of the GST Council in its 47th meeting held on 28-29 June, the Central Board of Indirect Taxes & Customs (CBIC) issued a series of circulars in response to requests for clarifications from industry on various issues. These Circulars were issued on August 03, 2022 and can be accessed [here](#). A summary of clarifications contained within the circulars is provided below:

I. Clarifications regarding applicable GST rates and exemptions on certain services (Circular No. 177/09/2022-TRU)

| Issue | Clarification |
|---|--|
| Rate of GST applicable on supply of ice-cream by ice-cream parlors during the period from 01.07.2017 to 05.10.2021 | <ul style="list-style-type: none"> - Past cases of payment of GST i.e. from 01.07.2017 to 05.10.2021 on supply of ice-cream by ice-cream parlors @ 5% without ITC shall be treated as fully GST paid to avoid unnecessary litigation. - 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. |
| Clarification on renting of motor vehicles designed to carry passengers to corporate recipients | <ul style="list-style-type: none"> - Reverse charge would apply on act of renting of vehicles (for transport of employees etc.) as for a period of time the motor vehicle shall be at the disposal of the body corporate. - 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 <u>not be liable</u> to pay GST on the same under RCM. |

| Issue | Clarification |
|---|--|
| <p>Exemption on Hiring of vehicles for transportation of employees to and from work by non-air conditioned contract carriage</p> | <ul style="list-style-type: none"> - Exemption available for transport of passengers by non-air conditioned contract carriage, would apply to transportation which 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 |
| <p>Tax treatment on location charges or preferential location charges (PLC) collected in addition to the lease premium for long term lease(of thirty years, or more) of land</p> | <ul style="list-style-type: none"> - 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. |
| <p>Sale of land after levelling, laying down of drainage lines etc.</p> | <ul style="list-style-type: none"> - 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. - 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. |

II. 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*). There has always been an ambiguity with respect to 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. This Circular examines the 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 the CGST Act.

| Nature of charge/payment | Analysis in the Circular | Whether GST is applicable |
|--------------------------|--|--|
| Liquidated damages | <ul style="list-style-type: none"> - 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 - Such compensation is not by way of consideration for any other independent activity, but it is just an event in the course of performance of the 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 | <ul style="list-style-type: none"> - 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, liquidated damages are merely 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 <i>[Example: damages resulting from damage to property, negligence, piracy, unauthorized use of trade name, copyright]</i> - In cases where the payments constitute consideration for another independent contract envisaging tolerating an act or situation or |

| Nature of charge/payment | Analysis in the Circular | Whether GST is applicable |
|---|--|--|
| | <ul style="list-style-type: none"> - <u>A contract is entered into for execution and not for its breach. 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</u> - The key factor determining the taxability of the charge/payment for breach of a contract 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” | <p>refraining from doing any act or situation or simply doing an act (by whatever name called), then it constitutes a ‘supply’ within the meaning of the CGST Act</p> <p><i>[Example: Failure to make payment on due date, ticket cancellation charges on passengers, pre-payment penalty by banks, etc]</i></p> |
| <p>Forfeiture of salary or payment of bond amount in the event of the employee leaving the employment before the minimum agreed period (Notice pay recovery)</p> | <ul style="list-style-type: none"> - 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 | <p>Notice pay amounts recovered by the employer are not taxable as consideration for the service of agreeing to tolerate an act or a situation (and that the employee does not get anything in return from the employer against payment of such amounts)</p> |

| Nature of charge/payment | Analysis in the Circular | Whether GST is applicable |
|---|--|--|
| | <p>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</p> | |
| <p>Late payment surcharge or fee</p> | <p>- The <u>facility of accepting late payments</u> with interest or late payment fee, fine or penalty is a facility granted by supplier <u>naturally bundled with the main supply</u></p> <p>- 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</p> | <p>Such charges are ancillary to and naturally bundled with the principal supply such as of electricity, water, telecommunication, cooking gas, insurance etc, and thus should be assessed at the same rate as the principal supply</p> |
| <p>Cheque dishonor fine/penalty</p> | <p>The fine or penalty that the supplier or a banker imposes, for dishonor 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</p> | <p>Cheque dishonor fine or penalty is not a consideration for any service and not taxable</p> |
| <p>Penalty imposed for violation of laws</p> | <p>- Laws are not framed for tolerating their violation. Penalty is stipulated not for tolerating violation but for not tolerating, penalizing and deterring</p> | <p>Penalty imposed for violation of laws cannot be regarded as consideration charged by Government</p> |

| Nature of charge/payment | Analysis in the Circular | Whether GST is applicable |
|------------------------------------|---|--|
| | <ul style="list-style-type: none"> - There is no agreement between the Government and the violator specifying that violation would be allowed or permitted against payment of fine or penalty | <p>or a Local Authority for tolerating violation of laws and hence not taxable</p> |
| <p>Cancellation charges</p> | <ul style="list-style-type: none"> - It is a common business practice for suppliers of services such as hotel accommodation, tour and travel, transportation etc. to <u>provide the facility of cancellation of the intended supplies within a certain time period on payment of cancellation fee</u> - 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. - It may be noted that all the facilities associated with a transportation travel and tour constitute a bundle of services, which are 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 | <p>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 should be assessed as the principal supply</p> <p><i>[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)</i></p> |

| Nature of charge/payment | Analysis in the Circular | Whether GST is applicable |
|--|--------------------------|---------------------------|
| <p>Note:</p> <p><i>The <u>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</u>. 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.</i></p> <p><i>Further, 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. 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.</i></p> | | |

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III. Clarifications regarding applicable GST rates on EVs, Stones, Mangoes, Treated water, etc. (Circular No. 179/11/2022-GST)

(a) Clarification on GST Rates:

| S.N | Item Description | Applicable GST Rate | Clarifications |
|-----|---|---------------------|---|
| 1 | Electric vehicles whether or not fitted with a battery pack | 5% | 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%. |
| 2 | Mangoes under CTH 0804 including mango pulp, but other than fresh mangoes and sliced, dried mangoes | 5% / 12% | - 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%. - Fresh mangoes, falling under heading 0804, continue to remain exempt from GST |
| 3 | Treated sewage water | Nil | Supply of treated sewage water, falling under heading 2201, is exempt under GST. |
| 4 | Nicotine Polacrilex Gum | 18% | 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%. |
| 5 | Fly ash bricks and Fly ash aggregates | 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 |

| S.N | Item Description | Applicable GST Rate | Clarifications |
|-----|---|--------------------------------------|--|
| | | | <p>Council in the 23rd Meeting, the condition of 90% or more fly ash content was applicable only for fly ash aggregate.</p> <p>- 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.</p> |
| 6 | <p>By-products of milling of Dal/ Pulses such as Chilka, Khandra and Churi</p> <p><u>Goods falling under the heading 2302:</u></p> <p>(a) Aquatic feed (b) Bran, sharps and other residues (c) Rice bran (other than de-oiled rice bran)</p> | <p>(a) NIL (b) 5% (c) 5%</p> | <p>- The dispute in applicable GST rate revolves around the central argument as to whether the 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%</p> <p>- It is clarified that, 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.</p> |

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(b) **Clarification on Classification of certain goods:**

| S.N | Item Description | Clarifications |
|-----|---|--|
| 1 | Stones otherwise covered in S. No. 123 of Schedule-I (such as Napa stones), which are not mirror polished | <p>- Napa Stone is a variety of dimensional limestone, which is a brittle stone and cannot be subject to extensive mirror polishing. Therefore, such minor polished stones do not qualify as mirror polished stones.</p> <p>- It is clarified that S. No. 123 in schedule-I to the notification No. 1/2017- Central Tax (rate) dated 28.06.2017 covers mirror polished stones.</p> |

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