

**GOVERNMENT OF WEST BENGAL
DIRECTORATE OF COMMERCIAL TAXES
14, BELIAGHATA ROAD, KOLKATA-700015**

TRADE CIRCULAR No. 08/2025
(Corresponding Central Circular No. 245/02/2025-GST)

DATED:18.03.2025

Subject: Clarifications regarding applicability of GST on certain services.

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 of the West Bengal Goods and Services Tax Act, 2017, clarifications on various issues are being issued through this Trade 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 Trade Circular No. 11/2022 dated 29.09.2022, 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. 1136-F.T. 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. 1136-F.T. 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. 1136-F.T. 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 nonbanking 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. 1136-F.T. 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. 1136-F.T. 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.1786- F.T. dated 22.11.2024.

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. 1786- F.T. dated 22.11.2024 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. 1136-F.T. dated 28.06.2017 was amended vide Notification No. 1786-F.T. dated 22.11.2024, 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. 1136-F.T. dated 28.06.2017 vide Notification No. 346-F.T. dated 03.03.2025 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. 1136-F.T. dated 28.06.2017*.

6.3 The said entry at *Sr. No. 3A of notification No. 1136-F.T. 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. 1136-F.T. 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. 1136-F.T. dated 28.06.2017.*

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

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

7.2 As per entry at Sr. No. 5 of notification No. 1137-F.T. 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 WBGST 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 WBGST 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.1787-F.T. dated 22.11.2024 effective from 10.10.2024 by *inserting an entry at Sr. No. 5AB of the notification No. 1137-F.T. 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. 1137-F.T. dated 28.06.2017. The same has been notified vide notification No. 347-F.T. dated 03.03.2025, effective from 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., from 10.10.2024 to 15.01.2025).

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. 1136-F.T.

dated 28.06.2017 vide notification No. 1786-F.T dated 22.11.2024, 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. 346-F.T. dated 03.03.2025. 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. 1136-F.T. dated 28.06.2017) up to 15.01.2025 (till the date of effect of amending notification No. 346-F.T. dated 03.03.2025) 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.

11. Difficulties, if any, in implementation of this Trade Circular may be brought to the notice of the Commissioner.

Sd/-

(DEVI PRASAD KARANAM, IAS)
Commissioner, State Tax
West Bengal

Memo. No.- 42 /CT/PRO
3C/PRO/2025

Date:18.03.2025

Copy forwarded to the Special Commissioner, State tax /ISD for information and for uploading it on the official website of the Directorate for information of all concerned.

Sd/-

(Joyjit Banik)
Additional Commissioner, State Tax
&
PRO