GST

Central Circulars on Services
(Updated up to 31st March, 2025)

Compiled by:

GST Policy Planning Unit
Directorate of Commercial Taxes
Government of West Bengal.

GST

Central Circulars on Services
(Updated up to 31st March, 2025)

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1. Reference State and Central Circulars on Services

Sl. No.	Subject	CGST Circular No.& Date	WBGST Circular No.& Date
1	Clarification on supply of satellite launch services by ANTRIX Corporation Ltd.	2/1/2017-IGST 27.09.2017	Nil
2	Clarification on taxability of printing contracts	11/11/2017-GST dt 20-10-2017	14/2018 dt 17-09-2018
3	Clarifications regarding applicability of GST and availability of ITC in respect of certain services	16/16/2017-GST 15.11.2017	18/2018-17.09.2018
4	Clarification on taxability of custom milling of paddy	19/19/2017-GST 20.11.2017	20/2018-17.09.2018
5	Clarification on issues regarding treatment of supply by an artist in various States and supply of goods by artists from galleries	22/22/2017-GST 21.12.2017	15/2017-21.12.2017
6	Clarifications regarding levy of GST on accommodation services, betting and gambling in casinos, horse racing, admission to cinema, home-stays, printing, legal services etc.	27/01/2018-GST 04.01.2018	24/2018-17.09.2018
7	Clarifications regarding GST on College Hostel Mess Fees	28/02/2018-GST 08.01.2018	Nil
8	Corrigendum to Circular No. 28/02/2018-GST dated 08th January 2018	18.01.2018	Nil
9	Clarification on supplies made to the Indian Railways classifiable under any chapter, other than Chapter 86	30/04/2018-GST 25.01.2018	26/2018-17.09.2018
10	Clarifications regarding GST in respect of certain services	32/06/2018-GST 12.02.2018	27/2018-17.09.2018
11	Clarifications regarding GST in respect of certain services	34/08/2018-GST 01.03.2018	28/2018-17.09.2018
12	Clarifications regarding GST in respect of certain services 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	35/09/2018-GST 05.03.2018	29/2018-17.09.2018
13	Clarification on issues related to Job Work	38/12/2018-GST 26.03.2018	30/2018-17.09.2018
14	Issue related to taxability of 'tenancy rights' under GST	44/18/2018-GST 02.05.2018	32/2018-17.09.2018
15	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	50/24/2018-GST 31.07.2018	Nil

16	Applicability of GST on ambulance services provided to Government by Private service providers under the National Health Mission (NHM)	51/25/2018-GST 31.07.2018	37/2018-17.09.2018
17	Taxability of services provided by Industrial Training Institutes (ITI)	55/29/2018-GST 10.08.2018	38/2018-17.09.2018
18	Applicability of GST on various programmes conducted by the Indian Institutes of Managements (IIMs)	82/01/2019-GST 01.01.2019	03/2019-08-01-2019
19	Applicability of GST on Asian Developer Bank (ADB) and International Finance Corporation (IFC)	83/02/2019-GST 01.01.2019	04/2019-08-01-2019
20	Clarification on issue of classification of service of printing of pictures covered under 998386	84/03/2019-GST 01.01.2019	05/2019-08-01-2019
21	Clarification on GST rate applicable on supply of food and beverage services by educational institution	85/04/2019-GST 01.01.2019	06/2019-08-01-2019
22	GST on Services of Business Facilitator (BF) or a Business Correspondent (BC) to Banking Company	86/05/2019-GST 01.01.2019	07/2019-08-01-2019
23	Clarification regarding exercise of option to pay tax under notification No. 2/2019- CT(R) dt 07.03.2019	97/16/2019-GST 05.04.2019	17/2019-12-04-2019
24	Corrigendum to Circular No. 97/16/2019-GST dated 5th April, 2019 issued vide F. No. CBEC/20/16/4/2018-GST (Pt. I)	corrigendum	….
25	Corrigendum to Circular No. 97/16/2019-GST dated 5th April, 2019 issued vide F. No. CBEC/20/16/4/2018-GST (Pt. I), as amended vide Corrigendum dated 01.07.2019	corrigendum	….
26	GST applicability on Seed Certification Tags	100/19/2019-GST 30.04.2019	21/2019-02-05-2019
27	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	101/20/2019-GST 30.04.2019	22/2019-02-05-2019
28	Clarification on doubts related to supply of Information Technology enabled Services (ITeS services)	107/26/2019-GST 18.07.2019	28/2019 22.07.2019
29	Issues related to GST on monthly subscription/contribution charged by a Residential Welfare Association from its members	109/28/2019-GST 22.07.2019	30/2019 31.07.2019
30	Clarification on scope of support services to exploration, mining or drilling of petroleum crude or natural gas or both	114/33/2019-GST 11.10.2019	35/2019 17.10.2019
31	Clarification on issue of GST on Airport levies	115/34/2019-GST 11.10.2019	36/2019 dt. 17.10.2019

32	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	116/35/2019-GST 11.10.2019	37/2019 17.10.2019
33	Clarification on applicability of GST exemption to the DG Shipping approved maritime courses conducted by Maritime Training Institutes of India	117/36/2019-GST 11.10.2019	38/2019 17.10.2019
34	Clarification regarding determination of place of supply in case of software/design services related to Electronics Semi-conductor and Design Manufacturing (ESDM) industry	118/37/2019-GST 11.10.2019	39/2019 17.10.2019
35	Clarification regarding taxability of supply of securities under Securities Lending Scheme, 1997	119/38/2019-GST 11.10.2019	40/2019 17.10.2019
36	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	126/45/2019-GST dt 22.11.2019	47/2019 dt 10.12.2019
37	Withdrawal of Circular No. 107/26/2019-GST dt. 18.07.2019 [Circular No. 127/46/2019-GST]	127/46/2019 dt 04.12.2019	48/2019 dt 10.12.2019
38	Reverse Charge Mechanism (RCM) on renting of motor vehicles [Circular No. 130/2019-GST]	130/2019 dt 31.12.2019	1/2020 dt 16.01.2020
39	Clarification in respect of issues under GST law for companies under Insolvency and Bankruptcy Code, 2016	134/04/2020 dt 23.03.2020	05/2020 dt 21-04-2020
40	Clarification in respect of levy of GST on Director's remuneration	140/10/2020 dt 10-06-2020	08/2020 dt 06.07.2020
41	Clarification regarding applicability of GST on supply of food in Anganwadis and Schools	149/05/2021 dt 17-06-2021	09/2021 dt. 30-06-2021
42	Clarification regarding applicability of GST on the activity of construction of road where considerations are received in deferred payment (annuity)	150/06/2021 dt 17-06-2021	10/2021 dt. 30-06-2021
43	Clarification regarding GST on supply of various services by Central and State Board (such as National Board of Examination)	151/07/2021 dt 17-06-2021	11/2021 dt. 30-06-2021
44	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	152/08/2021 dt 17-06-2021	12/2021 dt. 30-06-2021
45	GST on milling of wheat into flour or paddy into rice for distribution by State Governments under PDS	153/09/2021 dt 17-06-2021	13/2021 dt. 30-06-2021
46	GST on service supplied by State Govt. to their undertakings or PSUs by way of guaranteeing loans taken by them	154/10/2021 dt 17-06-2021	14/2021 dt. 30-06-2021

47	Clarification on doubts related to scope of "Intermediary"	159/15/2021 dt 20-09-2021	19/2021 dt 30.09.2021
48	Clarifications regarding applicable GST rates & exemptions on certain services	164/20/2021 dt 06-10-2021	24/2021 dt 03.11.2021
49	GST on service supplied by restaurants through e-commerce operators	167/23/2021 dt 17-12-2021	01/2022 dt 31-01-2022
50	Clarifications regarding applicable GST rates & exemptions on certain services [Circular No. 177/09/2022-GST]	177/09/2022 dt 03-08-2022	10/2022 dt. 29-09-2022
51	GST applicability on liquidated damages, compensation and penalty arising out of breach of contract or other provisions of law	178/10/2022 dt 03-08-2022	11/2022 dt. 29-09-2022
52	Clarification on the entitlement of input tax credit where the place of supply is determined in terms of the proviso to sub-section (8) of section 12 of the Integrated Goods and Services Tax Act, 2017	184/16/2022-GST dt. 27-12-2022	16/2022 dt. 29-12-2022
53	Clarification on various issue pertaining to GST	186/18/2022-GST dt. 27-12-2022	18/2022 dt. 29-12-2022
54	Clarification regarding the treatment of statutory dues under GST law in respect of the taxpayers for whom the proceedings have been finalised under Insolvency and Bankruptcy Code, 2016	187/19/2022-GST dt. 27-12-2022	19/2022 dt. 29-12-2022
55	Clarifications regarding applicability of GST on certain services	190/2/2023-GST dt. 13-01-2023	04/2023 dt. 22-08-2023
56	Clarification on valuation of supply of import of services by a related person where recipient is eligible to full input tax credit	210/04/2024-GST dt 26-06-2024	04/2024 dt 08-07-2024
57	Clarification on the taxability of ESOP/ESPP/RSU provided by a company to its employees through its overseas holding company	213/07/2024-GST dt 26-06-2024	07/2024 dt 08-07-2024
58	Clarification regarding taxability of the transaction of providing loan by an overseas affiliate to its Indian affiliate or by a person to a related person	218/12/2024-GST dt 26-06-2024	12/2024 dt 08-07-2024
59	Clarification on place of supply applicable for custodial services provided by banks to Foreign Portfolio Investors	220/14/2024-GST dt 26-06-2024	14/2024 dt 08-07-2024
60	Clarification on time of supply in respect of supply of services of construction of road and maintenance thereof of National Highway Projects of National Highways Authority of India (NHAI) in Hybrid Annuity Mode (HAM) model	221/15/2024-GST dt 26-06-2024	15/2024 dt 08-07-2024
61	Clarification on time of supply of services of spectrum usage and other similar services under GST	222/16/2024-GST dt 26-06-2024	16/2024 dt 08-07-2024

62	Clarification on various issues pertaining to taxability and valuation of supply of services of providing corporate guarantee between related persons	225/19/2024-GST dt. 11-07-2024	18/2024 dt 08-07-2024
63	Clarifications regarding applicability of GST on certain services	228/22/2024-GST dt. 15-07-2024	21/2024 dt 11-09-2024
64	Clarification in respect of advertising services provided to foreign clients	230/24/2024-GST dt. 10.09.2024	23/2024 dt.04.10.2024
65	Clarification on place of supply of data hosting services provided by service providers located in India to cloud computing service providers located outside India	232/26/2024-GST dt. 10.09.2024	25/2024 dt.04.10.2024
66	Clarifications regarding applicability of GST on certain services	234/28/2024-GST dt. 11.10.2024	27/2024 dt.16.12.2024
67	Clarification on place of supply of Online Services supplied by the suppliers of services to unregistered recipients	242/36/2024-GST dt. 31.12.2024	03/2025 dt.08.01.2025
68	Regularizing payment of GST on co-insurance premium apportioned by the lead insurer to the co-insurer and on ceding /re-insurance commission deducted from the reinsurance premium paid by the insurer to the reinsurer	244/01/2025-GST dt. 28.01.2025	07/2025 dt.18.03.2025
69	Clarifications regarding applicability of GST on certain services	245/02/2025-GST dt. 28.01.2025	08/2025 dt18.03.2025

2. Clarification on supply of satellite launch services by ANTRIX Corporation Ltd [Circular No 2/1/2017-IGST]

Circular No 2/1/2017-IGST
New Delhi, 27th September, 2017

Request has been received regarding taxability of satellite launch services provided to both international and domestic customers by ANTRIX Corporation Limited which is a wholly owned Government of India Company under the administrative control of Department of Space (DOS).

2. In the above context, the legal provisions in GST laws are as under:

a) Export of services is defined in IGST Act in Section 2(6) where the following 5 conditions have been prescribed as necessary for a supply to qualify as export of service:
   (i) the supplier of service is located in India;
   (ii) the recipient of service is located outside India;
   (iii) the place of supply of service is outside India;

(iv) the payment for such service has been received by the supplier of service in convertible foreign exchange; and

(v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8;

One of the five conditions for a supply of service to be considered as "export of service" is that the place of supply of service is outside India.

b) Section 13(9) of the IGST Act provides that where location of supplier of services or location of recipient of services is outside India, the place of supply of services of transportation of goods, other than by way of mail or courier, shall be the place of destination of such goods. However, where location of supplier and recipient of services is in India, then the place of supply is governed by section 12 (8) of the IGST Act, which stipulates that place of supply will be the location of the recipient of services provided he is registered; if not registered, then the place of supply will be the place where goods are handed over for their transportation.

3. In view of the above, place of supply of satellite launch services supplied by ANTRIX Corporation Limited to international customers would be outside India in terms of section 13(9) of IGST Act, 2017 and such supply which meets the requirements of section 2(6) of IGST Act, thus constitutes export of service and shall be zero rated in accordance with section 16 of the IGST Act. Where satellite launch service is provided by ANTRIX Corporation Limited to a person located in India, the place of supply of satellite launch service would be governed by section 12 (8) of the IGST Act and would be taxable under CGST Act, UTGST Act or IGST Act, as the case may be.

3. Clarification on taxability of printing contracts [Circular No 11/1/2017-IGST]

Circular No 11/11/2017-GST
New Delhi, 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 ofwhat 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, whereonly 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.

4. Clarifications regarding applicability of GST and availability of ITC in respect of certain services [Circular No 16/16/2017]

Circular No 16/16/2017
New Delhi, 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. 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. 4. Similarly, processing of sugarcane into jaggery changes its essential characteristics. Thus, jaggery is also not an agricultural produce. 5. Pulses commonly known as dal are obtained after dehusking or splitting or both. The process of de-husking 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. 6. 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 (de-husked 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	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

	airlines?	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 of5%.
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.

5. Clarification on taxability of custom milling of paddy [Circular No. 19/19/2017-GST]

Circular No. 19/19/2017-GST
New Delhi, 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% to5% 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).

6. 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]

Circular No 22/22/2017-GST
New Delhi, 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 e way bill wherever applicable and the invoice may be issued at the time of actual supply of artwork.

4. It is also clarified that the supplies of the art work from one State to another State will be inter-State supplies and attracts 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 artworks 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.

7. Clarifications regarding levy of GST on accommodation services, betting and gambling in casinos, horse racing, admission to cinema, home stays, printing, legal services etc. [Circular No. 27/01/2018-GST]

Circular No. 27/01/2018-GST
New Delhi, 4th January, 2018

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

2. In this context, it is stated that the following clarifications, *inter-alia*, were published as FAQ at http://www.cbec.gov.in/resources//htdocs-cbec/gst/om-clarification.pdf.

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 maybe. Illustration: If entire bet value is Rs. 100, GST leviable will be Rs. 28/-.
4	1. Whether for the purpose of entries at Sl. Nos. 34(ii) [admission to cinema] and 7(ii)(vi)(viii) [Accommodation in hotels,	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

	inns, etc.], of notification 11/2017-CT (Rate) dated 28th June 2017, price/ declared tariff includes the tax component or not? 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?	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 home stays 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 legal heir. [e.g. White Tiger Procures copyright from Ruskin Bond] 2. The books are printed/ published/ sold against a specific brand name. [e.g. Manorama Year Book] 3. 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	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.

	publishing Indian language edition (translated). [e.g. Ananda Publishers Ltd. pays fees to Penguin (NY)]	
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.

8. Clarifications regarding GST on College Hostel Mess Fees [Circular No 28/02/2018-GST]

Circular No 28/02/2018-GST
New Delhi, 8th January, 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]. It is immaterial whether the service is provided by the educational institution itself or the institution outsources the activity to an outside contractor.

9. Corrigendum to Circular No. 28/02/2018-GST dated 08th January 2018 issued vide F.No. 354/03/2018 on catering services provided in educational institute

New Delhi, 18th January 2018

In Para 2 of the said circular,

for

"It is immaterial whether the service is provided by the educational institution itself or the institution outsources the activity to an outside contractor."

read,

"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."

10. Clarification on supplies made to the Indian Railways classifiable under any chapter, other than Chapter 86 [Circular No 30/04/2018-GST]

Circular No 30/04/2018-GST
New Delhi, 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 28thJune, 2017, read with notification No. 5/2017-Central Tax (Rate) dated 28thJune, 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 28thJune, 2017 or notification No.2/2017-Central Tax (Rate) dated 28thJune, 2017.

3. The GST Council during its 25th meeting held on 18thJanuary, 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.

11. Clarifications regarding GST in respect of certain services as decided in 25th GST Council meeting. [Circular No 32/06/2018-GST]

Circular No 32/06/2018-GST
New Delhi, 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: – (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	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 under Article323B 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/

	50% of total amount imposed by the District Forum or Rs 25000/- whichever is less, is required to be paid.	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 28.6.17 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 be applicable on such money retained by the hospitals? (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	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 28.06.2017 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 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 in-patients as advised by the doctor/nutritionists is a part of composite supply of healthcare and not separately taxable. Other

	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.	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.

12. Clarifications regarding GST in respect of certain services [Circular No 34/08/2018-GST]

Circular No 34/08/2018-GST
New Delhi, 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:-

Sl. 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 4012 of the Customs Tariff attracting GST @ 28%)
3.	(1) Whether the Priority Sector Lending Certificate (PSLCs) are outside the purview of GST & therefore not taxable? (2) Whether the guarantee provided by State Government to state owned companies against guarantee commission, is taxable under GST?	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. PSL Care 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.
4.	(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?	(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,- i. Application fee for releasing connection of electricity; ii. Rental Charges against metering equipment; iii. Testing fee for meters/ transformers, capacitors etc.; iv. Labour charges from customers for shifting of meters or shifting of service lines; v. charges for duplicate bill; provided by DISCOMS to consumer are taxable. (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.

13. Clarifications regarding GST in respect of certain services 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 35/09/2018-GST]

Circular No 35/09/2018-GST
New Delhi, 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, license, 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.

14. Clarification on issues related to Job Work [Circular No. 38/12/2018]

CircularNo.38/12/2018

New Delhi, 26th March, 2018

Various representations have been received regarding the procedures to be followed for sending goods for job work and the related compliance requirements for the principal and the job worker. In view of the difficulties being faced by the taxpayers 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 the various issues raised as below:

2. As per clause (68) of section 2 of the CGST Act, 2017, "job work" means any treatment or process undertaken by a person on goods belonging to another registered person and the expression "job worker" shall be construed accordingly. The registered person on whose goods (inputs or capital goods) job work is performed is called the "Principal" for the purposes of section 143 of the CGST Act. The said section which encapsulates the provisions related to job work, provides that the registered principal may, without payment of tax, send inputs or capital goods to a job worker for job work and, if required, from there subsequently to another job worker and so on. Subsequently, on completion of the job work (by the last job worker), the principal shall either bring back the goods to his place of business or supply (including export) the same directly from the place of business/premises of the job worker within one year in case of inputs or within three years in case of capital goods (except moulds and dies, jigs and fixtures or tools).

3. It may be noted that the responsibility of keeping proper accounts of the inputs and capital goods sent for job work lies with the principal. Moreover, if the time frame of one year / three years for bringing back or further supplying the inputs / capital goods is not adhered to, the activity of sending the goods for job work shall be deemed to be a supply by the principal on the day when the said inputs / capital goods were sent out by him. Thus, essentially, sending goods for job work is not a supply as such, but it acquires the character of supply only when the inputs/ capital goods sent for job work are neither received back by the principal nor supplied further by the principal from the place of business / premises of the job worker within one/three years of being sent out. It may be noted that the responsibility for sending the goods for job work aswell as bringing them back or supplying them has been cast on the principal.

4. With respect to the above legal requirements, various issues have been raised on the following aspects:
   a. Scope / ambit of jobwork;
   b. Requirement of registration for a principal /job worker;
   c. Supply of goods by the principal from the job worker's place of business / premises;
   d. Movement of goods from the principal to the job worker and the documents and intimation required there for;
   e. Liability to issue invoice, determination of place of supply and payment of GST; and
   f. Availability of input tax credit to the principal and the job worker.

5. Scope/ambit of job work: Doubts have been raised on the scope of job work and whether any inputs, other than the goods provided by the principal, can be used by the job worker for providing the services of job work. It may be noted that the definition of job work, as contained in clause(68) of section 2 of the CGST Act, entails that the job work is a

treatment or process undertaken by a person on goods belonging to another registered person. Thus, the job worker is expected to work on the goods sent by the principal and whether the activity is covered within the scope of job work or not would have to be determined on the basis of facts and circumstances of each case. Further, it is clarified that the job worker, in addition to the goods received from the principal, can use his own goods for providing the services of jobwork.

6. Requirement of registration for the principal/ job worker: It is important to note that the provisions of section 143 of the CGST Act are applicable to a registered person. Thus, it is only a registered person who can send the goods for job work under the said provisions. It may also be noted that the registered person (principal) is not obligated to follow the said provisions. It is his choice whether or not to avail or not to avail of the benefit of these special provisions.

6.1 Doubts have been raised about the requirement of obtaining registration by job workers when they are located in the same State where the principal is located or when they are located in a State different from that of the principal. It may be noted that the job worker is required to obtain registration only if his aggregate turnover, to be computed on all India basis, in a financial year exceeds the specified threshold limit (i.e. Rs 20 lakhs or Rs. 10 lakhs in case of special category States except Jammu & Kashmir) in case both the principal and the job worker are located in the same State. Where the principal and the job worker are located in different States, the requirement for registration flows from clause (i) of section 24 of the CGST Act which provides for compulsory registration of suppliers making any inter-State supply of services. However, exemption from registration has been granted in case the aggregate turnover of the inter- State supply of taxable services does not exceed Rs 20 lakhs or Rs. 10 lakhs in case of special category States except Jammu & Kashmir in a financial year vide notification No. 10/2017 – Integrated Tax dated 13.10.2017. Therefore, it is clarified that a job worker is required to obtain registration only in cases where his aggregate turnover, to be computed on all India basis, in a financial year exceeds the threshold limit regardless of whether the principal and the job worker are located in the same State or in different States.

7. Supply of goods by the principal from job worker's place of business/premises:

Doubts have been raised as to whether the principal can supply goods directly from the job worker's place of business/ premises to its end customer and if yes, whether the supply will be regarded as having been made by the principal or by the job worker. It is clarified that the supply of goods by the principal from the place of business / premises of the job worker will be regarded as supply by the principal and not by the job worker as specified in section 143(1)(a) of the CGST Act.

8. Movement of goods from the principal to the job worker and the documents and intimation required there for:

8.1 Issues: Doubts have been raised about the documents required to be issued for sending the goods (i) by the principal to the job worker, (ii) from one job worker to another job worker; and (iii) from the job worker back to the principal.

8.2 Legal provisions: Section 143 of the CGST Act provides that the principal may send and/ or bring back inputs/ capital goods for job work without payment of tax, under intimation to the proper officer and subject to the prescribed conditions. Rule 45 of the CGST Rules provides that the inputs, semi-finished goods or capital goods being sent for job work (including that being sent from one job worker to another job worker for further job work or those being sent directly to a job worker) shall be sent under the cover of a challan issued by the principal, containing the details specified in rule 55 of the CGST

Rules. This rule has been amended vide notification No. 14/2018- Central tax dated 23.03.2018 to provide that a job worker may endorse the challan issued by the principal. The principal is also required to file FORM GST ITC-04 every quarter stating the said details. Further, as per the provisions contained in rule 138 of the CGST Rules, an e-way bill is required to be generated by every registered person who causes movement of goods of consignment value exceeding fifty thousand rupees even in cases where such movement is for reasons other than for supply (e.g. in case of movement for job work). Further, the third proviso to rule138(1) of the CGST Rules provides that the e-waybill shall be generated either by the principal or by the registered job worker irrespective of the value of the consignment, where goods are sent by a principal located in one State/ Union territory to a job worker located in any other State/ Union territory.

8.3 As mentioned above, rule 45 of the CGST Rules provides that inputs, semi-finished goods or capital goods shall be sent to the job worker under the cover of a challan issued by the principal, including in cases where such goods are sent directly to a job worker. Further, rule 55 of the CGST Rules provides that the consignor may issue a delivery challan containing the prescribed particulars in case of transportation of goods for job work. It may be noted that rule 45 provides for the issuance of a challan by the principal whereas rule 55 provides that the consignor may issue the delivery challan. It is also important to note that as per the provisions contained in rule 138 of the CGST Rules, an e-way bill is required to be generated by every registered person who causes movement of goods of consignment value exceeding fifty thousand rupees even in cases where such movement is for reasons other than for supply (e.g. in case of movement for job work). The third proviso to rule 138(1) of the CGST Rules provides that the e-way bill shall be generated either by the principal or by the registered job worker irrespective of the value of the consignment, where goods are sent by a principal located in one State/ Union territory to a job worker located in any other State/ Union territory. It may also be noted that as per Explanation 1 to rule 138(3) of the CGST Rules, where the goods are supplied by an unregistered supplier to a registered recipient, the movement shall be said to be caused by such recipient if the recipient is known at the time of commencement of the movement of goods. In other words, the e-way bill shall be generated by the principal, wherever required, in case the job worker is unregistered.

8.4 Clarification: On conjoint reading of the relevant legal provisions, the following is clarified with respect to the issuance of challan, furnishing of intimation and other documentary requirements in this regard:

i) Where goods are sent by principal to only one job worker: The principal shall prepare in triplicate, the challan in terms of rules 45 and 55 of the CGST Rules, for sending the goods to a job worker. Two copies of the challan may be sent to the job worker along with the goods. The job worker should send one copy of the said challan along with the goods, while returning them to the principal. The FORM GST ITC-04 will serve as the intimation as envisaged under section 143 of the CGST Act, 2017.

ii) Where goods are sent from one job worker to another job worker: In such cases, the goods may move under the cover of a challan issued either by the principal or the job worker. In the alternative, the challan issued by the principal may be endorsed by the job worker sending the goods to another job worker, indicating there in the quantity and description of goods being sent. The same process may be repeated for subsequent movement of the goods to other job workers.

iii) Where the goods are returned to the principal by the job worker: The job worker should send one copy of the challan received by him from the principal while returning the goods to the principal after carrying out the jobwork.

iv) Where the goods are sent directly by the supplier to the job worker: In this case, the goods may move from the place of business of the supplier to the place of business/ premises of the job worker with a copy of the invoice issued by the supplier in the name of the buyer (i.e. the principal) wherein the job worker's name and address should also be mentioned as the consignee, in terms of rule 46(o) of the CGST Rules. The buyer (i.e., the principal) shall issue the challan under rule 45 of the CGST Rules and send the same to the job worker directly in terms of para (i) above. In case of import of goods by the principal which are then supplied directly from the customs station of import, the goods may move from the customs station of import to the place of business/ premises of the job worker with a copy of the Bill of Entry and the principal shall issue the challan under rule 45 of the CGST Rules and send the same to the job worker directly.

v) Where goods are returned in piecemeal by the job worker: In case the goods after carrying out the job work are sent in piece meal quantities by a job worker to another job worker or to the principal, the challan issued originally by the principal cannot be endorsed and a fresh challan is required to be issued by the job worker.

vi) Submission of intimation: Rule 45(3) of the CGST Rules provides that the principal is required to furnish the details of challans in respect of goods sent to a job worker or received from a job worker or sent from one job worker to another job worker during a quarter in FORM GST ITC-04 by the 25thday of the month succeeding the quarter or within such period as may be extended by the Commissioner. It is clarified that it is the responsibility of the principal to include the details of all the challans relating to goods sent by him to one or more job worker or from one job worker to another and its return there from. The FORM GST ITC-04 will serve as the intimation as envisaged under section 143 of the CGST Act.

9. Liability to issue invoice, determination of place of supply and payment of GST:

9.1 Issues: Doubts have been raised about the time, value and place of supply in the hands of principal or job worker as also about the issuance of invoices by the principal or job worker, as the case may be, with regard to the supply of goods from principal to the recipient from the job worker's place of business / premises and the supply of services by the job worker.

9.2 Legal provisions: As mentioned earlier, section 143 of the CGST Act provides that the inputs/ capital goods may be sent for job work without payment of tax and unless they are brought back by the principal, or supplied from the place of business / premises of the job worker within a period of one / three years, as the case may be, it would be deemed that such inputs or capital goods (other than moulds and dies, jigs and fixtures or tools) have been supplied by the principal to the job worker on the day when the said inputs or capital goods were sent out. Further, the job worker is liable to pay GST on the supply of job work services.

9.3 The provisions relating to time of supply are contained in sections 12 and 13 of the CGST Act and that for determining the value of supply are in section 15 of the CGST Act. The provisions relating to place of supply are contained in section 10 of the IGST Act, 2017. Further, the provisions relating to the issuance of an invoice are contained in section 31 of the CGST Act read with rule 46 of the CGST Rules.

9.4 On conjoint reading of all the provisions, the following is clarified with respect to the issuance of an invoice, time of supply and value of supply:

i) Supply of job work services: The job worker, as a supplier of services, is liable to pay GST if he is liable to be registered. He shall issue an invoice at the time of supply of the services as determined in terms of section 13 read with section 31 of the CGST Act. The value of services would be determined in terms of section 15 of the CGST Act and would include not only the service charges but also the value of any goods or services used by him for supplying the job work services, if recovered from the principal. Doubts have been raised whether the value of moulds and dies, jigs and fixtures or tools which have been provided by the principal to the job worker and have been used by the latter for providing job work services would be included in the value of job work services. In this regard, attention is invited to section 15 of the CGST Act which lays down the principles for determining the value of any supply under GST. Importantly, clause(b)of sub-section (2) of section 15 of the CGST Act provides that any amount that the supplier is liable to pay in relation to the supply but which has been incurred by the recipient will form part of the valuation for that particular supply, provided it has not been included in the price for such supply. Accordingly, it is clarified that the value of such moulds and dies, jigs and fixtures or tools may not be included in the value of job work services provided its value has been factored in the price for the supply of such services by the job worker. It may be noted that if the job worker is not registered, GST would be payable by the principal on reverse charge basis in terms of the provisions contained in section 9(4) of the CGST Act. However, the said provision has been kept in abeyance for the time being.

ii) Supply of goods by the principal from the place of business/ premises of job worker: Section143 of the CGST Act provides that the principal may supply, from the place of business / premises of a job worker, inputs after completion of job worker otherwise or capital goods (other than moulds and dies, jigs and fixtures or tools) within one year or three years respectively of their being sent out, on payment of tax within India, or with or without payment of tax for exports, as the case may be. This facility is available to the principal only if he declares the job worker's place of business/ premises as his additional place of business or if the job worker is registered.

Since the supply is being made by the principal, it is clarified that the time, value and place of supply would have to be determined in the hands of the principal irrespective of the location of the job worker's place of business/ premises. Further, the invoice would have to be issued by the principal. It is also clarified that in case of exports directly from the job worker's place of business/premises, the LUT or bond, as the case may be, shall be executed by the principal.

Illustration: The principal is located in State A, the job worker in State B and the recipient in State C. In case the supply is made from the job worker's place of business/ premises, the invoice will be issued by the supplier (principal) located in State A to the recipient located in State C. The said transaction will be an inter-State supply. In case the recipient is also located in State A, it will be an intra-State supply.

iii) Supply of waste and scrap generated during the job work: Sub - section (5) of Section 143 of the CGST Act provides that the waste and scrap generated during the job work may be supplied by the registered job worker directly from his place of

business or by the principal in case the job worker is not registered. The principles enunciated in para (ii) above would apply mutatis mutandis in this case.

9.5 Violation of conditions laid down in section 143: As per the provisions contained in section 143 of the CGST Act, if the inputs or capital goods (other than moulds and dies, jigs and fixtures or tools) are neither received back by the principal nor supplied from the job worker's place of business within the specified time period, the inputs or capital goods (other than moulds and dies, jigs and fixtures or tools) would be deemed to have been supplied by the principal to the job worker on the day when such inputs or capital goods were sent out to the first job worker.

9.6 Thus, if the inputs or capital goods are neither returned nor supplied from the job worker's place of business/ premises within the specified time period, the principal would issue an invoice for the same and declare such supplies in his return for that particular month in which the time period of one year / three years has expired. The date of supply shall be the date on which such inputs or capital goods were initially sent to the job worker and interest for the intervening period shall also be payable on the tax. If such goods are returned by the job worker after the stipulated time period, the same would be treated as a supply by the job worker to the principal and the job worker would be liable to pay GST if he is liable for registration in accordance with the provisions contained in the CGST Act read with the rules made there under. It may be noted that if the job worker is not registered, GST would be payable by the principal on reverse charge basis in terms of the provisions contained in section 9(4) of the CGST Act. However, the said provision has been kept in abeyance for the time being. Further, there is no requirement of either returning back or supplying the goods from the job worker's place of business/ premises as far as moulds and dies, jigs and fixtures, or tools are concerned.

10. Availability of input tax credit to the principal and job worker:

Doubts have been raised regarding the availability of input tax credit (ITC) to the principal in respect of inputs / capital goods that are directly received by the job worker. Doubts have also been raised whether the job worker is eligible for ITC in respect of inputs, etc. used by him in supplying job work services. It is clarified that, in view of the provisions contained in clause (b) of sub-section (2) of section 16 of the CGST Act, the input tax credit would be available to the principal, irrespective of the fact whether the inputs or capital goods are received by the principal and then sent to the job worker for processing, etc. or whether they are directly received at the job worker's place of business/ premises, without being brought to the premises of the principal. It is also clarified that the job worker is also eligible to avail ITC on inputs, etc. used by him in supplying the job work services if he is registered.

15. Issue related to taxability of 'tenancy rights' under GST [Circular No. 44/18/2018-GST]

Circular No.44/18/2018-GST
New Delhi, 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.

16. 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(catering services provided in educational institute)[Circular No. 50/24/2018-GST]

Circular No. 50/24/2018-GST

New Delhi, 31st 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 June2017.

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.

17. Applicability of GST on ambulance services provided to Government by private service providers under the National Health Mission (NHM)[CircularNo.51/25/2018-GST]

CircularNo.51/25/2018-GST
New Delhi, 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 S1. 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 S1. No.2 of notification No. 25/2012 dated 20.06.2012 has been carried forward under GST in the identical form vide S1. 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 S1. No.3 and 3A 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 243W 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 243W 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 243 W 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 S1. No. 74.

5. As regards the service 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.

Enclosure:
Circular no. 210/2/2018- Service Tax (F. No. 137/51/2016- Service Tax, dated 30th May, 2018)

Circular No 210/2/2018-Service Tax
New Delhi, 30th May, 2018

I am directed to draw your attention to a reference of the Ministry of Health & Family Welfare, Government of India on the above subject and analyse the manner in which the taxability has to be determined in such cases.

2. It has been stated that under the National Health Mission (NHM), a flagship programme of the Government of India, the Central Government provides technical and financial support to states to strengthen healthcare systems including for free ambulance services (Dial 102/108 services). Dial 108 is the emergency response system primarily designed to attend to patients of

critical care, trauma and accident victims etc., while Dial 102 services essentially are for basic patient transport aimed to cater the needs of pregnant women and children, though other categories are also taking benefit and are not excluded. Many states are operating the ambulance service on an outsourced model and these services are funded under the NHM and provided free of cost to all patients. In this connection the Ministry of Health &Family Welfare, has requested for a clarification whether the private service provider (PSP) is liable for payment of service tax.

3.1 The matter has been examined. It is observed that this entire project involves three legs of activities, one by the Government for the public, second by the PSP for the public and third, by the PSP for the Government. In respect of the first and the second legs of activity i.e. the ambulance services being provided by the Government and PSP to the patients, neither the State government nor the PSP charges any fee from the patients who avail of these ambulance services. The PSP however charges a fee from the State government for carrying out the third activity.

3.2 Any activity carried out by one person for another without any consideration will not be covered by the definition of service' in section 65(44) B of the Finance Act, 1994. Even if a consideration was charged, by virtue of entry 2(ii) of notification no 25/2012- Service Tax dated 20th June, 2012, services provided by way of transportation of a patient in an ambulance, other than health care services by a clinical establishment, an authorized medical practitioner or para-medics, are exempted from the whole of the service tax leviable thereon. Thus the activities provided by the State government and the PSP to patients are not leviable to service tax.

3.3 As regards the activity undertaken by the PSP for the State government for which consideration is charged, attention is invitee: to s1.no 25(a) of the notification no 25/2012 - Service Tax, dated 20th June. 2012. The scope of the relevant exemption, in different time periods, was as follows:-

In the period from 01.07.2012 to 10.07.2014

"Services provided to Government, a local authority or a governmental authority by way of" (a) carrying out any activity in relation to any function ordinarily entrusted to a municipality in relation to water supply, public health, sanitation conservancy, solid waste management or slum improvement and upgradation; or ……"

In the period from 11.07.2014 to 30.06.2017

"Services provided to Government, a local authority or a governmental authority by way of (a) water supply, public health, sanitation conservancy, solid waste management or slum improvement and upgradation……….."

3.4 Thus it follows that, exemption is available, inter alia, to services provided to Government, a local authority or a governmental authority, by way of public health.

3.5 The phrase "public health" is a general term and will cover a number of activities which ensure the health of the public. In the Ministry of Health & Family Welfare's reference it has been stated that this activity of providing free ambulance services by the states is funded under the National Health Mission (NHM). One of the core values of the NHM enlisted by the Framework for implementation of National Health Mission (2012-2017) is to strengthen public health systems as a basis for universal access and social protection against the rising costs of health care. As a part of its goals outcomes and strategies the framework has categorically stated that NHM will

essentially focus on strengthening primary health care across the country. The Framework further states that assured free transport in the form of Emergency Response System (ERS) and Patient Transport Systems (PTS) is an essential requirement of the public hospital and one which would reduce the cost barriers to institutional care.

3.6 Thus the provision of ambulance services to State governments under the NHM 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.

18. Taxability of services provided by Industrial Training Institutes (ITI) [Circular No. 55/29/2018·GST]

Circular No. 55/29/2018·GST
New Delhi, 10th August, 2018

Representations have been received requesting to clarify the following:

a) Whether GST is payable on vocational training provided by private ITIs 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 (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 I ls 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 (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 Sl. 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 IITI 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 ITI are concerned, services provided by a Government ITI to individual trainees/students, is exempt under SI.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 IT

19. Applicability of GST on various programmes conducted by the Indian Institutes of Managements (IIMs) [Circular No. 82/01/2019-GST]

Circular No. 82/01/2019-GST
New Delhi, the 1st January, 2019

I am directed to invite your attention to the Indian Institutes of Management Act, 2018 which came into force on 31st 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. 1136-F.T. 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. 1136-F.T. 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. 1136-F.T.:–

(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. 1136-F.T. 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 31stJanuary, 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.

Sl. No.	**Periods**	**Programmes offered by Indian Institutes of Management**	**Whether exempt from GST**
(1)	**(2)**	**(3)**	**(4)**
1	1st July, 2017 to 30th January, 2018	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.	Exempt from GST
		i. One- year Post Graduate Programs for Executives, ii. Any programs other than those mentioned at Sl. No. 67 of notification No. 12/2017- Central Tax (Rate), dated 28.06.2017. iii. All short duration executive development programs or need based specially designed programs (less than one year).	Not exempt from GST
2	31st January, 2018 onwards	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.	Exempt from GST
		All short duration executive development programs or need based specially designed programs (less than one year) which are not a qualification recognized by law.	Not exempt from GST

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

20. Applicability of GST on Asian Development Bank (ADB) and International Finance Corporation (IFC) [Circular No. 83/02/2019-GST]

Circular No. 83/02/2019-GST

New Delhi, the 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.

21. Clarification on issue of classification of service of printing of pictures covered under 998386 [Circular No. 84/03/2019-GST]

Circular No. 84/03/2019-GST
New Delhi, the 1st 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 28.06.2018.

22. Clarification on GST rate applicable on supply of food and beverage services by educational institution [Circular No. 85/04/2019-GST]

Circular No. 85/04/2019-GST
New Delhi, the 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.

23. GST on Services of Business Facilitator (BF) or a Business Correspondent (BC) to Banking Company [Circular No. 86/05/2019-GST]

Circular No. 86/05/2019-GST
New Delhi, the 1st January, 2019

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' here in after), 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.

24. 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]

Circular No. 97/16/2019-GST
New Delhi, the 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 ITC- 03** 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.

25. Corrigendum to Circular No. 97/16/2019-GST dated 5th April, 2019 issued vide F. No. CBEC/20/16/4/2018-GST (Pt. I)

In para 2(i) of the Circular No. 97/16/2019-GST dated 5th April, 2019,

for

> "(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 ITC-03** in accordance with the provisions of sub-rule (3) of rule 3 of the said rules."

read,

"(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 31st July, 2019**. Such person shall also furnish a statement in **FORM GST ITC-03** in accordance with the provisions of sub-rule (3) of rule 3 of the said rules."

26. Corrigendum to Circular No. 97/16/2019-GST dated 5th April, 2019 issued vide F. No. CBEC/20/16/4/2018-GST (Pt. I), as amended vide Corrigendum dated 01.07.2019 - reg.

In para 2(i) of the Circular No. 97/16/2019-GST dated 5th April, 2019, as amended vide Corrigendumdated 01.07.2019,

for

"(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 31st July, 2019**. Such person shall also furnish a statement in **FORM GST ITC-03** in accordance with the provisions of sub-rule (3) of rule 3 of the said rules."

read,

"(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 September, 2019**. Such person shall also furnish a statement in **FORM GST ITC-03** in accordance with the provisions of sub-rule (3) of rule 3 of the said rules."

27. GST applicability on Seed Certification Tags [Circular No. 100/19/2019-GST]

Circular No. 100/19/2019-GST
New Delhi, the 23rd 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.

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:

i. Application for seed production
ii. Registration of sowing report
iii. Field inspection
iv. Seed processing
v. Seed sample and seed analysis
vi. 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 differs 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.

2. 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)

3. 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.

4. 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.

28. 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]

Circular No. 101/20/2019-GST
New Delhi, the 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 installments, provided the amount is determined upfront.

29. Clarification on doubts related to supply of Information Technology enabled Services (ITeS services) [Circular No. 107/26/2019-GST]

Circular No 107/26/2019-GST
New Delhi, 18th July, 2019

Various representations have been received seeking clarification on issues related to supply of Information Technology enabled Services (hereinafter referred to as "ITeS services") such as call center, business process outsourcing services, etc. and "Intermediaries" to overseas entities under GST law and whether they qualify to be "export of services" or otherwise.

2. The matter has been examined. 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 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 succeeding paragraphs.

3. Intermediary has been defined in the sub-section (13) of section 2 of the Integrated Goods and Service Tax Act, 2017 (hereinafter referred to as "IGST" Act) as under -

"Intermediary means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account".

3.1 The definition of intermediary *inter alia* provides specific exclusion of a person i.e. that of *a person who supplies such goods or services or both or securities on his own account*. Therefore, the supplier of services would not be treated as „intermediary" even where the supplier of services qualifies to be „an agent/ broker or any other person" if he is involved in the supply of services on his own account.

4. Information Technology enabled Services (ITeS services), though not defined under the GST law, have been defined under the sub-rule (e) of rule 10 TA of the Income-tax Rules, 1962 which pertains to Safe Harbour Rules for international transactions. It defines ITeS services as-

"information technology enabled services" means the following business process outsourcing services provided mainly with the assistance or use of information technology, namely:—

(i) back office operations;

(ii) call centres or contact centre services;

(iii) data processing and data mining;

(iv) insurance claim processing;

(v) legal databases;

(vi) creation and maintenance of medical transcription excluding medical advice;

(vii) translation services;

(viii) payroll;

(ix) remote maintenance;

(x) revenue accounting;

(xi) support centres;

(xii) website services;

(xiii) data search integration and analysis;

(xiv) remote education excluding education content development; or

(xv) clinical database management services excluding clinical trials,

but does not include any research and development services whether or not in the nature of contract research and development service".

5. There may be various possible scenarios when a supplier of ITeS services located in India supplies services for and on behalf of a client located abroad. These scenarios have been examined and are being discussed in detail here under:

5.1 Scenario -I:

The supplier of ITeS services supplies back end services as listed in para 4 above. In such a scenario, the supplier will not fall under the ambit of intermediary under sub-section

(13) of section 2 of the IGST Act where these services are provided on his own account by such supplier. Even where a supplier supplies ITeS services to customers of his clients on clients‟ behalf, but actually supplies these services on his own account, the supplier will not be categorized as intermediary. In other words, a supplier "A" supplying services, listed in para 4 above, on his own account to his client "B" or to the customer "C" of his client would not be intermediary in terms of sub-section (13) of section 2 of the IGST Act.

5.2 Scenario -II:

The supplier of backend services located in India arranges or facilitates the supply of goods or services or both by the client located abroad to the customers of client. Such backend services may include support services, during pre-delivery, delivery and post- delivery of supply (such as order placement and delivery and logistical support, obtaining relevant Government clearances, transportation of goods, post-sales support and other services, etc.). The supplier of such services will fall under the ambit of intermediary under sub-section (13) of section 2 of the IGST Act as these services are merely for arranging or facilitating the supply of goods or services or both between two or more persons. In other words, a supplier "A" supplying backend services as mentioned in this scenario to the customer "C" of his client "B" would be intermediary in terms of sub-section (13) of section 2 of the IGST Act.

5.3 Scenario –III:

The supplier of ITeS services supplies back end services, as listed in para 4 above, on his own account along with arranging or facilitating the supply of various support services during pre-delivery, delivery and post-delivery of supply for and on behalf of the client located abroad. In this case, the supplier is supplying two set of services, namely ITeS services and various support services to his client or to the customer of the client. Whether the supplier of such services would fall under the ambit of intermediary under sub-section (13) of section 2 of the IGST Act will depend on the facts and circumstances of each case. In other words, whether a supplier "A" supplying services listed in para 4 above as well as support services listed in Scenario -II above to his client "B" and / or to the customer "C" of his client is intermediary or not in terms of sub-section (13) of section 2 of the IGST Act would have to be determined in facts and circumstances of each case and would be determined keeping in view which set of services is the principal / main supply.

6. It is also clarified that supplier of ITeS services, who is not an intermediary in terms of sub-section (13) of section 2 of the IGST Act, can avail benefits of export of services if he satisfies the criteria mentioned in sub-section (6) of section 2 of the IGST Act, which reads as

under –

"export of services" means the supply of any service when,—

(i) the supplier of service is located in India;

(ii) the recipient of service is located outside India;

(iii) the place of supply of service is outside India;

(iv) the payment for such service has been received by the supplier of service in convertible foreign exchange; and

(v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8".

30. Issues related to GST on monthly subscription/contribution charged by a Residential Welfare Association from its members [Circular No. 109/28/2019-GST]

Circular No 109/28/2019-GST
New Delhi, 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

<table>
<tr><td></td><td></td><td>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. 12/2017- Central Tax (Rate) dated 28.06.2017 as amended vide notification No. 2/2018- Central Tax (Rate),dated 25.01.2018]</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 lakh or more.
<table>
<tr><th>Annual turnover 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>
<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.</td></tr>
</table>

		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/- .

31. 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]

Circular No 114/33/2019-GST
New Delhi, 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 1st 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 1st 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.

32. Clarification on issue of GST on Airport levies. [Circular No. 115/34/2019-GST]

Circular No 115/34/2019-GST
New Delhi, 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.

21 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.**

22 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.

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

24 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.

25 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.

33. 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]

Circular No 116/35/2019-GST
New Delhi, 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.

34. Clarification on applicability of GST exemption to the DG Shipping approved maritime courses conducted by Maritime Training Institutes of India [Circular No. 117/36/2019-GST]

Circular No 117/36/2019-GST
New Delhi, 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 fulfills 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.

35. Clarification regarding determination of place of supply in case of software/design services related to Electronics Semi-conductor and Design Manufacturing (ESDM) industry [Circular No. 118/37/2019-GST]

Circular No 118/37/2019-GST
New Delhi, 11th October, 2019

Various representations have been received from trade and industry seeking clarification on determination of place of supply in case of supply of software/design services by a supplier located in taxable territory to a service recipient located in non- taxable territory by using the sample hardware kits provided by the service recipient.

2. It is stated that a number of companies that are part of the growing Electronics Semi-conductor and Design Manufacturing (ESDM) industry in India are engaged in the process of developing software and designing integrated circuits electronically for customers located overseas. The client/customer electronically provides Indian development and design companies with design requirements and Intellectual Property blocks ("IP blocks", reusable units of software logic and design layouts that can be combined to form newer designs). Based on these, the Indian company digitally integrates the various IP blocks to develop the software and the silicon or hardware design. These designs are communicated abroad (in industry standard electronic formats) either to the customer or (on behest of the customer) a manufacturing facility for the manufacture of hardware based on such designs.

2.1 In addition, the software developed is also integrated upon or customized to this hardware. On some occasions, samples of such prototype hardware are then provided back to the Indian development and design companies to test and validate the software and design that has been developed to ensure that it is error free.

2.2 The trade has requested clarification on whether provision of hardware prototypes and samples and testing thereon lends these services the character of performance-based services in respect of "goods required to be made physically available by the recipient to the provider".

3. The provisions relating to determination of place of supply as contained in the Integrated Goods & Services Tax Act, 2017 (hereinafter referred to as "the IGST Act") have

been examined. In order to ensure uniformity in the implementation of the provisions of the law, the Board, in exercise of its powers conferred by sub-section (1) of section 168 of the Central Goods & Services Tax Act, 2017 (hereinafter referred to as "the CGST Act") clarifies the same as below.

4. In contracts where service provider is involved in a composite supply of software development and design for integrated circuits electronically, testing of software on sample prototype hardware is often an ancillary supply, whereas, chip design/software development is the principal supply of the service provider. The service provider is not involved in software testing alone as a separate service. The testing of software/design is aimed at improving the quality of software/design and is an ancillary activity. The entire activity needs to be viewed as one supply and accordingly treated for the purposes of taxation. Artificial vivisection of the contract of a composite supply is not provided in law. These cases are fact based and each case should be examined for the nature of supply contracted.

4.1 Therefore, it is clarified that the place of supply of software/design by supplier located in taxable territory to service recipient located in non-taxable territory by using sample prototype hardware / test kits in a composite supply, where such testing is an ancillary supply, is the location of the service recipient as per Section 13(2) of the IGST Act. Provisions of Section 13(3)(a) of IGST Act do not apply separately for determining the place of supply for ancillary supply in such cases.

36. Clarification regarding taxability of supply of securities under Securities Lending Scheme, 1997 [Circular No. 119/38/2019-GST]

Circular No 119/38/2019-GST
New Delhi, 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.

37. 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]

Circular No 126/45/2019-GST
New Delhi, 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.

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	-

2. 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."*

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 physical inputs (goods) which are owned by persons other than those registered under the CGST Act.

38. Withdrawal of Circular No. 107/26/2019-GST dt. 18.07.2019 [Circular No. 127/46/2019-GST]

Circular No 127/46/2019-GST
New Delhi, 4th December, 2019

Kind attention is invited to Circular No. 107/26/2019-GST dated 18.07.2019 wherein certain clarifications were given in relation to various doubts related to supply of Information Technology enabled Services (ITeS services) under GST.

2. Thereafter, numerous representations were received expressing apprehensions on the implications of the said Circular. In view of these apprehensions 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 Central Goods and Services Tax Act, 2017, hereby withdraws, *ab-initio*, Circular No. 107/26/2019-GST dated 18.07.2019.

39. Reverse Charge Mechanism (RCM) on renting of motor vehicles [Circular No. 130/2019-GST]

Circular No 130/2019-GST
New Delhi, 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	Anybody 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.

40. Clarification in respect of issues under GST law for companies under Insolvency and Bankruptcy Code, 2016 [Circular No. 134/2020-GST]

Circular No 134/04/2020-GST
New Delhi, 23rd March, 2020

Various representations have been received from the trade and industry seeking clarification on issues being faced by entities covered under Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "IBC").

2. As per IBC, once an entity defaults certain threshold amount, Corporate Insolvency Resolution Process (hereafter referred to as "CIRP") gets triggered and the management of such entity (Corporate Debtor) and its assets vest with an interim resolution professional (hereafter referred to as "IRP") or resolution professional (hereafter referred to as "RP"). It continues to run the business and operations of the said entity as a going concern till the insolvency proceeding is over and an order is passed by the National Company Law Tribunal (hereinafter referred to as the "NCLT")

To address the aforementioned problems, notification No.11/2020- Central Tax, dated 21.03.2020 has been issued by the Government prescribing special procedure under section 148 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the "CGST Act") for the corporate debtors who are undergoing CIRP under the provisions of IBC and the management of whose affairs are being undertaken by IRP/RP. 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 various issues in the table below:-

S.No.	Issue	Clarification
1.	**How are dues under GST for pre-CIRP period be dealt?**	In accordance with the provisions of the IBC and various legal pronouncements on the issue, no coercive action can be taken against the corporate debtor with respect to the dues for period prior to insolvency commencement date. The dues of the period prior to the commencement of CIRP will be

		treated as 'operational debt' and claims may be filed by the proper officer before the NCLT in accordance with the provisions of the IBC. The tax officers shall seek the details of supplies made / received and total tax dues pending from the corporate debtor to file the claim before the NCLT. Moreover, section 14 of the IBC mandates the imposition of a moratorium period, wherein the institution of suits or continuation of pendingsuits or proceedings against the corporate debtor is prohibited.
2.	**Should the GST registration of corporate debtor be cancelled?**	It is clarified that the GST registration of anentity for which CIRP has been initiated should not be cancelled under the provisions of section 29 of the CGST Act, 2017. The proper officer may, if need be, suspend the registration. In casethe registration of an entity undergoing CIRP has already been cancelled and it is within the period of revocation of cancellation of registration, it is advised that such cancellation may be revoked by taking appropriate steps in this regard.
3.	**Is IRP/RP liable to file returnsof pre-CIRP period?**	No. In accordance with the provisions of IBC, 2016, the IRP/RP is under obligation to comply with all legal requirements **for period after the Insolvency Commencement Date**. Accordingly, it is clarified that IRP/RP are not under an obligation to file returns of pre-CIRP period.
<u>During CIRP period</u>		
4.	**Should a new registration be taken by the corporate debtor during the CIRP period?**	The corporate debtor who is undergoing CIRP isto be treated as a distinct person of the corporate debtor and shall be liable to take a newregistration in each State or Union territory where the corporate debtor was registered earlier, within thirty days of the

		appointment of the IRP/RP. Further, in cases where the IRP/RP has been appointed prior to the issuance of notification No.11/2020- Central Tax, dated 21.03.2020, he shall take registration within thirty days of issuance of the said notification, with effect from date of his appointment as IRP/RP.
5.	**How to file First Return afterobtaining new registration?**	The IRP/RP will be liable to furnish returns, make payment of tax and comply with all the provisions of the GST law during CIRP period. The IRP/RP is required to ensure that the first return is filed under section 40 of the CGST Act, for the period beginning the date on which it became liable to take registration till the date on which registration has been granted.
6.	**How to avail ITC for invoices issued to the erstwhile registered person in case the IRP/RP has been appointed before issuance of notification No.11/2020- Central Tax, dated 21.03.2020 and no return has been filed by the IRP during the CIRP ?**	The special procedure issued under section 148 of the CGST Act has provided the manner of availment of ITC while furnishing the first return under section 40. The said class of persons shall, in his first return, be eligible to avail input tax credit on invoices covering the supplies of goods or services or both, received since appointment as IRP/RP and during the CIRP period but bearing the GSTIN of the erstwhile registered person, subject to the conditions of Chapter V of the CGST Act and rule made thereunder, except the provisions of sub-section (4) of section 16 of the CGST Act and sub-rule (4) of rule 36 of the CGST Rules. In terms of the special procedure under section 148 of the CGST Act issued vide notification No.11/2020- Central Tax, dated 21.03.2020. **This exception is made only for the first return filed under section 40 of the CGSTAct.**
7.	**How to avail ITC for invoices by persons who**	Registered persons who are receiving supplies from the said class of persons shall, for the period from the

	are availing supplies from the corporate debtors undergoing CIRP, in cases where the IRP/RP was appointed before the issuance of the notification No.11/2020 - Central Tax, dated 21.03.2020?	date of appointment of IRP / RP till the date of registration as required in this notification or 30 days from the date of this notification, whichever is earlier, be eligible to avail input tax credit on invoices issued using the GSTIN of the erstwhile registered person, subject to the conditions of Chapter V of the CGST Act and rule made thereunder, except the provisions of sub-rule (4) of rule 36 of the CGST Rules.
8.	**Some of the IRP/RPs have made deposit in the cash ledger of erstwhile registration of the corporatedebtor. How to claim refund for amount deposited in the cash ledger by the IRP/RP?**	Any amount deposited in the cash ledger by the IRP/RP, in the existing registration, from thedate of appointment of IRP / RP to the date of notification specifying the special procedure for corporate debtors undergoing CIRP, shall be available for refund to the erstwhile registration under the head refund of cash ledger, even though the relevant **FORM GSTR-3B/GSTR-1** are not filed for the said period. The instructions contained in Circular No. 125/44/2019-GST dt. 18.11.2019 stands modified to this extent.

41. Clarification in respect of levy of GST on Director's remuneration [Circular No. 140/10/2020-GST]

Circular No 140/10/2020-GST
New Delhi, 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:

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

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.

42. Clarification regarding applicability of GST on supply of food in Anganwadis and Schools [Circular No. 149/05/2021-GST]

Circular No 149/05/2021-GST
New Delhi, 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 bygovernment 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 non- formal 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.

43. 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]

Circular No 150/06/2021-GST
New Delhi, 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 accessto a road or a bridge on payment of annuity* [entry 23A of notification No. 12/2017-CentralTax]. 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 oftoll 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 becalled 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 makesit clear that it does not cover construction of road services (falling under heading 9954),even if deferred payment is made by way of installments (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.

44. 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]

Circular No 151/07/2021-GST
New Delhi, 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 forconducting such entrance examination for students, accreditation of educationalinstitutions 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) dated28.06.2017,

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.

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)].**

(ii) 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.

45. 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]

Circular No 152/08/2021-GST
New Delhi, 17th June, 2021

2. 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
According to entry No. 3(vi) of notification No. 11/2017-CT (R) dated28.06.2017, GST rate of 12% is applicable, inter alia, on-

> *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 underentry at sl. No. 3(xii) of notification 11/2017-(CTR) and attract GST at the rate of 18%.

46. GST on milling of wheat into flour or paddy into rice for distribution by State Governments under PDS [Circular No. 153/09/2021-GST]

Circular No 153/09/2021-GST
New Delhi, 17th June, 2021

Certain representations have been received seeking clarification whether composite supply of service by way of milling of wheat into wheat flour, along with 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 beenexamined 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 providedto 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 supplyis 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 paddyinto 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 sucha 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 undersection 51 of the CGST Act is also a registered person for the purposes of the said entryNo. 26, and thus said supply to such person is also entitled for 5% rate.

47. 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]

Circular No 154/10/2021-GST
New Delhi, 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 PSUis specifically exempt under said entry No. 34A.

48. Clarification on doubts related to scope of "Intermediary" [Circular No. 159/15/2021-GST]

Circular No 159/15/2021-GST
New Delhi, 20th September, 2021

Representations have been received citing ambiguity caused in interpretation of the scope of "Intermediary services" in the GST Law. The matter has been examined. 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 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 succeeding paragraphs.

2. Scope of Intermediary services

2.1 'Intermediary' has been defined in the sub-section (13) of section 2 of the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as "IGST" Act) as under–

"Intermediary means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account."

2.2 The concept of 'intermediary' was borrowed in GST from the Service Tax Regime. The definition of 'intermediary' in the Service Tax law as given in Rule 2(f) of Place of Provisionof Services Rules, 2012 issued vide notification No. 28/2012-ST, dated 20-6-2012 was as follows:

"intermediary" means a broker, an agent or any other person, by whatever name called, who arranges or facilitates a provision of a service (hereinafter called the 'main' service) or a supply of goods, between two or more persons, but does not include a person who provides the main service or supplies the goods on his account;"

2.3 From the perusal of the definition of "intermediary" under IGST Act as well as under Service Tax law, it is evident that there is broadly no change in the scope of intermediary services in the GST regime vis-à-vis the Service Tax regime, except addition of supply of securities in the definition of intermediary in the GST Law.

3. Primary Requirements for intermediary services

The concept of intermediary services, as defined above, requires some basic pre-requisites, which are discussed below:

3.1 **Minimum of Three Parties**: By definition, an intermediary is someone who arrangesor facilitates the supplies of goods or services or securities between two or more persons. It isthus a natural corollary that the arrangement requires a minimum of three parties, two of them transacting in the supply of goods or services or securities (the main supply) and one arrangingor facilitating (the ancillary supply) the said main supply. An activity between only two partiescan, therefore, NOT be considered as an intermediary service. An intermediary essentially "arranges or facilitates" another supply (the "main supply") between two or more other persons and, does not himself provide the main supply.

3.2 **Two distinct supplies:** As discussed above, there are two distinct supplies in case of provision of intermediary services;

(1) Main supply, between the two principals, which can be a supply of goods or services or securities;

(2) Ancillary supply, which is the service of facilitating or arranging the main supply between the two principals. This ancillary supply is supply of intermediary service and is clearly identifiable and distinguished from the main supply.

A person involved in supply of main supply on principal to principal basis to another person cannot be considered as supplier of intermediary service.

3.3 Intermediary service provider to have the character of an agent, broker or any other similar person: The definition of "intermediary" itself provides that intermediary service provider *means a broker, an agent or any other person, by whatever name called*….". This part of the definition is not inclusive but uses the expression "means" and does not expand the definition by any known expression of expansion such as "and includes". The useof the expression "arranges or facilitates" in the definition of "intermediary" suggests a subsidiary role for the intermediary. It must arrange or facilitate some other supply, which is the main supply, and does not himself provides the main supply. Thus, the role of intermediaryis only supportive.

3.4 Does not include a person who supplies such goods or services or both or securities on his own account: The definition of intermediary services specifically mentions that intermediary "does not include a person who supplies such goods or services or both or securities on his own account". Use of word "such" in the definition with reference to supply of goods or services refers to the main supply of goods or services or both, or securities, between two or more persons, which are arranged or facilitated by the intermediary. It implies that in cases wherein the person supplies the main supply, either fully or partly, on principal to principal basis, the said supply cannot be covered under the scope of "intermediary".

3.5 Sub-contracting for a service is not an intermediary service: An important exclusion from intermediary is sub-contracting. The supplier of main service may decide to outsource the supply of the main service, either fully or partly, to one or more sub-contractors. Such sub-contractor provides the main supply, either fully or a part thereof, and does not merely arrange or facilitate the main supply between the principal supplier and his customers, and therefore, clearly is not an intermediary. For instance, 'A' and 'B' have entered into a contract as per which 'A' needs to provide a service of, say, Annual Maintenance of tools and machinery to 'B'. 'A' subcontracts a part or whole of it to 'C'. Accordingly, 'C' provides the service of annual maintenance to 'A' as part of such sub-contract, by providing annual maintenance of tools and machinery to the customer of 'A', i.e. to 'B' on behalf of 'A'. Though 'C' is dealing with the customer of 'A', but 'C' is providing main supply of Annual Maintenance Service to 'A' on his own account, i.e. on principal to principal basis. In this case, 'A' is providing supply of Annual Maintenance Service to 'B', whereas 'C' is supplying the same service to 'A'. Thus, supply of service by 'C' in this case will not be considered as an intermediary.

3.6 The specific provision of place of supply of 'intermediary services' under section 13 of the IGST Act shall be invoked only when either the location of supplier of intermediary services or location of the recipient of intermediary services is outside India.

4. Applying the abovementioned guiding principles, the issue of intermediary services is

clarified through the following illustrations:

Illustration 1

'A' is a manufacturer and supplier of a machine. 'C' helps 'A' in selling the machine by identifying client 'B' who wants to purchase this machine and helps in finalizing the contract of supply of machine by 'A' to 'B'. 'C' charges 'A' for his services of locating 'B' and helpingin finalizing the sale of machine between 'A' and 'B', for which 'C' invoices 'A' and is paid by 'A' for the same. While 'A' and 'B' are involved in the main supply of the machinery, 'C',is facilitating the supply of machine between 'A' and 'B'. In this arrangement, 'C' is providingthe ancillary supply of arranging or facilitating the 'main supply' of machinery between 'A' and 'B' and therefore, 'C' is an intermediary and is providing intermediary service to 'A'.

Illustration 2

'A' is a software company which develops software for the clients as per their requirement. 'A' has a contract with 'B' for providing some customized software for its business operations. 'A' outsources the task of design and development of a particular module of the software to 'C', for which "C' may have to interact with 'B', to know their specific requirements. In this case, 'C' is providing main supply of service of design and development of software to 'A', and thus, 'C' is not an intermediary in this case.

Illustration 3

An insurance company 'P', located outside India, requires to process insurance claims of its clients in respect of the insurance service being provided by 'P' to the clients. For processing insurance claims, 'P' decides to outsource this work to some other firm. For this purpose, he approaches 'Q', located in India, for arranging insurance claims processing service from other service providers in India. 'Q' contacts 'R', who is in business of providing such insurance claims processing service, and arranges supply of insurance claims processing service by 'R' to 'P'. 'Q' charges P a commission or service charge of 1% of the contract value of insurance claims processing service provided by 'R' to 'P'. In such a case, main supply of insurance claims processing service is between 'P' and 'R', while 'Q' is merely arranging or facilitating the supply of services between 'P' and 'R', and not himself providing the main supply of services. Accordingly, in this case, 'Q' acts as an intermediary as per definition of sub-section (13) of section 2 of the IGST Act.

Illustration 4

'A' is a manufacturer and supplier of computers based in USA and supplies its goods all over the world. As a part of this supply, 'A' is also required to provide customer care service to its customers to address their queries and complains related to the said supply of computers. 'A' decides to outsource the task of providing customer care services to a BPO firm, 'B'. 'B' provides customer care service to 'A' by interacting with the customers of 'A' and addressing / processing their queries / complains. 'B' charges 'A' for this service. 'B' is involved in supplyof main service 'customer care service' to 'A', and therefore, ''B' is not an intermediary.

5. The illustrations given in para 4 above are only indicative and not exhaustive. The illustrations are also generic in nature and should not be interpreted to mean that the service categories mentioned therein are inherently either intermediary services or otherwise. Whether or not, a specific service would fall under intermediary services within the meaning of sub-section (13) of section 2 of the IGST Act, would depend upon the facts of the specific case. While examining the facts of the case and the terms of contract, the basic characteristics of intermediary services, as discussed in para 3 above, should be kept in consideration.

49. Clarifications regarding applicable GST rates & exemptions on certain services [Circular No. 164/20/2021-GST]

Circular No 164/20/2021-GST
New Delhi, 6th October, 2021

Representations have been received seeking clarification in respect of applicable GSTrates 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 thecentral 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 manufactureof 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, Unionterritory 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 providingsuch 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 abridge 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 andevaluation*".

9.3.2 As regards the applicable rate for the period from 1.7.2017 to 31.12.2018, the council tooknote 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**, t**he 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 of18%

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 jobwork would attract GST at the rate of 18%.

50. GST on service supplied by restaurants through e-commerce operators [Circular No. 167/23/2021-GST]

Circular No 167/23/2021-GST
New Delhi, 17th December, 2021

The GST Council in its 45th meeting held on 17th September, 2021 recommended to notify "Restaurant Service" under section 9(5) of the CGST Act, 2017. Accordingly, the tax on supplies of restaurant service supplied through e-commerce operators shall be paid by the e-commerce operator. In this regard notification No. 17/2021 dated 18.11.2021 has been issued.

2. Certain representations have been received requesting for clarification regarding modalities of compliance to the GST laws in respect of supply of restaurant service through e-commerce operators (ECO). Clarifications are as follows:

Sl No	Issue	Clarification
1.	Would ECOs have to still collect TCS in compliance with section 52 of the CGST Act, 2017?	As 'restaurant service' has been notified under section 9(5) of the CGST Act, 2017, the ECO shall be liable to pay GST on restaurant services provided, with effect from the 1st January, 2022, through ECO. Accordingly, the ECOs will no longer be required to collect TCS and file GSTR 8 in respect of restaurant services on which it pays tax in terms of section 9(5). On other goods or services supplied through ECO, which are not notified u/s 9(5), ECOs will continue to pay TCS in terms of section 52 of CGST Act, 2017 in the same manner at present.
2.	Would ECOs have to mandatorily take a separate registration w.r.t supply of restaurant service [notified under 9(5)] through them even though they are registered to pay GST on services on their own account?	As ECOs are already registered in accordance with rule 8(in Form GST-REG 01) of the CGST Rules, 2017 (as a supplier of their own goods or services), there would be no mandatory requirement of taking separate registration by ECOs for payment of tax on restaurant service under section 9(5) of the CGST Act, 2017.
3.	Would the ECOs be liable to	Yes. ECOs will be liable to pay GST on any

	pay tax on supply of restaurant service made by unregistered business entities?	restaurant service supplied through them including by an unregistered person.
4.	What would be the aggregate turnover of person supplying 'restaurant service' through ECOs?	It is clarified that the aggregate turnover of person supplying restaurant service through ECOs shall be computed as defined in section 2(6) of the CGST Act, 2017 and shall include the aggregate value of supplies made by the restaurant through ECOs. Accordingly, for threshold consideration or any other purpose in the Act, the person providing restaurant service through ECO shall account such services in his aggregate turnover
5.	Can the supplies of restaurant service made through ECOs be recorded as inward supply of ECOs (liable to reverse charge) in GSTR 3B?	No. ECOs are not the recipient of restaurant service supplied through them. Since these are not input services to ECO, these are not to be reported as inward supply (liable to reverse charge).
6.	Would ECOs be liable to reverse proportional input tax credit on his input goods and services for the reason that input tax credit is not admissible on 'restaurant service'?	ECOs provide their own services as an electronic platform and an intermediary for which it would acquire inputs/input service on which ECOs avail input tax credit (ITC). The ECO charges commission/fee etc. for the services it provides. The ITC is utilised by ECOfor payment of GST on services provided by ECO on its own account (say, to a restaurant). The situation in this regard remains unchanged even after ECO is made liable to pay tax on restaurant service. ECO would be eligible to ITC as before. Accordingly, it is clarified that ECO shall not be required to reverse ITC on account of restaurant services on which it pays GST in terms of section 9(5) of the Act. **It may also be noted that on restaurant**

		service, ECO shall pay the entire GST liability in cash (No ITC could be utilised for payment of GST on restaurant service suppliedthrough ECO)
7.	Can ECO utilize its Input Tax Credit to pay tax w.r.t 'restaurant service' supplied through the ECO?	No. As stated above, the liability of payment of tax by ECO as per section 9(5) shall be discharged in cash.
8.	Would supply of goods or services other than 'restaurant service' through ECOs be taxed at 5% without ITC?	ECO is required to pay GST on services notified under section 9(5), besides the services/other supplies made on his own account. On any supply that is not notified under section 9(5), that is supplied by a person through ECO, the liability to pay GST continues on such supplier and ECO shall continue to pay TCS onsuch supplies. Thus, present dispensation continues for ECO, on supplies other than restaurant services. On such supplies (other than restaurant services made through ECO) GST will continue to be billed, collected and deposited in the same manner as is being done at present. ECO will deposit TCS on such supplies.
9.	Would 'restaurant service' and goods or services other than restaurant service sold by a restaurant to a customer under the same order be billed differently? Who shall be liable for raising invoices in such cases?	Considering that liability to pay GST on supplies other than 'restaurant service' throughthe ECO, and other compliances under the Act, including issuance of invoice to customer, continues to lie with the respective suppliers (and ECOs being liable only to collect tax at source (TCS) on such supplies), it is advisable that ECO raises separate bill on restaurant service in such cases where ECO provides other supplies to a customer under the same order.
10.	Who will issue invoice in respect of restaurant service	The invoice in respect of restaurant service supplied through ECO under section 9(5) will

	supplied through ECO - whether by the restaurant or by the ECO?	be issued by ECO.
11.	Clarification may be issued as regard reporting of restaurant services, value and tax liability etc in the GST return.	A number of other services are already notified under section 9(5). In respect of such services, ECO operators are presently paying GST by furnishing details in GSTR 3B. The ECO may, on services notified under section 9 (5) of the CGST Act,2017, including on restaurant service provided through ECO, may continue to pay GST by furnishing the details in GSTR 3B, reporting them as outwardtaxable supplies for the time being. Besides, ECO may also, for the time being, furnish the details of such supplies of restaurant services under section 9(5) in Table 7A(1) or Table 4A of GSTR-1, as the case maybe, for accounting purpose. **Registered persons supplying restaurant services through ECOs under section 9(5) will report such supplies of restaurant services made through ECOs in Table 8 of GSTR-1 and Table 3.1 (c) of GSTR-3B, for the time being.**

51. Clarifications regarding applicable GST rates & exemptions on certain services [Circular No. 177/09/2022-GST]

Circular No. 177/09/2022-TRU
New Delhi, the 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 from01.07.2017 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 viewof prevailing doubt before the issuance of the Circular dated 6.10.2021 did not avail ITC and paid5% 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 againstconsideration 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 institutionare 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 educationalinstitutions to the leaving or ex-students is covered by exemption under Sl. No. 66 of NotificationNo. 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 serviceof 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 2016has observed as under:

> *"Cotton (with seeds) as plucked from cotton plants can hardly be called cotton fibre inwhich 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 cottonfibre 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 benoted 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 itclear that the proposal was to exempt supply of services associated with transit cargo both to andfrom 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 deliveryof 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 befollowed 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 tothem 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 authorityby way of any activity in relation to a function entrusted to a Panchayat under article 243G of theconstitution 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, inthe manner as a local authority does for the general public, the same are not eligible for exemptionunder 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 tradecatalogues 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 languageand 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 headto 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 withina 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 offuel 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 leaseof land constitute part of the lease premium or upfront amount charged for long term lease of landand 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 andtherefore, 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 haverequested 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 lieuof 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 theConcessionaires 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-GSTdated 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 tosuch 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 ofland' is neither a supply of goods nor a supply of services, therefore, sale of land does not attractGST.

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 forsuch 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 rentingof 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).

15.2 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 underHeading 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 withthe 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 servicewould fall under Heading 9964 and the body corporate shall not be liable to pay GST on the sameunder 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, conductedtour, 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 service of construction, supply, installation and commissioning of a 2.00 LLPD dairy plant onturn-key basis.

17.2 In case of a turnkey 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 forunits 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 notificationno. 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 publiclyowned. Only exclusion is on transportation which is predominantly for tourism, such as services which may combine with transportation, sightseeing, food and beverages, music, accommodationsuch as in shikara, cruise etc.

52. 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]

Circular No. 178/10/2022-TRU
New Delhi, the 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 doan 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 expressionhas following three limbs: -

a. <u>Agreeing to the obligation to refrain from an act-</u>

Example 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 wantsto protect its sunlight, or an industrial unit refraining from manufacturing activity during certain hours against an agreed compensation paid by a neighbouring school, which wantsto avoid noise during those hours.

b. <u>Agreeing to the obligation to tolerate an act or a situation-</u>

This 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. <u>Agreeing to the obligation to do an act-</u>

This 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 saiddescription.

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 licensespursuant to Supreme Court Order;
iii. Cheque dishonour fine/penalty charged by a power distribution company from thecustomers;
iv. Penalty paid by a mining company to State Government for unaccounted stock of riverbed material;

v. Bond amount recovered from an employee leaving the employment before the agreedperiod;
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; 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 anotherfor 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 ofCGST 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 totolerate 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 somethingand 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 actor 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 actunder 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 thefollowing 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 'LiquidatedDamages' *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 orbidders. 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 pre- payment 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) asper 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 themif 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 CourtOrder. Therefore, it would be incorrect to say that the prior allottees of the coal blocks supplied aservice 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 Courtin 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 toleratingthe 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, theemployee 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 forthe 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 allowfree 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 isa 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 facilityof 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 samerate as the principal supply. However, the same cannot be said of cheque dishonor fine or penaltyas 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.

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 asthe 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 suchas 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 allotmentof 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 ofthat 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.

53. Clarification on the entitlement of input tax credit where the place of supply is determined in terms of the proviso to sub-section (8) of section 12 of the Integrated Goods and Services Tax Act, 2017 – reg. [Circular No. 184/16/2022-GST]

Circular No. 184/16/2022-GST
New Delhi, the 27th December, 2022

Attention is invited to sub-section (8) of section 12 of Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as "IGST Act") which provides for the place of supply ofservices by way of transportation of goods, including by mail or courier, where location of the supplier as well as the recipient of services is in India. As per clause (a) of the aforesaid sub- section, the place of supply of services by way of transportation of goods, including by mail or courier, to a registered person shall be the location of such registered person. However, the proviso to the aforesaid sub-section which was inserted vide the Integrated Goods and Services Tax (Amendment) Act, 2018 w.e.f. 01.02.2019 provides that where the transportation of goods is to a place outside India, the place of supply of the said service shall be the place of destination of such goods. In such cases, as the place of supply of services, as per the proviso tosub-section (8) of section 12 of IGST Act, is the concerned foreign destination and not the Statewhere the recipient is registered under GST, doubts are being raised regarding the availability of input tax credit of the said services to the recipient located in India.

2. In order to clarify this 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	Issue	Clarification
1	In case of supply of services by way of transportation of goods, including by mail or courier, where the transportation of goods is to a place outside India, and where the supplier and recipient of the said supply of services are located in India, what would bethe place of supply of the said services?	The place of supply of services by way of transportation of goods, including by mail or courier, where both the supplier and the recipientare located in India, is determined in terms of sub- section (8) of section 12 of the IGST Act which reads as follows: "(8) *The place of supply of services by way of transportation of goods, including by mail or courier to,—* *(a) a registered person, shall be the location of such person;* *(b) a person other than a registered person, shall be the location at which such goods are handed over for their transportation:* ***Provided that where the transportation of goods is to a place outside India, the placeof supply shall be the place of destination of such goods***" Hence, in case of supply of services by way of transportation of goods, including by

		mail or courier, where the transportation of goods is to a place outside India, and where the supplier and recipient of the said supply of services are located in India, the place of supply is the concerned foreign destination where the goods are being transported, in accordance with the proviso to the sub-section (8) of section 12 of IGST Act, which was inserted vide the Integrated Goods and Services Tax (Amendment) Act, 2018 w.e.f. 01.02.2019. **Illustration**: *X is a person registered under GST in the state of West Bengal who intends to export goods to a person Y located in Singapore. X avails the services for transportation of goods by air to Singapore from an air cargo operator Z, who is also registered under GST in the state of West Bengal.* *In this case, the place of supply of the services provided by Z to X is the place of destination of goods i.e., Singapore, in terms of the proviso to sub-section (8) of section 12 of IGST Act.*
2	In the case given in Sl. No. 1, whether the supply of services will be treated as inter-State supply or intra-State supply?	The aforesaid supply of services would be considered as inter-State supply in terms of sub-section (5) of section 7 of the IGST Act since the location of the supplier is in India and the place of supply is outside India. Therefore, integrated tax (IGST) would be chargeable on the said supply of services. In respect of the illustration given in Sl. No. 1. above, Z would charge IGST from X in terms of sub-section (5) of section 7 of the IGST Act, for supply of services by way of transportation of goods.
3	In the case given in Sl. No. 1, whether the recipient of service of transportation of goods would be eligible to avail input tax credit in respect of the said input service of transportation of goods?	Section 16 of the CGST Act lays down the eligibility and conditions for taking input tax credit whereas, section 17 of the CGST Act provides for apportionment of credit and blocked credits under circumstances specified therein. The said provisions of law do not restrict availment of input tax credit by the

		recipient located in India if the place of supply of the said input service is outside India. Thus, the recipient of service of transportation of goods shall be eligible to avail input tax credit in respect of the IGST so charged by the supplier, subject to the fulfilment of other conditions laid down in section 16 and 17 of the CGST Act. In the illustration given in Sl. No. 1 above, X would be eligible to take input tax credit of IGST in respect of supply of services received by him from Z, subject to the fulfilment of other conditions laid down in section 16 and 17 of the CGST Act.
4	In the case mentioned at Sl. No. 1, what state code has to be mentioned by the supplier of the said service of transportation of goods, where the transportation of goods is to a place outside India, while reporting the said supply in **FORM GSTR-1**?	The supplier of service shall report place of supply of such service by selecting State code as '96- Foreign Country' from the list of codes in the drop- down menu available on the portal in **FORM GSTR-1.**

54. Clarification on various issue pertaining to GST [Circular No. 186/18/2022-GST]

Circular No. 186/18/2022-GST
New Delhi, the 27th December, 2022

Representations have been received from the field formations seeking clarification oncertain 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 bysection 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby clarifies the issues as under:

S. 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 CGSTAct. 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.

55. Clarification regarding the treatment of statutory dues under GST law in respect of the taxpayers for whom the proceedings have been finalised under Insolvency and Bankruptcy Code, 2016 [Circular No. 187/19/2022-GST]

Circular No 187/19/2022-GST
New Delhi, 27th December, 2022

Attention is invited to Circular No.134/04/2020-GST dated 23rd March, 2020, whereinit was clarified that no coercive action can be taken against the corporate debtor with respect to the dues of the period prior to the commencement of Corporate Insolvency Resolution Process (CIRP). Such dues will be treated as 'operational debt' and the claims may be filed bythe proper officer before the NCLT in accordance with the provisions of the IBC.

2. Representations have been received from the trade as well as tax authorities, seeking clarification regarding the modalities for implementation of the order of the adjudicating authority under Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "IBC") with respect to demand for recovery against such corporate debtor under Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act") as well under the existing laws and the treatment of such statutory dues under CGST Act and existing laws, after finalization of the proceedings under IBC.

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 as follows.

4.1 Section 84 of CGST Act reads as follows:

"*Section 84 - Continuation and validation of certain recovery proceedings.-*

Where any notice of demand in respect of any tax, penalty, interest or any other amount payable under this Act, (hereafter in this section referred to as "Government dues"), is served upon any taxable person or any other person and any appeal or revision application is filed or any other proceedings is initiated in respect of such Government dues, then-

..

(b) where such Government dues are reduced in such appeal, revision or ***in other proceedings-***

(i) it shall not be necessary for the Commissioner to serve upon the taxable person a fresh notice of demand;

(ii) the Commissioner shall give intimation of such reduction to him and to the

appropriate authority with whom recovery proceedings is pending;

(iii) any recovery proceedings initiated on the basis of the demand served upon him prior to the disposal of such appeal, revision or other proceedings may be continued in relation to the amount so reduced from the stage at which such proceedings stood immediately before such disposal."

4.2 As per Section 84 of CGST Act, if the government dues against any person under CGST Act are reduced as a result of any appeal, revision or other proceedings in respect of such government dues, then an intimation for such reduction of government dues has to be given by the Commissioner to such person and to the appropriate authority with whom the recovery proceedings are pending. Further, recovery proceedings can be continued in relation to such reduced amount of government dues.

4.3 The word 'other proceedings' is not defined in CGST Act. It is to be mentioned that the adjudicating authorities and appellate authorities under IBC are quasi-judicial authorities constituted to deal with civil disputes pertaining to insolvency and bankruptcy. For instance, under IBC, NCLT serves as an adjudicating authority for insolvency proceedings which are initiated on application from any stakeholder of the entity like the firm, creditors, debtors, employees etc. and passes an order approving the resolution plan. As the proceedings conducted under IBC also adjudicate the government dues pending under the CGST Act or under existing laws against the corporate debtor, the same appear to be covered under the term 'other proceedings' in Section 84 of CGST Act.

5. Rule 161 of Central Goods and Services Tax Rules, 2017 prescribes **FORM GST DRC-25** for issuing intimation for such reduction of demand specified under section 84 of CGST Act. Accordingly, in cases where a confirmed demand for recovery has been issued by the tax authorities for which a summary has been issued in **FORM GST DRC-07/DRC 07A** against the corporate debtor, and where the proceedings have been **finalised** against the corporate debtor under IBC reducing the amount of statutory dues payable by the corporate debtor to the government under CGST Act or under existing laws, the jurisdictional Commissioner shall issue an intimation in **FORM GST DRC-25** reducing such demand, to the taxable person or any other person as well as the appropriate authority with whom recovery proceedings are pending.

56. Clarifications regarding applicability of GST on certain services [Circular No. 190/02/2023-GST]

Circular No. 190/02/2023-GST
New Delhi, the 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 BHIM-UPI 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.

57. Clarification on taxability of shares held in a subsidiary company by the holding company [Circular No. 196/08/2023-GST]

Circular No. 196/08/2023-GST
New Delhi, the 17th July, 2023

Representations have been received from the trade and field formations seeking clarification on certain issues whether the holding of shares in a subsidiary company by the holding company will be treated as 'supply of service' under GST and will be taxed accordinglyor whether such transaction is not a supply.

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 bysection 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby clarifies the issues as under:

S. No	Issue	Clarification
	Taxability of share capital held in subsidiary company by the parent company	
1	Whether the activity of holding shares by a holding company of the subsidiary company will be treated as a supply of service or not and whether the same will attract GST or not.	Securities are considered neither goods nor services in terms of definition of goods under clause (52) of section 2 of CGST Act and the definition of services under clause (102) of the said section. Further, securities include 'shares' as per definition of securities under clause (h) of section 2 of Securities Contracts (Regulation) Act, 1956. This implies that the securities held by the holding company in the subsidiary company are neither goods nor services. Further, purchase or sale of shares or securities, in itself is neither a supply of goods nor a supply of services. For a transaction/activity to be treated as supply of services, there must be a supply as defined under section 7 of CGST Act. It cannot be said that a service is being provided by the holding company to the subsidiary company, solely on the basis that there is a SAC entry '997171' in the scheme of classification of services mentioning; "*the services provided by holding companies, i.e. holding securities of (or other equity interests in) companies and enterprises for the purpose of owning a controlling interest.",* unless there is a supply of services by the holding company to the subsidiary company in accordance with section 7 of CGST Act. Therefore, the activity of holding of shares of subsidiary company by the holding company per se cannot be treated as a supply of services by a holding company to the said subsidiary company and cannot be taxed under GST.

58. Clarification regarding taxability of services provided by an office of an organisation in one State to the office of that organisation in another State, both being distinct persons [Circular No. 199/11/2023-GST]

Circular No. 199/11/2023-GST
New Delhi, the 17th July, 2023

Various representations have been received seeking clarification on the taxability of activities performed by an office of an organisation in one State to the office of that organisation in another State, which are regarded as distinct persons under section 25 of Central Goods and Services Tax Act, 2017 (hereinafter referred to as 'the CGST Act'). The issues raised in the said representations have been examined and 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 CGST Act hereby clarifies the issue in succeeding paras.

2. Let us consider a business entity which has Head Office (HO) located in State-1 and a branch offices (BOs) located in other States. The HO procures some input services e.g. security service for the entire organisation from a security agency (third party). HO also provides some other services on their own to branch offices (internally generated services).

3. The issues that may arise with regard to taxability of supply of services between distinct persons in terms of sub-section (4) of section 25 of the CGST Act are being clarified in the Table below: -

S. No	Issues	Clarification
1.	Whether HO can avail the input tax credit (hereinafter referred to as 'ITC') in respect of common input services procured from a third party but attributable to both HO and BOs or exclusively to one or more BOs, issue tax invoices under section 31 to the said BOs for the said input services and the BOs can then avail the ITC for the same or whether is it mandatory for the HO to follow the Input Service Distributor (hereinafter referred to as 'ISD') mechanism for distribution of ITC in respect of common input services procured by them from a third party but attributable to both HO and BOs or exclusively to one or more BOs?	It is clarified that in respect of common input services procured by the HO from a third party but attributable to both HO and BOs or exclusively to one or more BOs, HO has an option to distribute ITC in respect of such common input services by following ISD mechanism laid down in Section 20 of CGST Act read with rule 39 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as 'the CGST Rules'). However, as per the present provisions of the CGST Act and CGST Rules, it is not mandatory for the HO to distribute such input tax credit by ISD mechanism. HO can also issue tax invoices under section 31 of CGST Act to the concerned BOs in respect of common input services procured from a third party by HO but attributable to the said BOs and the BOs can then avail ITC on the same subject to the provisions of section 16 and 17 of CGST Act. In case, the HO distributes or wishes to distribute ITC to BOs in respect of such common input services through the ISD mechanism as per the provisions of section 20 of

		CGST Act read with rule 39 of the CGST Rules, HO is required to get itself registered mandatorily as an ISD in accordance with Section 24(viii) of the CGST Act. Further, such distribution of the ITC in respect a common input services procured from a third party can be made by the HO toa BO through ISD mechanism only if the said input services are attributable to the said BO or have actually been provided to the said BO. Similarly, the HO can issue tax invoices under section 31 of CGST Act to the concerned BOs, in respect of any input services, procured by HO from a third party for on or behalf of a BO, only if the said services have actually been provided to the concerned BOs.

2.	In respect of internally generated services, there may be cases where HO is providing certain services to the BOs **for which full input tax credit is available to the concerned BOs.** However, HO may not be issuing tax invoice to the concerned BOs with respect to such services, or the HO may not be including the cost of a particular component such as salary cost of employees involved in providing said services while issuing tax invoice to BOs for the services provided by HO to BOs. Whether the HO is mandatorily required to issue invoice to BOs under section 31 of CGST Act for such internally generated services, and/ or whether the cost of all components including salary cost of HO employees involved in providing the said services has to be included in the computation of value of services provided by HO to BOs **when full input tax credit is available to the concerned BOs**.	The value of supply of services made by a registered person to a distinct person needs to be determined as per rule 28 of CGST Rules, read with sub-section (4) of section 15 of CGST Act. As per clause (a) of rule 28, the value of supply of goods or services or both between distinct persons shall be the open market value of such supply. The **second proviso to rule 28** of CGST Rules provides that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services. Accordingly, in respect of supply of services by HO to BOs, the value of the said supply of services declared in the invoice by HO shall be deemed to be open market value of such services, **if the recipient BO is eligible for full input tax credit**. Accordingly, in cases **where full input tax credit is available to a BO**, the value declared on the invoice by HO to the said BO in respect of a supply of services shall be deemed to be the open market value of such services, irrespective of the fact whether cost of any particular component of such services, like employee cost etc., has been included

		or not in the value of the services in the invoice. Further, in such **cases where full input tax credit is available to the recipient**, if HO has not issued a tax invoice to the BO in respect of any particular services being rendered by HO to the said BO, the value of such services may be deemed to be declared as Nil by HO to BO, and may be deemed as open market value in terms of second proviso to rule 28 of CGST Rules.
3.	In respect of internally generated services provided by the HO to BOs, in cases where **full input tax credit is not available to the concerned BOs,** whether the cost of salary of employees of the HO involved in providing said services to the BOs, is mandatorily required to be included while computing the taxable value of the said supply of services provided by HO to BOs.	In respect of internally generated services provided by the HO to BOs, the cost of salary of employees of the HO, involved in providing the said services to the BOs, is not mandatorily required to be included while computing the taxable value of the supply of such services, even in cases **where full input tax credit is not available to the concerned BO**.

59. Clarifications regarding applicability of GST on certain services [Circular No. 201/13/2023-GST]

Circular No. 201/13/2023-GST
New Delhi, the 1st August, 2023

Representations have been received seeking clarifications on the following issues

1. Whether services supplied by director of a company in his personal capacity such as renting of immovable property to the company or body corporate are subject to Reverse

Charge mechanism;

2. Whether supply of food or beverages in cinema hall is taxable as restaurant service.

The above issues have been examined by GST Council in the 50th meeting held on 11th July, 2023. The issue -wise clarifications as recommended by the Council are given below:

Whether services supplied by director of a company in his personal capacity such as renting of immovable property to the company or body corporate are subject to Reverse Charge mechanism:

2. Reference has been received requesting for clarification whether services supplied by a director of a company or body corporate in personal or private capacity, such as renting of immovable property to the company, are taxable under Reverse Charge Mechanism (RCM) or not.

2.1 Entry No. 6 of notification No. 13/2017 CTR dated 28.06.2017 provides that tax on services supplied by director of a company or a body corporate to the said company or the body corporate shall be paid by the company or the body corporate under Reverse Charge Mechanism.

2.2 It is hereby clarified that services supplied by a director of a company or body corporate to the company or body corporate in his private or personal capacity such as services supplied by way of renting of immovable property to the company or body corporate are not taxable under RCM. Only those services supplied by director of company or body corporate, which are supplied by him as or in the capacity of director of that company or body corporate shall be taxable under RCM in the hands of the company or body corporate under notification No. 13/2017-CTR (Sl. No. 6) dated 28.06.2017.

Whether supply of food or beverages in cinema hall is taxable as restaurant service:

3. References have been received requesting for clarification whether supply of food and beverages at cinema halls is taxable as restaurant service which attract GST at the rate of 5% or not.

3.1 As per Explanation at Para 4 (xxxii) to notification No. 11/2017-CTR dated 28.06.2017, *"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."

3.2 Eating joint is a wide term which includes refreshment or eating stalls/ kiosks/ countersor restaurant at a cinema also.

3.3 The cinema operator may run these refreshment or eating stalls/ kiosks/ counters or restaurant themselves or they may give it on contract to a third party. The customer may like to avail the services supplied by these refreshment/snack counters or choose not to avail these services. Further, the cinema operator can also install vending machines, or supply any other recreational service such as through coin-operated machines etc. which a customer may or may not avail.

3.4 It is hereby clarified that supply of food or beverages in a cinema hall is taxable as 'restaurant service' as long as:

a) the food or beverages are supplied by way of or as part of a service, and
b) supplied independent of the cinema exhibition service.

3.5 It is further clarified that where the sale of cinema ticket and supply of food and beverages are clubbed together, and such bundled supply satisfies the test of composite supply, the entire supply will attract GST at the rate applicable to service of exhibition of cinema, the principal supply.

60. Clarification on issues pertaining to taxability of personal guarantee and corporate guarantee in GST [Circular No. 204/16/2023-GST]

Circular No. 204/16/2023-GST
New Delhi, the 27th October, 2023

Representations have been received from the trade and field formations seeking clarification on certain issues with respect to taxability of activity of providing personal bank guarantee by Directors to banks for securing credit facilities for the company. Similarly, clarifications are being sought with respect to taxability and valuation of the activity of providing corporate guarantee by a related person to banks/financial institutions for another

related person, as well as by a holding company in order to secure credit facilities for its subsidiary company.

2. 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 bysection 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby clarifies the issues as under:

S.No.	Issue	Clarification
1.	Whether the activity of providing personal guarantee by the Director ofa company to the bank/ financial institutions for sanctioning of credit facilities to the said company withoutany consideration will be treated as asupply of service or not and whether the same will attract GST or not.	As per Explanation (a) to section 15 of CGST Act, the director and the company are to be treated as related persons. As per clause (c) of sub-section (1) of section 7 of the CGST Act, 2017, read with S. No. 2 of Schedule I of CGST Act, supply of goods or services or both between related persons, when made in the course or furtherance of business, shall be treated as supply even if made without consideration. Accordingly, the activity of providing personal guarantee by the Director to the banks/ financial institutions for securing credit facilities for their companies is to be treated as a supply of service, even when made without consideration. Rule 28 of Central Goods and Services Tax Rules, 2017 (hereinafter referred to as "CGST Rules") prescribes the method for determining the value of the supply of goods or services or both between related parties, other than where the supply is made through an agent. In terms of Rule 28 of CGST Rules, the taxable value of such supply of service shall be the open market value of such supply.

		RBI has provided guidelines for obtaining personal guarantee of promoters, directors and other managerial personnel of the borrowing concerns vide Para 2.2.9 of its Circular No. RBI/2021-22/121 dated 9th November, 2021, which is reproduced below: ***"2.2.9 Guidelines relating to obtaining of personal guarantees of promoters, directors, other managerial personnel, and shareholders of borrowing concerns*** *Banks should take personal guarantees of promoters, directors, other managerial personnel or major shareholders for thecredit facilities granted to corporates, public or private, only when absolutely warranted after a careful examination of the circumstances of the case and not as a matter of course. In order to identify the circumstances under which the guarantee may or may not be considered necessary, banks should be guided by the following broad considerations:* **……...** ***C. Worth of the***

		guarantors, payment of guarantee commission, etc *Where personal guarantees of directors are warranted, they should bear reasonable proportion to the estimated worth of the person.* ***The system of obtaining guarantees should not be used by the directors and other managerial personnel as a source of income from the company. Banks should obtain an undertaking from the borrowing company as well as the guarantors that no consideration whether by way of commission, brokerage fees or any other form, would be paid by the former or received by the latter, directly or indirectly. This requirement should be incorporated in the bank's terms and conditions for sanctioning of credit limits.****During the periodic inspections, the bank's inspectors should verify that this stipulation has been complied with.* ***There may, however, be exceptional cases where payment of remuneration may be permitted e.g. where assisted concerns are not doing well and the existing guarantors are no longer connected with the management but continuance of their guarantees is considered essential because the new***

		management's guarantee is either not available or is found inadequate. ***……..”*** Accordingly, as per mandate provided by RBI in terms of Para 2.2.9 (C) of RBI’s Circular No. RBI/2021-22/121 dated 9th November, 2021, no consideration by way of commission, brokerage fees or any otherform, can be paid to the director by the company, directly or indirectly, in lieu of providing personal guarantee to the bank for borrowing credit limits. As such, when no consideration can be paid for the said transaction by the company to the director in any form, directly or indirectly, as per RBI mandate, there is no question of such supply/ transaction having any open market value. **Accordingly, the open market value of the said transaction/ supply may be treated as zero and therefore, taxable value of such supply may be treated as zero. In such a scenario, no tax is payable on such supply of service by the director to the company**. There may, however, be cases where the director,

		who had provided the guarantee, is no longer connected with the management but continuance of his guarantee is considered essential because the new management's guarantee is either not available or is found inadequate, or there may be other exceptional cases wherethe promoters, existing directors, other managerial personnel, and shareholders of borrowing concerns are paid remuneration/ consideration in any manner, directly or indirectly. In all these cases, the taxable value of such supply of service shall be the remuneration/ consideration provided to such a person/ guarantor by the company, directly or indirectly.

2.	Whether the activity of providing corporate guarantee by a person on behalf of another related person, or by the holding company for sanction of credit facilities to its subsidiarycompany, to the bank/ financialinstitutions, even when made without any consideration will be treated as a taxable supply of service or not, and if taxable, what would be the valuationof such supply of services.	Where the corporate guarantee is provided by a company to the bank/financial institutions for providing credit facilities to the other company, where both the companies are related, the activity is to be treated as a supply of service between related parties as per provisions of Schedule I of CGST Act, even when made without any consideration. Similarly, where the corporate guarantee is provided by a holding company, for its subsidiary company, those two entities also fall under the category of 'related persons'. Hence the activity of providing corporate guarantee by a holding company to the bank/financial institutions for securing credit facilities for its subsidiary company, even when made without any consideration, is also to be treated as a supply of service by holding company to the subsidiary company, being a related person, as per provisions of Schedule I of CGST Act. In respect of such supply of services by a person to another related person or by a holding company to a subsidiary company, in form of providing corporate guarantee on their behalf to a bank/ financial institution, the

		taxable value will be determined as per rule 28 of CGST Rules. Considering different practices being followed by the field formations and taxpayers in determining such taxable value, in order to provide uniformity in practices and ease of implementation, sub-rule (2) has been inserted in rule 28 of CGST Rules vide Notification No. 52/2023 dated 26.10.2023, for determining the taxable value of such supply of services between related persons in respect of providing corporate guarantee. Accordingly, consequent to insertion of the said sub-rule in rule 28 of CGST Rules, in all such cases of supply of services by a related person to another person, or by a holding company to a subsidiary company, in the form of providing corporate guarantee on their behalf to a bank/ financial institution, the taxable value of such supply of services, will henceforth be determined as per the provisions of the sub-rule (2) of Rule 28 of CGST Rules, irrespective of whether full ITC is available to the recipient of services or not. It is clarified that the sub-rule (2) of Rule 28 shall not apply in respect of the activity

		of providing personal guarantee by the Director to the banks/ financial institutions for securing credit facilities for their companies and the same shall be valued in the manner provided in S. No. (1) above.

61. Clarifications regarding applicability of GST on certain services [Circular No. 206/18/2023-GST]

Circular No. 206/18/2023-GST
New Delhi, the 31st October, 2023

Based on the recommendations of the GST Council in its 52nd meeting held on 7th October, 2023 ,at New Delhi, clarification, with reference to GST levy, related to the following issues are being issued through this circular.

i. Whether 'same line of business' in case of passenger transport service and renting ofmotor vehicles includes leasing of motor vehicles without operators.

ii. Whether GST is applicable on reimbursement of electricity charges received by real estatecompanies, malls, airport operators etc. from their lessees/occupants.

iii. Whether job work for processing of "Barley" into "Malted Barley" attracts GST @ 5% as applicable to "job work in relation to food and food products" or 18% as applicable on "job work in relation to manufacture of alcoholic liquor for human consumption".

iv. Whether District Mineral Foundations Trusts (DMFTs) set up by the State Governments are Governmental Authorities and thus eligible for the same exemptions from GST as available to any other Governmental Authority.

v. Whether supply of pure services and composite supplies by way of horticulture/horticulture works (where the value of goods constitutes not more than 25 per cent of the total value of supply) made to CPWD are eligible for exemption from GST under Sr. No. 3 and 3A of Notification no 12/2017-CTR dated 28.06.2017.

2. Whether 'same line of business' in case of passenger transport service and

rentingof motor vehicles includes leasing of motor vehicles without operators.

2.1 Services of transport of passengers by any motor vehicle (SAC 9964) and renting of motor vehicle designed to carry passengers with operator (SAC 9966), where the cost of fuel is included in the consideration charged from the service recipient attract GST at the rate of 5% with input tax credit of services in the same line of business.

2.2 Same line of business as stated in the notification No. 11/2017- Central Tax (Rate) means *"service procured from another service provider of transporting passengers in a motor vehicle or renting of a motor vehicle".*

2.3 It is hereby clarified that input services in the same line of business include transport of passengers (SAC 9964) or renting of motor vehicle with operator (SAC 9966) and not leasing of motor vehicles without operator (SAC 9973) which attracts GST and/or compensation cess at thesame rate as supply of motor vehicles by way of sale.

3. Whether GST is applicable on reimbursement of electricity charges received by real estate companies, malls, airport operators etc. from their lessees/occupants.

3.1 Doubts were raised on the applicability of GST on supply of electricity by the real estate companies, malls, airport operators etc., to their lessees or occupants.

3.2 It is clarified that whenever electricity is being supplied bundled with renting of immovable property and/or maintenance of premises, as the case may be, it forms a part of composite supply and shall be taxed accordingly. The principal supply is renting of immovable property and/or maintenance of premise, as the case may be, and the supply of electricity is an ancillary supply as the case may be. Even if electricity is billed separately, the supplies will constitute a composite supply and therefore, the rate of the principal supply i.e., GST rate on renting of immovable property and/or maintenance of premise, as the case may be, would be applicable.

3.3 However, where the electricity is supplied by the Real Estate Owners, Resident Welfare Associations (RWAs), Real Estate Developers etc., as a pure agent, it will not form part of value of their supply. Further, where they charge for electricity on actual basis that is, they charge the same amount for electricity from their lessees or occupants as charged by the State Electricity Boards or DISCOMs from them, they will be deemed to be acting as pure agent for this supply.

4. Whether job work for processing of “Barley” into “Malted Barley” attracts GST @ 5% as applicable to "job work in relation to food and food products” or 18% as applicable on “job work in relation to manufacture of alcoholic liquor for human consumption”.

4.1 References have been received to clarify whether services by way of job work for conversion of barley into malt attracts GST at 5% prescribed for "job work in relation to all food and food products falling under Chapter 1 to 22 of the customs tariff" or at the rate of 18% prescribed for "services by way of job work in relation to manufacture of alcoholic liquor for human consumption”.

4.2 Malt is a food product. It can be directly consumed as part of food preparations or can be used as an ingredient in food products and also used for manufacture of beer and alcoholic liquorfor human consumption. However, irrespective of end-use, conversion of barley into malt amounts to job work in relation to food products.

4.3 It is hereby clarified that job work services in relation to manufacture of malt are coveredby the entry at Sl. No. 26 (i) (f) which covers “job work in relation to all food and food productsfalling under chapters 1 to 22 of the customs tariff” irrespective of the end use of that malt and attracts 5% GST.

5. Whether District Mineral Foundations Trusts (DMFTs) set up by the State Governments are Governmental Authorities and thus eligible for the same exemptions from GST as available to any other Governmental Authority.

5.1 DMFTs work for the interest and benefit of persons and areas affected by mining related operations by regulating receipt and expenditure from the respective Mineral Development Funds created in the concerned district. They provide services related to drinking water supply, environment protection, health care facilities, education, welfare of women and children, supply of medical equipment etc.

5.2 These activities are similar to activities that are enlisted in Eleventh Schedule and Twelfth Schedule of the Constitution. The ultimate users of the various schemes under DMF are individuals, families, women and children, farmers/producer groups, SHGs of the mining affected areas etc. The services/supplies out of DMF fund are provided free of charge and no consideration is realized from the beneficiaries by DMF against such services.

5.3 Accordingly, it is clarified that DMFT set up by the State Governments are Governmental Authorities and thus eligible for the same exemptions from GST as available to any other Governmental Authority.

6. Whether supply of pure services and composite supplies by way of horticulture/horticulture works (where the value of goods constitutes not more than 25 per cent of the total value of supply) made to CPWD are eligible for exemption from GST under Sr. No. 3 and 3A of Notification no 12/2017-CTR dated 28.06.2017.

6.1 Public parks in government residential colonies, government offices and other public areas are developed and maintained by CPWD.

6.2 Maintenance of community assets, urban forestry, protection of the environment and promotion of ecological aspects are functions entrusted to Panchayats and Municipalities under Article 243G and 243W read with Sr. No. 29 of 11th Schedule and Sr. No. 8 of 12th Schedule of the constitution.

6.3 Sr. No. 3 and 3A of notification No. 12/2017-CTR exempt pure services and composite supply of goods and services in which value of goods does not constitute more than 25%, that areprovided to the Central Government, State Government or Union territory or local authority 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.

6.4 Accordingly, it is clarified that supply of pure services and composite supplies by way of horticulture/horticulture works (where the value of goods constitutes not more than 25 per cent of the total value of supply) made to CPWD are eligible for exemption from GST under Sr. No.3 and 3A of Notification no 12/2017-CTR dated 28.06.2017.

62. Clarification on valuation of supply of import of services by a related person where recipient is eligible to full input tax credit [Circular No. 210/4/2024-GST]

Circular No. 210/4/2024-GST
New Delhi, the 26th June, 2024

As per S.No. 4 of Schedule I of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the 'CGST Act'), import of services by a person from a related person or from any of his other establishments outside India, in the course or furtherance of business,is to be treated as supply even if made without consideration.

2. Representations have been received from trade and industry stating that demands are being raised by some of the field formations against the registered persons seeking tax on reverse charge basis in respect of certain activities undertaken by their related persons based outside India, by considering the said activities as import of services by the registered person in India, based on an expansive interpretation of the deeming fiction in S.No. 4 of Schedule I of CGST Act, though no consideration is involved in the said activities and the same are not considered as supplies by the said related person in India. It has been represented that the same treatment, which is being given to domestic related parties/ distinct persons as per clarification provided by Circular No. 199/11/2023-GST dated 17.07.2023, may also be provided in cases where a foreign entity is providing service to its related party located in India, in cases where full ITC is available to the said recipient located in India.

3.1 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 CGST Act, hereby clarifies the issues as under:

3.2 Rule 28 of Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the 'CGST Rules') is reproduced as below:

> ***"Rule 28.Value of supply of goods or services or both between distinct or related persons, other than through an agent. –***
>
> *(1) The value of the supply of goods or services or both between distinct persons as specified in sub-section (4) and (5) of section 25 or where the supplier and recipient are related, other than where the supply is made through an agent, shall-*

(a) be the open market value of such supply;

(b) if the open market value is not available, be the value of supply of goods or services of like kind and quality;

(c) if the value is not determinable under clause (a) or (b), be the value as determined by the application of rule 30 or rule 31, in that order:

***Provided** that where the goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to ninety percent of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person:*

***Provided further that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services**.*

…"

3.3 As per second proviso to rule 28(1) of CGST Rules, in cases involving supply of goods or services or both between the **distinct** or **related persons** where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the said goods or services.

3.4 It may be noted that vide Circular No. 199/11/2023-GST dated 17.07.2023, clarification has been issued regarding taxability of services provided by an office of an organisation in one State to the office of that organisation in another State, both being distinct persons.It has been clarified in the said circular that as per the second proviso to rule 28(1) of CGST Rules, in respect of supply of services by Head Office(HO) to Branch Offices(BO) of an organisation, the value of the said supply of services declared in the invoice by HO shall be deemed to be open market value of such services, if the recipient BO is eligible for full input tax credit. It has also been clarified vide the said circular that in cases where full input tax credit is available to the recipient, if HO has not issued a tax invoice to the BO in respect of any particular services being rendered by HO to the said BO, the value of such services may be deemed to be declared as Nil by HO to BO, and may be deemed as open market value in terms of second proviso to rule 28(1) of CGST Rules.

3.5 The second proviso to Rule 28 (1) of CGST Rules, is applicable in all the cases involving supply of goods or services or both between the **distinct persons** as well as the **related persons, in cases where full ITC is available to the recipient.** Accordingly, it is evident that the clarification which has been issued vide Circular No. 199/11/2023-GST dated 17.07.2023 in respect of supplies of services between distinct persons in cases where full ITC is available to the recipient, is equally applicable in respect of import of services between related persons.

3.6 In case of import of services by a registered person in India from a r**elated person located outside India, the tax is required to be paid by the registered person in India under reverse charge mechanism.** In such cases, the registered person in India is required to issue self-invoice under Section 31(3)(f) of CGST Act and pay tax on reverse charge basis.

3.7 In view of the above, it is clarified that in cases where the foreign affiliate is providing certain services to the related domestic entity, and where full input tax credit is availableto the said related domestic entity, the value of such supply of services declared in the invoice by the said related domestic entity may be deemed as open market value in terms of second proviso to rule 28(1) of CGST Rules. Further, in cases where full input tax credit is available to the recipient, if the invoice is not issued by the related domestic entity with respect to any service provided by the foreign affiliate to it, the value of such services may be deemed to be declared as Nil, and may be deemed as open market value in terms of second proviso to rule 28(1) of CGST Rules.

4. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

5. Difficulty, if any, in the implementation of the above instructions may please be brought to the notice of the Board. Hindi version would follow.

63. Clarification on the taxability of ESOP/ESPP/RSU provided by a company to its employees through its overseas holding company [Circular No. 213/07/2024-GST]

Circular No. 213/07/2024-GST
New Delhi, the 26th June, 2024

Representations have been received from the trade and field formations seeking clarification regarding the taxability of Employee Stock Option (ESOP)/Employee Stock Purchase Plan (ESPP)/ Restricted Stock Unit (RSU) provided by a company to its employees.

2.1 It has been represented that some of the Indian companies provide the option to their employees for allotment of securities/shares of their foreign holding company as part of the compensation package as per terms of contract of employment. In such cases, on exercising

the option by the employees of Indian subsidiary company, the securities/shares of foreign holding company are allotted directly by the holding company to the concerned employees of Indian subsidiary company, and the cost of such securities/shares is generally reimbursed by the subsidiary company to the holding company.

2.2 Doubts are being raised regarding taxability of such a transaction under GST, i.e. whether such transfer of shares/ securities by the foreign holding company directly to the employees of the Indian subsidiary company and subsequent re-imbursement of the cost of such shares/ securities by the Indian subsidiary company to the foreign holding company can be considered as import of financial services by the Indian subsidiary company from the foreign holding company and whether the same can be considered as liable to GST in the hands of Indian subsidiary company on reverse charge basis.

3. 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.

4. The companies are providing option of allotment of securities/shares to their employees as a means of incentivization and the same is commonly referred to as an Employee Stock Purchase Plan (ESPP) or Employee Stock Option Plan (ESOP) or Restricted Stock Unit (RSU). Such specific terminology usage depends on the agreed-upon compensation terms between the employer and the employee. ESPPs and ESOPs are typicallypresented as 'options' granted to employees, whereas RSUs take the form of awards or rewards contingent upon the employee meeting specific performance standards. Regardless of the terminology used, the fundamental essence of the transaction remains the same i.e. the allocation of securities or shares from the employer to employee as part of compensation package with the aim of motivating enhanced performance.

4.1 A transaction involving transfer of ESOP/ESPP/RSU to the employees of domestic subsidiary by the foreign holding company appears to involve the following steps:

- The domestic subsidiary company gives option/ facility of ESOP/ESPP/RSU to its employees as part of compensation package as per terms of employment.
- The employees exercise their stock options, either by purchasing shares at the grant price or by holding the options until they vest.
- The foreign holding company of the domestic subsidiary company issues ESOP/ESPP/RSU, which are securities/shares listed on the foreign stock exchange, tothe employees of the domestic subsidiary company.

- The foreign holding company transfers the shares directly to the employees of the subsidiary company.
- The domestic subsidiary company generally reimburses the cost of such shares to the foreign holding company on cost-to cost basis either through an actual remittance or through an equity transfer as prescribed by the relevant Indian Accounting Standard.
- The employees hold the shares and may sell them at a later date, if they so choose.

4.2 The foreign holding company issues securities/shares as ESOP/SPP/RSU to the employees of the domestic subsidiary company on the request of the said domestic subsidiary company. However, Securities under GST Law are considered neither goods nor services in terms of definition of "goods" under clause (52) of section 2 of CGST Act and in terms of definition of "services" under clause (102) of the said section. Further, securities include 'shares' as per definition of "securities" under clause (h) of section 2 of Securities Contracts (Regulation) Act, 1956. Accordingly, purchase or sale of securities/shares, in itself, is neither a supply of goods nor a supply of services. Therefore, in the absence of such transaction, falling under the supply of 'goods' or 'services' as per GST Act, GST is not leviable on said transaction of sale/purchase/transfer of securities/shares.

4.3 Further, the companies offer ESOP/ESPP/RSU to their employees to motivate them to perform better, and to retain the employees, by aligning the interest of employees with that of company. The ESOP/ESPP/RSU is a part of remuneration of the employee by the employer as per terms of employment. As per Entry 1 of Schedule III of the CGST Act, the services by an employee to the employer in the course of or in relation to his employment are treated neither as supply of goods nor as supply of services. Therefore, GST is not leviable on the compensation paid to the employee by the employer as per the terms of employment contract which involve transfer of securities/shares of the foreign holding company to the employees of domestic subsidiary company.

4.4 The foreign holding company directly transfers the shares/securities to the employees of the domestic subsidiary company on the request of the said domestic subsidiary company. Reimbursement of such securities/ shares is generally done by domestic subsidiary company to foreign holding company on cost-to-cost basis i.e. equal to the market value of securities without any element of additional fee, markup or commission.Since the said reimbursement by the domestic subsidiary company to the foreign holding company is for transfer of securities/shares, which is neither in nature of goods nor services, the same cannot be treated

as import of services by the domestic subsidiary company from the foreign holding company and hence, is not liable to GST under CGST Act.

4.5 However, if the foreign holding company charges any additional fee, markup, or commission from the domestic subsidiary company for issuing ESOP/ESPP/RSU to the employees of the domestic subsidiary company, then the same shall be considered to be in nature of consideration for the supply of services of facilitating/ arranging the transaction in securities/ shares by the foreign holding company to the domestic subsidiary company. In this case, GST will be leviable on such amount of the additional fee, markup, or commission, charged by the foreign holding company from the domestic subsidiary for issuance of its securities/shares to the employees of the latter. The GST shall be payable by the domestic holding company on reverse charge basis on such import of services from the foreign holding company.

4.6 Accordingly, it is clarified that no supply of service appears to be taking place between the foreign holding company and the domestic subsidiary company where the foreign holding company issues ESOP/ESPP/RSU to the employees of domestic subsidiary company, and the domestic subsidiary company reimburses the cost of such securities/shares to the foreign holding company on cost-to-cost basis. However, in cases where an additional amount over and above the cost of securities/shares is charged by the foreign holding company from the domestic subsidiary company, by whatever name called, GST would be leviable on such additional amount charged as consideration for the supply of services of facilitating/ arranging the transaction in securities/ shares by the foreign holding company to the domestic subsidiary company. The GST shall be payable by the domestic subsidiary company on reverse charge basis in such a case on the said import of services.

5. It is requested that suitable trade notices may be issued to publicize the contents of thisCircular.

6. Difficulty, if any, in implementation of this Circular may please be brought to the notice of the Board. Hindi version would follow.

64. Clarification regarding taxability of the transaction of providing loan by an overseas affiliate to its Indian affiliate or by a person to a related person [Circular No. 218/12/2024-GST]

Circular No. 218/12/2024-GST
New Delhi, the 26th June, 2024

Representations have been received from trade and industry seeking clarity on whether there is any supply involved in the transaction of granting of loan by a person to a related person or by an overseas affiliate to its Indian entity, where the consideration being paid is only by way of interest or discount, and whether any GST is applicable on the same.

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:

S.No.	Issue	Clarification
Clarification regarding taxability of the transaction of providing loan by an overseas entity to its Indian related entity or by a person in India to a related person		
1	Whether the activity of providing loans by an overseas affiliate to its Indian affiliate or by a person to a related person, where there is no consideration in the nature of processing fee/ administrative charges/ loan granting charges etc., and the consideration is represented only by way of interest or discount, will be treated as a taxable supply of service under GST or not.	1. As per clause (c) of sub-section (1) of section 7 of the CGST Act, read with S. No. 2 and S. No. 4 of Schedule I of CGST Act, supply of goods or services or both between related persons, when made in the course or furtherance of business, shall be treated as supply, even if made without consideration. Therefore, it is evident that the service of granting loan/ credit/ advances by an entity to its related entity is a supply under GST. **2.** 2. 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) are exempted under sub entry (a) of entry 27 of Notification No. 12/2017-Central Tax (Rate). Therefore, it is clear that the supply of services of granting loans/ credit/ advances, in so far as the consideration is represented by way of interest or discount, is fully exempt under GST.

		3. It is mentioned that overseas affiliates or domestic related persons are generally charging no consideration in the form of processing fee/ service fee, other than the consideration by way of interest or discount on the loan amount. Doubts are being raised regarding the taxability of the services of processing/ administering/ facilitating the loan in such cases, by deeming the same as supply as per clause (c) of sub-section (1) of section 7 of the CGST Act, read with S. No. 2 and S. No. 4 of Schedule I of CGST Act. The **processing fee/ service fee** is generally a one-time charge that lenders levy on applicants when they apply for a loan. This fee is generally non-refundable and is used to cover the **administrative cost of processing the loan application**. Charges of any other nature in respect of loan, other than by way of interest or discount, would represent taxable consideration for providing the facilitation/ processing/ administration services for the loan and hence would be liable to GST. This has been clarified at serial number 42 in the Sectoral FAQ on Banking, Insurance and Stock Brokers Sector issued by CBIC. 4. It is significant to note that the processing/ service fee is generally charged by the bank/ financial institution from the recipient of the loan in order to cover the administrative cost of processing the loan application. An independent lender may carry out a thorough credit assessment of the potential borrower to identify and evaluate the risks involved and to consider methods of monitoring and managing these risks. Such credit

		assessment may include understanding the business of the applicant, as well as the purpose of the loan, financial standing and credibility of the applicant, how it is to be structured and the source of its repayment which may include analysis of the borrower's cash flow forecasts, the strength of the borrower's balance sheet, and where any collateral is offered, due diligence on the collateral offered may also be required to be carried out. To cover such costs, the independent lender generally collects a fee that is in the nature of processing fee/ administrative charges/ service fee/ loan granting charges, which is leviable to GST. 5. However, when an entity is extending a loanto a related entity, it may not require to follow such processes as are followed by an independent lender. For example, it may not need to go through the same process of information gathering about the borrower's business, his financial standing and credibility and other details, as the required information may already be readily available within the group, or between related persons. The lender may not also take any collateral from the borrower. Accordingly, in case of loans provided between related parties, there may not be the activity of 'processing' the loan, and no administrative cost may be involved in granting such a loan. Therefore, it may not be desirable to place the services being provided for processing the loans by banks or independent lenders vis-a-vis the loans provided by a related party, on equalfooting. 6. Even in case of loans provided between

		unrelated parties, there may not be any processing fee/ administrative charges/ loan granting charges etc., based on the relationship between the bank/ independent lender and the person taking the loan. The lender might waive off the administrative charges in full, based on the nature and amount of loan granted, as well as based on the relationship between the lender and the concerned person taking the loan. 7. Accordingly, in the cases, where no consideration is charged by the person from the related person, or by an overseas affiliate from its Indian party, for extending loan or credit, other than by way of interest or discount, it cannot be said that any supply of service is being provided between the said related persons in the form of processing/ facilitating/ administering the loan, by deeming the same as supply of services as per clause (c) of sub-section (1) of section 7 of the CGST Act, read with S. No. 2 and S. No. 4 of Schedule I of CGST Act. Accordingly, there is no question of levy of GST on the same by resortingto open market value for valuation of the same as per rule 28 of Central Goods and Services TaxRules, 2017. 8. However, in cases of loans provided between related parties, wherever any fee in the nature of processing fee/ administrative charges/ service fee/ loan granting charges etc. is charged, over and above the amount charged by way of interest or discount, the same may be considered to be the consideration for the supply of services of processing/ facilitating/ administering of the loan,

		which will be liable to GST as supply of servicesby the lender to the related person availing the loan.

3. It is requested that suitable trade notices may be issued to publicize the contents ofthis Circular.

4. Difficulties, if any, in implementing this Circular may please be brought to the noticeof the Board. Hindi version would follow.

65. Clarification on place of supply applicable for custodial services provided by banks to Foreign Portfolio Investors [Circular No. 220/14/2024-GST]

Circular No. 220/14/2024-GST
New Delhi, the 26th June, 2024

Representations have been received seeking clarification on the Place of Supply in cases of Custodial Services provided by Banks to Foreign Portfolio Investors (hereinafter referred toas "FPIs"), as a view is being taken by some field formations that the Place of Supply in case of 'custodial service' would be determined as per Section 13(8)(a) of the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as "IGST Act"), i.e. the location of the service provider (banks or financial institutions).

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 issue as under:

Issue	Clarification
Whether the activity of providing Custodial Services by banks or financial institutions to FPIs will be treated as services provided to 'account holder' under Section 13(8)(a) of the IGST Act, 2017? Further, how the place of supply of the said services shall be determined?	According to the Securities and Exchange Board of India (Custodian of Securities) Regulations 1996, 'Custodial Services' in relation to securities means safekeeping of securities of a client and providing services incidental thereto, and includes- • maintaining accounts of securities of a client; • collecting the benefits or rights accruing to the client in respect of securities; • keeping the client informed of the actions taken or to be taken by the issuer of securities, having a bearing on the benefits or rights accruing to the client; and • maintaining and reconciling records of the services referred above. As per Regulation 20(1) of the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2019, **an FPI is allowed to invest only in the following securities,** namely- (a) shares, debentures and warrants issued by a body corporate; listed or to be listed on a recognized stock exchange in India; (b) units of schemes launched by mutual funds under Chapter V, VI-A and VI-B of the Securities and Exchange Board of India (Mutual Fund) Regulations, 1996; (c) units of schemes floated by a Collective Investment Scheme in accordance with the Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999; (d) derivatives traded on a recognized stock exchange; (e) units of real estate investment trusts, infrastructure investment trusts and units of Category III Alternative Investment Funds registered with the Board; (f) Indian Depository Receipts; any debt securities or other instruments as permitted by the Reserve Bank of India for foreign portfolio investors to invest in from time to time; and (h) such other instruments as specified by the Board from time

	to time. Various banks enter into custodial agreements with the Foreign Portfolio Investors (FPIs) for the provision of such custodial services. The main activity carried out by banks as a custodian in relation to custodial services is maintaining account of the securities held by the FPIs. As per clause (a) of sub-section (8) of section 13 of IGST Act, Place of Supply of services supplied by banking company or a financial institution or a non-banking company to account holders shall be the location of the supplier of services. As per Explanation (a) of Section 13(8) of IGST Act, *'account' means an account bearing interest to the depositor, and includes a non-resident external account and a non-resident ordinary account.* It is mentioned that the provisions similar to above provisions under IGST Act existed during the Service Tax regime. The place of provision of service under Service Tax was governed by the Service Tax Place of Provision of Supply Rules, 2012. Provisions of Rule 9(a) of the Service Tax Place of Provision of Supply Rules, 2012 were identical to that of section 13(8)(a) of the IGST Act. The Education Guide under the Service Tax Law clarified the scope of the term "account holder" and the services provided by banks to account holders as well as the services which are not provided to account holders, as below: *"Question: 5.9.2 What is the meaning of "account holder"? Which accounts are not covered by this rule?* *Answer: "Account" has been defined in the rules to mean an account which bears an interest to the depositor. Services provided to holders of demand deposit, term deposits, NRE (non-resident external) accounts and NRO(non-resident ordinary) accounts will be covered under this rule.* *Question:5.9.3 What are the services that are provided bya banking company to an account holder (holder of an*

	account bearing interest to the depositor)? *Answer: Following are examples of services that are provided by a banking company or financial institution to an "account holder", in the ordinary course of business:-* *i) services linked to or requiring opening and operation of bank accounts such as lending, deposits, safe deposit locker etc;* *ii) transfer of money including telegraphic transfer, mail transfer, electronic transfer etc.* *Question:5.9.4 What are the services that are not provided by a banking company or financial institution to an account holder, in the ordinary course of business, and will consequently be covered under another Rule?* *Answer:* ***Following are examples of services that are generally NOT provided by a banking company or financial institution to an account holder (holder of a deposit account bearing interest),*** *in the ordinary course of business:-* *i) financial leasing services including equipment leasing and hire purchase* *ii) merchant banking services;* *iii) Securities and foreign exchange (forex) broking, and purchase or sale of foreign currency, including money changing;* *iv) asset management including portfolio management, all forms of fund management, pension fund management,* ***custodial, depository*** *and trust services.* *In the case of any service which does not qualify as a service provided to an account holder, the place of provision will be determined under the default rule i.e. the Main Rule 3. Thus, it will be the location of the service receiver where it is known (ascertainable in the ordinary course of business), and the location of the service provider otherwise*."

	Accordingly, as per clarification given in Education Guide under Service Tax Regime, the custodial services are not considered to be covered under the services provided by bank to account holders, but have been considered to be covered under the services which are not provided to account holder. As the provisions of section 13(8)(a) of the IGST Act are similar to the provisions of Rule 9(a) of the Service Tax Place of Provision of Supply Rules, 2012, the clarification given in the Education Guide under Service Tax Regime is equally applicable under GST Regime. Accordingly, it is clarified that the custodial services provided by banks or financial institutions to FPIs are not to be treated as services provided to 'account holder' and therefore, the said services are not covered under Section 13(8)(a) of the IGST Act. Therefore, the place of supply of such services is not to be determined under Section 13(8)(a) of the IGST Act but has to be determined under the default provision i.e., sub-section (2) of section 13 of the IGST Act.

2. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

3. Difficulty, if any, in implementation of the above instructions may please be brought tothe notice of the Board. Hindi version would follow.

66. Clarification on time of supply in respect of supply of services of construction of road and maintenance thereof of National Highway Projects of National Highways Authority of India (NHAI)in Hybrid Annuity Mode (HAM) model [Circular No. 221/15/2024-GST]

Circular No. 221/15/2024-GST
New Delhi, the 26th June, 2024

Representations have been received from the trade and the field formations seeking clarification regarding the time of supply in respect of supply of services of construction of road and maintenance thereof of National Highway Projects in Hybrid Annuity Mode (HAM) model, where certain portion of Bid Project Cost is received during construction period and remaining payment is received through deferred payment (annuity) spread over years.

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:

S.No.	Issue	Clarification
1.	Under HAM model **of National Highways Authority of India (NHAI)**, the concessionaire has to construct the new road and provide Operation & Maintenance of the same which is generally over a period of 15- 17 years and the payment of the same is spread over the years. What is the time of supply for the purpose of payment of tax on the said service under the HAM model?	Under the Hybrid Annuity Model (HAM) of concession agreements, the highway development projects are under Design, Build, Operate and Transfer model (DBOT), wherein the concessionaire is required to undertake new construction of Highway, as well as the Operation and Maintenance (O&M) of Highways. The payment terms for the construction portion as well as the O&M portion of the contract are provided in the agreement between National Highways Authority of India (NHAI) and the concessionaire. 2.1 A HAM contract is a single contract for construction as well as operation and maintenance of the highway. The payment terms are so staggered that the concessionaire is held accountable for the repair and maintenance of the highway as well. The contract needs to be looked at holistically based on the services to be performed by the concessionaire and cannot be artificially split into two separate contracts for construction and operation and maintenance, based

		on the payment terms. The concessionaire is bound contractually to complete not only the construction of the highway but also to operate and maintain the same. 2.2 In HAM contract, the payment is made spread over the contract period in installments and payment for each installment is to be made after specified periods, or on completion of an event, as specified in the contract. The same appears to be covered under the 'Continuous supply of services' as defined under section 2(33) of the CGST Act. 2.3 As per clause (a) of Section 13(2) of CGST Act, the time of supply in respect of a supply of services shall be **the date of issue of Invoice, or date of receipt of payment, whichever is earlier**, in cases where invoice is issued within the period prescribed under section 31 of CGST Act. Further, as per clause (b) of Section 13(2) of CGST Act, in cases where invoice is not issued within the period prescribed under section 31, the time of supply of service shall be **date of provision of the service** or **date of receipt of payment, whichever is earlier**. However, as per section 31(5) of CGST Act, in cases of **continuous supply** of services, where the payment is made periodically, either due on a specified date or is linked to the completion of an event, the invoice is required to be issued on or before the specified date or the date of completion of that event. 2.4 Accordingly, as per section 13(2) of CGST Act, read with section 31(5) of CGST Act, time of supply of services under HAM contract, including construction and O&M portion, should be the date of

		issuance of such invoice, or date of receipt of payment, whichever is earlier, if the invoice is issued on or before the specified date or the date of completion of the event specified in the contract, as applicable. However, in cases, where the invoice is not issued on or before the specified date or the date of completion of the event specified in the contract, as per clause (b) of section 13(2), time of supply should be the date of provision of the service, or date of receipt of payment, whichever is earlier. In case of continuous supply of services, the date of provision of service may be deemed as the due date of payment as per the contract, as the invoice is required to be issued on or before the due date of payment as per the provisions of Section 31(5) of CGST Act. 3. In the light of above, it is clarified that the tax liability on the concessionaire under the HAM contract, including on the construction portion, would arise at the time of issuance of invoice, or receipt of payments, whichever is earlier, if the invoice is issued on or before the specified date or the date of completion of the event specified in the contract, as applicable. If invoices are not issued on or before the specified date or the date of completion of the event specified in the contract, tax liability would arise on the date of provision of the said service (i.e., the due date of payment as per the contract), or the date of receipt of the payment, whichever is earlier. 4. It is also clarified that as the installments/annuity payable by NHAI to the concessionaire also includes some interest component, the amount of such interest shall also be includible in the taxable value for the purpose of payment of tax on the said

		annuity/installment in view of the provisions of section 15(2)(d) of the CGST Act.

3. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

4. Difficulty, if any, in implementation of this Circular may please be brought to the notice of the Board. Hindi version would follow.

67. Clarification on time of supply of services of spectrum usage and other similar services under GST [Circular No. 222/16/2024-GST]

Circular No. 222/16/2024-GST
New Delhi, the 26th June, 2024

Representations have been received from the trade and the field formations seeking clarification regarding the time of supply for payment of GST in respect of supply of spectrum allocation services in cases where the successful bidder for spectrum allocation (i.e. the telecom operator) opts for making payments in instalments under deferred payment option as per Frequency Assignment Letter (FAL) issued by Department of Telecommunication (DoT), Government of India.

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:

S.No.	Issue	Clarification
1.	In cases of spectrum allocation where the successful bidder (i.e. the 'telecom operator') opts for making payments in instalments as mentioned in the Notice Inviting Application (NIA) and Frequency Assignment Letter	Under the spectrum allocation model followed by DoT, bidder (the telecom operator) bids for securing the right to use spectrum offered by the government. Here, service provider is the Government of India (through DoT) and service recipient is the bidder/ telecom operator. The GST is to be discharged on the supply of

	(FAL) issued by Department of Telecommunications (DoT), Government of India, what will be the time of supply for the purpose of payment of GST on the said supply of spectrum allocation services.	spectrum allocation services by the recipient of services (the telecom operator) on reverse charge basis *[Notification No. 13/2017-Central Tax (Rate) dated 28th June, 2017 referred*]. 2.1 In respect of the said supply of spectrum allocation services, if the telecom operator chooses the option to make payment in installments, the payment has to be made spread over the contract period in installments and payment for each installment is to be made after specified periods, as specified in the Frequency Assignment Letter of DoT, which is in the nature of contract. The same is a 'continuous supply of services' as defined under section 2(33) of the CGST Act, since the supply of services (spectrum usage) is agreed to be provided by the supplier (DoT) to the recipient (telecom operator) continuously for a period which is exceeding three months with periodic payment obligations. 2.2 As per section 13(1) of CGST Act, the liability to pay tax on supply of services shall arise at the time of supply. In case of forward charge supplies, the time of supply of services is governed by section 13(2) of CGST Act, which is the earlier date of issue of invoice by the supplier or date of provision of service or the date of payment, as the case maybe. 2.3 However, in respect of supply of services, on which tax is paid or liable to be paid on

		reverse charge basis, as per Section 13(3) of CGST Act, 2017, the time of supply of services shall be the earlier of the following dates, namely**:-** (a) the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or (b) the date immediately following **sixty days from the date of issue of invoice or any other document**, by whatever name called, in lieu thereof by the supplier. 2.3.1 Some of the field formations are considering the Frequency Assignment Letter issued by DoT as akin to any other document, by whatever name called, in lieu of an invoice mentioned in clause (b) of section 13(3) of CGST Act and are demanding interest on instalments paid after 60 days from the date of issue of the same. 2.3.2 It is observed that Frequency Assignment Letter is in the nature of a bid acceptance document intimating the telecom operator that the result of the action has been accepted by the competent authority and the details of blocks and spectrum allotted to the telecom operator. The Frequncy Allotment Letter also mentions the options and the amounts to be paid by the telecom operator in each of the two options. 2.4 Further, as per section 31(5)(a) of CGST Act, in cases of continuous supply of services, where the due date of payment is ascertainable from the contract, the invoice shall be issued on or before

		such due date of payment. In the instant case, the date of payment to be made by the telecom operator to DoT is clearly ascertainable from the Notice Inviting Applications read with the Frequency Assignment Letter. Accordingly, tax invoice will be required to be issued in respect of the said supply of services, on or before such due date of payment as per the option exercised by the telecom operator. 3. In the light of above, it is clarified that in case where full upfront payment is made by the telecom operator, GST would be payable when the payment of the said upfront amount is made or is due, whichever is earlier, whereas in case where deferred payment is made by the telecom operator in specified installments, GST would be payable as and when the payments are due or made, whichever is earlier. 4. It is also clarified that the similar treatment regarding the time of supply, as is discussed in the above paras, may apply in other cases also where any natural resources are being allocated by the government to the successful bidder/ purchaser for right to use the said natural resource over a period of time, constituting continuous supply of services as per the definition under section 2(33) of the CGST Act, with the option of payments for the said services either through an upfront payment or in deferred periodic installments over the period of time.

3. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

4. Difficulty, if any, in implementation of this Circular may please be brought to the notice of the Board. Hindi version would follow.

68. Clarification on various issues pertaining to taxability and valuation of supply of services of providing corporate guarantee between related persons [Circular No. 225/19/2024-GST]

Circular No. 225/19/2024-GST
New Delhi, the 11th July, 2024

1.1 As per the recommendations of the GST Council, sub-rule (2) was inserted in Rule 28 of Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the "CGST Rules") vide Notification No. 52/2023-Central Tax dated 26th October, 2023 to provide for a specific clause for valuation of supply of services of providing corporate guarantee to any banking company or financial institution by an entity on behalf of a related person. Besides, Circular No. 204/16/2023-GST dated 27th October, 2023 was also issued as per the recommendations of the GST Council, to provide clarity regarding the applicability of the said sub-rule. Subsequently, based on the recommendations of the GST Council, sub-rule (2) of Rule 28 of CGST Rules has been amended retrospectively with effect from 26.10.2023 vide notification No. 12/2024 dated 10th July 2024.

1.2 In this regard, various representations have been received from trade and industry, seeking clarifications on various issues pertaining to the taxability and valuation of the supply of services of providing corporate guarantee between related persons as per the said rule.

2. Therefore, 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 as under:

S. No	Issue	Clarification
1	Whether sub-rule (2) of rule 28 of CGST Rules will apply to the corporate guarantees issued prior to insertion of the said sub-rule on 26th October 2023? Also, where intra-group corporate guarantees have been issued before 26th October 2023, which are still in force today, would they be liable to pay GST on "1% of	It is to be clarified that the supply of service of providing corporate guarantee to any banking company or financial institution by a supplier to a related recipient, on behalf of the said recipient, was taxable even before the insertion of sub-rule (2) in rule 28 of CGST Rules with effect from 26th October 2023. Rule 28(2) of CGST Rules is only for determination of the value of the taxable supply of providing corporate guarantee to any

	the amount of such guarantee offered" on such guarantees?	banking company or financial institution by a supplier to a related recipient, on behalf of the said recipient and not regarding the taxability of the said supply itself. Prior to the insertion of the said sub-rule, i.e., before 26th October 2023, the valuation of service of providing corporate guarantee to any banking company or financial institution by a supplier to a related recipient, on behalf of the said recipient, was to be done as per the provisions of Rule 28 of CGST Rules, as it existed then. Therefore, in respect of supply of services of providing corporate guarantee between related persons, in respect of corporate guarantee issued or renewed before 26th October 2023, the valuation of the said supply is to be done in accordance with Rule 28, as it existed during that time. However, if the corporate guarantee is issued or renewed on or after 26th October 2023, then the valuation of the said supply will be required to be done as per Rule 28(2) of CGST Rules.
2	In cases where the corporate guarantee is provided for a particular amount, whereas the loan is only partly availed or not availed at all by the recipient, what will be the value of supply of corporate guarantee. Also, whether the recipient would be eligible to avail full ITC (Input Tax Credit) even before total loan is disbursed?	The activity of supply of the service of providing a corporate guarantee is not linked with the actual disbursal of the loan. The service that is provided by the guarantor to the guarantee is that of taking on the risk of default. Therefore, it is clarified that the value of supply of the service of providing a corporate guarantee will be calculated based on the amount guaranteed and will not be based on the amount of loan actually disbursed to the recipient of the corporate guarantee. Further, it is also clarified that the recipient of the

		service of providing corporate guarantee shall be eligible to avail the ITC, subject to other conditions specified in the Act and the Rules made thereunder, irrespective of when the loan is actually disbursed to the recipient, and irrespective of the amount of loan actually disbursed.
3	In the case of takeover of existing loans, since there is merely an assignment of an already issued corporate guarantee, whether GST would be applicable again?	In the service of providing corporate guarantee to any banking company or financial institution by a supplier to a related recipient, on behalf of the said recipient, the supplier of the service is the corporate entity providing the corporate guarantee and the recipient is the related entity for whom the corporate guarantee is provided by the said supplier. Therefore, if the loan issued by the banking company/ financial institution is taken over by another banking company/ financial institution, the said activity of taking over of the loan does not fall under the service of providing corporate guarantee to any banking company or financial institution by a supplier to a recipient. Therefore, it is clarified that in such cases, there will be no impact on GST, unless there is issuance of fresh corporate guarantee or there is a renewal of the existing corporate guarantee. However, if the takeover of the loan is followed/ accompanied by issuance of fresh corporate guarantee, then GST would be payable on the same.
4	Where corporate guarantee is provided by more than one entity / co-guarantor, what is the amount on which GST is payable by each co-guarantor?	In cases where corporate guarantee is being provided by multiple related entities, the value of such services of providing corporate guarantee shall be the sum of the actual consideration paid/ payable to coguarantors, if the said amount of

		total consideration is higher than one per cent of the amount of such guarantee offered. In cases where the sum of the actual consideration is less than one per cent of the amount of such guarantee offered, then GST shall be payable by each co-guarantor proportionately on one per cent of the amount guaranteed by them. For instance, if there are two co-guarantors, A and B, who jointly provide a corporate guarantee to a banking/ financial institution on behalf a related recipient C for Rs. 1 crore, then A and B shall each pay GST on 0.5% of the amount guaranteed. However, if in the above case of A and B providing corporate guarantee jointly to a banking/ financial institution on behalf a related recipient C for Rs 1 crore, A provides guarantee for 60% of the guarantee amount and B provides guarantee for the remaining 40% of the guaranteed amount, then GST shall be payable by A and B proportionately i.e., 0.6% and 0.4% of the amount guaranteed. This is to say that A shall pay GST on 1% of the amount guaranteed by A, i.e., 1% on Rs. 60 lakhs and B shall pay GST on 1% of the amount guaranteed by B, i.e., 1% on Rs. 40 lakhs
5	Where intra-group corporate guarantee is issued, whether GST may be paid by the recipient under reverse charge, as in the absence of actual invoice and payment, the recipient entity may not be able to claim input tax credit of tax paid by the domestic guarantor?	It is clarified that in cases where domestic corporates issue intra-group guarantees, GST is to be paid under forward charge mechanism, and invoice is to be issued by the supplier of the service of providing corporate guarantee to the related recipient under Section 31 of CGST Act, 2017 read along with the relevant rules. However, in cases where such guarantee is

		provided by the foreign/ overseas entity for a related entity located in India, then GST would be payable under reverse charge mechanism, by the recipient of service, i.e., the related entity located in India.
6	Whether the discharge of tax liability on corporate guarantee @ 1% of such guarantee offered is to be done one time or on yearly basis or on monthly basis and when issued for a fixed term of say, five years or ten years as per tenure of the loan?	Rule 28(2) of CGST Rules has been amended retrospectively with effect from 26th October 2023, vide notification No. 12/2024 -CT dated 10.07.2024. Therefore, it is clarified that the value of supply of the service of providing corporate guarantee to a banking company or a financial institution on behalf of a related recipient shall be one per cent of the amount guaranteed per annum or the actual consideration, whichever is higher. Accordingly, the value of supply of the service of providing corporate guarantee to a banking company or a financial institution on behalf of a related recipient for a particular number of years shall be one per cent of the amount of such guarantee offered multiplied by the number of years for which the said guarantee is offered or the actual consideration whichever is higher. In addition to the above, in cases where the corporate guarantee is provided for a period less than a year, say 6 months (half a year), then in those cases as well, the valuation may be done on proportionate basis for the said period, i.e., in this case, the value of the said supply of services may be taken as half of one per cent of the amount of such guarantee offered (6/12 * one per cent), or the actual consideration, whichever is higher. To illustrate the same, if a corporate guarantee is

		issued for a period of say five years, then the value of such guarantee is to be calculated at one per cent per year of the amount of such guarantee offered, or the actual consideration, whichever is higher, i.e., the value of such corporate guarantee provided would be 5% of the amount guaranteed or the actual consideration, whichever is higher. Therefore, GST would be payable on such amount at the time of issuance of such corporate guarantee, i.e., 5% of the amount guaranteed or the actual consideration, whichever is higher. However, if a corporate guarantee is issued, say for a period of one year and is renewed five times, for a period of one year each, then tax would be payable on one per cent of the amount of such guarantee offered, or the actual consideration, whichever is higher, on the issue of such corporate guarantee in the first year as well as on every renewal in subsequent years.
7	Whether the benefit of second proviso to sub-rule (1), which states that value declared in invoice is deemed to be the open market value in cases where full input tax credit is available to the recipient of services, is not applicable in cases falling under sub-rule (2)?	Proviso has been inserted in sub-rule (2) of Rule 28 of CGST Rules, retrospectively with effect from 26th October 2023 vide notification No. 12/2024 CT dated 10.07.2024, similar to that provided in the second proviso to sub-rule (1) of Rule 28 of CGST Rules, to provide the benefit in cases involving supply of service of corporate guarantees provided between related persons. Accordingly, it is clarified that in cases involving the supply of service of corporate guarantees provided between related persons, where full input tax credit is available to the recipient of services, the value declared in the invoice shall be deemed to be the value of supply of the said service.

8	Whether the valuation in terms of Rule 28(2) of CGST Rules will apply to the export of the service of providing corporate guarantee between related persons?	As per the amendment done in sub-rule (2) of rule 28 of CGST Rules retrospectively w.e.f. 26th October 2023 vide notification No. 12/2024 -CT dated 10.07.2024, the provisions of the said sub-rule will not apply in cases where the recipient of the services of providing corporate guarantee between related persons is located outside India. Accordingly, the provisions of the said sub-rule shall not apply to the export of the services of providing corporate guarantee between related persons.

69. Clarification regarding applicability of GST on certain services [Circular No. 228/22/2024-GST]

Circular No. 228/22/2024-GST
New Delhi, the 15th July, 2024

In exercise of the powers conferred under section 168(1) of the Central Goods and Services Tax Act, 2017 and on the recommendations of the 53 GST Council in its meeting held on 22" June, 2024, at New Delhi, clarifications, related to the following issues are being issued through this circular:

(i) GST exemption on the outward supplies made by the Ministry of Railways (Indian Railways). (ii) GST exemption on the transactions between Special Purpose Vehicles (SPVs) and Ministry of Railways (Indian Railways).

(iii) Applicability of GST on the statutory collections made by the Real Estate Regulatory Authority (RERA) in accordance with the Real Estate (Regulation and Development) Act, 2016.

(iv)Applicability of GST on the incentive amount shared by acquiring bank with other stakeholders in the digital payment ecosystem under the notified Incentive Scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions.

(v) GST liability on the reinsurance of specified general and life insurance schemes.

(vi) GST liability on the reinsurance of insurance schemes for which total premium is paid by the Government.

(vii) Applicability of GST on retrocession services.

(viii) GST liability on certain accommodation services.

2. GST exemption on the outward supplies made by Ministry of Railways (Indian Railways).

2.1 Based on the request of Ministry of Railways (Indian Railways) and recommendations of the 52nd GST Council meeting held on 07.10.2023, all supplies of goods and services made by Ministry of Railways (Indian Railways) were brought under Forward Charge Mechanism and consequently exemptions that were available to Ministry of Railways (Indian Railways) were withdrawn vide notification No.13/2023-CT(R) dated 19.10.2023 w.e.f. 20.10.2023.

2.2 However, Ministry of Railways had brought out certain difficulties in implementation of the above said notification and matter was examined by the 53rd GST Council in its meeting held on 22nd June, 2024.

2.3 GST Council has recommended to exempt the services provided by Ministry of Railways (Indian Railways) to general public viz., sale of platform tickets, facility of retiring rooms/waiting rooms, cloak room services and battery-operated car services. GST council has also recommended to exempt the supply of services made between various zones/ divisions under Ministry of Railways (Indian Railways). Notification No. 04/2024-CT(R) dated 12.07.2024 has been issued in this regard and effective date of implementation of the said notification is 15.07.2024.

2.4 The GST Council in its 53" meeting has also recommended to regularize GST liability for the intervening period i.e. from 20.10.2023 to 14.07.2024 on ‘as is where is’ basis.

2.5 Therefore, as recommended by the 53rd GST Council, the GST on the services provided by Ministry of Railways (Indian Railways) to general public viz., sale of platform tickets, facility of retiring rooms, cloak room services and battery-operated car services and supply of services made between various zones/ divisions under Ministry of Railways (Indian Railways) is hereby regularized on ‘as is where is’ basis from 20.10.2023 to 14.07.2024.

3. GST exemption on the transactions between Special Purpose Vehicles (SPVs) and Ministry of Railways (Indian Railways).

3.1 Based on the recommendations of the 48" GST Council meeting held on 17.12.2022, it was clarified to Ministry of Railways (Indian Railways) that supply of services by SPVs to Ministry of Railways (Indian Railways) by way of allowing Indian Railways to use infrastructure built and owned by them during the concession period against consideration and maintenance services supplied by Ministry of Railways (Indian Railways) to SPVs are taxable.

3.2 However, Ministry of Railways had brought out certain difficulties faced in implementation of the said recommendations of the 48" GST Council and matter was examined by the 53 GST Council in its meeting held on 22nd June, 2024.

3.3 GST Council has recommended to exempt the supply of service by SPVs to Ministry of Railways (Indian Railways) by way of allowing Indian Railways to use the infrastructure built and owned by SPVs during the concession period against consideration and maintenance services supplied by Ministry of Railways (Indian Railways) to SPVs from GST. Notification No. 4/2024- CT(R) dated 12.07.2024 has been issued in this regard.

3.4 The GST Council in its 53" meeting has also recommended to regularize the past period in respect of such transactions for the period from 01.07.2017 to 14.07.2024 on 'as is where is' basis.

3.5 Thus, as recommended by the 53rd GST Council, GST on the supply of services by SPVs to Ministry of Railways (Indian Railways) by way of allowing it to use infrastructure built and owned by them during the concession period against consideration and maintenance services supplied by Ministry of Railways (Indian Railways) to SPVs in relation to such use of infrastructure built and owned by SPVs during the concession period against consideration is hereby regularized for the period from 01.07.2017 to 14.07.2024 on 'as is where is' basis.

4. Applicability of GST on the statutory collections made by the Real Estate Regulatory Authority (RERA) in accordance with the Real Estate (Regulation and Development) Act, 2016.

4.1 Representation has been received requesting for clarification on whether GST is applicable on the statutory collections made by the Real Estate Regulatory Authority (RERA).

4.2 RERA is constituted under the Real Estate (Regulation and Development) Act, 2016. RERA performs function of regulating the real estate development and construction of the building entrusted to them which fall under Entry No.l and 2 of the Twelfth Schedule of the Indian Constitution.

4.3 RERA is a 'governmental authority' as per the definition in the exemption notification No.12/2017- CT(R) dated 28.06.2017 and is covered under the scope of entry at SI. No. 4 of notification No. 12/2017-CT(R) dated 28.06.2017.

4.4 GST Council in its 53" meeting has recommended to clarify that statutory collections made by RERA are covered under the SI. No. 4 of notification No. 12/2017-CT(R) dated 28.06.2017.

4.5 Thus, as recommended by the 53" GST Council, it is hereby clarified that statutory collections made by RERA are covered under the SI. No. 4 of notification No. 12/2017-CT(R) dated 28.06.2017.

5. Applicability of GST on the incentive amount shared by acquiring banks with other stakeholders in the digital payment ecosystem under the notified Incentive Scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions.

5.1 Representation has been received requesting for clarification on whether GST is applicable on the incentive amount shared by acquiring banks with other stakeholders in the digital payment ecosystem under the notified Incentive Scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions.

5.2 Under the notified Incentive Scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions, the Ministry of Electronics and Information Technology (MeitY) pays the acquiring banks an incentive as a percentage of the value of the transactions up to two thousand rupees. Applicability of GST on the incentive paid by the MeitY to acquiring banks under the notified Incentive Scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions was examined in the 48th GST Council meeting held on 17th December, 2022 and based on the recommendations of the GST Council meeting, it was clarified by Circular No. 190/02/2023- GST dated 13" January, 2023, that incentives paid by MeitY to acquiring banks under the said scheme are in the nature of subsidy and thus, not taxable.

5.3 The Gazette Notifications dated 17th December, 2021 and 14th January, 2023 issued by MeitY state that the incentives will be shared by the acquiring banks with other payment system participants and the payment system operator, in the proportion and manner decided by the National Payments Corporation of India (NPCI) in consultation with the participating banks. MeitY pays the incentive to the acquiring bank and it is further shared by the acquiring bank with the issuer bank. Issuer bank further shares the incentive with the Payer Payment Service Provider (PSP), which are typically banks, and the UPI app.

5.4 The share of incentive paid by the acquiring bank to the issuer bank and further shared by the issuer bank to the Payer PSPs and the UPI app are decided by the NPCI in consultation with participating banks. Payer PSPs may choose to further share this incentive with Third Party App Providers (TPAP). However, the proportion of the incentive shared by Payer PSPs with TPAPs is not being decided by NPCI in consultation with the participating banks for Financial Years 2021- 22 and 2022-23 and was determined by the business agreement between the Payer PSPs and TPAP.

5.5 GST Council in its 53rd meeting held on 22nd June, 2024 has recommended to clarify that further sharing of the incentive amount by the acquiring bank with other stakeholders, up to the point where the incentive is distributed in the proportion and manner as decided by NPCI in consultation with the participating banks under the notified Incentive Scheme, is in the nature of a subsidy and thus, not taxable.

5.6 Thus, as recommended by the 53 GST Council, it is hereby clarified that further sharing of the incentive amount by the acquiring bank with other stakeholders, up to the point where the incentive is distributed in the proportion and manner as decided by NPCI in consultation with the participating banks under the notified Incentive Scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions, is in the nature of a subsidy and is thus, not taxable.

6. GST liability on the reinsurance of specified general and life insurance schemes.

6.1 Representations have been received to either exempt or regularize the GST liability, for the period from 01.07.2017 to 24.01.2018, on reinsurance of specified general insurance and life insurance schemes, which are exempt from GST.

6.2 Certain specified general insurance and life insurance schemes are exempt from GST under SI. Nos. 35 and 36 of notification No. 12/2017- CT(R) dated 28.06.2017. Vide entry at SI. No. 36A of the said notification, reinsurance of the aforesaid exempted insurance schemes has also been exempted w.e.f. 25.01.2018.

6.3 GST Council in its 53rd meeting held on 22nd June, 2024 has recommended to regularize the GST liability on such reinsurance of exempt general insurance and life insurance schemes for the past period, i.e. from 01.07.2017 to 24.01.2018, on ‘as is where is’ basis.

6.4 Thus, as recommended by the GST Council, GST liability on the services by way of reinsurance of the insurance schemes specified in SI. Nos. 35 and 36 of notification No. 12/2017- CT(R) dated 28.06.2017 is regularized for the period from 01.07.2017 to 24.01.2018 on ‘as is where is’ basis.

7. GST liability on the reinsurance of insurance schemes for which total premium is paid by the Government.

7.1 Representations have been received to exempt GST, for the period from 01.07.2017 to 26.07.2018, on reinsurance of those insurance schemes for which total premium is paid by the Government.

7.2 Services provided to the Central Government, State Government, or Union Territory under any insurance scheme for which total premium is paid by the Central Government, State Government, or Union Territory are exempt from GST under SI. No. 40 of notification No. 12/2017- CT(R) dated 28.06.2017. Vide entry at SI. No. 36A of the said notification, re-insurance of the aforesaid insurance schemes has been prospectively exempted w.e.f. 27.07.2018.

7.3 GST Council in its 53rd meeting held on 22nd June, 2024 has recommended to regularize the GST liability on such reinsurance of Government sponsored insurance schemes for the past period, i.e. from 01.07.2017 to 26.07.2018, on 'as is where is' basis.

7.4 Thus, as recommended by the GST Council, GST liability on the services by way of reinsurance of insurance services covered under SI. No. 40 of notification No. 12/2017- CT(R) dated 28.06.2017 is regularized for the period from 01.07.2017 to 26.07.2018 on 'as is where is' basis.

8. Applicability of GST on retrocession services.

8.1 Representations have been received to clarify whether the term reinsurance' as mentioned in SI. No. 36A of notification No. 12/2017- CT(R) dated 28.06.2017 includes 'retrocession'.

8.2 The matter was placed before the GST Council in its 53™ meeting held on 22™ June, 2024. As per the IRDAI (Re-insurance) Regulations, 2018, 'Retrocession' means a re-insurance transaction whereby a part of assumed reinsured risk is further ceded to another Indian Insurer or a CBR (Cross Border Re-insurer). Accordingly, the GST Council has recommended to clarify that reinsurance includes retrocession services.

8.3 Thus, as recommended by the GST Council, it is hereby clarified that the term 'reinsurance' as mentioned in SI. No. 36A of notification No. 12/2017-CT(R) dated 28.06.2017 includes 'retrocession' services.

9. GST liability on certain accommodation services.

9.1 Representations have been received requesting to clarify whether service by way of hostel accommodation, service apartments/hotels booked for longer period is a service of renting of residential dwelling for use as residence and exempted under entry at SI. No. 12 of notification No. 12/2017-CTR dated 28.06.2017. Requests have also been received for GST exemption on hostels for poor and middle-class students run by charitable trusts.

9.2 The matter was placed before the GST Council in its 53 meeting held on 22" June, 2024 and the GST Council recommended to exempt the supply of accommodation services having value of supply less than or equal to twenty thousand rupees per person per month provided that the accommodation service is supplied for a minimum continuous period of ninety days. The same has been exempted w.e.f. 15.07.2024 vide notification No. 4/2024-CT(R) dated 12.07.2024.

9.3 Inits 53" meeting, the GST Council further recommended extending the benefit for past cases provided that value of supply of accommodation services supplied was less than or equal to twenty thousand rupees per person per month and that the accommodation service was supplied for a minimum continuous period of ninety days.

9.4 Thus, as recommended by the GST Council, GST liability on the supply of accommodation services is regularized on 'as is where is' basis for the period from 01.07.2017 to 14.07.2024 where value of supply of the accommodation service is less than or equal to twenty thousand rupees per person per month and the said accommodation service was supplied for a minimum continuous period of ninety days.

70. Clarification in respect of advertising services provided to foreign clients [Circular No. 230/24/2024-GST]

Circular No. 230/24/2024-GST
New Delhi, the 10th September, 2024

References have been received from the trade and industry requesting for clarification regarding advertising services being provided by Indian advertising companies/agencies to foreign entities, as some of the field formations are considering the place of supply of the said services as within India, thereby denying the export benefits to such advertising companies.

1.2 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 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 issuesin succeeding paragraphs.

2. Issue in Brief

A foreign company or firm hires an advertising company/agency in India for advertisement of its goods or services and may enter into a comprehensive agreement with the advertising company/agency encompassing all the issues related to advertising services ranging from media planning, investment planning for the same, creating and designing content, strategizing for maximum customer reach, the identification of media owners, dealing with media owners, procuring media space, etc. for displaying/broadcasting/printing of advertisement including monitoring of the progress of the same. In such a case, the advertising agency provides a one stop solution to the client who outsources the entire activity to the agency.

2.1 In this scenario, media owners raise invoice to the advertising agency for inventory costs, which are then paid by the advertising agency. Subsequently, the advertising agency raises invoice to the foreign client for the rendered advertising services and receives the payments in foreign exchange from the foreign client. In this regard, clarification has been sought as to:

a. Whether the advertising company can be considered as an "intermediary" between the foreign client and the media owners in terms of section 2(13) of Integrated Goods and Services Tax Act, 2017 (herein after referred to as the "IGST Act"), thereby resulting in determination of place of supply under section 13(8)(b) of the IGST Act?

b. Whether the representative of foreign client in India or the target audience of the advertisement in India can be considered as the recipient of the services being supplied by the advertising company under section 2(93) of CGST Act?

c. Whether the advertising services provided by the advertising companies to foreign clients can be considered as performance-based services as per section 13(3)of the IGST Act?

3. CLARIFICATION:

3.1 Issue 1 -Whether the advertising company can be considered as an "intermediary" between the foreign client and the media owners as per section 2(13) of IGST Act?

3.1.1 As per section 2(13) of IGST Act, read with Circular no. 159/15/2021-GST dated 20.09.2021, a broker, agent or any other person who arranges or facilitates the main supply of goods or services or both or securities and has not involved himself in the main supply on his own account is considered as intermediary.

3.1.2 In the instant scenario, it is observed that the foreign clients enter into a comprehensive agreement with advertising companies/agencies in India and outsource the entire activity of advertising services to the advertising companies/agencies. Further, these advertising companies/agencies enter into an agreement with the media owners in India for implementing the said media plan and procurement of media space for airing or releasing or printing advertisement.

3.1.3 The advertising agency, in this case, enters into two agreements:

i. With the client located outside India for providing a one stop solution starting from designing the advertisement to its display in the media as agreed to with the client. The advertising company raises invoice to its foreign client for the above advertising services and the payments of the same is received from the foreign client in foreign exchange.

ii. With the media company to procure media space for display of the advertisement and to monitor campaign progress based on data shared by the media company. The media company bills the advertising agency and the payment for same is made by the advertising agency to the media company.

3.1.4 Thus, the agreement, in the instant case, is in the nature of two distinct principal-to-principal supplies and no agreement of supply of services exists between the Media company and the foreign client. The advertising company is not acting as an agent but has been contracted by the client to procure and provide certain services. The advertising agency is providing the services to the client on its own account.

3.1.5 In view of above, it is clarified that in the present scenario, the advertising company is involved in the main supply of advertising services, including resale of media space, to the foreign client on principal-to-principal basis as detailed above and does not fulfil the criteria of "intermediary" under section 2(13) of the IGST Act. Thus, the same cannot be considered as "intermediary" in such a scenario and accordingly, the place of supply in the instant matter cannot be linked with the location of supplier of services in terms of section 13(8)(b) of the IGST Act.

3.2 Issue-2 Whether the representative of foreign client in India or the target audience of the advertisement in India can be considered as the "*recipient*" of the services being supplied by the advertising company under section 2(93) of CGST Act?

3.2.1 As per Section 2(93)(a) of the CGST Act, the "recipient" of the services means the person who is **liable to pay consideration** where a consideration is payable for the supply of goods or services or both.

3.2.2 In the instant scenario, the foreign client is liable to pay the consideration to advertising company for the supply of advertising and not the consumers or the target audience that watches the advertisement in India. Further, in this case, even if a representative of the said foreign client based in India, including a subsidiary or related person of the said foreign client, is interacting with the advertising company on behalf of the said foreign client, the said representative based in India cannot be considered as a recipient of the service, if the agreement is between the foreign client and the advertising company, the invoice is being issued for the said service by the advertising company to the foreign client and the payment for the said service is received by the advertising company directly from the said foreign client. Further, the target audience of the advertisements may be based in India but such target audience cannot be considered as recipient of the said advertising services being supplied by the advertising company as per the definition of the recipient under section 2(93) of CGST Act.

3.2.3 Therefore, in view of above, it is clarified that the recipient of the advertising services provided by the advertising company in such cases is the foreign client and not the Indian representative of the foreign client based in India or the target audience of the advertisements,as per section 2(93) of the CGST Act, 2017.

3.3 Issue-3: Whether the advertising services provided by the advertising companies to foreign clients can be considered as performance-based services as per section 13(3)of the IGST Act?

3.3.1 The place of supply of performance based services is provided in sub-section (3) of section 13 of IGST Act. The provisions of clause (a) of the said sub-section pertain to the services supplied in respect of goods which are required to be made physically available bythe recipient of services to the supplier of services. However, in the instant matter, there does not appear to be any such involvement of goods which are required to be physically available with supplier of advertising services. Therefore, the said provisions of clause (a) of the said sub-section cannot be made applicable for determination of place of supply of advertising services.

3.3.2 Further, clause of (b) of sub-section (3) of section 13(3)(b) of IGST Act provides that the place of supply shall be the location where the services are actually performed in case, where,

a. services are supplied to an individual,

b. represented either as the recipient of services or a person acting on behalf of the recipient, and

c. which requires the physical presence of the recipient or the person acting on his behalf, with the supplier for the supply of services

3.2.3 In the present scenario, the supply of advertising services does not require physical presence of the recipient (foreign client or representative or a person acting on his behalf) with the advertising company for availing the said advertising services. Thus, the said supply of advertising services cannot be considered as being covered under section 13(3)(b) of the IGST Act for being considered as the services actually performed in India in terms of the said section.

3.3.3 Accordingly, it is clarified that the place of supply of advertising services in such cases can neither be determined as per the provision of section 13(3)(a) nor as per the provisions of section 13(3)(b) of IGST Act.

4. Further, it is observed that in the present scenario, the place of supply of the above-mentioned advertising services does not appear to be covered under any other provisions of sub-sections (3) to (13) of Section 13 of the IGST Act. Therefore, in view of foregoing discussion, it appears that the place of supply of the said advertising service being supplied by the advertising company to the foreign clients can only be determined as per the default provision, i.e. sub-section (2) of section 13 of IGST Act, i.e. the place of location of the recipient of the services. Since the recipient of the advertising services in such scenario is the foreign client, who is located outside India, the place of supply of the said services appears to be the location of the said foreign client i.e. outside India as per Section 13(2) of IGST Act, and the said service can be considered to be export of services, subject to the fulfillment ofconditions mentioned in section 2(6) of IGST Act.

5. However, there may be cases where the advertising company located in India merely acts as an agent of the foreign client in engaging with the media owner for providing media space to the foreign client. In such cases, the agreement/ contract for providing the media space and broadcast of the advertisement is directly between media owner and the foreign client. The media owner directly invoices the foreign client for providing the media space and broadcast of the advertisement and the foreign client remits the payment for the said services directly to the media owner. In such instances, the services of providing media space and broadcasting the advertisement are directly provided by the media owner to the foreign client. In such cases, the advertising company is merely facilitating the provision of the said services of providing media space and broadcasting the advertisement between the foreign client

and the media owner and does not provide the said services on its own account. The advertising company invoices the foreign client for the facilitation services provided by it.

5.1 Consequently, in such cases, the advertising company is an "intermediary" in accordance with Section 2(13) of the CGST Act, 2017, as elucidated in Circular No. 159/15/2021-GST dated 20.09.2021, in respect of the said services of facilitating the foreign client and accordingly, the place of supply in respect of the said services provided by the advertising company to the foreign client is determinable as per section 13(8)(b)of IGST Act, i.e. the location of the supplier, i.e. the location of the advertising company.

71. Clarification on place of supply of data hosting services provided by service providers located in India to cloud computing service providers located outside India [Circular No. 232/26/2024-GST]

Circular No. 232/26/2024-GST
New Delhi, the 10th September, 2024

2. **Issue**

2.1 It has been represented that some field formations are of the view that the place of supply of data hosting services provided by the service providers located in India to cloud computing service providers located outside India is the location of data hosting service provider in India and therefore, the benefit of export of services is not available on such supply of data hosting services.

2.2 Thus, clarification has been sought in respect of the following issues-

(i) Whether data hosting service provider qualifies as 'Intermediary' between the cloud computing service provider and their end customers/users/subscribers as per Section 2(13) of the Integrated Goods and Services Tax Act, 2017 (herein after referred to as the "IGST Act") and whether the services provided by data hosting service provider to cloud computing service providers are covered as intermediary services and whether the place of supply of the same is to be determined as per section 13(8)(b) of IGST Act.

(ii) Whether the data hosting services are provided in relation to goods "made available" by recipient of services to service provider for supply of such services and whether the place of supply of the same is to be determined as per section 13(3)(a) of the IGST Act.

(iii) Whether the data hosting services are provided directly in relation to "immovable property" and whether the place of supply of the same is to be determined as per section 13(4) of the IGST Act.

3. **Clarification**

3.1 Whether data hosting service provider qualifies as 'Intermediary' between the cloud computing service provider and their end customers/users/subscribers as per Section 2(13) of the IGST Act and whether the services provided by data hosting service provider to cloud computing service providers are covered as intermediary services and whether the place of supply of the same is to be determined as per section 13(8)(b) of IGST Act.

3.1.1 As per section 2(13) of the IGST Act, read with Circular no. 159/15/2021-GST dated 20.09.2021, a broker, agent or any other person who arranges or facilitates the main supply of goods or services or both or securities and has not involved himself in the main supply on his own account is considered as 'intermediary'. Persons who supply goods or services, or both on their own account are not covered in the definition of "intermediary".

3.1.2 The cloud computing service providers generally enter into contract with data hosting service providers to use their data centres for hosting cloud computing services. Data hosting service provider either owns premises for data centre or operates data centre on leased premises, procures infrastructure and human resource, handles operations like infrastructure monitoring, IT management and equipment maintenance, etc. to provide the said supply of data hosting services to the cloud computing service providers. The data hosting service provider generally handles all aspects of data centre like rent, software and hardware infrastructure, power, net connectivity, security, human resource, etc. Importantly, the data hosting service providers do not deal with end users/consumers of cloud computing services and may not even know about the end users.

3.1.3 It is observed that data hosting service provider provides data hosting services to the cloud computing service provider on a web platform through computing and networking equipment for the purpose of collecting, storing, processing, distributing, or allowing access to large amounts of data. The cloud computing service provider provides cloud-based applications and software services to various end users/customers/subscribers for data storage, analytics, artificial intelligence, machine learning, processing, database analysis and deployment services, etc. The end users/customers/subscribers access cloud computing services seamlessly over the internet through technology hosted on data centers. There appears to be no contact between data hosting service provider and the end users/ consumers/ subscribers of the overseas cloud computing service provider. Thus, it is observed that the data hosting service provider provides data

hosting services to the cloud computing service provider on principal-to-principal basis on his own account and is not acting as a broker or agent for facilitating supply of service between cloud computing service providers and their end users/consumers.

3.1.4 Accordingly, it is clarified that in such a scenario, the services provided by data hosting service provider to its overseas cloud computing service providers cannot be considered as intermediary services and hence, the place of supply of the same cannot be determined as per section 13(8)(b) of IGST Act.

3.2 Whether the data hosting services are provided in relation to goods "made available" by recipient of services to service provider for supply of such services and whether the place of supply of the same is to be determined as per section 13(3)(a) of the IGST Act, 2017.

3.2.1 Section 13(3)(a) of the IGST Act provides that in cases where the services are supplied in respect of goods which are made physically available by the recipient of services to service provider, the place of supply will be location of service provider.

3.2.2 In the instant scenario, it is observed that the data hosting service provider, as an independent entity, is providing seamless data hosting services to the overseas cloud computing service providers, through the premises, hardware and personnel at the data centre which not only comprises of hardware but also other essential infrastructure (without which the hardware infrastructure cannot be utilized) like ventilation and cooling system, uninterrupted power supply, software, network connectivity, security protocols, etc. which are owned by the data hosting service providers and are independently handled, operated, monitored and maintained by them. These data hosting service providers are charging their clients (cloud computing service providers), the charges for the services being provided by them to these clients as consideration depending on the specific terms and conditions as per agreements between them. From the above, it is observed that throughout the provision of the said services, the data hosting service provider owns premises for data center or operates data center on leased premises, independently handles, monitors and maintains the premises, hardware and software infrastructure, personnel and in such scenario, the overseas cloud computing service providers cannot be considered to own the said infrastructure and make the same physically available to the data hosting service provider for supply of the said services

In view of above, it is clarified that data hosting services provided by data hosting service provider to the said cloud computing service providers cannot be considered in relation to the goods "made available" by the said cloud computing service providers to the data hosting service provider in India and hence, the place of supply of the same cannot be determined under section 13(3)(a) of the IGST Act.

3.2.4 There may be some cases where some of the hardware required for data hosting service is provided by the recipient of the service, i.e., the cloud computing service provider to the data hosting service provider. Even in these cases, data hosting service provider handles all aspects of data centre, like arranging for the premises, making available software and other hardware infrastructure, power, net connectivity, security, human resource, maintenance etc., for providing data hosting services to the cloud computing service provider. Accordingly, in such cases, though the data hosting services is being provided by the data hosting service provider *inter-alia* using the hardware made available by the cloud computing service provider, it cannot be said that data hosting service are being provided in relation to the said goods made available by the cloud computing service provider to them. Accordingly, even in these cases, place of supply cannot be determined under section 13(3)(a) of the IGST Act. premises and hence, the place of supply of such services cannot be determined under section 13(4) of IGST Act.

4. Further, the place of supply for the data hosting services provided by data hosting service provider located in India to overseas cloud computing service providers does not appear to fit into any of the specific provisions outlined in sections 13(3) to 13(13) of the IGST Act. Therefore, the place of supply in such cases needs to be determined according to the default provision under section 13(2) of the IGST Act, i.e. the location of the recipient of the services. Where the cloud computing service provider receiving the data hosting services are located outside India, the place of supply will be considered to be outside India according to section 13(2) of the IGST Act.

5. Accordingly, supply of data hosting services being provided by a data hosting service provider located in India to an overseas cloud computing entity can be considered as export of services, subject to the fulfillment of the other conditions mentioned in section 2(6) of IGST Act.

72. Clarifications regarding applicability of GST on certain services [Circular No. 234/28/2024-GST]

Circular No. 234/28/2024-GST
New Delhi, 11th October, 2024

2. Applicability of GST on the service of affiliation provided by universities to colleges:

2.1 Representations have been received seeking clarification on the applicability of GST on the service of affiliation provided by universities to colleges.

2.2 The activity of affiliation is to monitor and ensure whether the institution possesses the required infrastructure in terms of space, technical prowess, financial liquidity, faculty strength, etc. and is thereby eligible for the privileges to conduct the course/program of study for the degree/title extended by the University to the students enrolled in such institutions. The affiliation services provided by the universities to colleges are not by way of services related to the admission of students to such colleges or the conduct of examinations by such colleges.

2.3 Thus, as recommended by the 54th GST Council, it is hereby clarified that the affiliation services provided by universities to their constituent colleges are not covered within the ambit of exemptions provided to educational institutions in the notification No. 12/2017-CT(R) dated 28.06.2017 and GST at the rate of 18% is applicable on the affiliation services provided by the universities.

3. Applicability of GST on the service of affiliation provided by Central and State educational boards or Councils, or other similar bodies, to schools:

3.1 Representations have been received to clarify the applicability of GST on the service of affiliation provided by the Central and State educational boards or councils, or other similar bodies, to schools and to regularize the payment of tax on such services for the past period.

3.2 The activity of affiliation carried out by educational boards or councils, or other similar bodies, is to monitor and ensure whether the schools possess the required infrastructure, finances, faculty strength etc. and are thereby eligible for the privileges to operate under the aegis of said boards or councils. The services of affiliation provided to schools by educational boards or councils, or other similar bodies, are not by way of services related to the admission of students to such schools or the conduct of examinations by such schools..

3.3 The matter was placed before the GST Council in its 54th meeting held on 09th September 2024, and the GST Council recommended to clarify that such services of affiliation, provided to schools by Central or State educational boards or councils, or other similar bodies, by whatever name called, are taxable. At the same time, the GST Council recommended exempting the supply of affiliation services provided by Central and State educational boards or Councils, or other similar bodies, by whatever name called to government schools i.e. schools established, owned or controlled by the Central Government, State Government, Union Territory, local authority, Governmental authority or Government entity. The same has been exempted w.e.f. 10.10.2024 vide notification No. 08/2024-Central Tax (Rate) dated 08.10.2024.

3.4 In its 54th meeting, the GST Council further recommended regularizing the GST

liability on such services provided to all schools for the period from 01.07.2017 to 17.06.2021, i.e., the date of issuance of Circular No. 151/07/2021-GST wherein accreditation services of boards are clarified to be taxable at the rate of 18%.

3.5 Therefore, as recommended by the GST Council it is clarified that services of affiliation, provided to schools by Central or State educational boards or councils, or other similar bodies, by whatever name called, are taxable. Further, as recommended by the Council, the payment of GST on the services of affiliation provided by Central and State educational boards or Councils, or other similar bodies, to all schools is regularized on '*as is where is*' basis for the period from 01.07.2017 to 17.06.2021.

4. Applicability of GST on the Directorate General of Civil Aviation (DGCA) approved flying training courses conducted by Flying Training Organizations approved by the DGCA:

4.1 Representations have been received regarding the applicability of GST on the DGCA-approved flying training courses conducted by Flying Training Organizations (FTOs) which are approved by the Directorate General of Civil Aviation (DGCA). The same has been examined.

4.2 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 recognized by any law for the time being in force.

4.3 In exercise of the power vested by Section 5 of the Aircraft Act, 1934, the Central Government has made the Aircraft Rules, 1937, which, inter-alia, provide for 'approved training', i.e. training the curriculum of which has been approved by the DGCA, and 'approved training organization', i.e. a flying training organization which shall obtain the approval of DGCA before the students are enrolled to acquire flying experience. The said rules further state that flying experience required for the issue of private pilot and commercial pilot licenses shall be acquired at the Flying Training Organization (FTO) approved/ recognized by the DGCA. The Civil Aviation Requirements (CAR) issued under the said rules also provide for a completion certificate to be issued by an approved FTO to each student who completes its approved course of training.

4.4 It is evident from the above that the DGCA not only approves FTOs but also flying training courses and mandates the requirement of course completion certificates to be issued to successful candidates in terms of the Aircraft Act, 1934 and the rules prescribed thereunder. Therefore, the approved flying training courses conducted by FTOs approved by DGCA,

wherein the DGCA mandates the requirement of a completion certificate, are covered under Sl. No. 66 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 and are hence, exempt.

5. Regularizing payment of GST on transport of passengers by helicopter:

5.1 54th GST Council has recommended that the GST rate on transportation of passengers, with or without accompanied baggage, by air, in a helicopter on seat share basis may be notified at 5%. Accordingly, notification No. 07/2024- Central Tax (Rate) dated 08.10.2024 effective from 10.10.2024 has been issued.

5.2 The Council further recommended to regularize payment of GST on transportation of passengers, with or without accompanied baggage, by air, in a helicopter on seat share basis on *'as is where is'* basis.

5.3 In addition to above, the Council also recommended to clarify that charter of helicopter would continue to attract GST at the rate of 18%.

5.4 Thus, as recommended by the 54th GST Council, payment of GST on transportation of passengers, with or without accompanied baggage, by air, in a helicopter on seat share basis is hereby regularized on *'as is where is'* basis for the period from 01.07.2017 to 09.10.2024.

5.5 Further, as recommended by the 54th GST Council, it is hereby clarified that transport of passengers by helicopter on other than seat share basis i.e., for charter operations will continue to attract GST at the rate of 18%.

6. Whether incidental/ ancillary services such as loading/ unloading, packing, unpacking, transshipment, temporary warehousing etc., provided in relation to transportation of goods by road is to be treated as part of Goods Transport Agency service, being composite supply, or these services are to be treated as separate independent supplies:

6.1 Representations have been received to clarify whether incidental/ ancillary services such as loading/ unloading, packing, unpacking, transshipment, temporary warehousing etc., provided in relation to transportation of goods by road is to be treated as part of Goods Transport Agency (GTA) service, being composite supply, or these services are to be treated as separate independent supplies.

6.2 It has been brought to notice that enforcement agencies are raising demands for such services holding them leviable to GST at the rate of 18% by interpreting last para of Question

No. 6 of the FAQ issued by CBIC which states that ***"If such incidental services are provided as separate services and charged separately, whether in the same invoice or separate invoices, they shall be treated as separate supplies",*** to mean that if a GTA shows packing charges, loading, unloading charges etc., separately in the invoice, the GTA becomes liable to pay GST at the rate of 18% on these services by treating them as cargo handling services.

6.3 After deliberations on the issue and based on recommendations of the 54th GST Council, it is hereby clarified that ancillary or incidental services provided by GTA in the course of transportation of goods by road, such as loading/unloading, packing/unpacking, transshipment, temporary warehousing etc. will be treated as composite supply of transport of goods. The method of invoicing used by GTAs will not generally alter the nature of the composite supply of service. However, if such services are not provided in the course of transportation of goods and are invoiced separately, then these services will not be treated as composite supply of transport of goods.

7. Regularizing payment of GST on import of services by an establishment of a foreign airlines company from a related person or any of its establishment outside India, when made without consideration:

7.1 54th GST Council has recommended to exempt import of services by an establishment of a foreign airlines company from a related person or any of its establishment outside India, when made without consideration. Accordingly, notification No. 08/2024-Integarted Tax (Rate) dated 08.10.2024 effective from 10.10.2024 has been issued.

The Council further recommended to regularize payment of GST on import of services by an establishment of a foreign airlines company from a related person or any of its establishment outside India, when made without consideration for the past period on '*as is where is*' basis

7.2 Therefore, on recommendations of the 54th GST Council, the payment of GST on import of services by an establishment of a foreign airlines company from a related person or any of its establishment outside India, when made without consideration is hereby regularized for the period from 01.07.2017 to 09.10.2024 on *'as is where is'* basis.

8. Applicability of GST on Preferential Location Charges (PLC) collected along with consideration for sale/ transfer of residential / commercial properties:

8.1 Allowing choice of location of apartment is integral part of supply of construction services and therefore, location charge is nothing but part of consideration charged for supply of

construction services before issuance of completion certificate. Being charged along with supply of construction services for the apartment, the same attract GST at same rate as of construction services before issuance of completion certificate.

8.2 Therefore, based on the recommendations of the 54th GST Council, it is hereby clarified that location charges or Preferential Location Charges (PLC) paid along with the consideration for the construction services of residential /commercial/industrial complex forms part of composite supply where supply of construction services is the main service and PLC is naturally bundled with it and are eligible for same tax treatment as the main supply of construction service.

9. Regularizing payment of GST on certain support services provided by an electricity transmission or distribution utility:

9.1 GST Council in its 54th meeting held on 09th September, 2024 has recommended to exempt **supply of services by way of providing metering equipment on rent, testing for meters/ transformers/capacitors etc., releasing electricity connection, shifting of meters/service lines, issuing duplicate bills etc., which are incidental or ancillary to the supply of transmission and distribution of electricity provided by transmission and distribution utilities to their consumers.**

9.2 The same have been exempted vide notification No. 08/2024- Central Tax (Rate) dated 08.10.2024 effective from 10.10.2024.

9.3 The GST Council in its 54th meeting has also recommended to regularize the payment of GST for supply of such services for the period i.e., from 01.07.2017 to 09.10.2024 on '*as is where is*' basis.

9.4 Therefore, as recommended by the 54th GST Council, the payment of GST on services provided by an electricity transmission or distribution utility which are incidental or ancillary to the supply of transmission and distribution of electricity by such utility, such as those listed in para 9.1 above is hereby regularized on '*as is where is'* basis from 01.07.2017 to 09.10.2024.

10. Regularizing payment of GST on services of film distributors or sub-distributors who act on a principal basis to acquire and distribute films:

10.1 Representations have been received to clarify regarding the GST liability for the period from 01.07.2017 to 01.10.2021 on transaction between distributors and exhibitors wherein the

distributors grant the theatrical rights to the exhibition centers. Field formations have viewed that such transaction are classifiable under SAC 9996 and attracts GST at the rate of 18%.

10.2 Prior to 1st October 2021, GST at the rate of 18% was leviable on "*Motion Picture, videotape and television programme distribution services"* under Heading 9996 whereas 12% rate of GST was leviable on *"temporary or permanent transfer or permitting the use or enjoyment of intellectual property right in respect of goods other than IT technology software"* under Heading 9973. It was observed that both entries apparently covered services by way of licensing of rights to broadcast or show films. This issue was discussed in the 45th GST Council meeting held on 17.09.2021 wherein, the Council recommended to keep a uniform rate of 18% on both these entries with effect from 01.10.2021.

10.3 The GST Council in its 54th meeting held on 09th September 2024 has recommended to regularize the payment of GST on transaction between distributors and exhibitors wherein the distributors grant the theatrical rights to the exhibition centers on '*as is where is*' basis from 01.07.2017 to 30.09.2021.

10.4 Therefore, as recommended by the GST Council, the payment of GST on transaction between distributors and exhibitors wherein the distributors grant the theatrical rights to the exhibition centers is regularized for the period from 01.07.2017 to 30.09.2021 on *'as is where is'* basis.

73. Clarification on place of supply of Online Services supplied by the suppliers of services to unregistered recipients [Circular No. 242/36/2024-GST]

Circular No. 242/36/2024-GST
New Delhi, 31st December, 2024

References have been received from field formations regarding non-compliance of provisions of mandatory recording of correct place of supply on the invoices by the suppliers in respect of online services provided by them, either themselves or through electronic commerce operators, to unregistered recipients due to wrong interpretation of provisions of section 12(2)(b) of Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as "IGST Act") read with rule 46 of Central Goods and Services Rules, 2017 (hereinafter referred to as "CGST Rules"). It has also been mentioned that though in such cases of taxable online supplies of

services to unregistered recipients, registered suppliers are required to mention State name of the recipient on the invoice, irrespective of the value of such supply, and declare place of supply of such services as the State of the recipient as per the provisions of clause (i) of section 12(2)(b) of IGST Act but many suppliers are not recording the State name of the unregistered recipient on the invoice and are declaring place of supply of such services as the location of the supplier as per clause (ii) of section 12(2)(b) of IGST Act. This is resulting in wrong declaration of place of supply, resulting in flow of revenue in respect of the said supply to the wrong State. Request has been made to clarify the issue so as to ensure correct declaration of place of supply by the suppliers of such services to unregistered recipients.

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 Central Goods and Services Act, 2017 (hereinafter referred to as "CGST Act") hereby issues the following clarification.

3. **Legislative provisions:**

3.1 As per sub-section (17) of section 2 of the IGST Act, 'online information and database access or retrieval services' means:

"services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply impossible to ensure in the absence of information technology and includes electronic services such as,—

(i) advertising on the internet;

(ii) providing cloud services;

(iii) provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;

(iv) providing data or information, retrievable or otherwise, to any person in electronic form through a computer network;

(v) online supplies of digital content (movies, television shows, music and the like);

(vi) digital data storage; and

(vii) online gaming, excluding the online money gaming as defined in clause (80B) of section 2 of the Central Goods and Services Tax Act, 2017 (12 of 2017);"

3.2 The term 'electronic commerce' has been defined under section 2(44) of CGST Act, as follows:

"electronic commerce" means the supply of goods or services or both, including digital products over digital or electronic network;

3.3 The term 'electronic commerce operator' has been defined under section 2(45) of CGST Act, as

follows:

"electronic commerce operator" means any person who owns, operates or manages digital or electronic facility, or platform for electronic commerce;

3.4 Sub-section (2) of section 12 of the IGST Act, reads as follows:

"*(2) the place of supply of services, except the services specified in sub- section (3) to (14),-*

(a) made to a registered person shall be the location of such person;

(b) made to any person other than a registered person shall be, -

(i) the location of the recipient where the address on record exists; and

(ii) the location of the supplier of services in other cases."

3.5 As per sub-section (2) of Section 31 of the CGST Act,

"(2) A registered person supplying taxable services shall, before or after the provision of service but within a prescribed period, issue a tax invoice, showing the description, value, tax charged thereon and such other particulars ***as may be prescribed****:"*

3.6 Rule 46 of CGST Rules provides as below:

" 46. Subject to rule 54, a tax invoice referred to in section 31 shall be issued by the registered person containing the following particulars, namely,-

…

(f) name and address of the recipient and the address of delivery, along with the name of the State and its code, if such recipient is unregistered and where the value of the taxable supply is less than fifty thousand rupees and the recipient requests that such details be recorded in the tax invoice;

Provided that in cases involving supply of online money gaming or in cases that where any taxable service is supplied by or through an electronic commerce operator or by a supplier of online information and database access or retrieval services to a recipient who is unregistered, irrespective of the value of such supply, a tax invoice issued by the registered person shall contain the name of the State of the recipient and the same shall be deemed to be the address on record of the recipient*;*

….."

4. **Clarification:**

4.1 Section 12 of the IGST Act provides that except in cases specified in sub-sections (3) to (14) of the said section, when the services are supplied to a registered person, the place of supply of services shall be the location of the recipient and **when the services are supplied to an unregistered person, the place of supply of the said services shall be the location of the recipient, if his address is available on record,** and shall be the location of the supplier, if the address is not available on record.

4.2 Section 31(2) of the CGST Act provides that a registered person providing taxable services must issue a tax invoice with details like the service description, value, tax charged and such other particulars as may be prescribed.

4.3 Rule 46 of CGST Rules provides the particulars required to be mentioned on the tax invoice. Clause (f) of the said rule provides for mentioning some details on the invoice in case of supplies made to unregistered recipient. Further, proviso to clause (f) of rule 46 of the CGST Rules provides that in cases involving the supply of online money gaming or involving supply of any taxable services by or through an electronic-commerce operator or by a supplier of online information and database access or retrieval services, to an unregistered recipient, irrespective of the value of the said supply, the tax invoice issued by the registered supplier must contain the recipient's State name. It has also been provided in the said proviso that such State name shall be deemed to be the address on record of the recipient.

4.4 A conjoint reading of clause (b) of sub-section (2) of Section 12 of the IGST Act, sub- section (2) of Section 31 of the CGST Act and proviso to rule 46(f) of CGST Rules leads to a conclusion that in respect of supply of services made to unregistered persons, irrespective of the value of the said supply, the supplier is required to mandatorily record the name of the State of the unregistered recipient on the tax invoice, in cases involving supply of online money gaming or supply of taxable services by or through an electronic commerce operator or supply of online information and database access or retrieval (OIDAR) services. Recording of the name of State of the unregistered recipient on the tax invoice in respect of such supply of services shall be deemed as the address on record of the recipient for the purpose of determination of place of supply of the said services under section 12(2)(b) of IGST Act. Accordingly, in such cases, the place of supply of such services shall be considered as the location of the recipient of the services as per provisions of clause (i) of section 12(2)(b) of IGST Act.

4.5 It is also observed that a combined reading of the definitions of ‘electronic commerce’ and ‘electronic commerce operator’ as per section 2(44) and section 2(45) of CGST Act, along with rule 46(f) of CGST Rules, leads to an understanding that all services supplied to unregistered recipients over digital or electronic network, either by the supplier using his own digital or electronic facility / platform or through any other electronic or digital platform owned and operated by an independent electronic commerce operator, will be covered under proviso to rule 46(f) of CGST Rules.

4.5.1 It is, accordingly, clarified that provisions of proviso to rule 46(f) of CGST Rules shall be applicable in respect of all the online supplies of services supplied to an unregistered recipient, in addition to the supply of online money gaming and OIDAR services. Some of the examples of such services are subscription of e-newspapers and e-magazines, online subscription of entertainment services (e.g. OTT platforms), online telecom services, digital

services through mobile applications etc. Therefore, in respect of supply of any such online/ digital services, OIDAR services and online money gaming to unregistered recipients, the suppliers are mandatorily required to record the name of the State of the recipient on the tax invoice, irrespective of the value of supply of such services, and to declare place of supply of the said services as the location of the recipient (based on the name of State of the recipient) in their details of outward supplies in FORM GSTR-1/1A.

4.5.2 For the purpose of recording the name of the State of the recipient on tax invoice in respect of such supplies made to unregistered persons for such online services, supplier should devise suitable mechanism to ensure collection of such details from unregistered recipient before making any supplies to him. As mentioned above, in such cases, the name of the State of the recipient so recorded shall be deemed to be the address of recipient available on record and thus, for determining place of supply of the said services, provisions of section 12(2)(b)(i) of IGST Act will be applicable as per which the place of supply shall be the location of the recipient.

4.5.3 It is also mentioned that if the supplier fails to issue invoice in accordance with the said provisions by not recording correct mandatory particulars, including recording of name of State of unregistered recipient in respect of such supplies, he may be liable to penal action under the provisions of section 122(3)(e) of CGST Act.

74. Regularizing payment of GST on co-insurance premium apportioned by the lead insurer to the co-insurer and on ceding /re-insurance commission deducted from the reinsurance premium paid by the insurer to the reinsurer [Circular No. 244/01/2025-GST]

Circular No. 244/01/2025-GST
New Delhi, 28th of January, 2025

Based on the recommendations of the GST Council in its 53rd meeting held on 22nd June, 2024, at New Delhi, and in exercise of the powers conferred under section 168(1) of the Central Goods and Services Tax Act, 2017, the following clarification is being issued through this Circular:

On the recommendations of the 53rd meeting of the GST Council held in New Delhi on 22nd June, 2024, the following activities or transactions were included in Schedule III of the CGST Act, 2017 as activities or transactions which shall be treated neither as a supply of goods nor as a supply of services:

a) Activity of apportionment of co-insurance premium by the lead insurer to the co-insurer for the insurance services jointly supplied by the lead insurer and the co-insurer to the insured in co-insurance agreements, subject to the condition that the lead insurer pays the Central tax, the State tax, the Union territory tax and the integrated tax on the entire amount of premium paid by the insured.

b) Services by insurer to the reinsurer for which ceding commission or the reinsurance commission is deducted from reinsurance premium paid by the insurer to the reinsurer, subject to the condition that the Central tax, the State tax, the Union territory tax and the integrated tax is paid by the reinsurer on the gross reinsurance premium payable by the insurer to the reinsurer, inclusive of the said ceding commission or the reinsurance commission.

The above provisions were enacted vide Finance (No. 2) Act, 2024 and have been brought into force on 01.11.2024 vide Notification No. 17/2024-Central Tax dated 27.09.2024.

3. In its 53rd meeting, the GST Council further recommended that the payment of GST on the activities or transactions, as specified in paragraph 2 above, may be regularized for the past period, i.e. from 01.07.2017 to the effective date of amendments in the CGST Act, , on *'as is where is'* basis.

Thus, as recommended by the 53rd GST Council, the payment of GST on the activities or transactions specified in paragraph 2 above is regularized for the period 01.07.2017 to 31.10.2024, on *'as is where is'* basis.

75. Clarifications regarding applicability of GST on certain services [Circular No. 245/02/2025-GST]

Circular No. 245/02/2025-GST
New Delhi, 28th of January, 2025

Based on the recommendations of the GST Council in its 55th meeting held on 21st December 2024, at Jaisalmer, and in exercise of the powers conferred under section 168(1) of the Central Goods and Services Tax Act, 2017, clarifications on various issues are being issued through this Circular, as under:

2. Applicability of GST on penal charges being levied by the Regulated Entities (REs) in view of RBI instructions dated 18.08.2023 directing such Regulated Entities (REs) to levy penal charges in place of penal interest.

2.1 Representations have been received seeking clarification on the applicability of GST on penal charges being levied by the Regulated Entities (REs) in view of RBI instructions dated 18.08.2023 directing such Regulated Entities (REs) to levy penal charges in place of penal interest.

2.2 Regulated Entities (REs) such as banks and non-banking financial companies (NBFCs) have been instructed, vide RBI instructions dated 18.08.2023, to discontinue the use of penal interest for non-compliance with loan terms. As per the instructions, instead of penal interest, REs are to levy penal charges for non-compliance with loan terms. The intent of levying penal charges is essentially to inculcate a sense of credit discipline. These instructions are effective from 01.01.2024, and do not apply to credit cards, external commercial borrowings, trade credits and structured obligations which are covered under product specific directions.

2.3 It is being viewed by certain field formations that penal charges so levied are in the nature of payment/consideration for tolerating an act or situation. Similar issues were examined in Circular No. 178/10/2022-GST dated 03.08.2022, wherein it has already been clarified that certain payments such as liquidated damages for breach of contract are not a consideration for tolerating an act or situation. They are rather amounts recovered to deter such acts; such amounts are for preventing breach of contract or non-performance and are thus mere 'events' in a contract. It has been further clarified that the essence of a contract is its 'performance' and not its 'breach', meaning thereby that parties enter into a contract for execution and not for its breach.

2.4 Penal charges levied by REs, in compliance with RBI directions dated 18.08.2023, are essentially in the nature of charges for breach of terms of contract and hence, fall within the ambit of the above clarification.

2.5 Thus, as recommended by the 55th GST Council, it is hereby clarified that no GST is payable on the penal charges levied by Regulated Entities, in compliance with RBI directions dated 18.08.2023, for non-compliance with material terms and conditions of loan contract by the borrower.

3. Whether GST exemption under Sl. No. 34 of notification No. 12/2017-CTR dated 28.06.2017 is available to payment aggregators in relation to settlement of an amount, up to two thousand rupees in a single transaction, transacted through credit card, debit card, charge card or other payment card services?

3.1 Representations have been received seeking clarity on the applicability of GST exemption under Sl. No. 34 of notification No. 12/2017-CTR dated 28.06.2017 to Payment Aggregators (PAs) in relation to settlement of an amount, up to two thousand rupees in a single transaction, transacted through credit card, debit card, charge card or other payment card services.

3.2 The matter has been examined. Payment Aggregators (PAs) are entities that facilitate e-commerce sites and merchants to accept various payment instruments from their customers without the need for the e-commerce sites and merchants to create a separate payment integration system of their own. In the process, PAs receive payments from customers, pool and transfer them on to the merchants within a specified time period.

3.3 The exemption under Sl. No. 34 of notification No. 12/2017-CT(Rate) dated 28.06.2017 is available to acquiring banks. For the purpose of the said exemption entry, the term 'acquiring bank' has been explained as under:

> *"acquiring bank" means any banking company, financial institution including non- banking financial company or any other person, who makes the payment to any person who accepts such card.*

3.4 Clause 8 of the RBI's Guidelines on Regulation of Payment Aggregators and Payment Gateways dated 17.03.2020, pertaining to 'Settlement and Escrow Account Management' makes it clear that the PAs receive payments from customers in an escrow account, and are obligated to do the final settlement with the merchant within time periods specified by RBI. Therefore, the RBI regulated PAs, involved in the settlement process of making payments to the merchant, are covered by the second part of the definition of acquiring bank, i.e. *"any other person, who makes the payment to any person who accepts such card"* and hence, fall within the definition of acquiring bank, for the purpose of the exemption under Sl. No. 34 of notification No. 12/2017-CTR dated 28.06.2017, as they make the payment to the merchants who accept credit cards, debit cards, charge cards or other payment card services.

3.5 Further, the RBI's Guidelines dated 17.03.2020 clearly distinguish between Payment Aggregators and Payment Gateways (PGs), keeping in view their role vis-à-vis handling funds. PAs are defined as entities who receive payments from customers, pool and transfer them on to the merchants within a specified time period. On the other hand, PGs are defined as entities that provide technology infrastructure to route and facilitate processing of an online payment transaction without any involvement in handling of funds.

3.6 Thus, as recommended by the 55th GST Council, it is hereby clarified that GST exemption under Sl. No. 34 of notification No. 12/2017-CTR dated 28.06.2017 is available to RBI regulated Payment Aggregators (PAs) in relation to settlement of an amount, up to two thousand rupees in a single transaction, transacted through credit card, debit card, charge card or other payment card services, as PAs fall within the definition of 'acquiring bank' given in the Explanation to the said exemption entry. It is also clarified that this exemption is limited to payment settlement function only, which involves handling of money, and does not cover Payment Gateway (PG) services.

4. Regularizing payment of GST on research and development services provided by Government Entities against consideration in the form of grants received from Government Entities.

4.1 The GST Council, in its 54th meeting held on 09.09.2024 recommended exempting research and development services provided by Government Entities or research associations, universities, colleges or other institutions, notified under clauses (ii) or (iii) of sub-section (1) of section 35 of the Income Tax Act, 1961, against consideration in the form of grants. The same has been exempted w.e.f. 10.10.2024 vide notification No. 08/2024-CT(Rate) dated 8.10.2024.

4.2 There were certain interpretational issues with respect to the taxability, or otherwise, of supply of research and development services by Government Entities against grants received from the Government Entities like DRDO, CSIR, SERB etc. These issues now stand resolved, for the period starting from 10.10.2024, with the issuance of notification No. 08/2024-CT(Rate) dated 08.10.2024 which specifically exempted research and development services provided by Government Entities or research associations, universities, colleges or other institutions, notified under clauses (ii) or (iii) of sub-section (1) of section 35 of the Income Tax Act, 1961, against consideration in the form of grants.

4.3 Accordingly, for the past period, the Council, in its 55th meeting, has recommended to regularize payment of GST on the supply of research and development services by Government Entities against grants received from the Government Entities for the period 01.07.2017 to 09.10.2024 on *'as is where is'* basis.

4.4 Thus, as recommended by the 55th GST Council, the payment of GST on the supply of research and development services by Government Entities against grants received from the Government Entities is regularized for the period 01.07.2017 to 09.10.2024, on *'as is where is'* basis.

5. Regularizing payment of GST on skilling services provided by Training Partners approved by the National Skill Development Corporation.

5.1 On the recommendations of the 54th meeting of the GST Council held in New Delhi on 09.09.2024, the entry at Sl. No. 69 of the Notification No. 12/2017-CTR dated 28.06.2017 was amended vide Notification No. 08/2024 dated 08.10.2024, to synchronize it with the new regulatory framework for skill development under NCVET.

5.2 As a result of the aforesaid amendment, the earlier exemption available to the skilling services provided by Training Partners approved by National Skill Development Corporation was withdrawn. The amended exemption was restricted to the skilling services provided by Training Bodies accredited with an Awarding Body that is recognized by the NCVET. Later, it was informed by the Ministry of Skill Development and Entrepreneurship, Government of India, that

since NSDC is the implementing agency for skilling schemes of the Government of India, as well as other skill development programs, hence, the withdrawal of the tax exemption to Training Partners approved by NSDC would adversely impact the skilling ecosystem significantly.

5.3 Accordingly, the GST Council, in its 55th meeting, has recommended that the earlier exemption to skilling services provided by Training Partners approved by the National Skill Development Corporation may be restored. The said exemption has been reinstated by amending Notification No. 12/2017-CT(Rate) dated 28.06.2017 vide Notification No. 06/2025-CT(Rate) dated 16.01.2025 with effect from 16.01.2025.

5.4 Further, for the past period, the GST Council has recommended to regularize payment of GST on services provided by Training Partners approved by the National Skill Development Corporation, which were exempt prior to 10.10.2024, for the period 10.10.2024 to 15.01.2025 on 'as is where is' basis.

5.5 Thus, as recommended by the GST Council, the payment of GST on services provided by Training Partners approved by the National Skill Development Corporation, which were exempt prior to 10.10.2024, is regularized for the period 10.10.2024 to 15.01.2025, on *'as is where is' basis.*

6. Applicability of GST on facility management services provided to Municipal Corporation of Delhi (MCD) Headquarters.

6.1 Representation has been received seeking clarification on the applicability of GST on facility management services provided to Municipal Corporation of Delhi (MCD) Headquarters, New Delhi.

6.2 MCD is receiving the services such as housekeeping, civil maintenance, furniture maintenance and horticulture, from facility management agency, for the upkeep of their office. MCD has sought clarification as to whether such services received by them are exempt from GST in terms of *Sr. No.3A of the notification No. 12/2017-CTR dated 28.06.2017.*

6.3 The said entry at *Sr. No. 3A of notification No. 12/2017-CTR dated 28.06.2017* provides exemption to composite supply of goods and services in which the value of supply of goods constitutes not more than 25% of the value of the said composite supply provided to the Government or local authority by way of any activity in relation to any function entrusted to a Panchayat under Article 243G of The Constitution of India or in relation to any function entrusted to a Municipality under Article 243W of The Constitution of India.

6.4 However, in the instant case, MCD is receiving the services of facility management such as housekeeping, civil maintenance, furniture maintenance and horticulture agency for the upkeep of their office. These services are not supplied in relation to performing any functions entrusted to

a Municipality under Article 243W of The Constitution of India. Such services are not covered under the scope of entry at *Sr. No. 3A* of the *notification No. 12/2017-CTR dated 28.06.2017.*

6.5 Thus, as recommended by the 55th GST Council, it is hereby clarified that GST is applicable on the services provided by facility management agency to MCD, Delhi HQ for upkeep of its head quarter building at applicable rates as these services are not covered under the scope of entry at *Sr. No. 3A of the notification No. 12/2017-CTR dated 28.06.2017.*

7. Whether Delhi Development Authority (DDA) is a local authority as per section 2(69) of the CGST Act, 2017?

7.1 Representation has been received from DDA seeking clarification whether DDA is a 'local authority' as per section 2(69) of CGST Act, 2017.

7.2 As per entry at Sr. No. 5 of notification No. 13/2017-CTR dated 28.06.2017, services supplied by local authority to a business entity are taxable on Reverse Charge (RCM) basis.

7.3 Local authority under section 2(69) of the CGST Act, 2017 has been defined as a "*Municipal Committee, a Zilla Parishad, a District Board, and any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund"*

7.4 It means an authority which is similar to the elected self-governing body such as Municipal Committee and which is entrusted with the control and management of municipal or local fund can be termed as local authority.

7.5 It is seen that DDA does not meet the requirement of local authority as per section 2(69) of the CGST Act, 2017. Thus, as recommended by the 55th GST Council, it is hereby clarified that DDA cannot be treated as local authority under GST law.

8. Regularizing payment of GST on Reverse Charge (RCM) basis on renting of commercial property by unregistered person to a registered person for taxpayers registered under composition levy.

8.1 Based on the recommendations of the 54th GST council held on 09.09.2024, renting of immovable property other than residential dwelling (commercial property) by unregistered person to registered person was brought under reverse charge basis.

8.2 The said recommendation was notified vide notification No.09/2024-CTR dated 08.10.2024 effective from 10.10.2024 by *inserting an entry at Sr. No. 5AB of the notification No. 13/2017-CTR dated 28.06.2017* thereby prescribing payment of GST on reverse charge

basis on renting of immovable property other than residential dwelling (commercial property) by unregistered person to registered person.

8.3 Various representations from different sectors were received requesting to bring the service of renting of commercial property by unregistered person to registered person under Forward Charge basis.

8.4 55th GST Council in its meeting held on 21.12.2024 recommended that taxpayers registered under composition levy may be excluded from the entry at Sr. No. 5AB of the notification No. 13/2017-CT(Rate) dated 28.06.2017. The same has been notified vide notification No. 07/2025- CT(Rate) dated 16.01.2025. The Council further recommended that payment of GST on reverse charge basis on renting of immovable property other than residential dwelling (commercial property) by unregistered person to a registered person for taxpayers registered under composition levy may be regularized on *'as is where is'* basis for the intervening period (i.e., date of effect of notification No. 09/2024-CTR dated 08.10.2024 to date of issuance of amending notification No. 07/2025-CT(Rate) dated 16.01.2025).

8.5 Thus, as recommended by the 55th GST Council, payment of GST on Reverse Charge (RCM) basis on renting of immovable property other than residential dwelling (commercial property) by unregistered person to registered person under composition levy is hereby regularized for the period from 10.10.2024 to 15.01.2025 on '*as is where is'* basis.

9. Regularizing payment of GST on certain support services provided by an electricity transmission or distribution utility.

9.1 The GST Council, in its 54th meeting recommended to exempt supply of services by way of providing metering equipment on rent, testing for meters/ transformers/ capacitors etc., releasing electricity connection, shifting of meters/service lines, issuing duplicate bills etc., which are incidental or ancillary to the supply of **transmission and distribution** of electricity provided by electricity **transmission and distribution** utilities to their consumers. Thereafter, entry at Sr. No. 25A was inserted in the notification No. 12/2017- CTR dated 28.06.2017 vide notification No. 08/2024-CTR dated 08.10.2024, with effect from 10.10.2024.

9.2 In its 55th meeting, the GST Council recommended that the entry at Sr. No. 25 and 25A may be aligned and the same has been brought into effect vide notification No. 6/2025-CTR dated 16.01.2025. Accordingly, these incidental or ancillary services to the supply of **transmission or distribution** of electricity supplied by **transmission or distribution utilities**

are now covered under the said exemption entry. Further, it was also recommended that the intervening period i.e., 10.10.2024 (effective date of entry at Sr. No. 25A in notification No. 12/2017-CTR dated 28.06.2017) up to 15.01.2025 (till the date of amending notification No. 06/2025 CTR dated 16.01.2025) may be regularised on '*as is where is'* basis.

9.3 Thus, as recommended by the 55th GST Council, the payment of GST on certain incidental or ancillary services to the supply of transmission or distribution of electricity, as mentioned in Para 9.1 above, supplied by an electricity transmission or distribution utility is regularized for the period 10.10.2024 to 15.01.2025, on *'as is where is'* basis.

10. Regularizing the payment of GST on services provided by M/s Goethe Institute/Max Mueller Bhawans.

10.1 Goethe Institute/Max Mueller Bhawan have six institutes across India which provide linguistic and cultural training to young Indians preparing for their stay in Germany.

10.2 They are registered under GST at Delhi, Mumbai, Chennai, Bengaluru, Kolkata, and Pune. Prior to 1st April, 2023, the Institutes did not collect GST from their students nor did they pay GST to Government as they were under the bonafide belief that their activities are exempt from GST.

10.3 55th GST Council has recommended to regularize the payment of GST on services provided by Goethe Institutes/Max Mueller Bhawans for the period from 01.07.2017 to 31.03.2023 on *'as is where is'* basis.

10.4 Thus, as recommended by the 55th GST Council, payment of GST on services supplied by Goethe Institute/Max Mueller Bhawans is hereby regularized for the period from 01.07.2017 to 31.03.2023 on *'as is where is'* basis.