

Note on Various Clarifications issued by CBIC

CBIC has issued several clarifications based to the recommendations made by the GST Council in the 52nd Council Meeting. The summary of the clarifications is given below:

1. Clarifications on export of services – Realisation of Consideration in INR:

Circular No. 202/14/2023-GST dated 27th October 2023

Clarification has been issued to clarify that if the Indian exporters are paid the export proceeds in INR from the designated Special Vostro Account of the correspondent bank of the partner trading country in terms of Regulation 7(1) of Foreign Exchange Management (Deposit) Regulations, 2016, as mandated by RBI's A.P. (DIR Series) Circular No.10 dated 11th July 2022 and reiterated further in Foreign Trade Policy, 2023, then it shall be considered as the fulfilment of the condition stipulated in definition of export as given in section 2 (6) (iv) of the IGST Act.

2. Clarification regarding determination of place of supply in various cases:

Circular No. 203/15/2023-GST dated 27th October 2023

Clarification has been issued clarifying the place of supply for the following services:

- i. **Service of transportation of goods, including through mail and courier, in cases where the location of the supplier of services or location of the recipient of services is outside India:** It is clarified that in case of service of goods, including through mail and courier, in cases where the location of the supplier of services or location of the recipient of services is outside India, the place of supply of such services shall be determined as per the provisions of section 13 (2) of the IGST Act, i.e., the place of supply shall be the location of the service recipient.
- ii. **Place of supply in case of supply of services in respect of advertising sector:**
The following clarifications have been issued for the supplies related to advertising sector:
 - a. The place of supply of services provided by way of supply of sale of space on hoarding/structure for advertising or for grant of rights to use the hoarding/structure for advertising would be the location where such hoarding/structure is located as per section 12 (3) (a) of the IGST Act.

- b. In case of supply involving display of the advertisement by the vendor who is in possession of the hoarding/structure, the place of supply shall be determined as per section 12 (2) of the IGST Act.
- iii. **Place of supply in case of supply of the “co-location services”:** It is clarified that co-location services are in the nature of “Hosting and Information Technology (IT) infrastructure provisioning services”. Such services do not appear to be limited to renting of immovable property and therefore, the place of supply of such services shall be determined as per section 12 (2) of the IGST Act. However, if the scope of the agreement is limited to providing only the immovable property, then the place of supply shall be determined as per section 12 (3) (a) of the IGST Act.

3. Clarification regarding GST rate on imitation zari thread or yarn:

Circular No. 205/17/2023-GST dated 31st October 2023

It is clarified that imitation zari thread or yarn made from metallised polyester film/plastic falling under HSN 5605 are covered by entry 218AA of the Schedule I attracting 5% GST.

4. Clarifications regarding applicability of GST on certain services:

Circular No. 206/18/2023-GST dated 31st October 2023

Clarification has been issued regarding the applicability of GST on the following services:

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

It is 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 the same rate as supply of motor vehicles by way of sale.

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

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.

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 the 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.

Our Comments:

As per the above clarification, wherever the landowner recovers the electricity from the occupants, if such is made to the extent of the actual amount of electricity charges charged by the Electricity Boards, then it shall not be subject to GST. The taxpayer shall ensure that proper supporting documentation is maintained to prove that the amount recovered represents the actual amount of electricity based on the usage. A separate bill of supply/invoice may be raised for the same.

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”:

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

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:

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.

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 percent 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:

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.

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