



Updates

October
2021

Highlights



Updates

October, 2021

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New Functionalities in GSTN Portal

Rate Notification

SI No	Subject	Central Rate Notification	State Rate Notification	IGST Rate Notification
1	Amendment in GST rate notification No. 1/2017- CT (R) dt 28-06-2017 in respect of various goods :	13/2021-CT(R) dt 27-10-2021	1364-F.T. dt. 09-11-2021	13/2021-IGST(R) dt 27-10-2021

Schedule-II- Rate-12% [Effective date: 27th October, 2021]

Omission of SI 243: *Permanent transfer of Intellectual Property (IP) right in respect of goods other than Information Technology software [Consequent amendment made in SI 452P of Schedule-II]*

Schedule-III- Rate-18% [Effective date: 27th October, 2021]

SI	Chapter	Description
452P	Any Chapter	<i>Permanent transfer of Intellectual Property (IP) right</i>

Existing entries 452P substituted as above

Circulars

SI No	Subject	Central Circular	State Circular
1	Clarification regarding GST rates & classification (goods) in respect of amendment in rate :	<u>163/19/2021</u> <u>dt 06-10-2021</u>	<u>23/2021</u> <u>dt 03.11.2021</u>

- Exemption from GST to fresh fruits and nuts covers only such products which are not frozen or dried in any manner as stated above or otherwise processed. **Supply of dried fruits and nuts**, falling under heading 0801 and 0802 **attract GST @ 5%/12%** as specified in the respective rate schedule
- **Nil rate on tamarind seeds would apply if such is used for sowing purposes.** With effect from 01-10-2021, Tamarind and other seeds falling under heading 1209, if not supplied as seed for sowing, would attract GST @ 5%.
- **Copra** (dried flesh of coconut), classified under heading 1203, **attracts GST rate of 5%** irrespective of use.
- **Pure henna powder and henna leaves, having no additives**, is classifiable under tariff item 1404 90 90 and shall attract **GST rate of 5%** . The GST rate on mehndi paste in cones falling under 1404 & 3305 shall be 5%.

Circulars (contd...)

Clarification regarding GST rates & classification (goods) *contd.*

- **Scented sweet supari** falls under tariff item 2106 90 30 as “Betle nut product” and **attracts GST @ 18%.** **Flavoured and coated illaichi (tariff head 2106)** is distinct from illaichi or cardamom (tariff head 0908) and shall attract GST @ **18%**
- All pharmaceutical goods falling under heading 3006 shall attract GST rate of 12% under entry 65 of Schedule-II of [notification No. 1/2017-CT \(R\) dt 28-06-2017](#) as amended from time to time.
- Concessional GST rate of 12% is applicable on all diagnostic kits and reagents falling under heading 3822 [“Diagnostic or Laboratory Reagents, Certified Reference Materials etc.”]
- Requirement of Original/ import Essentiality certificate, issued by the Directorate General of Hydrocarbons (DGH) on each inter-State stock transfer of goods imported at concessional GST rate of 5% for petroleum operations-
There is no need for taking a certificate every time on inter-state movement of goods within the same company / stock transfer so long as the goods are the same as those imported by the company at concessional rate.

Circulars (contd...)

Clarification regarding GST rates & classification (goods) *contd.*

- **Brewers' spent grain (BSG), Dried distillers' grains with soluble [DDGS] and other such residues are classifiable under heading 2303 and shall attract GST @ 5%**
- **UPS/ inverter would attract GST rate of 18% under heading 8504, while external batteries would attract the GST rate of 28% (heading 8507; for all batteries except lithium-ion battery) even if they are sold on the same invoice.**
- **GST on Solar PV Power Projects can be paid in terms of the 70:30 ratio for goods and services, respectively, for the period of 01-07-2017 to 31-12-2018, in the same manner as has been prescribed for the period on or after 01-01-2019, as per the explanation in the [Notification No.24/2018 CT\(R\) dated 31-12-2018](#).**

No refunds will be granted if GST already paid is more than the amount determined using this mechanism.
- **Supplies of Fibre Drums which is partially corrugated even if made at 12% GST (during the period from 1.7.2017 to 30.9.2021), would be treated as fully GST-paid. However, no refund of GST already paid @ 18% shall be allowed.**

Circulars (contd...)

SI No	Subject	Central Circular	State Circular
2	Clarifications regarding applicable GST rates & exemptions on certain services	164/20/2021 dt 06-10-2021	24/2021 dt 03.11.2021

- 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-CT \(R\) dt 28-06-2017](#) and attract 5% GST [without ITC].
- **Ice cream sold by a parlour** or any similar outlet would attract GST @ 18%.
- 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. **Satellite launch services supplied by M/s New Space India Ltd (NSIL) are similar to those supplied by ANTRIX Corporation Ltd and the clarification in respect of ANTRIX Corporation Ltd is applicable to NSIL.**

Circulars (contd...)

Clarifications regarding applicable GST rates & exemptions on certain services

- **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- CT \(R\) dt 28-06-2017](#) and hence exempt from GST**
- **Entry 23 of notification No. [12/2017- CT \(R\) dt 28-06-2017](#) , exempts Service by way of access to a road or a bridge on payment of toll charges. **Overloading charges at toll plazas would get the same treatment as given to toll charges.****
- **Expression “giving on hire” in Sl. No. 22 (*that 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”.*) of the Notification No. [12/2017- CT \(R\) dt 28-06-2017](#) 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**

Circulars (contd...)

Clarifications regarding applicable GST rates & exemptions on certain services

- The applicable rate of GST on the **services by way of grant of mining rights, during the period 1.7.2017 to 31.12.2018, was 18%**
- The applicable rate of **GST 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 is 28%** [Entry 34(iii)(a) of rate Schedule of Services].
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 shall attract GST @ 18%**. [Entry 34(iii) of rate Schedule of Services].
- **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% and would attract GST at the rate of 18%.**

Rulings by WBAAR

❑ The applicant is stated to be engaged in supplying manpower services to his clients on daily/ monthly basis for different jobs as required by his clients. The clients also authorize him to make payment of salary/wages on monthly basis to the manpower provided by him.

❑ He raises periodical invoices to his clients indicating salary/ wages payable against the manpower services supplied by him and also indicates the service charges payable to him at the agreed rates in the invoices in a separate manner. Further upon receipt of payment from his clients, he disburses the salary/wages to the manpower provided by him.

✓ Whether the applicant is acting as a pure agent as defined in Explanation to Rule 33 of the CGST Rules, 2017?

✓ Whether the payment of salary/wages by the supplier can be excluded from the value of supply for the purpose of section 15 of the CGST Act, 2017?

✓ As per the Client Service Agreement, the applicant is not acting as a pure agent as defined in Explanation to Rule 33 of the CGST Rules, 2017

✓ The payment of salary/wages by the supplier can not be excluded from the value of supply for the purpose of section 15 of the CGST Act, 2017

Order No & Dt:

13/WBAAR/2021-22

dated 08.10.2021

Name of the

Applicant:

PRODIP NANDI

Rulings by WBAAR (contd...)

The applicant is engaged in providing conservancy/solid waste management services as well as garbage collection and dumping services to the Conservancy Department of the Howrah Municipal Corporation (HMC). HMC is deducting TDS in terms of Notification No. 50/2018 - CT dt 13/09/2018 (corresponding West Bengal State Notification No. 1344 – F.T. dated 13/09/2018) and State Government Order No. 6284 -F(Y) dated 28/09/2018 while paying consideration for the above supply.

Whether the above supply is exempted in terms of Sl No. 3 or 3A of Notification No. 12/2017 – CT(R) dt 28/06/2017 (corresponding WB State Notification No. 1136 – F.T. dt 28/06/2017), Whether the notifications regarding TDS are applicable in his case?

The applicant's supply to the Howrah Municipal Corporation for lifting and removing of daily garbage etc. accumulated from the vats, dumping yards, containers and other places on the roads, lanes and bye-lanes of HMC area is exempt from payment of tax vide entry serial number 3 of the Notification No. 12/2017 – CT(R) dt 28/06/2017 (corresponding WB State Notification No. 1136 – F.T. dt 28/06/2017), as amended from time to time.

As the applicant is making an exempt supply, the provisions of section 51 in respect of tax deduction at source do not apply in the instant case.

Order No & Dt:

14/WBAAR/2021-22

dated 08.10.2021

Name of the

Applicant:

VINAYAK SINGH

Court Judgements

SUPREME COURT OF INDIA : Union of India. Vs Bharti Airtel Ltd & Ors
CIVIL APPEAL NO. OF 2021 (ARISING OUT OF S.L.P. (C) NO. 8654 OF 2020)

Facts:

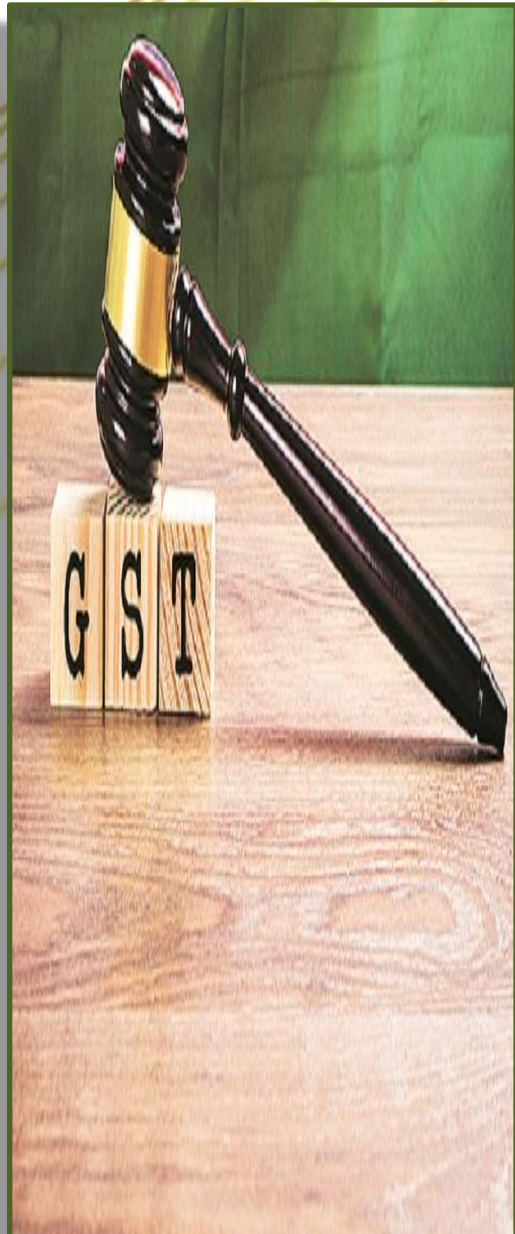
- ✓ This appeal emanates from the judgment and order dated 05.05.2020 passed by the High Court of Delhi in W.P. (C) No.6345 of 2018, whereby the High Court allowed the writ petition filed by respondent No.1 herein and read down paragraph 4 of the Circular No. 26/26/2017-GST dated 29.12.2017 issued by CBEC, to the extent it restricted the rectification of Form GSTR-3B in respect of the period in which the error had occurred.
- ✓ The High Court also allowed respondent No.1 to rectify Form GSTR-3B for the period in which error had occurred, i.e., from July to September 2017.
- ✓ Further, the High Court directed the appellant that on filing of the rectified Form GSTR-3B, they shall, within a period of two weeks, verify the claim set forth by respondent No.1 and give effect to the same once verified.

Court Judgements (contd.)

Judgements:

The Apex Court held that:

- ✓ The challenge to the impugned Circular No. 26/26/2017-GST dated 29.12.2017, is unsustainable for the reasons noted hitherto. We hold that stipulations in the stated Circular including paragraph 4 thereof, are consistent with the provisions of the 2017 Acts and the Rules framed thereunder.
- ✓ The direction issued by the High Court being in the nature of issuing writ of mandamus to allow the writ petitioner to rectify Form GSTR-3B for the period - July to September 2017, in the teeth of express statutory dispensation, cannot be sustained.
- ✓ This appeal is allowed. The impugned judgement and the order is set aside.



Thank
you



Image courtesy:
<https://www.google.co.in/imghp?hl=en&tab=ri&ogbl>

Disclaimer:

This presentation is clarificatory in nature. It is not to be construed as a legal explanation or interpretation of the Acts and the Rules.