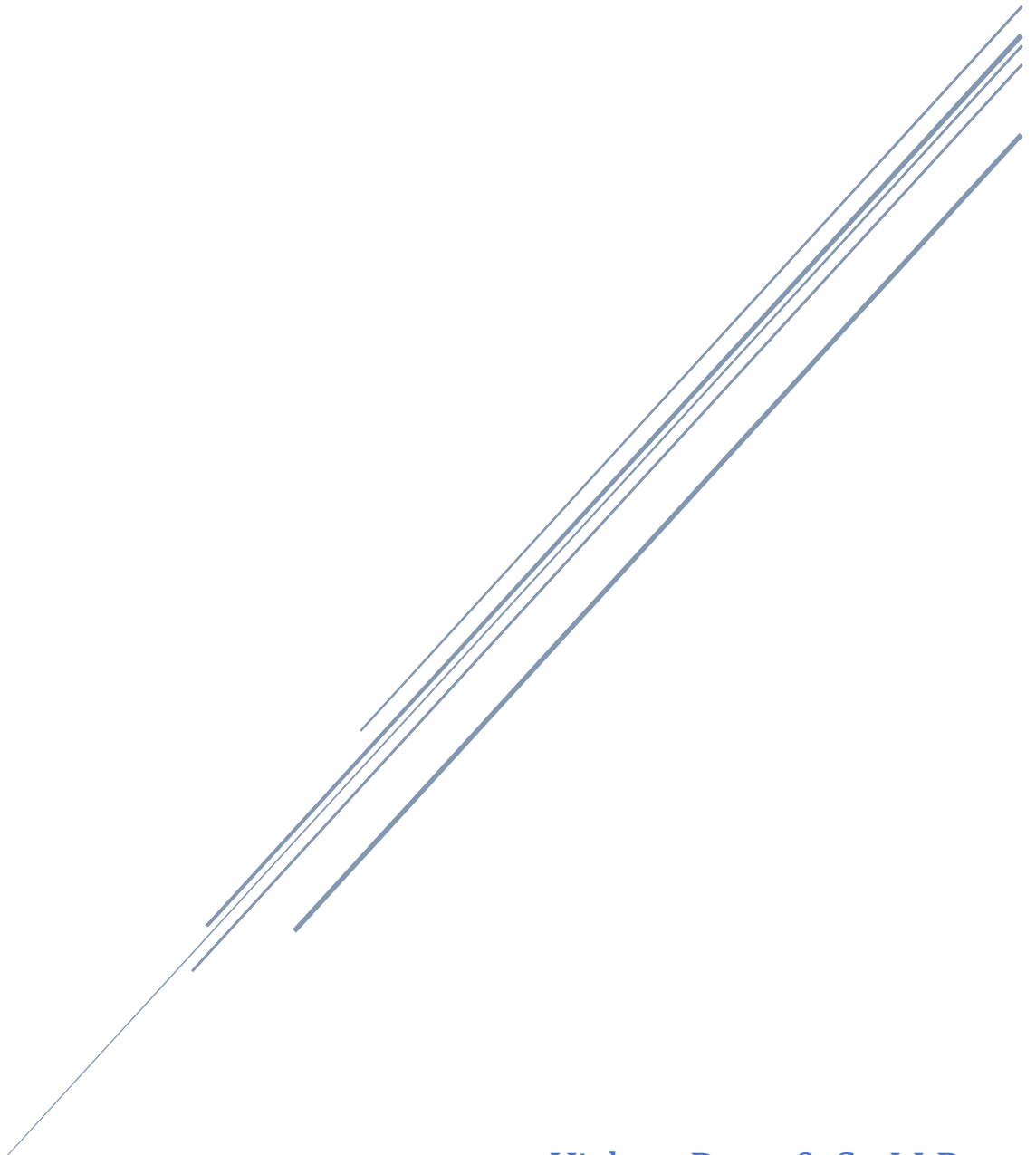


# GST UPDATE

Clarifications issued on 03.08.2022



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Pursuant to the decisions taken during the 47<sup>th</sup> GST Council meeting on 29.06.2022, CBIC has issued three circulars clarifying various issues related of rate of tax and exemptions. The summary of the clarifications is detailed below:

#### CIRCULAR NO 177

The following clarifications have been issued in this circular:

Sl. No.	Issue	Clarification
1	Rate of GST applicable on supply of ice-cream by ice-cream parlors during the period from 01.07.2017 to 05.10.2021.	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.
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	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 educational institutions to the leaving or ex-students is covered by exemption under Sl. No. 66 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017.
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?	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 It may however be noted that this exemption has been withdrawn w.e.f 18.07.2022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?	It is clarified that exemption under Sl. No. 9B of Notification 12/2017- Central Tax (Rate) covers services associated with transit cargo both <b>to and from Nepal and Bhutan</b> . It is also clarified that movement of empty containers from Nepal and Bhutan, after delivery of goods there, is a service associated

		with the transit cargo to Nepal and Bhutan and is therefore covered by the exemption.
5	Applicability of GST on sanitation and conservancy services supplied to Army and other Central and State Government departments.	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 11 <sup>th</sup> and 12 <sup>th</sup> Schedule, in the manner as a local authority does for the general public, the same are not eligible for exemption under Sl. No. 3 and 3A of Notification 12/2017- Central Tax (Rate).
6	Whether the activity of selling of space for advertisement in souvenirs is eligible for concessional rate of 5%?	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%.
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.	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 of fuel is 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%.
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 of upfront amount charged for long term lease of land and are eligible for the same tax treatment?	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.
9	Applicability of GST on payment of honorarium to the Guest Anchors	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 lieu of 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.
10	Whether the additional toll fees collected in the form of higher toll charges from vehicles not having fastag is exempt from GST?	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 to such vehicles and may be given the same treatment as given to toll charges.
11	Applicability of GST on services in form of Assisted Reproductive Technology (ART)/ In vitro fertilization (IVF)	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.
12	Whether sale of land after levelling, laying down of drainage lines etc., is taxable under GST?	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. <b>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.</b> 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 for such services.
13	Situations in which corporate recipients are liable to pay GST on renting of motor vehicles designed to carry passengers	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 under Heading 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 taken 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 with the person providing vehicle on rent.
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	It is clarified that 'charter or hire' excluded from the exemption entry is charter or hire of a motor vehicle for a period of time, where the renter defines how and when the vehicles will be operated, determining schedules, routes and other operational considerations.

	<p>non-air conditioned contract carriage?</p>	<p>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.</p>
<p><b>15</b></p>	<p>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?</p>	<p>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.</p> <p>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).</p>
<p><b>16</b></p>	<p>Applicability of GST on tickets of private ferry used for passenger transportation.</p>	<p>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.</p> <p>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 publicly owned. Only exclusion is on transportation which is predominantly for tourism, such as services which may combine with transportation, sightseeing, food and beverages, music, accommodation such as in shikara, cruise etc.</p>

## CIRCULAR NO 178

The following clarifications have been issued in this circular with regard to the taxability of the liquidated damages:

- It is clarified that agreement to do refrain from an act should not be presumed to exist. Unless there is an express or implied promise by the recipient of money to agree to do or abstain from doing something in return for the money paid to him, it cannot be assumed that such payment was for doing an act or for refraining from an act or for tolerating an act or situation.
- The activities in the nature of liquidated damages, forfeiture of salary, etc. are merely 'events' in a contract and not consideration for an independent contract.
- Unless payment has been made for an independent activity of tolerating an act under 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.
- With the above explanation, the taxability of few of the transactions are clarified as under:

Sl. No.	Transaction	Clarification
1	Liquidated damages	<p>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.</p> <p>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. <b>Such payments do not constitute consideration for a supply and are not taxable.</b></p>

2	Compensation for cancellation of coal blocks	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 them if the Government pays compensation to them. 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 Court Order. <b>Therefore, the compensation paid for cancellation of coal blocks pursuant to the order of the Supreme Court in the above case is not taxable.</b>
3	Cheque dishonor fine/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. <b>Therefore, cheque dishonor fine or penalty is not a consideration for any service and not taxable.</b>
4	Penalty imposed for violation of laws	Penalty imposed for violation of laws such as traffic violations, or for violation of pollution norms or other laws are also <b>not consideration for any supply received and are not taxable, which are also not taxable.</b>
5	Forfeiture of salary or payment of bond amount in the event of the employee leaving the employment before the minimum agreed period	The said amounts are recovered by the employer not as a consideration for tolerating the 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, the employee does not get anything in return from the employer against payment of such amounts. <b>Therefore, such amounts recovered by the employer are not taxable as consideration for the service of agreeing to tolerate an act or a situation.</b>
6	Compensation for not collecting toll charges	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. Therefore, the same tax treatment applicable for the toll charges will apply.
7	Late payment surcharge or fee	The facility of accepting late payments with interest or late payment fee, fine or penalty is a facility granted by supplier naturally bundled with the main supply. 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 <b>should be assessed at the same rate as the principal supply.</b>
8	Fixed Capacity charges for Power	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.
9	Cancellation charges	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. 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 <b>such cases should be assessed at the same rate of the principal supply.</b>
10	Forfeiture of earnest money	Forfeiture of earnest money is 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.



## CIRCULAR NO 179

The following clarifications have been issued in this circular related to the changes made to the rate of tax for the goods:

Sl. No.	Goods	Clarification
1	Electric vehicles whether or not fitted with a battery pack	It is clarified that electrically operated vehicle is to be classified under HSN 8703 even if the battery is not fitted to such vehicle at the time of supply and thereby attract GST at the rate of 5% in terms of entry 242A of Schedule I of notification No. 1/2017-Central Tax (Rate).
2	Stones otherwise covered in S. No. 123 of Schedule-I (such as Napa stones), which are not mirror polished	It is clarified that S. No. 123 in schedule-I to the notification No. 1/2017-Central Tax (rate) dated 28.06.2017 covers minor polished stones.
3	Mangoes under CTH 0804 including mango pulp, but other than fresh mangoes and sliced, dried mangoes	It is hereby clarified that mangoes, fresh falling under heading 0804 are exempt; Mangoes, sliced and dried, falling under 0804 are chargeable to a concessional rate of 5%; while all other forms of dried mango, including Mango pulp, attract GST at the rate of 12%. To bring absolute clarity, the relevant entry at S. No. 16 of Schedule-II of notification no. 1/2017-Central Tax (Rate), dated 28th June, 2017, has been amended vide notification No. 6/2022-Central Tax (Rate), dated the 13th July, 2022. Fresh mangoes, falling under heading 0804, continue to remain exempt from GST [S. No. 51 of notification No. 2/2017-Central Tax (Rate), dated the 28 <sup>th</sup> June, 2017].
4	Treated sewage water	It is hereby clarified that supply of treated sewage water, falling under heading 2201, is exempt under GST. Further, to clarify the issue, the word 'purified' is being omitted from the above-mentioned entry vide notification No. 7/2022-Central Tax (Rate), dated the 13th July, 2022.
5	Nicotine Polacrilex Gum	It is hereby clarified that the Nicotine Polacrilex gum which is commonly applied orally and is intended to assist tobacco use cessation is appropriately classifiable under tariff item 2404 91 00 with applicable GST rate of 18% [Sl. No. 26B in Schedule III of notification no. 1/2017-Central Tax (Rate), dated the 28th June, 2017].

6	Fly ash bricks	It is clarified that the condition of 90 per cent. or more fly ash content applied only to Fly Ash Aggregates and not to fly ash bricks and fly ash blocks. Further, with effect from 18 <sup>th</sup> July, 2022 the condition is omitted from the description.
7	Applicability of GST on by-products of milling of Dal/ Pulses such as Chilka, Khanda and Churi	It is hereby clarified that the subject goods which inter alia is used as cattle feed ingredient are appropriately classifiable under heading 2302 and attract GST at the rate of 5% vide S. No. 103A of Schedule-I of notification no. 1/2017-Central Tax (Rate), dated the 28 <sup>th</sup> June, 2017 and that for the past, the matter would be regularized on as is basis.

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