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**33rd YEAR OF PUBLICATION**

# Tax Law Decisions

**A UNIQUE AND BEST MONTHLY MAGAZINE ON  
GST, VALUE ADDED TAX AND ALLIED LAWS  
IN TWO VOLUMES PER YEAR**

**FOUNDER EDITOR : DINESH GANGRADE**

**EDITOR : NILESH GANGRADE**

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छत्तीसगढ़, मध्यप्रदेश, झारखण्ड, ओडिशा और महाराष्ट्र का प्रतिनिधि मण्डल श्री जितेन्द्र जी बरलोटा (CCCI, President) के नेतृत्व में माननीय श्री भूपेशजी बघेल, मुख्यमंत्री, छत्तीसगढ़ शासन से भेंट कर उन्हें कराधान संबंधी आ रही कठिनाईयों से अवगत कराया

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टैक्स बार एण्ड प्रैक्टिसनर्स एसोसिएशन, छतरपुर (म.प्र.) के नवनिर्वाचित अध्यक्ष श्री संजय नामदेव एवं सचिव श्री मुकेश अग्रवाल सहित कार्यकारिणी का शपथ ग्रहण

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**4**



## अंतर्राज्यीय चेम्बर प्रतिनिधियों की बैठक रायपुर में सम्पन्न



Raipur MP Suneel Soni, Raipur Mayor Pramod Dubey, Chamber President Jitendra Jain Barlotia, Saranshak Puran Lal Agrawal, Treasure Prakash Agrawal Chamber Mahamantri - Lal Chand Gulwani



Delegations of Chambers of Commerce of five State meets CM at CM House

कर सलाहकार परिषद रतलाम की स्टडी सर्किल मीटिंग का आयोजन 14 सितंबर को किया गया। मीटिंग में सीए. रजनीश जी जैन ने टेक्स आडिट विषय पर बहुत ही विस्तार से उद्बोधन प्रस्तुत किया, श्री राकेश जी भटेवरा ने जीएसटी के अंतर्गत नए रिटर्न फार्म पर विस्तृत उद्बोधन प्रस्तुत किये। दोनों वक्ताओं को स्व. श्री एस.डी. पुरोहित जी अवार्ड से सम्मानित किया गया। मीटिंग की अध्यक्षता परिषद अध्यक्ष सीए. संजय जी कोचर ने की एवं संचालन परिषद सचिव सीए. संदीप जी मूणत ने किया। अंत में आदरणीय सदस्यों के प्रति आभार प्रदर्शन किया गया।



## Tax Law Decisions

## CONTENTS

## STATUTES

- \* Notification u/s **164** of CGST Act, 2017 appointing 241  
 24-9-2019 the date from which the provisions of rules 10,  
 11, 12 and 26 of the Central Goods and Services Tax  
 (Fourth Amendment) Rules, 2019 come into force  
**[No. 42/2019-Central Tax]**  
***G.S.R. 683(E). New Delhi, the 24th September, 2019***

☆☆

## ARTICLE

- \* जीएसटी के नए रिटर्न सिस्टम के प्रावधानों की समीक्षा - आर.एस. गोयल 221

☆☆

## CIRCULAR ISSUED BY CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS

- \* Sabka Vishwas (Legacy Dispute Resolution) (25-9-2019) 242  
 Scheme, 2019. **[Circular No. 1072/05/2019-CX]**
- \* Eligibility to file a refund application in FORM (3-10-2019) 267  
 GST RFD-01 for a period and category under  
 which a NIL refund application has already  
 been filed **[Circular No. 110/29/2019-GST]**
- \* Procedure to claim refund in FORM GST (3-10-2019) 270  
 RFD-01 subsequent to favourable order in  
 appeal or any other forum  
**[Circular No. 111/30/2019-GST]**
- \* Withdrawal of Circular No. 105/24/2019-GST (3-10-2019) 272  
 dated 28-6-2019  
**[Circular No. 112/31/2019-GST]**

☆☆

**PRESS RELEASES : PRESS INFORMATION BUREAU**

- \* GST Rate on Goods as Recommended by The (20-9-2019) 225  
GST Council in its 37th Meeting
- \* जीएसटी परिषद की 37वीं बैठक में सिफारिश की गई (20-9-2019) 228  
वस्तुओं पर जीएसटी दर
- \* GST Rate on Services as Recommended by The (20-9-2019) 231  
GST Council in its 37th Meeting
- \* जीएसटी परिषद की 37वीं बैठक में सेवाओं के लिए (20-9-2019) 234  
अनुशंसित जीएसटी दर
- \* Recommendations of GST council related to (20-9-2019) 237  
law & procedure
- \* कानून एवं प्रक्रिया संबंधी जीएसटी परिषद की सिफारिशें (20-9-2019) 239

★★

**NOTIFICATIONS -****CENTRAL GOODS AND SERVICES TAX ACT, 2017**

- \* Notification u/s **10(1)** of CGST Act, 2017 amending 241  
No. 14/2019-CT dated 7-3-2019 so as to exclude  
manufacturers of aerated waters from the purview of  
composition scheme [**No. 43/2019-Central Tax**]  
**G.S.R. 729(E). New Delhi, the 30th September, 2019**

**:: CGST RATE ::**

- \* Notification u/s **7(2)** of CGST Act, 2017 notifying the grant 267  
of alcoholic liquor licence neither a supply of goods nor a  
supply of service [**No. 25/2019-Central Tax (Rate)**]  
**G.S.R. 746(E). New Delhi, the 30th September, 2019**
- \* Notification u/s **9, 11, 15, 16 and 148** of CGST Act, 2017 253  
amending No. 11/2017- Central Tax (Rate) so as to notify  
CGST rates of various services as recommended by GST  
Council in its 37th meeting held on 20-9-2019  
[**No. 20/2019-Central Tax (Rate)**]  
**G.S.R. 731(E). New Delhi, the 30th September, 2019**

2019)	CONTENTS	3
* Notification u/s <b>9(1)</b> and <b>15(5)</b> of CGST Act, 2017 amending No. 1/2017- Central Tax (Rate) dated 28-6-2017 so as to specify effective CGST rates for specified goods, to give effect to the recommendations of the GST Council in its 37th meeting dated 20-9-2019. [ <b>No. 14/2019-Central Tax (Rate)</b> ] <b>G.S.R. 709(E). New Delhi, the 30th September, 2019</b>		245
* Notification u/s <b>9(1)</b> , <b>11(1)</b> and <b>16(1)</b> of CGST Act, 2017 amending No. 2/2019- Central Tax (Rate) dated 7-3-2019 so as to exclude manufacturers of aerated waters from the purview of composition scheme [ <b>No. 18/2019-Central Tax (Rate)</b> ] <b>G.S.R. 721(E). New Delhi, the 30th September, 2019</b>		251
* Notification u/s <b>9(3)</b> of CGST Act, 2017 amending No. 13/2017-Central Tax (Rate) so as to notify services under reverse charge mechanism (RCM) as recommended by GST Council in its 37th meeting held on 20-9-2019 [ <b>No. 22/2019-Central Tax (Rate)</b> ] <b>G.S.R. 737(E). New Delhi, the 30th September, 2019</b>		261
* Notification u/s <b>9(4)</b> of CGST Act, 2017 amending No. 7/2019-Central Tax (Rate), dated the 29th March, 2019 by amending the entry related to cement [ <b>No. 24/2019-Central Tax (Rate)</b> ] <b>G.S.R. 743(E). New Delhi, the 30th September, 2019</b>		266
* Notification u/s <b>11(1)</b> of CGST Act, 2017 amending No. 2/2017- Central Tax (Rate) dated 28-6-2017 so as to grant exemption to dried tamarind and cups, plates made of leaves, bark and flowers of plants [ <b>No. 15/2019-Central Tax (Rate)</b> ] <b>G.S.R. 712(E). New Delhi, the 30th September, 2019</b>		248
* Notification u/s <b>11(1)</b> of CGST Act, 2017 amending notification No. 3/2017- Central Tax (Rate) dated 28-6-2017 so as to extend concessional CGST rates to specified projects under HELP/OALP, and other changes [ <b>No. 16/2019-Central Tax (Rate)</b> ] <b>G.S.R. 715(E). New Delhi, the 30th September, 2019</b>		249
* Notification u/s <b>11(1)</b> of CGST Act, 2017 amending No. 26/2018-Central Tax (Rate) dated 31-12-2018, so as		250

to exempt CGST on supplies of silver and platinum by nominated agencies to registered persons

**[No. 17/2019-Central Tax (Rate)]**

**G.S.R. 718(E). New Delhi, the 30th September, 2019**

- \* Notification u/s **11(1)** of CGST Act, 2017 exempting supply of goods for specified projects under FAO w.e.f. 1-10-2019  
**[No.19/2019-Central Tax (Rate)]**  
**G.S.R. 724(E). New Delhi, the 30th September, 2019**

252
- \* Notification u/s **11(1)** of CGST Act, 2017 amending No. 12/2017-Central Tax (Rate) exempting services as recommended by GST Council in its 37th meeting held on 20-9-2019. **[No. 21/2019-Central Tax (Rate)]**  
**G.S.R. 734(E). New Delhi, the 30th September, 2019**

258
- \* Notification u/s **148** of CGST Act, 2017 amending No. 4/2018-Central Tax (Rate), dated the 25th January, 2018, by adding an explanation on the applicability of provisions related to supply of development rights  
**[No. 23/2019-Central Tax (Rate)]**  
**G.S.R. 740 (E). New Delhi, the 30th September, 2019**

265

\*\*\*

#### CHRONOLOGICAL LIST OF NOTIFICATIONS -

##### CENTRAL GOODS AND SERVICES TAX ACT, 2017

- \* No. 42/2019-Central Tax      Dated 24th September, 2019

241
- \* No. 43/2019-Central Tax      Dated 30th September, 2019

241
- \* No. 14/2019-Central Tax (Rate)      Dated 30th September, 2019

245
- \* No. 15/2019-Central Tax (Rate)      Dated 30th September, 2019

248
- \* No. 16/2019-Central Tax (Rate)      Dated 30th September, 2019

249
- \* No. 17/2019-Central Tax (Rate)      Dated 30th September, 2019

250
- \* No. 18/2019-Central Tax (Rate)      Dated 30th September, 2019

251
- \* No. 19/2019-Central Tax (Rate)      Dated 30th September, 2019

252
- \* No. 20/2019-Central Tax (Rate)      Dated 30th September, 2019

253



**2019) CONTENTS 5**

* No. 21/2019-Central Tax (Rate) Dated 30th September, 2019	258
* No. 22/2019-Central Tax (Rate) Dated 30th September, 2019	261
* No. 23/2019-Central Tax (Rate) Dated 30th September, 2019	265
* No. 24/2019-Central Tax (Rate) Dated 30th September, 2019	266
* No. 25/2019-Central Tax (Rate) Dated 30th September, 2019	267

☆☆☆☆

**LIST OF CASES REPORTED**

* Blue Bird Pure Pvt. Ltd. Vs. Union of India & Ors. (Del)	340
* Directorate of Skill Development, Bhopal (AAR-MP)	273
* Emerald Heights International School, Indore (AAR-MP)	261
* In Reference Vs. Manglam Cement Limited, Indore (MP)	257
* Indo Thai Securities Ltd., Indore (AAR-MP)	286
* Madhya Pradesh Power Generating Company Ltd., Jabalpur (AAR-MP)	293
* NMDC Limited, Majhgawan, Diamond Mining Project (AAR-MP)	311
* Prakash Chand Jain, Indore (AAR-MP)	299
* Ravi Masand, Indore (AAR-MP)	304
* Swastik Traders Vs. State of U.P. (All)	336

☆☆

**SUBJECT INDEX**

- \* **AAR-MP** - Additional contributions - The said contributions are nothing but additions to the royalty payable for the original supply itself, and is therefore liable to be added to the value of the original supply and treated accordingly for the purposes of GST. **NMDC Limited, Majhgawan, Diamond Mining Project [AAR-MP] (18-7-2019) 311**
- \* **AAR-MP** - Agriculture Knapsack Sprayer - Agriculture Mechanical Sprayers will be classifiable under Chapter Head 8424 of the GST Tariff and such product would attract GST @12%. **Ravi Masand, Indore (24-7-2019)**

**[AAR-MP]****304**

\* **AAR-MP** - Construction for MPPGCL - Contract for construction of building and structure for colony - The GST will be applicable @18% under SAC 9954, in as much as it refers to construction of residential quarters, which was awarded to M/s.Shreeji Infrastructure P. Ltd. by the applicant. **Madhya Pradesh Power Generating Company Ltd., Jabalpur (26-7-2019) [AAR-MP]293**

\* **AAR-MP** - Directorate of Skill Development, Bhopal shall be liable to pay IGST on import of Service under Reverse Charge Mechanism for business in terms of Notification No. 10/2017-IT(R). **Directorate of Skill Development, Bhopal (18-7-2019) [AAR-MP]** **273**

\* **AAR-MP** - Fees received by School for conference - Consideration received by the school from the participant school(s) for participation of their students and staff in the impugned conference would not be exempted under entry No. 66 or entry No. 1 or entry No. 80 or any other entry of the Notification. **Emrald Heights International School, Indore (20-8-2019) [AAR-MP]** **261**

\* **AAR-MP** - Interest for delayed payment - The additional amount being charged in delay of payment by whatever named called should be classified as principal supply and the classification of the same cannot differ from the original supply - Hence the additional amount charged on delayed payment shall be taxed as per original supply i. e. supply of Stock broking services. **Indo Thai Securities Ltd., Indore (25-6-2019) [AAR-MP]** **286**

\* **AAR-MP** - Mining lease - Clarification on classification of royalty payments to Government in respect of Mining lease - The said service shall be classified under Tariff Heading 99733. **NMDC Limited, Majhgawan, Diamond Mining Project [AAR-MP] (18-7-2019)** **311**

\* **AAR-MP** - Nano Rechargeable LED Torch Light - Nano Rechargeable LED Torch Light is classifiable under Chapter Head 8513 attracting GST @18% - The same is not a 'Solar Based Device'. **Prakash Chand Jain, Indore (8-5-2019) [AAR-MP]** **299**

\* **First appeal** - GST - Order has been passed without hearing to the petitioner and in violation of principles of natural justice - The High Court remanded the matter back to the Appellate Authority. **Swastik Traders Vs. State of U.P. (All)** **336**

\* **Reference** - Quantity discount given monthly by way of credit notes - M.P. High Court concluded that the assessee is entitled for trade discount given monthly by way of credit notes from the total turnover for arriving at taxable



turnover and remanded the matter to the Appellate Board for fresh decision in view the law laid down in the case of Titan Industries Limited and in light of the answer to the reference. **In Reference Vs. Manglam Cement Limited, Indore (MP)** 257

\* **TRAN-1** - The High Court directed the respondents to either open the online portal so as to enable the Petitioner to again file the rectified TRAN-1 Form electronically or accept the manually filed TRAN-1 Form with the correction. **Blue Bird Pure Pvt. Ltd. Vs. Union of India (Del)** 340

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## MADHYA PRADESH DATE EXTENSION NOTIFICATION

Bhopal, the 27th September 2019

**FA-3-40-2018-1-V (64).**— Whereas, the State Government is satisfied that all such assessment and reassessment proceedings of dealers liable to pay tax under the Madhya Pradesh Vat Act, 2002 (No. 20 of 2002), the Central Sales Tax Act, 1956 (No. 74 of 1956), Madhya Pradesh Vilasita, Manoranjan, Amod Avam Vigyapan kar Adhiniyam, 2011 (No.11 of 2011) and the Madhya Pradesh Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhiniyam, 1976 (No. 52 of 1976), which have to be completed by the end of 30 September, 2019 under the provisions of sub-section (7) of section 20 of the Madhya Pradesh Vat Act, 2002 (No. 20 of 2002) can not be completed within the prescribed period, despite all possible efforts being made by the assessing authorities, and that in order to enable the assessing authorities to complete such proceedings on merits, it is essential that the time limit prescribed for the completion of such pending proceedings for the period 1st April, 2017 to 30th June, 2017 be extended upto **29<sup>th</sup> February, 2020** and all the remaining pending cases to be extended upto **30th November, 2019**.

Now, therefore, in exercise of the powers conferred by sub-section (8) of section 20 of the Madhya Pradesh Vat Act, 2002 (No. 20 of 2002), the State Government hereby, extends the period up to **29<sup>th</sup> February, 2020** for completion of every such assessment and reassessment proceedings in every pending cases in respect of every dealer, under the said Acts, for the period 1st April, 2017 to 30th June, 2017 which is not completed by the **30<sup>th</sup> September, 2019** and for completion of every such assessment and reassessment proceedings in all the remaining pending cases in respect of every dealer, under the said Act, extends the period up to **30<sup>th</sup> November, 2019**, which is not completed by the **30<sup>th</sup> September, 2019**.

By order and in the name of the Governor of Madhya Pradesh,  
**HARSHIKA SINGH, Dy. Secy.**

**CHHATTISGARH**  
**DATE EXTENSION NOTIFICATION**  
**Form-18, year 2015-16 and 2016-17**

**Government of Chhattisgarh**  
**Commercial Tax Department**  
**Mantralaya, Mahanadi Bhawan,**  
**Nava Raipur, Atal Nagar, District-Raipur**

**NOTIFICATION**

Nava Raipur, Atal Nagar, dated : 30.09.2019

No. F-10-23 /2019/CT/V (81 ) - In exercise of the powers conferred by clause (ii) of sub-section (1) of section 15-B of the Chhattisgarh Value Added Tax Act, 2005 (No. 2 of 2005), the State Government, hereby, makes the following further amendment in this departments notification No. F-10-63/2018/CT/V (103), dated 10.12.2018, namely :-

**AMENDMENT**

In the said notification,-

1. For the figures and punctuation "30-09-2019", wherever they occur the figures and punctuation "31-12-2019" shall be substituted.
2. For the figures and punctuation "31-12-2019", wherever they occur the figures and punctuation "31-03-2020" shall be substituted.

By order and in the name of the  
Governor of Chhattisgarh,

  
(Reena Babasaheb Kangale)  
Secretary

## (84) जीएसटी के नए रिटर्न सिस्टम के प्रावधानों की समीक्षा

आर.एस. गोयल

(सदस्य संपादक मंडल, टीएलडी)



**जीएसटी लागू होने के समय रिटर्न्स से संबंधित प्रावधान :-**

- सप्लायर के द्वारा की गई समस्त सप्लाई से संबंधित जीएसटीआर-1 अगले माह की 10 तारीख तक प्रस्तुत करना था ।
- सप्लायर के द्वारा भरी गई विगत की जानकारी क्रेता व्यवसायी को जीएसटीआर-2ए में प्राप्त होगी ।
- क्रेता व्यवसायी को जीएसटीआर-2 भरने की सुविधा थी जिसमें वह जीएसटीआर-2ए में दी गई जानकारी को स्वीकार/अस्वीकार/संशोधन करने तथा जो जानकारी विक्रेता के द्वारा नहीं दी गई है उसे जोड़ने के अधिकार थे ।
- जीएसटीआर-2 में अपलोड की गई जानकारी के आधार पर विक्रेता के पोर्टल पर जीएसटीआर-1ए जनरेट होता था इसे यदि विक्रेता के द्वारा स्वीकार कर लिया जाता है तो उनके द्वारा जीएसटीआर-1 में प्रस्तुत जानकारी ऑटो पापुलेट हो जाती थी ।

उपरोक्त व्यवस्था के कारण विक्रेता के द्वारा अपलोड की गई सप्लाई की विगत क्रेता की वास्तविक क्रय से मेच हो जाती है इस सिस्टम के लागू रहने पर वर्तमान में आ रही मिसमेच की समस्या से पूर्ण मुक्ति मिलने की संभावना थी । किन्तु जीएसटी पोर्टल सही तरीके से नहीं चलने के कारण जीएसटीआर-2 रिटर्न को स्थगित कर दिया गया तथा जीएसटीआर-3 के स्थान पर जीएसटीआर-3बी अस्थाई रूप से लागू कर दिया गया जिसने कि समयांतर में स्थायी रिटर्न का स्वरूप ले लिया ।

**वर्तमान व्यवस्था :-**

- वर्तमान में सप्लायर के द्वारा अपनी सप्लाई की समस्त विगत, सप्लायर को प्राप्त एडवांस की राशि तथा उस पर देय जीएसटी की राशि जीएसटीआर-1 में दर्शानी होती है । जीएसटीआर-1 अगले माह की 10 तारीख तक प्रस्तुत करना होता है किन्तु जिन व्यवसायियों का 1.5 करोड़ से कम का टर्नओवर है उन्हें त्रैमासिक विवरण पत्र भरने की सुविधा प्राप्त है ।
- जीएसटीआर-3 के स्थान पर शासन के द्वारा जीएसटीआर-3बी प्रस्तुत करने की व्यवस्था अस्थाई रूप से लागू की गई है ।

- जीएसटीआर-3बी के अंतर्गत व्यवसायी को अपनी समस्त सप्लाई तथा एडवांस की विगत दर्शाकर सप्लाई एवं एडवांस पर देयकर की संगणना करते हुए कुल कर का दायित्व निकालना होता है।
- इसी के साथ क्रय किये गये मालों एवं प्राप्त की गई सेवाओं पर चुकाए गए कर पर इनपुट टैक्स क्रेडिट की गणना करते हुए उसकी छूट देयकर में से लेते हुए नेट कर की राशि को जमा करते हुए जीएसटीआर-3बी रिटर्न प्रस्तुत करना होता है।

#### नई परिवर्तित व्यवस्था :-

- **त्रैमासिक विवरण हेतु टर्नओवर की लिमिट 1.5 करोड़ से बढ़ाकर 5 करोड़**
  - नई परिवर्तित व्यवस्था में सबसे महत्वपूर्ण परिवर्तन यह किया गया है कि छोटे व्यवसायियों के द्वारा प्रस्तुत किए जाने वाले त्रैमासिक विवरण पत्र प्रस्तुत करने की टर्नओवर की लिमिट को 1.5 करोड़ से बढ़ाकर 5 करोड़ कर दी गई है।
- **जीएसटीआर 1 के स्थान पर एनेक्सर**
  - व्यवसायियों को जीएसटीआर-1 स्थान पर अब एक एनेक्सर (एएनएक्स-1) ही भरना होगा।
- **इनवाइस रियल टाइम में लगातार अपलोड करने की सुविधा**
  - दूसरा महत्वपूर्ण एवं सकारात्मक परिवर्तन यह किया गया है कि विक्रेता व्यवसायी को यह सुविधा प्रदान कर दी गई है कि वे उनके द्वारा किए गए विक्रय या अन्य सप्लाई की विगत एएनएक्स-1 में लगातार प्रस्तुत कर सकेंगे। अर्थात् उन्हें यह विगत भरने के लिए अगले माह की 1 से 10 तारीख तक का इंतजार नहीं करना होगा।
- **विक्रेता व्यवसायी की द्वारा अपलोड की गई विगत क्रेता व्यवसायी के एएनएक्स-2 में ऑटोपॉपुलेट**
  - तीसरा महत्वपूर्ण एवं सकारात्मक परिवर्तन यह किया गया है कि विक्रेता व्यवसायी के द्वारा भरी गई जानकारी क्रेता व्यवसायी के एएनएक्स-2 में ऑटोपॉपुलेट होकर रिफ्लेक्ट होगी।
- **विक्रेता व्यवसायी की द्वारा अपलोड की गई विगत क्रेता व्यवसायी को जानकारी तुरंत देखने की सुविधा**
  - चौथा महत्वपूर्ण एवं सकारात्मक परिवर्तन यह किया गया है कि विक्रेता व्यवसायी के द्वारा भरी गई जानकारी को क्रेता व्यवसायी रियल टाइम अर्थात् लगातार देख सकेंगे इस प्रकार यदि विक्रेता व्यवसायी ने माल का बिल जारी करते ही उसकी जानकारी अपलोड कर दी है तो क्रेता व्यवसायी कुछ घंटों के पश्चात देख सकेंगे।



- जानकारी को स्वीकार करने, अस्वीकार करने तथा पेंडिंग करने की सुविधा
  - क्रेता व्यवसायी को यह सुविधा भी दी गई है कि वे विक्रेता व्यवसायी के द्वारा दी गई जानकारी को स्वीकार, अस्वीकार एवं पेंडिंग कर सकेंगे।
- जानकारी को स्वीकार या अस्वीकार नहीं किए जाने पर स्वीकार किया जाना मान्य
  - यदि क्रेता व्यवसायी, विक्रेता व्यवसायी के द्वारा भरी गई जानकारी को स्वीकार, अस्वीकार, संशोधित नहीं करते हैं तो ऐसी स्थिति में वह जानकारी स्वीकार कर लिया जाना मान्य कर ली जाएगी।
- इसके अतिरिक्त एएनएक्स-2 में क्रेता व्यवसायी को अपनी सभी क्रय की जानकारी प्रस्तुत करना होगी।
- अब जीएसटीआर-1 के स्थान पर सरलीकृत फार्म आरईटी-1 प्रस्तुत करने की सुविधा
- एक अन्य महत्वपूर्ण परिवर्तन यह भी किया गया है कि अब समस्त व्यवसायियों को जीएसटीआर-3बी के स्थान पर एक अन्य सरलीकृत फार्म आरईटी-1 प्रस्तुत करना होगा।
- व्यवसाई के द्वारा भरे गए एएनएक्स-1 एवं एएनएक्स-2 की समस्त जानकारी के आधार पर आरईटी-1 तैयार किया जा सकेगा।
- एसएमएस के माध्यम से रिटर्न भरने की सुविधा
- छोटे व्यवसायियों को यह भी सुविधा दी गई है कि यदि किसी अवधि में उनकी कोई क्रय अथवा विक्रय नहीं है तो ऐसी स्थिति में वे अपना रिटर्न एसएमएस के माध्यम से भी प्रस्तुत कर सकेंगे।
- विवरण त्रैमासिक किंतु कर हर माह
- यद्यपि छोटे व्यवसायियों को त्रैमासिक विवरण पत्र प्रस्तुत करने की सुविधा प्रदान की गई है किंतु उन्हें अपना कर प्रत्येक माह भरकर उसकी विगत पीएमटी-08 में प्रस्तुत करनी होगी।
- केवल उपभोक्ताओं या अपंजीयत व्यक्तियों को विक्रय करने वाले छोटे व्यवसायियों को सहज रिटर्न भरने की सुविधा
- ऐसे छोटे व्यवसाई जो केवल उपभोक्ताओं या अपंजीयत व्यवसायी को माल का विक्रय करते हैं उन्हें आरईटी-1 के स्थान पर एक अन्य अत्यंत सरलीकृत रिटर्न प्रस्तुत करने का विकल्प होगा इस रिटर्न को सहज रिटर्न का नाम दिया गया है तथा इसका नंबर आरईटी-2 होगा।

- उपभोक्ताओं, अपंजीयत व्यक्तियों एवं पंजीयत व्यापारियों को विक्रय करने वाले छोटे व्यवसायों को सुगम रिटर्न भरने की सुविधा
  - किंतु ऐसे व्यवसायी जो कि उपभोक्ताओं या अपंजीयत व्यवसायी के साथ-साथ पंजीयत व्यवसायों को भी विक्रय करते हैं उन्हें एक अन्य सरलीकृत रिटर्न प्रस्तुत करने का विकल्प होगा इस रिटर्न को सुगम रिटर्न का नाम दिया गया है तथा इसका नंबर आरईटी-3 होगा।
- सहज एवं सुगम रिटर्न आरईटी-1 की अपेक्षा में सरलीकृत होंगे।

**छोटे व्यवसायों के लिए नया रिटर्न सिस्टम लागू होने की दिनांक :-**

- पूर्व में यह प्रावधान लाए गए थे कि अक्टूबर से दिसम्बर माह का जीएसटीआर-3बी के स्थान पर प्रस्तुत किया जाने वाला आरईटी-1 रिटर्न 20 जनवरी को प्रस्तुत करना होगा किंतु जीएसटी काउंसिल की 37वीं मीटिंग में यह निर्णय लिया गया कि नया रिटर्न सिस्टम को 1 अप्रैल 2020 से लागू किया जाए।
- छोटे व्यवसायों को निर्धारित करने का तरीका
  - ऐसे छोटे व्यवसायी जिनका पिछले वित्तीय वर्ष में टर्नओवर 5 करोड़ से कम है उन्हें अक्टूबर से दिसम्बर माह का जीएसटीआर-3बी प्रस्तुत नहीं करना है किंतु उसके स्थान पर उक्त अवधि का आरईटी-1 अप्रैल से जून 2020 के लिए 20 जुलाई 2020 को प्रस्तुत करने के प्रावधान लाए जा रहे हैं।
- बड़े व्यवसायों के लिए नया रिटर्न सिस्टम लागू होने की दिनांक :-
  - ऐसे बड़े व्यवसायी जिनका पिछले वित्तीय वर्ष में टर्नओवर 5 करोड़ से अधिक है उन्हें माह अप्रैल 2020 से 3बी रिटर्न के स्थान पर आरईटी-1 अगले माह की 20 तारीख तक प्रस्तुत करने के संबंध में प्रावधान लाए जा रहे हैं।
  - अन्य शब्दों में 3बी के स्थान पर लागू किया गया आरईटी-1 प्रथम बार 20 जनवरी को ही प्रस्तुत करना होगा।
- जीएसटीआर-1 स्थान पर प्रस्तुत किया जाने वाला एएनएक्स-1
  - छोटे व्यवसायों को अप्रैल से जून माह पहला एएनएक्स-1 31 जुलाई 2020 को प्रस्तुत करना होगा।
  - बड़े व्यवसायों को अप्रैल माह का एएनएक्स-1 10 मई 2020 को प्रस्तुत करना होगा।
  - लेखा पुस्तकों से आई.टी.सी. की मेचिंग हेतु मेचिंग टूल
  - व्यवसायों को पोर्टल पर उपलब्ध इनपुट टैक्स क्रेडिट की जानकारी को लेखा पुस्तकों की जानकारी से मेच करने के लिए एक मेचिंग टूल भी उपलब्ध कराया जाएगा।

□

**(85) GST Rate on Goods as Recommended by The GST Council in its 37th Meeting**

Press Information Bureau  
Government of India, Ministry of Finance

20-September-2019, 9:59 PM

The 37th GST Council met in Goa today under the Chairmanship of Union Finance & Corporate Affairs Minister Smt Nirmala Sitharaman. The meeting was also attended by Union Minister of State for Finance & Corporate Affairs Shri Anurag Thakur besides Chief Minister of Goa Shri Pramod Sawant, Finance Ministers of States & UTs and seniors officers of the Ministry of Finance.

The council took the following decisions in respect to rates relating to goods.

**I. GST rates reduction, -**

- a. 18% to 12% on parts of Slide Fasteners
- b. 18% to 5% on Marine Fuel 0.5% (FO)
- c. 12% to 5% on Wet Grinders (consisting stone as a grinder)
- d. 5% to Nil on:-
  - i. Dried tamarind
  - ii. Plates and cups made up of leaves/ flowers/bark
- e. 3% to 0.25% on cut and polished semi- precious stones
- f. Applicable rate to 5% on specified goods for petroleum operations undertaken under Hydrocarbon Exploration Licensing Policy (HELP)
- g. Exemptions from GST/IGST on:-
  - i. imports of specified defence goods not being manufactured indigenously (upto 2024)
  - ii. supply of goods and services to FIFA and other specified persons for organizing the Under-17 Women's Football World Cup in India.
  - iii. supply of goods and services to Food and Agriculture Organisation (FAO) for specified projects in India.

**II. GST rates have been recommended to be increased from,-**

- a. 5% to 12% on goods, falling under chapter 86 of tariff like railway wagons, coaches, rolling stock (without refund of accumulated ITC). This is to address the concern of ITC accumulation with suppliers of these goods.
- b. 18% to 28% +12% compensation cess on caffeinated Beverages.

### **III. Measures for Export Promotion**

- a. Exemption from GST/IGST:-
  - i. at the time of import on Silver/Platinum by specified nominated agencies.
  - ii. supply of Silver/Platinum by specified nominated agency to exporters for exports of Jewellery.
- b. Inclusion of Diamond India Limited (DIL) in the list of nominated agencies eligible for IGST exemption on imports of Gold/ Silver/ Platinum so as to supply at Nil GST to Jewellery exporters.

**IV.** A uniform GST rate of 12% on Polypropylene/Polyethylene Woven and Non- Woven Bags and sacks, whether or not laminated, of a kind used for packing of goods (from present rates of 5%/12%/18%)

### **V. GST concession in certain cases for specific period:-**

- a. Exemption to Fishmeal for the period 1-7-2017 to 30-9-2019. There were doubts as regards taxability of fishmeal in view of the interpretational issues. However, any tax collected for this period shall be required to be deposited.
- b. 12% GST during the period 1-7-2017 to 31-12-2018, on pulley, wheels and other parts (falling under Heading 8483) and used as parts of agricultural machinery.

**VI.** Passenger vehicles of engine capacity 1500 cc in case of diesel, 1200 cc in case of petrol and length not exceeding 4000mm designed for carrying upto 9 persons attract compensation cess of 1% for petrol and 3% for diesel vehicle. Council recommended same compensation cess rate for vehicles having these specifications (length and engine capacity) but designed for carrying more than 10 persons but upto 13 persons. (Presently these vehicles attract compensation cess at the rate of 15%)

### **VII. Other miscellaneous Changes:**

- Aerated drink manufacturers shall be excluded from composition



scheme.

- Option to pay GST at the rate of 18% on transaction value at the time of disposal of specified goods for petroleum operations (on which concessional GST rate of 5% was paid at the time of original supply) provided that the goods are certified by Director General Hydrocarbon(DGH) as non-serviceable.
- Restriction on refund of compensation cess on tobacco products (in case of inverted duty structure)
- Prescribing modalities for allowing concessions on spare parts imported temporarily by foreign airlines for repair of their aircraft, while in India in transit in terms of the Chicago Convention on Civil Aviation.
- Certain other changes of technical nature for the sake of clarity in application of notification.

**VIII. Clarifications as regards applicability of GST rate in respect of certain goods recommended by GST Council which *inter-alia* includes:**

- a. Mere heating of leguminous vegetables (gram/lentil) for removing moisture, or to soften and puff it or removing the skin, and not subjecting to any other processing or addition of any other ingredients (salt, oil etc.) would be classified under HS code 0713.
- b. All “mechanical sprayers” falling under HS Code 8424 would attract 12% GST.
- c. Parts like Solar Evacuation tubes for solar power based devices like solar water heater, solar steam, generation systems, would be eligible to 5% GST rate.
- d. Exclusive parts and accessories suitable for use solely or principally with a medical device (falling under headings 9018, 9019, 9021 or 9022) would fall in respective headings and attract GST at the concessional rate of 12%.
- e. Almond milk is classifiable under HS code 22029990 and attracts GST rate of 18%.
- f. Imported stores for Navy would be entitled to exemption from IGST

**The rate changes shall be made effective with effect from 1st October, 2019.**

*[This note presents the decision of the GST Council in simple language for ease of understanding, which would be given effect to through Gazette notifications/circulars, which shall have force of law.]*



## **(86) जीएसटी परिषद की 37वीं बैठक में सिफारिश की गई वस्तुओं पर जीएसटी दर**

पत्र सूचना कार्यालय, भारत सरकार, वित्त मंत्रालय

20 सितम्बर, 2019, 9:59 पीएम

केंद्रीय वित्त और कॉरपोरेट मामलों की मंत्री श्रीमती निर्मला सीतारमण की अध्यक्षता में आज जीएसटी परिषद की 37वीं बैठक गोवा में हुई। इस बैठक में केंद्रीय वित्त और कॉरपोरेट मामलों के राज्य मंत्री श्री अनुराग ठाकुर के अलावा गोवा के मुख्यमंत्री श्री प्रमोद सावंत, राज्यों एवं केन्द्र शासित प्रदेशों के वित्त मंत्रियों और वित्त मंत्रालय के वरिष्ठ अधिकारियों ने भाग लिया।

वस्तुओं से संबंधित दरों के संबंध में परिषद ने निम्नलिखित निर्णय लिए :

### **जीएसटी दरों में कमी -**

- स्लाइड फास्टरों के पुर्जों पर 18% से 12%
- समुद्री ईंधन 0.5% (एफओ) पर 18% से 5%
- वेट ग्राइंडर पर 12% से 5% (ग्राइंडर के रूप में पत्थर सहित)
- निम्नलिखित पर 5% से शून्य :-
  - सूखी इमली
  - पत्तों/फूलों/छाल से बने प्लेट और कप
- कटाई एवं पॉलिश किए गए कीमतों पत्थरों पर 3% से 0.25%
- हाइड्रोकार्बन अन्वेषण लाइसेंसिंग नीति (एचईएलपी) के तहत पेट्रोलियम परिचालन के लिए निर्दिष्ट वस्तुओं पर लागू दर 5%
- जीएसटी/आईजीएसटी से छूट :-
  - स्वदेशी तौर पर विनिर्मित न होने वाली (2024 तक) विशेष रक्षा वस्तुओं का आयात
  - भारत में अंडर-17 महिला फुटबॉल विश्व कप के आयोजन के लिए फीफा और अन्य निर्दिष्ट व्यक्तियों को वस्तुओं एवं सेवाओं की आपूर्ति।

- भारत में निर्दिष्ट परियोजनाओं के लिए खाद्य एवं कृषि संगठन (एफएओ) को वस्तु एवं सेवाओं की आपूर्ति।

#### जीएसटी दरों में वृद्धि की सिफारिश -

- अध्याय 86 के तहत आने वाली वस्तुओं जैसे रेल डिब्बा, रोलिंग स्टॉक आदि पर 5% से 12% (संचित आईटीआई के रिफंड के बिना)। इससे इन वस्तुओं की आपूर्तिकर्ताओं के साथ आईटीसी संचय की चिंता दूर होगी।
- कैफीनयुक्त पेय पदार्थों पर 18% से बढ़ाकर 28% + 12% मुआवजा उपकर

#### निर्यात संवर्धन के उपाय

- जीएसटी/आईजीएसटी से छूट :-
  - निर्दिष्ट नामित एजेंसियों द्वारा रजत/प्लेटिनम पर आयात के समय
  - निर्दिष्ट नामित एजेंसी द्वारा निर्यातकों को आभूषण निर्यात के लिए निर्यातकों को रजत/प्लेटिनम की आपूर्ति।
- डायमंड इंडिया लिमिटेड (डीआईएल) को स्वर्ण/रजत/प्लेटिनम के आयात पर आईजीएसटी छूट के लिए नामांकित एजेंसियों की सूची में शामिल करना ताकि आभूषण निर्यातकों को नील जीएसटी की आपूर्ति की जा सके।

पॉलीप्रोपाइलीन/पॉलीइथिलीन से बुने हुए, बिना बुने हुए और लेमिनेटिड बैग एवं बोरियों पर 12% की एक समान जीएसटी दर (वर्तमान दरों से 5% / 12% / 18%)

#### खास अवधि के लिए कुछ मामलों में जीएसटी रियायत :-

- 1-7-2017 से 30-9-2019 की अवधि के लिए मछुआरों को छूट। यह छूट व्याख्यात्मक मुद्दों के मद्देनजर कर योग्यता के संबंध में संदेह होने के कारण दी गई है। हालांकि, इस अवधि के दौरान संग्रह किए जाने वाले किसी भी कर को जमा कराना होगा।
- 1-7-2017 से 31-12-2018 तक की अवधि के लिए दौरान चरखी, पहियों और अन्य भागों (शीर्षक 8483 के तहत) और और कृषि मशीनरी के उपकरणों पर 12% जीएसटी।

डीजल के मामले में 1500 सीसी इंजन क्षमता और पेट्रोल के मामले में 1200 सीसी इंजन क्षमता के यात्री वाहन जो 4000 मिमी से अधिक लम्बा न हो और जिसे 9 व्यक्तियों को ले जाने के लिए डिज़ाइन किया गया है, पर पेट्रोल के लिए 1% डीजल के लिए 3% मुआवजा उपकर। परिषद ने इन विशेषताओं (लंबाई और इंजन क्षमता) के साथ लेकिन 10

व्यक्तियों से अधिक लेकिन 13 व्यक्तियों तक को ले जाने के लिए डिज़ाइन किये गये वाहनों के लिए समान मुआवजा उपकर दर की सिफारिश की है । (वर्तमान में इन वाहनों पर मुआवजा उपकर की दर 15% है ।)

**अन्य बदलाव :**

- एयरेटेड पेय विनिर्माताओं को कंपोजीशन स्कीम से बाहर रखा जाएगा ।
- पेट्रोलियम परिचालन के लिए निर्दिष्ट वस्तुओं के निपटान के समय लेनदेन मूल्य पर 18% की दर से जीएसटी का भुगतान करने का विकल्प (जिस पर मूल आपूर्ति के समय 5% की रियायती जीएसटी दर का भुगतान किया गया था) बशर्ते कि माल निदेशक द्वारा प्रमाणित हो सामान्य हाइड्रोकार्बन (डीजीएच) गैर-सेवा के रूप में ।
- तंबाकू उत्पादों पर मुआवजा उपकर के रिफंड पर प्रतिबंध (विपरीत शुल्क ढांचे के मामले में)
- विदेशी एयरलाइनों द्वारा अपने विमान की मरम्मत के लिए अस्थायी रूप से आयातित अतिरिक्त पुर्जों पर रियायत की अनुमति के लिए तौर-तरीकों की सिफारिश, जबकि भारत में नागर विमानन पर शिकागो कन्वेंशन के संदर्भ में पारगमन में ।

**जीएसटी परिषद द्वारा कुछ वस्तुओं के संदर्भ में जीएसटी दर को लागू करने के संबंध में स्पष्टीकरण :**

- नमी हटाने के लिए फलीदार सब्जियाँ (चना और मसूर) को महज गर्म करने अथवा उसे नरम करने और पफ करने या छिलका हटाने के लिए और किसी भी अन्य सामग्री (नमक, तेल आदि) से प्रसंस्करण न करने को एचएस कोड 0713 के तहत वर्गीकृत किया जाएगा ।
- एचएस कोड 8424 के तहत आने वाले सभी 'मैकेनिकल स्प्रेयर' पर जीएसटी दर 12% होगा ।
- सौर ऊर्जा आधारित उपकरणों जैसे सोलर वॉटर हीटर, सोलर स्टीम, जेनरेशन सिस्टम के लिए सोलर इवेक्यूएशन ट्यूब जैसे पुर्जों पर 5% जीएसटी दर लगेगा ।
- चिकित्सा उपकरणों (9018, 9019, 9021 या 9022 के अंतर्गत आने वाले) के विशेष पुर्जों एवं एसेसरीज पर जीएसटी दर 12% होगा ।
- बादाम दूध को एचएस कोड 22029990 के तहत वर्गीकृत किया गया है और इस पर 18% जीएसटी दर लगेगा ।
- नौसेना के लिए आयातित भंडार को आईजीएसटी से छूट मिलेगी ।



दरों में बदलाव 01 अक्टूबर 2019 से प्रभावी होगा ।

(यह विज्ञप्ति जीएसटी परिषद के निर्णय को सरल भाषा में आसानी से समझने के लिए है, इसे राजपत्र अधिसूचना/परिपत्रों के माध्यम से प्रभावी किया जाएगा, जो कानून की ताकत होगी।)



## **(87) GST Rate on Services as Recommended by The GST Council in its 37th Meeting**

Press Information Bureau  
Government of India, Ministry of Finance

20-September-2019, 10:04 PM

The 37th GST Council met in Goa today under the Chairmanship of Union Finance & Corporate Affairs Minister Smt Nirmala Sitharaman . The meeting was also attended by Union Minister of State for Finance & Corporate Affairs Shri Anurag Thakur besides Chief Minister of Goa Shri PramodSawant, Finance Ministers of States & UTs and seniors officers of the Ministry of Finance.

GST Council took following decisions relating to changes in GST rates, ITC eligibility criteria, exemptions and clarifications on connected issues.

### **(A) EXEMPTIONS / CHANGES IN GST RATES / ITC ELIGIBILITY CRITERIA:**

#### **Rate reduction sector wise:**

#### **Hospitality and tourism:**

- To reduce the rate of GST on hotel accommodation service as below:-
 

Transaction Value per Unit (Rs) per day	GST
Rs 1000 and less	Nil
Rs 1001 to Rs 7500	12%
Rs 7501 and more	18%
- To reduce rate of GST on outdoor catering services other than in premises having daily tariff of unit of accommodation of Rs 7501 from present 18% with ITC to 5% without ITC. The rate shall be mandatory for all kinds of catering. Catering in premises with daily tariff of unit of accommodation is Rs 7501 and above shall remain at 18% with ITC.

**Job work service:**

3. To reduce rate of GST from 5% to 1.5% on supply of job work services in relation to diamonds.
4. To reduce rate of GST from 18% to 12% on supply of machine job work such as in engineering industry, except supply of job work in relation to bus body building which would remain at 18%.

**Exemption sector wise:****Warehousing:**

5. To exempt prospectively services by way of storage or warehousing of cereals, pulses, fruits, nuts and vegetables, spices, copra, sugarcane, jaggery, raw vegetable fibres such as cotton, flax, jute etc., indigo, unmanufactured tobacco, betel leaves, tendu leaves, rice, coffee and tea.

**Transportation:**

6. To increase the validity of conditional exemption of GST on export freight by air or sea by another year, i.e. till 30-9-2020.

**Insurance:**

7. To exempt “BANGLA SHASYA BIMA” (BSB) crop insurance scheme of West Bengal Government.
8. To exempt services of life insurance business provided or agreed to be provided by the Central Armed Paramilitary Forces (under Ministry of Home Affairs) Group Insurance Funds to their members under the respective Group Insurance Schemes of these Central Armed Paramilitary forces.

**Export promotion:**

9. To exempt services provided by an intermediary to a supplier of goods or recipient of goods when both the supplier and recipient are located outside the taxable territory.
10. To issue a notification under Section 13(13) of IGST Act notifying the place of supply of specified R&D services (such as Integrated discovery and development, Evaluation of the efficacy of new chemical/ biological entities in animal models of disease, Evaluation of biological activity of novel chemical/ biological entities in in-vitro assays, Drug metabolism and pharmacokinetics of new chemical entities, Safety Assessment/

Toxicology, Stability Studies, Bio Equivalence and Bio Availability Studies, Clinical trials, Bio analytical studies) provided by Indian pharma companies to foreign service recipients, as the place of effective use and enjoyment of a service i.e. location of the service recipient.

11. To clarify that the place of supply of chip design software R&D services provided by Indian companies to foreign clients by using sample test kits in India is the location of the service recipient and section 13(3)(a) of IGST Act, 2017 is not applicable for determining the place of supply in such cases.

#### **Miscellaneous**

12. To allow the registered authors an option to pay GST on royalty charged from publishers under forward charge and observe regular GST compliance.
13. To notify grant of liquor licence by State Governments against payment of license fee as a “no supply” to remove implementational ambiguity on the subject.
14. To exempt services related to FIFA Under-17 Women’s World Cup 2020 similar to existing exemption given to FIFA U17 World Cup 2017.

#### **(B) RATIONALIZATION/ TRADE FACILITATION MEASURES:**

15. To allow payment of GST on securities lending service under reverse charge mechanism (RCM) at the merit rate of 18% and to clarify that GST on securities lending service for period prior to RCM period shall be paid on forward charge basis. IGST shall be payable on supply of these services and in cases where CGST/SGST/UTGST have been paid, such taxpayers will not be required to pay tax again.
16. To allow RCM to suppliers paying GST @ 5% on renting of vehicles, from registered person other than body corporate (LLP, proprietorship) when services provided to body corporate entities.

#### **(C) CLARIFICATIONS:**

17. To clarify the scope of the entry ‘services of exploration, mining or drilling of petroleum crude or natural gas or both’.
18. To clarify taxability of Passenger Service Fee (PSF) and User Development Fee (UDF) levied by airport operators.

Note: It is proposed to issue notifications giving effect to these recommendations of the Council on 1st October, 2019.

*[This note presents the decision of the GST Council in simple language for easy understanding which would be given effect to through Gazette notifications/ circulars which shall have force of law.]*



## (88) जीएसटी परिषद की 37वीं बैठक में सेवाओं के लिए अनुशंसित जीएसटी दर

पत्र सूचना कार्यालय, भारत सरकार, वित्त मंत्रालय

20 सितम्बर, 2019, 10:04 पीएम

केंद्रीय वित्त और कॉरपोरेट मामलों की मंत्री श्रीमती निर्मला सीतारमण की अध्यक्षता में आज जीएसटी परिषद की 37वीं बैठक गोवा में हुई। इस बैठक में केंद्रीय वित्त और कॉरपोरेट मामलों के राज्य मंत्री श्री अनुराग ठाकुर के अलावा गोवा के मुख्यमंत्री श्री प्रमोद सावंत, राज्यों एवं केन्द्र शासित प्रदेशों के वित्त मंत्रियों और वित्त मंत्रालय के वरिष्ठ अधिकारियों ने भाग लिया।

जीएसटी परिषद ने दरों में बदलाव, आईटीसी पात्रता मानदंड, छूट और इनसे जुड़े मुद्दों पर स्पष्टीकरण से संबंधित फैसले लिए।

(ए) छूट/जीएसटी दरों में परिवर्तन/आईटीसी पात्रता मानदंड :

क्षेत्रवार दर में कमी :

आतिथ्य सेवा और पर्यटन :

1. होटलों के कमरों के किराये पर जीएसटी दर को कम किया गया है जो निम्नलिखित है:-

प्रति यूनिट दैनिक किराया (रु.)	जीएसटी
1000 रुपये और उससे कम	शून्य
1001 रुपये से 7500 रु तक	12%
7501 रुपये और उससे अधिक	18%

जीएसटी की दर, परिसर के अलावा आउटडोर केटरिंग सेवाओं पर जिसमें ठहरने का दैनिक किराया 7501 रुपये प्रति यूनिट है, को कम करके 18% (आईटीसी के साथ) से घटाकर 5% (आईटीसी के बिना) किया गया है। सभी प्रकार के केटरिंग के लिए यह दर अनिवार्य होगी। 7501 रुपये और इसके अधिक के दैनिक रूम किराये वाले परिसरों में केटरिंग पर जीएसटी दर 18% (आईटीसी के साथ) रहेगी।

**जॉब/वर्क सर्विस:**

हीरा उद्योग से जुड़ी जॉब वर्क सेवाओं की आपूर्ति पर जीएसटी की दर को 5% से घटाकर 1.5% कर की गई है।

इंजीनियरिंग उद्योग क्षेत्र में मशीन जॉब वर्क की आपूर्ति पर जीएसटी दर को 18% से घटाकर 12% करना, लेकिन बसों की बॉडी बनाने से जुड़े जॉब वर्क की आपूर्ति पर जीएसटी दर 18% ही रहेगी।

**छूट क्षेत्र वार :****भण्डारण :**

अनाज, दालें, फल, नट्स और सब्जियां, मसाले, गरी, गन्ना, गुड़, कच्ची सब्जी के रेशे जैसे कपास, सन, जूट आदि, इंडिगो, अन-उत्पादित तम्बाकू, बीड़ी पत्ता, तेंदू पत्ता, चावल, कॉफी और चाय भंडारण या भंडारण के माध्यम से भावी सेवाओं को छूट देना।

**परिवहन :**

हवाई या समुद्री मार्ग द्वारा निर्यातित माल पर जीएसटी की सशर्त छूट की वैधता अवधि को एक वर्ष और अर्थात् 30 सितंबर 2020 तक बढ़ाया जाना।

**बीमा :**

पश्चिम बंगाल सरकार की फसल बीमा योजना “बंगला शस्य बीमा” (बीएसबी) को जीएसटी से छूट देना।

गृह मंत्रालय के तहत आने वाले केंद्रीय सशस्त्र अर्धसैनिक बलों के सदस्यों को उनके बलों द्वारा प्रदान की जाने वाली सामूहिक जीवन बीमा योजना या ऐसी अन्य जीवन बीमा योजनाएं जिन्हें देने पर सहमति बनी हो को जीएसटी से छूट प्रदान करना।

**निर्यात प्रोत्साहन :**

आपूर्तिकर्ता और प्राप्तकर्ता दोनों के कर योग्य क्षेत्र के बाहर स्थित होने की स्थिति में किसी मध्यस्थ द्वारा सामानों की आपूर्तिकर्ता करने वालों की सेवाओं को छूट देना।

आईजीएसटी अधिनियम की धारा 13 (13) के तहत एक अधिसूचना जारी करना, जिसके तहत विदेशी सेवा प्राप्त कर्ताओं को भारतीय फार्मा कंपनियों द्वारा मुहैया कराई गई निर्दिष्ट अनुसंधान और विकास सेवाओं (जैसे कि एकीकृत खोज और विकास, बीमार पशुओं पर रासायनिक/जैविक घटकों के प्रभाव का आकलन, इन-विट्रो एसेज में अभिनव रासायनिक और जैविक घटकों के जैविक प्रभाव का आकलन, नये रासायनिक घटकों के फार्माकोकाइनेटिक्स और ड्रग मेटाबोलिज्म, स्थिरता संबंधी अध्ययन, जैव समतुल्यता एवं जैव उपलब्धता संबंधी



अध्ययन, क्लिनिकल परीक्षण, जैव विश्लेषणात्मक अध्ययन) के आपूर्ति स्थल को सेवा के प्रभावकारी उपयोग के स्थल अर्थात् सेवा प्राप्तकर्ता के स्थान के रूप में अधिसूचित किया जाएगा।

यह स्पष्ट करना कि भारत में नमूना परीक्षण किट का उपयोग करके भारतीय कंपनियों द्वारा विदेशी ग्राहकों को उपलब्ध कराई गई चिप डिजाइन सॉफ्टवेयर आरएंडडी सेवाओं की आपूर्ति का स्थान ही सेवा प्राप्तकर्ता का स्थान है और आईजीएसटी अधिनियम, 2017 की धारा 13(3)(ए) इस तरह के मामलों में आपूर्ति स्थल को निर्धारित करने पर लागू नहीं होती है।

#### विविध :

पंजीकृत लेखकों को फॉरवर्ड चार्ज के तहत प्रकाशकों से वसूल की जाने वाली रॉयल्टी पर जीएसटी का भुगतान करने का विकल्प देने और नियमित जीएसटी अनुपालन का करने का विकल्प प्रदान करना।

लाइसेंस शुल्क के भुगतान के एवज में राज्य सरकारों द्वारा शराब लाइसेंस देने के विषय पर कार्यान्वयन संबंधी अस्पष्टता को दूर करना।

फीफा अंडर-17 विश्व कप 2017 को दी गई मौजूदा छूट के समान ही फीफा अंडर -17 महिला विश्व कप 2020 से संबंधित सेवाओं को छूट प्रदान करना।

#### (बी) व्यापार सुविधाओं को युक्तिसंगत बनाना

18% की मेरिट दर पर रिवर्स चार्ज मैकेनिज्म (आरसीएम) के तहत जीएसटीएन सिन्क्रोरीटीज लेंडिंग सेवा के भुगतान की अनुमति देने के लिए और यह स्पष्ट करने के लिए कि आरसीएम अवधि से पहले की अवधि के लिए प्रतिभूति उधार सेवा पर जीएसटी फॉरवर्ड चार्ज के आधार पर भुगतान किया जाएगा। इन सेवाओं की आपूर्ति पर आईजीएसटी देय होगा और ऐसे मामलों में जहां सीजीएसटी/एसजीएसटी/यूटीजीएसटी का भुगतान किया गया है, ऐसे करदाताओं को फिर से कर का भुगतान करने की आवश्यकता नहीं होगी।

आरसीएम को शरीर कॉर्पोरेट (एलएलपी, प्रोपराइटरशिप) के अलावा पंजीकृत व्यक्ति से वाहनों के किराए पर जीएसटी @ 5% का भुगतान करने की अनुमति देने के लिए जब बॉडी कॉर्पोरेट संस्थाओं को सेवाएं प्रदान की जाती हैं।

#### (सी) विवरण :

पेट्रोलियम क्रूड या प्राकृतिक गैस या दोनों की खोज, खनन या ड्रिलिंग की प्रविष्टि expl सेवाओं के दायरे को स्पष्ट करने के लिए।

हवाई अड्डे के संचालकों द्वारा लगाए गए यात्री सेवा शुल्क (पीएसएफ) और उपयोगकर्ता विकास शुल्क (यूडीएफ) की कराधान को स्पष्ट करने के लिए।

नोट : यह सी की इन सिफारिशों को प्रभावी करने के लिए अधिसूचना जारी करने का प्रस्ताव है ।



## **(89) Recommendations of GST council related to law & procedure**

Press Information Bureau  
Government of India, Ministry of Finance

20-September-2019, 10:08 PM

The 37th GST Council met in Goa today under the Chairmanship of Union Finance & Corporate Affairs Minister Smt Nirmala Sitharaman . The meeting was also attended by Union Minister of State for Finance & Corporate Affairs Shri Anurag Thakur besides Chief Minister of Goa Shri Pramod Sawant, Finance Ministers of States & UTs and seniors officers of the Ministry of Finance .

The GST Council, in its meeting recommended the following Law & Procedure related changes :

1. Relaxation in filing of annual returns for MSMEs for **FY 2017-18** and **FY 2018-19** as under:
  - a. waiver of the requirement of filing **FORM GSTR-9A** for Composition Taxpayers for the said tax periods; and
  - b. filing of **FORM GSTR-9** for those taxpayers who (are required to file the said return but) have aggregate turnover up to Rs. 2 crores made optional for the said tax periods.
2. A Committee of Officers to be constituted to examine the simplification of Forms for Annual Return and reconciliation statement.
3. Extension of last date for filing of appeals against orders of Appellate Authority before the GST Appellate Tribunal as the Appellate Tribunals are yet not functional.
4. In order to nudge taxpayers to timely file their statement of outward supplies, imposition of restrictions on availment of input tax credit by the recipients in cases where details of outward supplies are not furnished by the suppliers in the statement under section 37 of the CGST Act, 2017.

5. New return system now to be introduced from April, 2020 (earlier proposed from October, 2019), in order to give ample opportunity to taxpayers as well as the system to adapt and accordingly specifying the due date for furnishing of return in **FORM GSTR-3B** and details of outward supplies in **FORM GSTR-1** for the period October, 2019 - March, 2020.
6. Issuance of circulars for uniformity in application of law across all jurisdictions:
  - a. procedure to claim refund in **FORM GST RFD-01A** subsequent to favourable order in appeal or any other forum;
  - b. eligibility to file a refund application in **FORM GST RFD-01A** for a period and category under which a NIL refund application has already been filed; and
  - c. clarification regarding supply of Information Technology enabled Services (ITeS services) (in supersession of Circular No. 107/26/2019-GST dated 18-7-2019) being made on own account or as intermediary.
7. Rescinding of Circular No.105/24/2019-GST dated 28-6-2019, *ab-initio*, which was issued in respect of post-sales discount.
8. Suitable amendments in CGST Act, UTGST Act, and the corresponding SGST Acts in view of creation of UTs of Jammu & Kashmir and Ladakh.
9. Integrated refund system with disbursal by single authority to be introduced from 24th September, 2019.
10. In principle decision to link Aadhar with registration of taxpayers under GST and examine the possibility of making Aadhar mandatory for claiming refunds.
11. In order to tackle the menace of fake invoices and fraudulent refunds, in principle decision to prescribe reasonable restrictions on passing of credit by risky taxpayers including risky new taxpayers.

**Note: The recommendations of the GST Council have been presented in this release in simple language only for immediate information of all stakeholders. The same would be given effect through relevant Circulars/Notifications which alone shall have the force of law.**



## (90) कानून एवं प्रक्रिया संबंधी जीएसटी परिषद की सिफारिशें

पत्र सूचना कार्यालय, भारत सरकार, वित्त मंत्रालय

20 सितम्बर, 2019, 10:08 पीएम

केंद्रीय वित्त एवं कॉरपोरेट मामलों की मंत्री श्रीमती निर्मला सीतारमण की अध्यक्षता में आज जीएसटी परिषद की 37वीं बैठक गोवा में हुई। इस बैठक में केंद्रीय वित्त एवं कॉरपोरेट मामलों के राज्य मंत्री श्री अनुराग ठाकुर के अलावा गोवा के मुख्यमंत्री श्री प्रमोद सावंत, राज्यों और केन्द्र शासित प्रदेशों के वित्त मंत्री और वित्त मंत्रालय के वरिष्ठ अधिकारी भी उपस्थित थे।

जीएसटी परिषद ने अपनी इस बैठक में कानून एवं प्रक्रिया संबंधी निम्नलिखित बदलावों की सिफारिश की :

1. एमएसएमई के लिए वित्त वर्ष 2017-18 और वित्त वर्ष 2018-19 के लिए वार्षिक रिटर्न दाखिल करने में छूट इस प्रकार होगी :
  - उक्त कर अवधि के लिए कम्पोजिशन करदाताओं के लिए फॉर्म जीएसटीआर-9ए दाखिल करने की आवश्यकता में छूट,
  - कुल मिलाकर दो करोड़ रुपये से अधिक कुल कारोबार वाले करदाताओं के लिए फॉर्म जीएसटीआर-9 (दाखिल करना अनिवार्य होगा लेकिन) उक्त अवधि के लिए वैकल्पिक होगा।
2. वार्षिक रिटर्न और सुलह बयान संबंधी फॉर्म के सरलीकरण की जांच के लिए अधिकारियों की एक समिति गठित की जाएगी।
3. जीएसटी अपीलीय ट्रिब्यूनल के समक्ष अपीलीय अधिकारी के आदेशों के खिलाफ अपील दायर करने की अंतिम तिथि में विस्तार क्योंकि अपीलीय ट्रिब्यूनल फिलहाल काम नहीं कर रहा है।
4. करदाताओं को बाहरी आपूर्ति के संबंध में अपने बयान समय पर दर्ज करने के लिए प्रोत्साहित करने के उद्देश्य से सीजीएसटी अधिनियम 2017 की धारा 37 के प्रावधानों के अनुरूप आपूर्तिकर्ताओं द्वारा इनपुट दर्ज नहीं किए जाने के मामलों में प्राप्तकर्ताओं द्वारा इनपुट टैक्स क्रेडिट का लाभ उठाने पर प्रतिबंध लगाने का आदेश दिया गया है।
5. रिटर्न दाखिल करने की नई व्यवस्था अप्रैल 2020 (इससे पहले अक्टूबर 2019 से लागू करने का प्रस्ताव था) से लागू होगी। इससे अक्टूबर 2019 से मार्च, 2020 की अवधि के लिए करदाताओं को फॉर्म जीएसटीआर-3बी में रिटर्न प्रस्तुत करने और

**फॉर्म जीएसटीआर-1** में बाहरी आपूर्ति की जानकारी देने और सिस्टम को उसे स्वीकार करने एवं उसके अनुरूप अंतिम तिथि निर्धारित करने के लिए पर्याप्त अवसर मिलेगा।

6. सभी अदालतों में कानून के तहत आवेदन की एकरूपता के लिए परिपत्र जारी किया जाएगा:
  - अपील अथवा किसी अन्य फोरम में अनुकूल आदेश के बाद **फॉर्म जीएसटी आरएफडी-01ए** में रिफंड का दावा करने की प्रक्रिया,
  - उस अवधि एवं श्रेणी के लिए **फॉर्म जीएसटी आरएफडी-01ए** में रिफंड आवेदन दायर करने की पात्रता जिसके तहत शून्य रिफंड के लिए आवेदन पहले ही दायर किया जा चुका है,
  - स्वयं अथवा बिचौलिये के खाते के संदर्भ में सूचना प्रौद्योगिकी समर्थ सेवाओं (आईटीएस सेवाओं) (परिपत्र संख्या 107/26/2019-जीएसटी दिनांक 18-7-2019 के संदर्भ में) की आपूर्ति के बारे में स्पष्टीकरण तैयार किया जा रहा है।
7. परिपत्र संख्या 105/24/2019-जीएसटी दिनांक 28-6-2019, को समाप्त करने के लिए अब-इनिटियो जिसे बिक्री के बाद छूट के संबंध में जारी किया गया था।
8. जम्मू-कश्मीर एवं लद्दाख को केन्द्र शासित प्रदेश बनाए जाने के संदर्भ में सीजीएसटी अधिनियम, यूटीसीजीएसटी अधिनियम और संबंधित एसजीएसटी अधिनियमों में उपयुक्त संशोधन।
9. 24 सितंबर, 2019 से एकल प्राधिकरण द्वारा संवितरण के साथ एकीकृत रिफंड प्रणाली।
10. जीएसटी के तहत करदाताओं के पंजीकरण के साथ आधार को जोड़ने और रिफंड का दावा करने के लिए आधार को अनिवार्य बनाए जाने की संभावनाएं तलाशने का सैद्धांतिक निर्णय।
11. नकली इनवॉइस और फर्जी रिफंड के खतरे से निपटने के लिए जोखिम भरे नए करदाताओं सहित जोखिमपूर्ण करदाताओं द्वारा क्रेडिट हस्तांतरण पर उचित प्रतिबंध लगाने का सिद्धांत निर्णय।

नोट: सभी हितधारकों को तत्काल जानकारी देने के उद्देश्य से इस विज्ञप्ति में जीएसटी परिषद की सिफारिशों को सरल शब्दों में प्रस्तुत किया गया है। इन्हें संबंधित परिपत्र/अधिसूचना के माध्यम से प्रभावी किया जाएगा जो अपने आप में कानून की ताकत होगी।





**(91) Notification u/s 164 of CGST Act, 2017 appointing 24-9-2019 the date from which the provisions of rules 10, 11, 12 and 26 of the Central Goods and Services Tax (Fourth Amendment) Rules, 2019 come into force**

**No. 42/2019-Central Tax**

**G.S.R. 683(E). New Delhi, the 24th September, 2019** - In exercise of the powers conferred by section 164 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government hereby appoints the 24th day of September, 2019, as the date on which the provisions of rules 10, 11, 12 and 26 of the Central Goods and Services Tax (Fourth Amendment) Rules, 2019 [Notification No. 31/2019–Central Tax, dated the 28th June, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 457(E), dated the 28th June, 2019], shall come into force.

*[Published in the Gazette of India dated 24-9-2019]*



**(92) Notification u/s 10(1) of CGST Act, 2017 amending No. 14/2019-CT dated 7-3-2019 so as to exclude manufacturers of aerated waters from the purview of composition scheme**

**No. 43/2019-Central Tax**

**G.S.R. 729(E). New Delhi, the 30th September, 2019** - In exercise of the powers conferred under the proviso to the sub-section (1) of section 10 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.14/2019-Central Tax, dated the 7th March, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 196(E), dated the 7th March, 2019, namely:-

In the said notification, in the table, after Sl. No. 2 and the entries thereto, the following Sl. No. and entries shall be inserted, namely: -

“2A.	2202 10 10	Aerated Water”.
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**2.** This notification shall come into force on the 1st day of October, 2019.

*[Published in the Gazette of India dated 30-9-2019]*



**(93) Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019.**  
**Circular No. 1072/05/2019-CX**

F. No. 267/78/2019/CX-8-Pt.III

Government of India, Ministry of Finance, Department of Revenue  
Central Board of Indirect Taxes and Customs,

Dated, the 25th September, 2019

**Subject:** Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019-reg

I am directed to invite your attention to Board's Circular No. 1071/4/2019-CX.8 dated 27th August, 2019 on the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019. Subsequently, the Board has received references from field formations as well as from the trade seeking certain clarifications on the Scheme.

2. The references received by the Board have been examined, and the issues raised therein are clarified in the context of the various provisions of the Finance (No.2) Act, 2019 and Rules made thereunder, as follows:

- (i) Only the persons who are eligible in terms of Section 125 can file a declaration under the Scheme. The eligibility conditions are captured in Form SVLDRS-1 (Sr. No. 8). The system automatically disallows persons who are not eligible from filing a declaration. However, there is a possibility that such ineligible persons may still make a declaration by selecting an incorrect response. For instance, under Sr. No. 8.1, the person making a declaration has to indicate whether he/she has been convicted for an offence for the matter for which the declaration is being made. If, the answer is 'Yes', then the person is ineligible and is not allowed to proceed further by the system. However, such person is able to file a declaration if he/she incorrectly indicates 'No' as the answer even though he/she has been convicted. Such declarations are void and do not merit consideration under the Scheme. Such persons may be informed of their ineligibility through a letter.
- (ii) Section 124(1)(a) outlines the relief available in the case of one or more appeals arising out of a Show Cause Notice. Such an appeal may have been filed either by the party or by the department. Further, Section 127(6) provides for deemed withdrawal of such appeals filed by a declarant pending at a forum other than the Supreme Court or High Court. It is clarified that such deemed withdrawal will also be applicable for departmental appeals. Further, where a departmental appeal,

reference or writ petition is pending before the Supreme Court or High Court, the department will file an application for withdrawal of such appeal, reference or writ petition after issuance of the discharge certificate. Similarly, if prosecution has already been launched, the procedure as laid down in Circular No. 1009/16/2015-CX dated 23-10-2015 should be followed for withdrawal of prosecution after issuance of discharge certificate.

- (iii) One of the category of cases for which a declaration can be made under the Scheme is where the declarant has filed a return but not paid duty. It is possible that a taxpayer may not have paid duty in case of multiple returns. It may be noted that Rule 3 of the Sabka Vishwas (Legacy Dispute Resolution) Scheme Rules, 2019 provides that a separate declaration shall be filed for each case. Further, in terms of the Explanation to Rule 3, in case of arrears, a case means 'an amount in arrears'. Section 121(c)(iii) defines an "amount in arrears" as the duty recoverable on account of the declarant having filed a return but not paying duty. Since the amount in arrears pertains to a return, a separate declaration will need to be filed for each such return.
- (iv) Section 121(c) defines an amount in arrears as the amount of duty which is recoverable as arrears of duty. Further, Section 123 defines 'tax dues' in respect of arrears as the amount which is due in arrears. In other words, tax dues are the amount of duty which is outstanding against the declarant. This is the net amount after deducting the dues that he has already paid. Such payment may be in the form of pre-deposits appropriated or paid subsequently by the taxpayer voluntarily against the outstanding amount. It is clarified that the relief available under Section 124(1)(c) will be applied to the net outstanding amount so arrived at. It may be noted that in respect of all other categories, any money paid before its appropriation is in the nature of a deposit only. Hence, in respect of declarations made under these other categories, the relief will be applied to the outstanding amount and, only thereafter the pre-deposits/deposits [Section 124(2)] shall be adjusted. The same is illustrated as follows:
  - (a) Taxpayer has outstanding arrears of confirmed duty demand of Rs. 1 crore and he has already paid Rs. 60 lakhs. So, the amount of tax dues is Rs 40 lakhs. After applying applicable relief @ 60%, the amount payable under the Scheme is Rs 16 lakhs.

- (b) Taxpayer has outstanding arrears of confirmed duty demand of Rs 1 crore apart from Rs 20 lakh penalty and interest as applicable. He has already paid Rs 1 cr towards duty. So, the amount of tax dues is zero, and the amount payable under the Scheme is zero.
- (v) It may so happen that on being pointed out by audit etc, the taxpayer may in some cases deposit the duty without interest. In such cases, a Show Cause Notice is generally issued for appropriating the duty deposited and demanding the applicable interest. It is clarified that such cases are covered under the Scheme. However, in no case will a refund of the duty paid be made to the taxpayer.
- (vi) Section 125(1)(f) bars a person from making voluntary disclosure after being subjected to an enquiry or investigation or audit. Further, what constitutes an enquiry or investigation or audit has also been defined [Sections 121(g) and 121(m)]. A doubt has been expressed as to whether benefit of the Scheme would be available in cases where documents like balance sheet, profit and loss account etc. are called for by department, while quoting authority of Section 14 of the Central Excise Act, 1944 etc. It is clarified that the Designated Committee concerned may take a view on merit, taking into account the facts and circumstances of each case as to whether the provisions of Section 125(1)(f) are attracted in such cases.
- (vii) Section 125(1)(a) excludes cases which are under appeal and where final hearing has taken place on or before 30th June, 2019 from the purview of the Scheme. Similar exclusion has been made applicable, mutatis mutandis, under Section 125(1)(c) to cases under adjudication. It is clarified that such cases, however, may still fall under the arrears category once the appellate or adjudication order, as the case may be, is passed and has attained finality or appeal period is over, and other requirements under the Scheme are fulfilled.
- (viii) Section 121(c) (i) and (ii) define “an amount in arrears” as the amount of duty which is recoverable, inter alia, on account of no appeal having been filed by the declarant against an order or order in appeal before the expiry of the period of time for filing of appeal or the order in appeal having attained finality. There may be situations where the taxpayer does not want to file an appeal even though the time period for filing of appeal is not over. It is clarified that in such cases, the taxpayer can file a declaration under the Scheme provided he gives in writing to the

department that he will not file an appeal. This declaration shall be binding on the taxpayer.

3. Difficulty if any, in implementation of this Circular may be brought to the notice of the Board.

(Navraj Goyal) OSD (CX)



**(94) Notification u/s 9(1) and 15(5) of CGST Act, 2017 amending No. 1/2017- Central Tax (Rate) dated 28-6-2017 so as to specify effective CGST rates for specified goods, to give effect to the recommendations of the GST Council in its 37th meeting dated 20-9-2019.**

**No. 14/2019-Central Tax (Rate)**

**G.S.R.709(E). New Delhi, the 30th September, 2019** - In exercise of the powers conferred by sub-section (1) of section 9 and sub-section (5) of section 15 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.1/2017-Central Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 673(E), dated the 28th June, 2017, namely:-

In the said notification, -

**A. in Schedule I – 2.5%, -**

- (i) S.No. 33A and the entries relating thereto shall be omitted;
- (ii) against S.No. 164, in the entry in column (3), after item ii, the following item shall be inserted, namely: -  
“iii. Marine Fuel 0.5% (FO)”;
- (iii) against S. No. 224, for the entry in column (2), the entry “63 [other than 6305 32 00, 6305 33 00, 6309], shall be substituted;
- (iv) after S. No. 234B and the entries relating thereto, the following S. No. and entries shall be inserted, namely: -

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“234C	8509	Wet grinder consisting of stone as grinder”;
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- (v) S.Nos. 235 to 242 and the entries related thereto, shall be omitted;

**B. in Schedule II - 6%, -**

- (i) after S. No. 80A and entries relating thereto, the following S. No. and entries shall be inserted namely: -

“80AA	3923 or 6305	Woven and non-woven bags and sacks of polyethylene or polypropylene strips or the like, whether or not laminated, of a kind used for packing of goods”;
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- (ii) S. No. 201A and the entries relating thereto shall be omitted;

- (iii) after S. No. 205 and the entries relating thereto, the following S. Nos. and entries shall be inserted, namely: -

“205A	8601	Rail locomotives powered from an external source of electricity or by electric accumulators
205B	8602	Other rail locomotives; locomotive tenders; such as Diesel-electric locomotives, Steam locomotives and tenders thereof
205C	8603	Self-propelled railway or tramway coaches, vans and trucks, other than those of heading 8604
205D	8604	Railway or tramway maintenance or service vehicles, whether or not self-propelled (for example, work shops, cranes, ballast tampers, track liners, testing coaches and track inspection vehicles)
205E	8605	Railway or tramway passenger coaches, not self-propelled; luggage vans, post office coaches and other special purpose railway or tramway coaches, not self-propelled (excluding those of heading 8604)
205F	8606	Railway or tramway goods vans and wagons, not self-propelled
205G	8607	Parts of railway or tramway locomotives or rolling-stock; such as Bogies, bissel-bogies, axles and wheels, and parts thereof 205H 8608 Railway or tramway track fixtures and fittings; mechanical (including electro-mechanical) signalling, safety or traffic control equipment for railways, tramways,



roads, inland waterways, parking facilities, port installations or airfields; parts of the foregoing”;

- (iv) against S. No. 231B, in column (3), after the words “Slide fasteners”, the words “and parts thereof”, shall be inserted;

**C. in Schedule III - 9%, -**

- (i) against S. No. 24A, in column (3), after the words “coconut water”, the words “and caffeinated beverages” shall be inserted;
- (ii) against S. No. 108, in column (3), after the words “other closures, of plastics”, the brackets, words, letters and figures “(except the items covered in Sl. No. 80AA in Schedule II)”, shall be inserted;
- (iii) in S. No. 400, for the entry in column (3), the entry, “Following motor vehicles of length not exceeding 4000 mm, namely: -
- (a) Petrol, Liquefied petroleum gases (LPG) or compressed natural gas (CNG) driven vehicles of engine capacity not exceeding 1200cc; and
- (b) Diesel driven vehicles of engine capacity not exceeding 1500 cc for persons with orthopedic physical disability, subject to the condition that an officer not below the rank of Deputy Secretary to the Government of India in the Department of Heavy Industries certifies that the said goods shall be used by the persons with orthopedic physical disability in accordance with the guidelines issued by the said Department”, shall be substituted;

- (iv) S. No. 446 and the entries relating thereto shall be omitted;

**D. in Schedule IV – 14%, -**

- (i) after S. No. 12 and the entries relating thereto, the following S. No. and the entries shall be inserted, namely: -

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“12A.	22029990	Caffeinated Beverages”;
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**E. in Schedule V – 1.5%, -**

- (i) S. No. 3 and the entries relating thereto shall be omitted;
- (ii) S. No. 4 and the entries relating thereto shall be omitted;

**F. in Schedule VI – 0.125%, -**

- (i) in S. No. 2, for the entry in column (3), the entry, “precious stones (other

than diamonds) and semi-precious stones, whether or not worked or graded but not strung, mounted or set; ungraded precious stones (other than diamonds) and semi-precious stones, temporarily strung for convenience of transport”, shall be substituted;

- (ii) S. No. 2A and the entries relating thereto shall be omitted;
- (iii) in S. No. 3, for the entry in column (3), the entry, “Synthetic or reconstructed precious or semiprecious stones, whether or not worked or graded but not strung, mounted or set; ungraded synthetic or reconstructed precious or semiprecious stones, temporarily strung for convenience of transport”, shall be substituted;
- (iv) S. No. 4 and the entries relating thereto, shall be omitted;

2. This notification shall come into force on the 1st day of October, 2019.

**Note :** The principal notification No.1/2017-Central Tax (Rate), dt. the 28th June, 2017 was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 673(E), dt. the 28th June, 2017 and last amended by Noti. No. 12/2019-Central Tax (Rate) dated 31st July, 2019 published in the Gazette of India, Extraordinary, Part II, Section 3, sub-section (i) vide number GSR 539(E), dt. the 31st July, 2019.

[Published in the Gazette of India dated 30-9-2019]



**(95) Notification u/s 11(1) of CGST Act, 2017 amending No. 2/2017- Central Tax (Rate) dated 28-6-2017 so as to grant exemption to dried tamarind and cups, plates made of leaves, bark and flowers of plants**

**No. 15/2019-Central Tax (Rate)**

**G.S.R. 712(E). New Delhi, the 30th September, 2019** - In exercise of the powers conferred by sub-sections (1) of section 11 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 2/2017-Central Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 674 (E), dated the 28th June, 2017, namely:-

In the said notification, in the Schedule, -

**2019) No. 16/2019-Central Tax (Rate) dated 30-9-2019 249**

- (i) after S. No. 57 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

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“57A	0813	Tamarind dried”;
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- (ii) after S. No. 114B and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

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“114C	46	Plates and cups made up of all kinds of leaves/ flowers/bark”;
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2. This notification shall come into force on the 1st day of October, 2019.

**Note:** The principal notification No. 2/2017-Central Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 674(E), dated the 28th June, 2017 and last amended *vide* Notification No. 25/2018 Central Tax (Rate) dated 31st December, 2018 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number GSR 1262 (E), dated the, 31st December, 2018.

[Published in the Gazette of India dated 30-9-2019]



**(96) Notification u/s 11(1) of CGST Act, 2017 amending notification No 3/2017- Central Tax (Rate) dated 28-6-2017 so as to extend concessional CGST rates to specified projects under HELP/OALP, and other changes**

**No. 16/2019-Central Tax (Rate)**

**G.S.R. 715(E). New Delhi, the 30th September, 2019** - In exercise of the powers conferred by sub-section (1) of section 11 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following amendments in the notification of the Government of India, in the Ministry of Finance (Department of Revenue), No. 3/2017-Central Tax (Rate), dated the 28th June, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 675(E) dated the 28th June, 2017, namely: -

In the said notification, -

- (i) in the TABLE, against S. No. 1, in column (3), after item (5), the following item shall be inserted, namely: -

“(6) Petroleum operations or coal bed methane operations undertaken under specified contracts under the Hydrocarbon Exploration Licensing Policy (HELP) or Open Acreage Licensing Policy (OALP)”;

- (ii) in the ANNEXURE, against Condition No. 1, in clause (e), the following proviso shall be inserted, namely: -

“**Provided** that where the said goods so supplied are sought to be disposed of in non-serviceable form, after mutilation, the recipient of outward supply or the transferee, as the case may be, may at his option, pay the tax at the rate of 9 per cent. on transaction value of such goods subject to the condition that the recipient of outward supply or the transferee, as the case may be, produces before the Deputy Commissioner of Central tax or the Assistant Commissioner of Central tax or the Deputy Commissioner of State tax or the Assistant Commissioner of State tax, as the case may be, having jurisdiction over the supplier of goods, a certificate from a duly authorised officer of the Directorate General of Hydro Carbons in the Ministry of Petroleum and Natural Gas, Government of India, to the effect that the said goods are nonserviceable and have been mutilated before disposal.”.

2. This notification shall come into force on the 1st day of October, 2019.

[Published in the Gazette of India dated 30-9-2019]



**(97) Notification u/s 11(1) of CGST Act, 2017 amending No. 26/2018-Central Tax (Rate) dated 31-12-2018, so as to exempt CGST on supplies of silver and platinum by nominated agencies to registered persons**

**No. 17/2019-Central Tax (Rate)**

**G.S.R. 718(E). New Delhi, the 30th September, 2019** - In exercise of the powers conferred by sub-section (1) of section 11 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.26/2018-Central Tax (Rate), dated the 31st December, 2018, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 1263 (E), dated the 31st December, 2018, namely:-

In the said notification, -

- (i) for the word “gold”, wherever it occurs, the words, “gold, silver or platinum”, shall be substituted;
- (ii) in the opening paragraph, for the word and figures, “heading 7108”, the word and figures, “Chapter 71”, shall be substituted;
- (iii) in the Explanation, for clause (d), the following clause shall be substituted, namely: -

“(d) “Chapter” means heading as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).”.

2. This notification shall come into force on the 1st day of October, 2019.

[Published in the Gazette of India dated 30-9-2019]



**(98) Notification u/s 9(1), 11(1) and 16(1) of CGST Act, 2017 amending No. 2/2019- Central Tax (Rate) dated 7-3-2019 so as to exclude manufacturers of aerated waters from the purview of composition scheme**

**No. 18/2019-Central Tax (Rate)**

**G.S.R. 721(E). New Delhi, the 30th September, 2019** - In exercise of the powers conferred by sub-section (1) of section 9, sub-section (1) of section 11, sub-section (1) of section 16 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, and on being satisfied that it is necessary in the public interest so to do, hereby makes the following amendments in the notification of the Government of India, in the Ministry of Finance (Department of Revenue) No.02/2019-Central Tax (Rate), dated the 7th March, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 189(E), dated the 7th March, 2019, namely:-

In the said notification, in the Annexure, after Sl. No. 2 and the entries thereto, the following Sl. No. and entries shall be inserted, namely: -

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“2A.	2202 10 10	Aerated Water”.
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2. This notification shall come into force on the 1st day of October, 2019.

**Note :** The principal notification No.2/2019-Central Tax (Rate), dated the 7th March, 2019 was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 189(E), dated the 7th March, 2019 and last amended by Notification No. 9/2019-Central

Tax(Rate) dated 29th March, 2019 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number G.S.R. 268(E), dated the 29th March, 2019.

[Published in the Gazette of India dated 30-9-2019]



**(99) Notification u/s 11(1) of CGST Act, 2017 exempting supply of goods for specified projects under FAO w.e.f. 1-10-2019**

**No.19/2019-Central Tax (Rate)**

**G.S.R. 724(E). New Delhi, the 30th September, 2019** - In exercise of the powers conferred by sub-section (1) of section 11 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby exempts, all the goods supplied to the Food and Agricultural Organisation of the United Nations (FAO) for execution of projects listed below in the Annexure, from whole of the Central Tax leviable thereon under section 9 of the said Act, subject to the condition that an officer not below the rank of Deputy Secretary to the Government of India in the Ministry of Ministry of Agriculture and Farmers Welfare certifies, namely:-

- (i) the quantity and description of the goods; and
- (ii) that the said goods are intended for the purpose of use in execution of said projects.

**ANNEXURE**

- (1) Strengthening Capacities for Nutrition-sensitive Agriculture and Food systems,
- (2) Green Ag: Transforming Indian Agriculture for Global Environment benefits and the conservation of Critical Biodiversity and Forest landscape.

**2.** This notification shall come into force on the 1st day of October, 2019.

[Published in the Gazette of India dated 30-9-2019]





**(100) Notification u/s 9, 11, 15, 16 and 148 of CGST Act, 2017 amending No. 11/2017- Central Tax (Rate) so as to notify CGST rates of various services as recommended by GST Council in its 37th meeting held on 20-9-2019**

**No. 20/2019-Central Tax (Rate)**

**G.S.R. 731(E). New Delhi, the 30th September, 2019** - In exercise of the powers conferred by sub-sections (1), (3) and (4) of section 9, sub-section (1) of section 11, sub-section (5) of section 15, sub-section (1) of section 16 and section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, and on being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India, in the Ministry of Finance (Department of Revenue) No.11/2017- Central Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 690(E), dated the 28th June, 2017, namely:-

In the said notification, -

- (i) in the Table, -
- (a) against serial number 7, for the entries relating thereto in column (3), (4) and (5), the following items and entries shall be substituted, namely,-

(3)	(4)	(5)
“(i) Supply of ‘hotel accommodation’ having value of supply of a unit of accommodation above one thousand rupees but less than or equal to seven thousand five hundred rupees per unit per day or equivalent.	6	-
(ii) Supply of ‘restaurant service’ other than at ‘specified premises’	2.5	Provided that credit of input tax charged on goods and services used in supplying the service has not been taken [Please refer to <i>Explanation</i> no. (iv)]

(iii) Supply of goods, being food or any other article for human consumption or any drink, by the Indian Railways or Indian Railways Catering and Tourism Corporation Ltd. or their licensees, whether in trains or at platforms.	2.5	Provided that credit of input tax charged on goods and services used in supplying the service has not been taken [Please refer to <i>Explanation</i> no. (iv)]
(iv) Supply of 'outdoor catering', at premises other than 'specified premises' provided by any person other than- (a) suppliers providing 'hotel accommodation' at 'specified premises', or (b) suppliers located in 'specified premises'.	2.5	Provided that credit of input tax charged on goods and services used in supplying the service has not been taken [Please refer to <i>Explanation</i> (iv)]
(v) Composite supply of 'outdoor catering' together with renting of premises (including hotel, convention center, club, pandal, shamiana or any other place, specially arranged for organising a function) at premises other than 'specified premises' provided by any person other than- (a) suppliers providing 'hotel accommodation' at 'specified premises', or (b) suppliers located in 'specified premises'.	2.5	Provided that credit of input tax charged on goods and services used in supplying the service has not been taken [Please refer to <i>Explanation</i> (iv)]
(vi) Accommodation, food and beverage services other than (i) to (v) above <i>Explanation:</i> (a) For the removal of doubt, it is hereby clarified that, supplies covered by items (ii), (iii), (iv) and (v) in column (3) shall attract central tax prescribed against them	9	-”;

<p>in column (4) subject to conditions specified against them in column (5), which is a mandatory rate and shall not be levied at the rate as specified under this entry.</p> <p>(b) This entry covers supply of 'restaurant service' at 'specified premises'</p> <p>(c) This entry covers supply of 'hotel accommodation' having value of supply of a unit of accommodation above seven thousand five hundred rupees per unit per day or equivalent.</p> <p>(d) This entry covers supply of 'outdoor catering', provided by suppliers providing 'hotel accommodation' at 'specified premises', or suppliers located in 'specified premises'.</p> <p>(e) This entry covers composite supply of 'outdoor catering' together with renting of premises (including hotel, convention center, club, pandal, shamiana or any other place, specially arranged for organising a function) provided by suppliers providing 'hotel accommodation' at 'specified premises', or suppliers located in 'specified premises'.</p>		
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- (a) against serial number 10, in column (2), after the word "vehicles", the words "with operators" shall be inserted;
- (b) against serial number 10, in column (3), in item (iii), the words "or without" shall be omitted;
- (c) against serial number 15, in column (3), item (iv) and the entries relating thereto in column (4) and (5) shall be omitted;
- (d) against serial number 15, in column (3), in item (vii), the brackets and words ", (iv)" shall be omitted;
- (e) against serial number 17, in column (2), the figures and words " , with

or” shall be omitted;

- (f) against serial number 17, in column (3), item (v) and (vii) and the entries relating thereto in column (4) and (5) shall be omitted;
- (g) against serial number 17, in column (3), for item (viii), the following shall be substituted;

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(3)

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“(viii) Leasing or rental services, without operator, other than (i), (ii), (iii), (iv), (vi), and (vii) above.”

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- (h) against serial number 21, after item (i) in column (3) and the entries relating thereto in columns (3), (4) and (5), the following shall be inserted, namely: -

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(3)	(4)	(5)
“(ia) Other professional, technical and business services relating to exploration, mining or drilling of petroleum crude or natural gas or both	6	-”;

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- (i) against serial number 21, in column (3), in item (ii), for the brackets and words “(i) above”, the brackets and words “(i) and (ia) above” shall be substituted;
- (j) against serial number 24, in column (2), after the numbers “9986”, the brackets, words and figures “(Support services to agriculture, hunting, forestry, fishing, mining and utilities)” shall be inserted;
- (k) against serial number 24, in column (3), in item (ii), for the words “Service of”, the words “Support services to” shall be substituted;
- (l) against serial number 26, in column (3), in item (i), in clause (c), after the words “products”, the figures and words “, other than diamonds,” shall be inserted;
- (m) against serial number 26, in column (3), after item (ia) and the entries relating thereto in columns (3), (4) and (5), the following shall be inserted, namely: -

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(3)	(4)	(5)
“(ib) Services by way of job work in relation to diamonds	0.75	-

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falling under chapter 71 in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975);

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(ic) Services by way of job work in relation to bus body building;	9	-
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(id) Services by way of job work other than (i), (ia), (ib) and (ic) above;	6	-";
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(n) against serial number 26, in column (3), in item (iv), after the brackets, words and figures "(ia)," the brackets, words and figures "(ib), (ic), (id)," shall be inserted;

(i) in the paragraph 2A, the word "registered" shall be omitted;

(ii) in paragraph 4 relating to explanation, after clause (xxxi), the following clauses shall be inserted, namely:-

“(xxxii) ‘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.

(xxxiii) ‘Outdoor catering’ 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, at Exhibition Halls, Events, Conferences, Marriage Halls and other outdoor or indoor functions that are event based and occasional in nature.

(xxxiv) ‘Hotel accommodation’ means supply, by way of accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes including the supply of time share usage rights by way of accommodation.

(xxxv) ‘Declared tariff’ means charges for all amenities provided in the unit of accommodation (given on rent for stay) like furniture, air conditioner, refrigerators or any other amenities, but without excluding any discount offered on the published charges for such unit.

(xxxvi) ‘Specified premises’ means premises providing ‘hotel accommodation’ services having declared tariff of any unit of accommodation

above seven thousand five hundred rupees per unit per day or equivalent.”.

- (iii) in the ‘Annexure: Scheme of Classification of Services’, annexed to the notification, -
- (a) against serial number 119 to 124, in column (4), for the words “with or without”, wherever they occur, the word “with” shall be substituted;
  - (b) against serial number 232 to 240, in column (4), for the words “with or without”, wherever they occur, the word “without” shall be substituted.”.

2. This notification shall come into force with effect from the 1st day of October, 2019.

**Note :** The principal notification No. 11/2017 - Central Tax (Rate), dated the 28th June, 2017 was published in the Gazette of India, Extraordinary, *vide* number G.S.R. 690 (E), dated the 28th June, 2017 and was last amended by notification No. 10/2019-Central Tax (Rate), dated the 10th May, 2019, published *vide* number G.S.R. 354(E), dated the 10th May, 2019.

[Published in the Gazette of India dated 30-9-2019]



**(101) Notification u/s 11(1) of CGST Act, 2017 amending No. 12/2017-Central Tax (Rate) exempting services as recommended by GST Council in its 37th meeting held on 20-9-2019.**

**No. 21/2019-Central Tax (Rate)**

**G.S.R.734(E). New Delhi, the 30th September, 2019** - In exercise of the powers conferred by sub-section (1) of section 11 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India, in the Ministry of Finance (Department of Revenue), No.12/2017- Central Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 691(E), dated the 28th June, 2017, namely:-

In the said notification, -

- (i) in the Table, -
- (a) against serial number 7, in the entry in column (3), for the words and brackets, “twenty lakh rupees (ten lakh rupees in case of a special category state) in the preceding financial year”, the following words, brackets and figures shall be substituted, namely, –
- “such amount in the preceding financial year as makes it eligible for exemption from registration under the Central Goods and Services Tax Act, 2017 (12 of 2017)”;
- (b) after serial number 9A and the entries relating thereto, the following shall be inserted namely: -

(1)	(2)	(3)	(4)	(5)
“9AA	Chapter 99	Services provided by and to Fédération Internationale de Football Association (FIFA) and its subsidiaries directly or indirectly related to any of the events under FIFA U-17 Women's World Cup 2020 to be hosted in India.	Nil	Provided that Director (Sports), Ministry of Youth Affairs and Sports certifies that the services are directly or indirectly related to any of the events under FIFA U-17 Women's World Cup 2020.”;

- (c) against serial number 14, in the entry in column (3), after the word ‘below’, the words ‘or equal to’ shall be inserted;
- (d) against serial number 19A, in the entry in column (5), for the figures “2019”, the figures “2020” shall be substituted;
- (e) against serial number 19B, in the entry in column (5), for the figures “2019”, the figures “2020” shall be substituted;
- (f) after serial number 24A and the entries relating thereto, the following serial number and entries relating thereto shall be inserted, namely: -

(1)	(2)	(3)	(4)	(5)
“24B	Heading 9967	Services by way of storage or warehousing of cereals, pulses,	Nil	Nil”;



	or Heading 9985	fruits, nuts and vegetables, spices, copra, sugarcane, jaggery, raw vegetable fibres such as cotton, flax, jute etc., indigo, unmanufactured tobacco, betel leaves, tendu leaves, coffee and tea.		
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- (g) after serial number 29A and the entries relating thereto, the following serial number and entries shall be inserted, namely: -

(1)	(2)	(3)	(4)	(5)
"29B	Heading 9971 or Heading 9991	Services of life insurance provided or agreed to be provided by the Central Armed Police Forces (under Ministry of Home Affairs) Group Insurance Funds to their members under the Group Insurance Schemes of the concerned Central Armed Police Force.	Nil	Nil";

- (h) against serial number 35, in the entry in column (3), after the entry (q), the entry "(r) Bangla Shasya Bima" shall be inserted;
- (i) against serial number 45, in the entries in column (3), for the words and brackets "twenty lakh rupees (ten lakh rupees in the case of special category states) in the preceding financial year", wherever they occur, the following words, brackets and figures shall be substituted, namely,-  
"such amount in the preceding financial year as makes it eligible for exemption from registration under the Central Goods and Services Tax Act, 2017 (12 of 2017)";
- (j) after serial number 82 and the entries relating thereto, the following shall be inserted, namely: -

(1)	(2)	(3)	(4)	(5)
"82A	Heading 9996	Services by way of right to admission to the events organized under FIFA U-17 Women's World Cup 2020.	Nil	Nil".

2. This notification shall come into force with effect from the 1st day of October, 2019.

**Note:** -The principal notification was published in the Gazette of India, Extraordinary, *vide* notification No. 12/2017-Central Tax (Rate), dated the 28th June, 2017, *vide* number G.S.R. 691 (E), dated the 28th June, 2017 and was last amended by notification No. 13/2019-Central Tax (Rate), dated the 31st July, 2019 *vide* number G.S.R. 540(E), dated the 31st July, 2019.

[Published in the Gazette of India dated 30-9-2019]



**(102) Notification u/s 9(3) of CGST Act, 2017 amending No. 13/2017-Central Tax (Rate) so as to notify services under reverse charge mechanism (RCM) as recommended by GST Council in its 37th meeting held on 20-9-2019**

**No. 22/2019-Central Tax (Rate)**

**G.S.R.737(E). New Delhi, the 30th September, 2019** - In exercise of the powers conferred by sub-section (3) of section 9 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India, in the Ministry of Finance (Department of Revenue), No.13/2017- Central Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 692(E), dated the 28th June, 2017, namely:-

In the said notification, in the Table, -

(iv) for serial number 9 and the entries relating thereto, the following shall be substituted, namely: -

(1)	(2)	(3)	(4)
"9	Supply of services by a music composer, photographer, artist or the like by way of transfer or permitting the use or enjoyment of a copyright covered under clause (a) of sub-Section (1) of section 13 of the Copyright Act, 1957	Music composer, photographer, artist, or the like	Music company, producer or the like, located in the taxable territory. ”;

	relating to original dramatic, musical or artistic works to a music company, producer or the like.		
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- (v) after serial number 9 and the entries relating thereto, the following serial number and entries shall be inserted, namely: -

(1)	(2)	(3)	(4)
"9A	Supply of services by an author by way of transfer or permitting the use or enjoyment of a copyright covered under clause (a) of sub-section (1) of section 13 of the Copyright Act, 1957 relating to original literary works to a publisher.	Author	<p>Publisher located in the taxable territory:</p> <p>Provided that nothing contained in this entry shall apply where, -</p> <p>(i) the author has taken registration under the Central Goods and Services Tax Act, 2017 (12 of 2017), and filed a declaration, in the form at Annexure I, within the time limit prescribed therein, with the jurisdictional CGST or SGST commissioner, as the case may be, that he exercises the option to pay central tax on the service specified in column (2), under forward charge in accordance with Section 9 (1) of the Central Goods and Service Tax Act, 2017 under forward charge, and to comply with all the provisions of Central Goods and Service Tax Act, 2017 (12 of 2017) as they apply to a person liable for paying the tax in relation to the supply of any goods or services or both</p>

			and that he shall not withdraw the said option within a period of 1 year from the date of exercising such option;  (ii) the author makes a declaration, as prescribed in Annexure II on the invoice issued by him in Form GST Inv-I to the publisher. ”;
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(vi) after serial number 14 and the entries relating thereto, the following serial numbers and entries shall be inserted, namely: -

(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	Any body corporate located in the taxable territory.
16	Services of lending of securities under Securities Lending Scheme, 1997 (“Scheme”) of Securities and Exchange Board of India (“SEBI”), as amended.	Lender i.e. 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 of SEBI	Borrower i.e. a person who borrows the securities under the Scheme through an approved intermediary of SEBI.”.

2. This notification shall come into force on the 1st day of October, 2019.

**Annexure I**

**FORM**  
**(9A of Table)**

(Declaration to be filed by an author for exercising the option to pay tax on the “supply of services by an author by way of transfer or permitting the use

or enjoyment of a copyright covered under clause (a) of sub-section (1) of section 13 of the Copyright Act, 1957 relating to original literary works to a publisher” under forward charge on or before 31-10-2019 for the option to be effective from 1.11.2019 *or* before the commencement of any Financial Year for the option to be effective from the commencement of that Financial Year.)

Reference No. \_\_\_\_\_

Date \_\_\_\_\_

To

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(To be addressed to the jurisdictional Commissioner)

1. Name of the author:
2. Address of the author:
3. GSTIN of the author:

#### Declaration

1. I have taken registration under the Central Goods and Services Tax Act, 2017 (12 of 2017), and I hereby exercise the option to pay central tax on the service specified against serial No. 9A in column (2) of the Table in the notification No. 13/2017 - Central Tax (Rate), dated the 28th June, 2017, supplied by me, under forward charge in accordance with section 9 (1) of CGST Act, and to comply with all the provisions of CGST Act, 2017 (12 of 2017) as they apply to a person liable for paying the tax in relation to the supply of any goods or services or both;
2. I understand that this option, once exercised, shall not be allowed to be changed within a period of 1 year from the date of exercising the option and shall be valid, at least, till the end of Financial Year following the year in which it is made.

Signature \_\_\_\_\_

Name \_\_\_\_\_

GSTIN \_\_\_\_\_

Place \_\_\_\_\_

Date \_\_\_\_\_

## Annexure II

(Declaration to be made in the invoice by the author exercising the option to pay tax on the “supply of service by an author by way of transfer or permitting the use or enjoyment of a copyright covered under clause (a) of sub-section (1) of section 13 of the Copyright Act, 1957 relating to original literary works to a publisher” under forward charge.)

### Declaration

#### (9A of Table)

I have exercised the option to pay central tax on the service specified against serial No. 9A in column (2) of the Table in the notification No. 13/2017-Central Tax (Rate) dated 28th June, 2017 under forward charge.

**Note:** -The principal notification No. 13/2017 - Central Tax (Rate), dated the 28th June, 2017 was published in the Gazette of India, Extraordinary, *vide* number G.S.R. 692 (E), dated the 28th June, 2017 and was last amended by notification No. 5/2019 - Central Tax (Rate), dated the 29th March, 2019 *vide* number G.S.R. 252(E), dated the 29th March, 2019.

[Published in the Gazette of India dated 30-9-2019]



### **(103) Notification u/s 148 of CGST Act, 2017 amending No. 4/2018-Central Tax (Rate), dated the 25th January, 2018, by adding an explanation on the applicability of provisions related to supply of development rights**

#### **No. 23/2019-Central Tax (Rate)**

**G.S.R. 740 (E). New Delhi, the 30th September, 2019** - In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following amendments in the notification of the Government of India, in the Ministry of Finance (Department of Revenue), No.4/2018- Central Tax (Rate), dated the 25th January, 2018 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 67(E), dated the 25th January, 2018, namely:-

After paragraph, the following explanation shall be inserted, namely: -

“Explanation.-

Nothing contained in this notification shall apply with respect to the development rights supplied on or after 1st April, 2019.”.

2. This notification shall come into force with effect from the 1st day of October, 2019.

**Note:** -The principal notification was published in the Gazette of India, Extraordinary, *vide* notification No. 4/2018 - Central Tax (Rate), dated the 25th January, 2018, *vide* number G.S.R. 67 (E), dated the 25th January, 2018.

[Published in the Gazette of India dated 30-9-2019]



**(104) Notification u/s 9(4) of CGST Act, 2017 amending No. 7/2019-Central Tax (Rate), dated the 29th March, 2019 by amending the entry related to cement**

**No. 24/2019-Central Tax (Rate)**

**G.S.R. 743(E). New Delhi, the 30th September, 2019** - In exercise of the powers conferred by sub-section (4) of section 9 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following amendments in the notification of the Government of India, in the Ministry of Finance (Department of Revenue), No. 07/2019-Central Tax (Rate), dated the 29th March, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 254 (E), dated the 29th March, 2019, namely:-

In the said notification, in the Table, against serial number 2, for the entry in column (2), the following entry shall be substituted, namely: -

“Cement falling in chapter heading 2523 in the first schedule to the Customs Tariff Act, 1975 (51 of 1975).”.

2. This notification shall come into force with effect from the 1st day of October, 2019.

**Note:** -The principal notification was published in the Gazette of India, Extraordinary, *vide* notification No. 7/2019-Central Tax (Rate), dated the 29th March, 2019, *vide* number G.S.R. 254 (E), dated the 29th March, 2019.

[Published in the Gazette of India dated 30-9-2019]





**(105) Notification u/s 7(2) of CGST Act, 2017 notifying the grant of alcoholic liquor licence neither a supply of goods nor a supply of service**

**No. 25/2019-Central Tax (Rate)**

**G.S.R. 746(E). New Delhi, the 30th September, 2019** - In exercise of the powers conferred by sub-section (2) of section 7 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council hereby notifies that the following activities or transactions undertaken by the State Governments in which they are engaged as public authorities, shall be treated neither as a supply of goods nor a supply of service, namely:-

“Service by way of grant of alcoholic liquor licence, against consideration in the form of licence fee or application fee or by whatever name it is called.”

**Explanation.-** This notification is being issued to implement the recommendation of the 26th Goods and Services Tax council meeting held on the 10th March, 2018 that no GST shall be leviable on licence fee and application fee, by whatever name it is called, payable for alcoholic liquor for human consumption.

[Published in the Gazette of India dated 30-9-2019]



**(106) Eligibility to file a refund application in FORM GST RFD-01 for a period and category under which a NIL refund application has already been filed**

**Circular No. 110/29/2019-GST**

**F.No. CBEC - 20/06/03/2019 - GST**

Government of India, Ministry of Finance,  
Department of Revenue,  
Central Board of Indirect Taxes and Customs,  
GST Policy Wing

New Delhi, the 3rd October, 2019

**Subject:** Eligibility to file a refund application in FORM GST RFD-01 for a period and category under which a NIL refund application has already been filed – regarding

Several registered persons have inadvertently filed a NIL refund claim for a certain period under a particular category on the common portal in **FORM GST RFD-01A/RFD-01** in spite of the fact that they had a genuine claim for refund for that period under the said category. Once a NIL refund claim is filed, the common portal does not allow the registered person to re-file the refund claim for that period under the said category. Representations have been received requesting that registered persons may be allowed to re-file the refund claim for the period and the category under which the NIL claim has inadvertently been filed. The matter has been examined and in order to clarify this 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 Tax Act, 2017 (hereinafter referred to as “CGST Act”), hereby clarifies the issues raised as below:

2. Whenever a registered person proceeds to claim refund in **FORM GST RFD-01A/RFD-01** under a category for a particular period on the common portal, the system pops up a message box asking whether he wants to apply for ‘NIL’ refund for the selected period. This is to ensure that all refund applications under a particular category are filed chronologically. However, certain registered persons may have inadvertently opted for filing of ‘NIL’ refund. Once a ‘NIL’ refund claim has been filed for a period under a particular category, the common portal does not allow the registered person to re-file the refund claim for that period under the said category.
3. It is now clarified that a registered person who has filed a NIL refund claim in **FORM GST RFD-01A/RFD-01** for a given period under a particular category, may again apply for refund for the said period under the same category only if he satisfies the following two conditions:
  - a. The registered person must have filed a NIL refund claim in **FORM GST RFD-01A/RFD-01** for a certain period under a particular category; and
  - b. No refund claims in **FORM GST RFD-01A/RFD-01** must have been filed by the registered person under the same category for any subsequent period.

It may be noted that condition (b) shall apply only for refund claims falling under the following categories:

- i. Refund of unutilized input tax credit (ITC) on account of exports without payment of tax;
- ii. Refund of unutilized ITC on account of supplies made to SEZ Unit/SEZ Developer without payment of tax;
- iii. Refund of unutilized ITC on account of accumulation due to inverted tax structure;

In all other cases, registered persons shall be allowed to re-apply even if the condition (b) is not satisfied

4. Registered persons satisfying the above conditions may file the refund claim under “Any Other” category instead of the category under which the NIL refund claim has already been filed. However, the refund claim should pertain to the same period for which the NIL application was filed. The application under the “Any Other” category shall also be accompanied by all the supporting documents which would be required to be otherwise submitted with the refund claim.

5. On receipt of the claim, the proper officer shall calculate the admissible refund amount as per the applicable rules and in the manner detailed in para 3 of Circular No.59/33/2018-GST dated 4-9-2018, wherever applicable. Further, upon scrutiny of the application for completeness and eligibility, if the proper officer is satisfied that the whole or any part of the amount claimed is payable as refund, he shall request the taxpayer in writing, if required, to debit the said amount from his electronic credit ledger through **FORM GST DRC-03**. Once the proof of such debit is received by the proper officer, he shall proceed to issue the refund order in **FORM GST RFD-06** and the payment order in **FORM GST RFD-05**.

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

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

(Yogendra Garg)

Principal Commissioner (GST)



**(107) Procedure to claim refund in FORM GST RFD-01 subsequent to favourable order in appeal or any other forum**

**Circular No. 111/30/2019-GST**

**F.No. CBEC - 20/06/03/2019 - GST**

Government of India, Ministry of Finance, Department of Revenue  
Central Board of Indirect Taxes and Customs, GST Policy Wing

New Delhi, the 3rd October, 2019

**Subject:** Procedure to claim refund in FORM GST RFD-01 subsequent to favourable order in appeal or any other forum – regarding

Doubts have been raised on the procedure to be followed by a registered person to claim refund subsequent to a favourable order in appeal or any other forum against rejection of a refund claim in **FORM GST RFD-06**. The matter has been examined and in order to clarify this 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 Tax Act, 2017 (hereinafter referred to as “CGST Act”), hereby clarifies the issues raised as below:

**2.** Appeals against rejection of refund claims are being disposed offline as the electronic module for the same is yet to be made operational. As per rule 93 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as “CGST Rules”), where an appeal is filed against the rejection of a refund claim, re-crediting of the amount debited from the electronic credit ledger, if any, is not done till the appeal is finally rejected. Therefore, such rejected amount remains debited in respect of the particular refund claim filed in **FORM GST RFD-01**.

**3.** In case a favourable order is received by a registered person in appeal or in any other forum in respect of a refund claim rejected through issuance of an order in **FORM GST RFD-06**, the registered person would file a fresh refund application under the category “Refund on account of assessment/provisional assessment/appeal/any other order” claiming refund of the amount allowed in appeal or any other forum. Since the amount debited, if any, at the time of filing of the refund application was not re-credited, the registered person shall not be required to debit the said amount again from his electronic credit ledger at the time of filing of the fresh refund application under the category “Refund on account of assessment/provisional assess-

ment/appeal/any other order”. The registered person shall be required to give details of the type of the Order (appeal/any other order), Order No., Order date and the Order Issuing Authority. The registered person would also be required to upload a copy of the order of the Appellate or other authority, copy of the refund rejection order in **FORM GST RFD 06** issued by the proper officer or such other order against which appeal has been preferred and other related documents.

4. Upon receipt of the application for refund under the category “Refund on account of assessment/provisional assessment/appeal/any other order” the proper officer would sanction the amount of refund as allowed in appeal or in subsequent forum which was originally rejected and shall make an order in **FORM GST RFD 06** and issue payment order in **FORM GST RFD 05** accordingly. The proper officer disposing the application for refund under the category “Refund on account of assessment/provisional assessment/appeal/any other order” shall also ensure re-credit of any amount which remains rejected in the order of the appellate (or any other authority). However, such re-credit shall be made following the guideline as laid down in para 4.2 of Circular no. 59/33/2018 - GST dated 4-9-2018.

5. The above clarifications can be illustrated with the help of an example. Consider a registered person who makes an application for refund of unutilized ITC on account of export to the extent of Rs.100/- and debits the said amount from his electronic credit ledger. The proper officer disposes the application by allowing refund of Rs.70/- and rejecting the refund of Rs. 30/-. However, he does not recredit Rs.30/- since appeal is preferred by the claimant and accordingly **FORM GST RFD 01B** is not uploaded. Assume that the appellate authority allows refund of only Rs.10/- out of the Rs. 30/- for which the registered person went in appeal. This Rs.10/- shall be claimed afresh under the category “Refund on account of assessment/provisional assessment/appeal/any other order” and processed accordingly. However, subsequent to processing of this claim of Rs.10/- the proper officer shall re-credit Rs.20/- to the electronic credit ledger of the claimant, provided that the registered person is not challenging the order in a higher forum. For this purpose, **FORM GST RFD 01B** under the original ARN which has so far not been uploaded will be uploaded with refund sanctioned amount as Rs.80/- and the amount to be re-credited as Rs. 20/-. In case, the proper officer who rejected the refund claim is not the one who is disposing the application under the category “Refund on account of assessment/provisional

assessment/appeal/any other order”, the latter shall communicate to the proper officer who rejected the refund claim to close the ARN as above only after obtaining the undertaking as referred in para 4.2 of Circular no. 59/33/2018-GST dated 4-9-2018.

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

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

(Yogendra Garg)

Principal Commissioner (GST)

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### **(108) Withdrawal of Circular No. 105/24/2019-GST dated 28-6-2019**

Circular No. 112/31/2019-GST

**F.No. CBEC - 20/06/03/2019 - GST**

Government of India, Ministry of Finance, Department of Revenue

Central Board of Indirect Taxes and Customs, GST Policy Wing

New Delhi, the 3rd October, 2019

**Subject:** Withdrawal of Circular No. 105/24/2019-GST dated 28-6-2019 – reg.

Kind attention is invited to Circular No. 105/24/2019-GST dated 28-6-2019 wherein certain clarifications were given in relation to various doubts related to treatment of secondary or post-sales discounts under GST.

2. 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. 105/24/2019-GST dated 28-6-2019.

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

(Yogendra Garg)

Principal Commissioner (GST)

□

**(109) Notification u/s 168 of CGST Act, 2017 prescribing the due date for furnishing of return in FORM GSTR-3B for the months of October, 2019 to March, 2020**

**No. 44/2019–Central Tax**

**G.S.R. 767(E) New Delhi, the 9th October, 2019** - In exercise of the powers conferred by Section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act) read with sub-rule (5) of rule 61 of the Central Goods and Services Tax Rules, 2017 (hereafter in this notification referred to as the said rules), the Commissioner, on the recommendations of the Council, hereby specifies that the return in **FORM GSTR-3B** of the said rules for each of the months from October, 2019 to March, 2020 shall be furnished electronically through the common portal, on or before the twentieth day of the month succeeding such month.

**2. Payment of taxes for discharge of tax liability as per FORM GSTR-3B.**—Every registered person furnishing the return in **FORM GSTR-3B** of the said rules shall, subject to the provisions of section 49 of the said Act, discharge his liability towards tax, interest, penalty, fees or any other amount payable under the said Act by debiting the electronic cash ledger or electronic credit ledger, as the case may be, not later than the last date, as specified in the first paragraph on which he is required to furnish the said return.

*[Published in the Gazette of India dated 9-10-2019]*



**(110) Notification u/s 148 of CGST Act, 2017 prescribing the due date for furnishing FORM GSTR-1 for registered persons having aggregate turnover of up to 1.5 crore rupees for the quarters from October, 2019 to March, 2020**

**No. 45/2019–Central Tax**

**G.S.R. 768(E) New Delhi, the 9th October, 2019** - In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), the Central Government, on the recommendations of the Council, hereby notifies the registered persons having aggregate turnover of up to 1.5 crore rupees in the preceding financial year or the current financial year, as



the class of registered persons who shall follow the special procedure as mentioned below for furnishing the details of outward supply of goods or services or both.

2. The said registered persons shall furnish the details of outward supply of goods or services or both in **FORM GSTR-1** under the Central Goods and Services Tax Rules, 2017, effected during the quarter as specified in column (2) of the Table below till the time period as specified in the corresponding entry in column (3) of the said Table, namely:-

**TABLE**

Sl. No.	Quarter for which details in FORM GSTR-1 are furnished	Time period for furnishing details in FORM GSTR-1
(1)	(2)	(3)
1.	October, 2019 to December, 2019	31st January, 2020
2.	January, 2020 to March, 2020	30th April, 2020

3. The time limit for furnishing the details or return, as the case may be, under sub-section (2) of section 38 of the said Act, for the months of October, 2019 to March, 2020 shall be subsequently notified in the Official Gazette.

[Published in the Gazette of India dated 9-10-2019]



**(111) Notification u/s 168 of CGST Act, 2017 prescribing the due date for furnishing of return in FORM GSTR-1 for registered persons having aggregate turnover more than 1.5 crore rupees for the months of October, 2019 to March, 2020**

**No. 46/2019–Central Tax**

**G.S.R. 769(E) New Delhi, the 9th October, 2019** - In exercise of the powers conferred by the second proviso to sub-section (1) of section 37 read with section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), the Commissioner, on the recommendations of the Council, hereby extends the time limit for furnishing the details of outward supplies in **FORM GSTR-1** of the Central Goods and Services Tax Rules, 2017, by such class of registered persons having aggregate turnover of more than 1.5 crore rupees

in the preceding financial year or the current financial year, for each of the months from October, 2019 to March, 2020 till the eleventh day of the month succeeding such month.

2. The time limit for furnishing the details or return, as the case may be, under sub-section (2) of section 38 of the said Act, for the months of October, 2019 to March, 2020 shall be subsequently notified in the Official Gazette.

[Published in the Gazette of India dated 9-10-2019]



**(112) Notification u/s 148 of CGST Act, 2017 seeking to make filing of annual return under section 44 (1) of CGST Act for F.Y. 2017-18 and 2018-19 optional for small taxpayers whose aggregate turnover is less than Rs 2 crores and who have not filed the said return before the due date.**

**No. 47/2019–Central Tax**

**G.S.R. 770(E) New Delhi, the 9th October, 2019 -** In exercise of the powers conferred by Section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereinafter referred to as the said Act), the Central Government, on the recommendations of the Council, hereby notifies those registered persons whose aggregate turnover in a financial year does not exceed two crore rupees and who have not furnished the annual return under sub-section (1) of section 44 of the said Act read with sub-rule (1) of rule 80 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the said rules) before the due date, as the class of registered persons who shall, in respect of financial years 2017-18 and 2018-19, follow the special procedure such that the said persons shall have the option to furnish the annual return under sub-section (1) of section 44 of the said Act read with sub-rule (1) of rule 80 of the said rules:

Provided that the said return shall be deemed to be furnished on the due date if it has not been furnished before the due date.

[Published in the Gazette of India dated 9-10-2019]



**(113) Notification u/s 128 of CGST Act, 2017 amending No. 41/2019 – Central Tax, dated the 31st August, 2019**

**No. 48/2019–Central Tax**

**G.S.R. 771(E) New Delhi, the 9th October, 2019** - In exercise of the powers conferred by section 128 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following amendments in the notification of the Government of India in the Ministry of Finance, Department of Revenue No. 41/2019-Central Tax, dated the 31st August, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 618(E), dated the 31st August, 2019, namely:–

In the said notification, in the opening paragraph–

(a) in clause (ii), for the figures, letters and word “20th September”, the figures, letters and word “11th October” shall be inserted;

(b) after the clause (iv), the following clauses shall be inserted, namely: –

“(v) the registered persons whose principal place of business is in the State of Jammu and Kashmir, having aggregate turnover of more than 1.5 crore rupees in the preceding financial year or the current financial year, who have furnished, electronically through the common portal, details of outward supplies in **FORM GSTR-1** of the Central Goods and Services Tax Rules, 2017 (hereafter referred to as the said rules), for the month of August, 2019, on or before the 11th October, 2019, for failure to furnish the said **FORM GSTR-1** by the due date;

(vi) the registered persons whose principal place of business is in the State of Jammu and Kashmir, required to deduct tax at source under the provisions of section 51 of the said Act, who have furnished electronically through the common portal, return in **FORM GSTR-7** of the said rules under sub-section (3) of section 39 of the said Act read with rule 66 of the said rules, for the month of July, 2019, on or before the 10th October, 2019, for failure to furnish the said **FORM GSTR-7** by the due date;

(vii) the registered persons whose principal place of business is in the State of Jammu and Kashmir, required to deduct tax at source under the provisions of section 51 of the said Act, who have furnished electronically through the common portal, return in **FORM GSTR-7** of the said rules under sub-section (3) of section 39 of the said Act read with rule 66 of the said

rules, for the month of August, 2019, on or before the 10th October, 2019, for failure to furnish the said **FORM GSTR-7** by the due date;

(viii) the registered persons whose principal place of business is in the State of Jammu and Kashmir, who have furnished, electronically through the common portal, return in **FORM GSTR-3B** of the said rules, for the month of July, 2019, on or before the 20th October, 2019, for failure to furnish the said **FORM GSTR-3B** by the due date;

(ix) the registered persons whose principal place of business is in the State of Jammu and Kashmir, who have furnished, electronically through the common portal, return in **FORM GSTR-3B** of the said rules, for the month of August, 2019, on or before the 20th October, 2019, for failure to furnish the said **FORM GSTR-3B** by the due date.”.

**Note :** The principal notification No. 41/2019–Central Tax, dated the 31st August, 2019 was published in the Gazette of India, Extraordinary vide number G.S.R. 618(E), dated the 31st August, 2019.

*[Published in the Gazette of India dated 9-10-2019]*



## **(114) Central Goods and Services Tax (Sixth Amendment) Rules, 2019**

### **No. 49/2019–Central Tax**

**G.S.R. 772(E) New Delhi, the 9th October, 2019** - In exercise of the powers conferred by section 164 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017, namely:-

**1.** (1) These rules may be called the Central Goods and Services Tax (Sixth Amendment) Rules, 2019.

(2) Save as otherwise provided in these rules, they shall come into force on the date of their publication in the Official Gazette.

**2.** In the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the said rules), in rule 21A,-

(a) in sub-rule (3), the following explanation shall be inserted, namely:-

**“Explanation.-**For the purposes of this sub-rule, the expression “shall not make any taxable supply” shall mean that the registered person shall not

issue a tax invoice and, accordingly, not charge tax on supplies made by him during the period of suspension.”;

(b) after sub-rule (4), the following sub-rule shall be inserted, namely:-

“(5) Where any order having the effect of revocation of suspension of registration has been passed, the provisions of clause (a) of sub-section (3) of section 31 and section 40 in respect of the supplies made during the period of suspension and the procedure specified therein shall apply.”.

3. In the said rules, in rule 36, after sub-rule (3), the following sub-rule shall be inserted, namely:-

“(4) Input tax credit to be availed by a registered person in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers under sub-section (1) of section 37, shall not exceed 20 per cent. of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the suppliers under sub-section (1) of section 37.”.

4. In the said rules, in rule 61,-

(a) for sub-rule (5), the following sub-rule shall be substituted, with effect from the 1st July, 2017 namely:-

“(5) Where the time limit for furnishing of details in **FORM GSTR-1** under section 37 or in **FORM GSTR-2** under section 38 has been extended, the return specified in sub-section (1) of section 39 shall, in such manner and subject to such conditions as the Commissioner may, by notification, specify, be furnished in **FORM GSTR-3B** electronically through the common portal, either directly or through a Facilitation Centre notified by the Commissioner:

Provided that where a return in **FORM GSTR-3B** is required to be furnished by a person referred to in sub-rule (1) then such person shall not be required to furnish the return in **FORM GSTR-3**.”;

(b) sub-rule (6) shall be omitted with effect from the 1st July, 2017.

5. In the said rules, in rule 83A, in sub-rule (6), for clause (i), the following clause shall be substituted, namely:-

“(i) Every person referred to in clause (b) of sub-rule (1) of rule 83 and who is enrolled as a goods and services tax practitioner under sub-rule (2) of the said rule is required to pass the examination within the period as

specified in the second proviso of sub-rule (3) of the said rule.”.

6. In the said rules, in rule 91, -

(a) in sub-rule (3), with effect from the 24th September, 2019, after the words “application for refund”, the words “on the basis of a consolidated payment advice:” shall be inserted;

(b) after the sub-rule (3), with effect from the 24th September, 2019, the following sub-rule shall be inserted, namely:-

“(4) The Central Government shall disburse the refund based on the consolidated payment advice issued under sub-rule (3).”.

7. In the said rules, in rule 97, -

(a) after sub-rule (7), with effect from the 1st July, 2017, the following sub-rule shall be inserted, namely,-

“(7A) The Committee shall make available to the Board 50 per cent. of the amount credited to the Fund each year, for publicity or consumer awareness on Goods and Services Tax, provided the availability of funds for consumer welfare activities of the Department of Consumer Affairs is not less than twenty-five crore rupees per annum.”;

(b) in sub-rule (8), with effect from the 1st July, 2017, clause (e) shall be omitted.

8. In the said rules, in rule 117, -

(a) in sub-rule (1A) for the figures, letters and word “31st March, 2019”, the figures, letters and word “31st December, 2019” shall be substituted.

(b) in sub-rule (4), in clause (b), in sub-clause (iii), in the proviso for the figures, letters and word “30th April, 2019”, the figures, letters and word “31st January, 2020”, shall be substituted.

9. In the said rules, in rule 142, -

(a) after sub-rule (1) the following sub-rule shall be inserted, namely:-

“(1A) The proper officer shall, before service of notice to the person chargeable with tax, interest and penalty, under sub-section (1) of Section 73 or sub-section (1) of Section 74, as the case may be, shall communicate the details of any tax, interest and penalty as ascertained by the said officer, in **Part A of FORM GST DRC-01A.**”;

(b) in sub-rule (2), after the words “in accordance with the provisions of the Act”, the words, figures and brackets “, whether on his own ascertainment or, as communicated by the proper officer under sub-rule (1A),” shall be inserted;

(c) after sub-rule (2) the following sub-rule shall be inserted, namely:-

“(2A) Where the person referred to in sub-rule (1A) has made partial payment of the amount communicated to him or desires to file any submissions against the proposed liability, he may make such submission in **Part B** of **FORM GST DRC-01A**.” .

**10.** In the said rules, after **FORM GST DRC-01**, the following form shall be inserted, namely:-

**“FORM GST DRC-01A**

Intimation of tax ascertained as being payable under section 73(5)/74(5)

[See Rule 142 (1A)]

**Part A**

*[full text of Form not produced here]*

**Part B**

Reply to the communication for payment before issue of Show Cause Notice

[See Rule 142 (2A)]

*[full text of Form not produced here]*

[F. No. 20/06/07/2019-GST]

RUCHI BISHT, Under Secy.

**Note :** The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* notification No. 3/2017-Central Tax, dated the 19th June, 2017, published *vide* number G.S.R. 610(E), dated the 19th June, 2017 and last amended *vide* notification No. 33/2019-Central Tax, dated the 18th July, 2019, published *vide* number G.S.R. 513(E), dated the 18th July, 2019.

*[Published in the Gazette of India dated 9-10-2019]*





**(2019) 63 TLD 257**

In the High Court of M.P.  
Hon'ble S.C. Sharma & Shailendra Shukla, JJ.

**In Reference****Vs.****Manglam Cement Limited, Indore**

Tax Reference No. 4/2019, 5/2019, 6/2019 &amp; 9/2019

July 25, 2019

*Deposition : In favour of assessee*

**Reference - Quantity discount given monthly by way of credit notes - M.P. High Court concluded that the assessee is entitled for trade discount given monthly by way of credit notes from the total turnover for arriving at taxable turnover and remanded the matter to the Appellate Board for fresh decision in view the law laid down in the case of Titan Industries Limited and in light of the answer to the reference.**

**Reference answered accordingly****Cases referred :**

- \* BPL Ltd. Vs. Asstt. CCT, Bhopal (2014) 52 TLD 276 (MP); (2014) 24 STJ 252
- \* IFB Industries Ltd. Vs. State of Kerala (2014) 53 TLD 1 (SC); (2012) 49 VST 1 (SC); (2012) 20 STJ 485
- \* Titan Industries Limited Vs. CCT, M.P. & Others (2016) 28 STJ 612 (MP)

**:: ORDER ::**

Parties through their counsel.

Regard being had to the similitude in the controversy involved in the present cases, these Tax References were analogously heard and by a common order, they are being disposed of by this Court. Facts of the Tax Reference No.4/2019 are narrated hereunder.

The present Tax Reference has been received from the Madhya Pradesh Commercial Tax Appellate Board, Bhopal under Section 70 of the Madhya Pradesh Commercial Tax Act, 1994. The reference made by the Board reads as under:-

“Whether on the facts and circumstances of the case, the Madhya Pradesh Commercial Tax Appellate Board was right in law in holding

that as per the provisions of the Madhya Pradesh Commercial Tax Act, 1994 and the definitions in Sections 2(u) and 2(z) therein, quantity discount given monthly by way of credit notes cannot be deducted from total turnover for arriving at taxable turnover.”

The facts of the case reveal that the assessee in the present case, M/s. Manglam Cement Limited, is a company dealing with cement and having sales depots in the State of Madhya Pradesh. The goods are received as Stock Transfer from the factories situated at Rajasthan. An assessment order was passed on 16-1-2008 and the claim of deduction in respect of the amount of trade discount was disallowed on the ground that discount was not shown in the trading invoices.

M/s. Manglam Cement Limited preferred an appeal against the order passed by the assessing authority and the appellate authority vide order dated 11-11-2008 has dismissed the appeal. Thereafter, a Second Appeal was preferred before the Tribunal and the Tribunal has dismissed the Second Appeal also vide order dated 31-8-2012. Thereafter, the assessee has preferred an application under Section 70(1) of the Madhya Pradesh Commercial Tax Act, 1994 before the Madhya Pradesh Commercial Tax Appellate Board dated 31-8-2012 and it was argued on behalf of the Company that the price is decided and circulated amongst the dealers so that there will be pre-intimation of price ultimately to be paid by the purchasing dealers for purchases made by them. The price structure circulated also consists of quantity discount on monthly purchases by the stockists. It was argued that the assessing authority and the appellate authority have erroneously rejected the claim of deduction of the amount of credit notes for the quantity discount from the taxable turnover. A prayer was made to refer the question before this Court.

It is pertinent to note that the claim in question was raised right from the assessment stage to the stage of Second Appeal, which has been decided by the Appellate Board.

Learned counsel has argued before this Court that the deduction claimed by the Company could not have been disallowed in light of the judgment delivered in the case of **Titan Industries Limited Vs. CCT, M.P. & Others** reported in (2016) 28 STJ 612 (MP).

Paragraphs - 24, 25 and 27 of the judgment delivered in the case of *Titan Industries Limited (supra)*, which are relevant for answering the

present reference reads as under:-

“24. The Hon’ble Supreme Court in the case of **IFB Industries Ltd Vs. State of Kerala (2014) 53 TLD 1 (SC)**; (2012) 20 STJ 485 (SC); (2012) 49 VST 1 has held that the discount through credit note issued even subsequent to a sale without their mention in the sale voucher of the bill is permissible. It has been held that claim for deduction of the amount of trade discount cannot be disallowed only on the ground that the discount amount were not shown in the sale invoice or the bills issued. The Supreme Court has held that once allowing of discount is established from the material available on record, the same has to be allowed.

25. The decision of the Apex Court in the case of **IFB Industries Ltd Vs. State of Kerala (2014) 53 TLD 1 (SC)**; (2012) 20 STJ 485 (SC); (2012) 49 VST 1, has been recently followed by the Division Bench of the Principal Seat at Jabalpur in the case of **BPL Ltd. Vs. Assistant CCT**, reported in **(2014) 52 TLD 276 (MP)**; (2014) 24 STJ 252 and has held that the appellant therein is entitled to deduction of discount allowed as per ordinary trade practice by way of credit notes without showing same in sale bill. The decision of the Division Bench in the case of **BPL Ltd. (supra)** has been further followed by the Division Bench of this Court in the case of **M/s. D & H Secheron Pvt. Ltd. Vs. State of M.P.**, passed in W.P. No.14547 of 2010 on 5-8-2014.

27. On the basis of discussion made herein-above and in the light of the law laid down by the Apex Court in the judgment of **IFB Industries Ltd Vs. State of Kerala (2014) 53 TLD 1 (SC)**; (2012) 20 STJ 485 (SC); (2012) 49 VST 1, that the claim for deduction of the trade discount and performance incentive discount could not be disallowed solely on the ground that the discount amount were not shown in the sale invoices. The Apex Court has explained the judgment of Deputy Commissioner of **Sales Tax Vs. Advani Oerlikon Pvt. Ltd. (2005) 7 STJ 768 (SC)**; 1980 45 STC 32 in para 30 of the case of **IFB Industries Ltd. (supra)**. Thus we are of the view that the learned authorities have erred in law in rejecting the claim of the petitioner for grant of trade discount and, therefore, we are unable to sustain the order of the appellate and assessing authority coming under the writ petition. The impugned orders in all the writ petitions are

quashed. The case of the petitioner for the respective assessing period are remitted to the assessing authority with a direction to make assessment and pass a fresh order in accordance with law on the aforesaid judgment. The assessing authority shall not reject the petitioners claim for exemption of the amount of trade discount solely on the ground that the discount amount was not shown in the invoice price.”

Learned Government Advocate has fairly stated before this Court that the issue involved in the present case has been concluded by the judgment delivered in the case of *Titan Industries Limited (supra)*, however, he has stated that a Special Leave Petition has been filed and the same is pending before the Hon’ble Supreme Court. He has further argued that the no interim order has been granted in the matter.

In light of the aforesaid, as the controversy involved in the present case stands concluded on account of the judgment delivered in the case of *Titan Industries Limited, (supra)*, the reference is answered in favour of the assessee reads as under:-

“In the facts and circumstances of the case, the Madhya Pradesh Commercial Tax Appellate Board has erred in law in holding that as per the provisions of the Madhya Pradesh Commercial Tax Act, 1994 and the definitions in Sections 2(u) and 2(z) therein, quantity discount given monthly by way of credit notes cannot be deducted from total turnover for arriving at taxable turnover”.

The net result is that the assessee is entitled for trade discount given monthly by way of credit notes from the total turnover for arriving at taxable turnover.

The matter is remanded back to the Madhya Pradesh Commercial Tax Appellate Board, Bhopal to decide the Second Appeal afresh keeping in view the law laid down in the case of *Titan Industries Limited (supra)* and in light of the answer to the reference.

It is needless to mention that the order passed by the Madhya Pradesh Commercial Tax Appellate Board, after the remand, shall certainly be subject to final outcome of the Special Leave Petition, which is pending, as informed by the learned Government Advocate.

With the aforesaid, the present Tax Reference stands disposed of. The connected Tax References (Tax Reference Nos.5/2019, 6/2019 & 9/2019) also stand disposed of.

The order passed by this Court shall govern the connected references (Tax Reference Nos.5/2019, 6/2019 & 9/2019) also.

Let a copy of the order passed by this Court in the present case be kept in the file of connected Tax References also.

□

**(2019) 63 TLD 261** Authority for Advance Ruling, Madhya Pradesh  
Rajiv Agrawal & Manoj Kumar Choubey, Members  
**Emerald Heights International School, Indore**

Case No. : 11/2019

Advance Ruling No. : 13/2019

August 20, 2019

**AAR-MP - Fees received by School for conference - Consideration received by the school from the participant school(s) for participation of their students and staff in the impugned conference would not be exempted under entry No. 66 or entry No. 1 or entry No. 80 or any other entry of the Notification.**

**:: PROCEEDINGS ::**

**(Under sub-section (4) of Section 98 of Central Goods and Service Tax Act, 2017 and the Madhya Pradesh Goods & Service Tax Act, 2017)**

1. The present application has been filed u/s 97 of the Central Goods & Services Tax Act, 2017 and MP Goods & Services Tax Act, 2017 (hereinafter also referred to CGST Act and SGST Act respectively) by M/s. Emerald Heights International School (hereinafter referred to as the Applicant), not registered but desirous of obtaining registration under the Goods & Services Tax.
2. The provisions of the CGST Act and MPGST Act are identical, except for certain provisions. Therefore, unless a specific mention of the dissimilar provision is made, a reference to the CGST Act would also mean a reference to the same provision under the MPGST Act. Further, henceforth, for the purposes of this Advance Ruling, a reference to such a similar provision under

the CGST or MP GST Act would be mentioned as being under the GST Act.

### **3. BRIEF FACTS OF THE CASE:**

**3.1** Emerald Heights School Samiti is a registered Society (hereinafter referred as “Society”) for the promotion of education and registered under M.P. Societies Act, 1971 bearing registration No.10981 and is also registered as a Charitable institution ‘under Section 12A of the Income Tax Act’ 1961.

**3.2** Emerald Heights School Samiti owns and runs The Emerald Heights International School (hereinafter referred as “the School” or “the Applicant”) and according to the applicant the Society is not engaged in any other activity and does not derive any other income other than from the School.

**3.3** The School is an Educational Institution and inter-alia, engaged in the providing world class education to its students upto Higher Secondary only. The School is situated in Indore and affiliated with the “Central Board of Secondary Education (CBSE)”.

**3.4** The school is not registered with the Goods & Service Tax Department as it is providing education services.

**3.5** The school is affiliated and associated with various National and International Organizations which are mainly active to promote education and sports world wide. Amongst various organizations the school is also member school of an association namely “Round Square”. (hereinafter referred as “Round Square” or “the “association””, which according to the applicant is also a charitable organization registered as a “Charity” in England bearing Charity Number 327117.

**3.6** The Association is an internationally diverse network of 200 like-minded schools in 50 Countries. They connect and collaborate to offer world-class programmes and experiences that develop global competence, character and confidence in the students and brings together a culturally diverse network of schools to develop intercultural understanding in their students. For achieving these goals, the association organizes conferences for students and staff of its member Schools on regular intervals in various parts of the World.

**3.7** The members of the association organize educative conferences for Students and staff of member schools of association from time to time in line with the philosophy of the association. As the Applicant is a member school

of the organisation, they intend to hold one such educational conference/gathering (hereinafter referred to as the “Conference”) in Indore, India.

**3.8** This global cultural gathering will bring to India students and teachers from up to 200 schools in 50 countries around the world - the majority of them registered charities – to develop their cultural understanding, debate topical issues that sensitise them to the community they are visiting, forge friendships, carry out social service and develop mind, body and soul through a range of culturally immersive experiences including local expeditions, sporting activities, and mindful practices, most especially a daily programme of yoga.

**3.9** The Applicant and the Association intend to enter into an agreement (Proposed agreement) for hosting and managing the conference/gathering. The Proposed agreement clearly mentions that the school shall act as Host of the Conference in its own right as Principal and shall not be deemed to be acting as an Agent of the Association.

**3.10** As per the Proposed agreement, the applicant is responsible to hold the conference engaging appropriately skilled, trained and experienced personnel and sufficient financial and material resources. This shall include planning the conference, inviting the participants, arranging the accommodation, food etc., organizing and managing the events in the conference etc.

**3.11** Consideration for performing the above functions to cover the expenses of the conference would flow from the Round Square member schools (many of such member schools are based outside India) in the form of fee along with the list of individual student and staff attendees to the Applicant. According to the applicant no surplus is expected to be generated from the Conference. Surplus, if any, shall be transferred back to the Association.

#### **4. QUESTIONS RAISED BEFORE THE AUTHORITY:**

The following questions have been posted before the Authority in the application:-

- a. Will the consideration received by the school from the participant school(s) for participation of their students and staff in the conference would be exempted under entry No. 66 or entry No. 1 or entry No. 80 or any other entry of the Notification No.12/2017 - Central Tax (Rate) or will be chargeable to GST under CGST Act, 2017 & MP GST Act, 2017 or IGST Act, 2017?



- b. If not exempted then what would be the appropriate category of the service and the appropriate Tax Rate?
- c. What would be the Place of Supply for such services?
- d. Whether exemption provided to service providers of catering, security, cleaning, house-keeping, transportation etc. to an educational institution upto higher secondary be available to the Service Providers of the Applicant for services related to such conference.
- e. Whether ITC would be eligible of all the input services availed for the purpose of the above conference?

**5. CONCERNED OFFICER'S VIEW POINT:**

The Concerned Officer Submitted that the services raised under the question is not eligible for exemption. The rate of tax applicable shall be the rate applicable to the respective services. AAR cannot decide the place of services and ITC shall be available according to the provisions of the law.

**6. RECORD OF PERSONAL HEARING:**

Shree Vandit Sanghi, CA of the applicant for personal hearing. He reiterated submissions already made in the application. The Applicant in support of his argument stated that -

- A. (i) Services provided by an educational institution to its students, faculty and staff are exempt under the GST Law.

In this context, the entry 66 of the Notification No. 12/2017-Central Tax (Rate), which has been exempted from the GST, 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 against consideration in the form of entrance fee;*

*(b) to an educational institution, by way of,-*

*(i) transportation of students, faculty and staff;*

*(ii) catering, including any mid-day meals scheme sponsored by the Central Government, State Government*

*or Union territory;*

*(iii) security or cleaning or house-keeping services performed in such educational institution;*

*(iv) services relating to admission to, or conduct of examination by, such institution;*

*Provided.....”*

For the purposes of the above entry, the educational institution has been defined under the clause 2(y) of the Notification No. 12/2017-Central Tax (Rate), as under

*“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 recognised by any law for the time being in force;*

*(iii) education as a part of an approved vocational education course;”*

(ii) As per the above exemption entry, the services provided by any educational institution to its students, faculty and staff are exempt from GST. Also, services provided to an educational institution for transportation of students, catering and some other specified services are exempt from GST.

The Applicant further stated that in the present context, there is no doubt in the fact that the applicant is an educational institution for the purposes of the above exemption entry as they are providing education upto Senior Secondary level to the students.

The Applicant further submitted that being an educational institution, the applicant is entitled to the exemptions from the GST for its functions covered under entry 66 of the Notification 12/2017-Central Tax (Rate). One of such functions is - provision of services to its students, faculty and staff.

In the present case, the applicant would be organizing a conference for the students over a period of six-seven days during the time period from 16th September 2019 to 13th October 2019. The attendees of

the conference would include students and teachers of the applicant school as well as the students and teachers from different schools who are member of the 'Round Square'. The objective of the conference is to bring to India students and teachers from up to 200 schools in 50 countries around the world - the majority of them registered charities -to allow for the students' leadership and creativity while ensuring the individual development of every pupil including academic, Physical, cultural and spiritual aspects in a global perspective and also to develop their cultural understanding, debate topical issues that sensitise them to the community they are visiting, forge friendships, carry out social service and develop mind, body and soul through a range of culturally immersive experiences including local expeditions, sporting activities, and mindful practices, most especially a daily programme of yoga.

Accordingly, the services under the agreement are practically the services to be provided by an educational institution to the students, and hence, merit exemption under the entry 66 to the Notification No.12/2017-CT(Rate).

(iii) The services of educative conference to be provided by the Applicant to the students would merit consideration under the service category of 'education services'.

- B.** (i) Services by an entity registered under section 12AA of the Income Tax Act by way of Charitable activities are exempt under the GST Law.

The applicant argued that in this context, the entry 1 of the Notification No.12/2017 - Central Tax (Rate), which has been exempted from the GST, reads as under:-

*Services by an entity registered under section 12AA of the Income Tax Act by way of Charitable activities.*

*"charitable activities" means activities relating to -*

(i) .....

(ii) *advancement of religion, spirituality or yoga*

(ii) The applicant submitted that being a 12AA registered educational institution, the applicant is entitled to the exemptions from the GST for its functions covered under entry 1 of the Notification 12/2017-Central Tax (Rate). One of such functions is - advancement of religion, spirituality or yoga,

In the present case, the applicant would be organizing a conference for the students over a period of six-seven days during the time period from 16th September 2019 to 13th October 2019. The attendees of the conference would include students and teachers of the applicant school as well as the students and teachers from different schools who are member of the 'Round Square'. The objective of the conference is to bring to India students and teachers from up to 200 schools in 50 countries around the world - the majority of them registered charities - to allow for the students' leadership and creativity while ensuring the individual development of every pupil including academic, Physical, cultural and spiritual aspects in a global perspective and also to develop their cultural understanding, debate topical issues that sensitise them to the community they are visiting, forge friendships, carry out social service and develop mind, body and soul through a range of culturally immersive experiences including local expeditions, sporting activities, and mindful practices, most especially a daily programme of yoga.

(iii) Accordingly, the services under the agreement are practically the exempted services to be provided by 12AA registered educational institution, and hence, merit exemption under the entry 1 to the Notification No.12/2017-CT(Rate).

**C. (i) Services by way of training or coaching in recreational activities relating to -**

(a) Arts or culture or

(b) Sports by charitable entities Registered under section 12AA of the Income Tax Act.

are exempt under the GST Law.

In this context entry 80 of the Notification No.12/2017 - Central Tax (Rate), which has been exempted from the GST, reads as under:-

*Services by way of training or coaching in recreational activities relating to-*

(a) Arts or culture or

(b) Sports by charitable entities Registered under section 12AA of the Income Tax Act.

(ii) The applicant argued that being a 12AA registered educational institution, the applicant is entitled to the exemptions from the GST for

its functions covered under entry 80 of the Notification 12/2017-Central Tax (Rate). One of such functions is activities resulting in training relating to Arts, Culture and Sports.

In the present case, the applicant would be organizing a conference for the students over a period of six-seven days during the time period from 16th September 2019 to 13th October 2019. The attendees of the conference would include students and teachers of the applicant school as well as the students and teachers from different schools who are member of the 'Round Square'. The objective of the conference is to bring to India students and teachers from up to 200 schools in 50 countries around the world - the majority of them registered charities - to allow for the students' leadership and creativity while ensuring the individual development of every pupil including academic, Physical, cultural and spiritual aspects in a global perspective and also to develop their cultural understanding, debate topical issues that sensitise them to the community they are visiting, forge friendships, carry out social service and develop mind, body and soul through a range of culturally immersive experiences including local expeditions, sporting activities, and mindful practices, most especially a daily programme of yoga.

(iii) Accordingly, the services under the agreement include that resulting to training in recreational activities relating to Arts, culture and Sports and hence, being registered u/s 12AA of the Income tax act merit exemption under the entry 80 to the Notification No.12/2017-CT(Rate).

- D.** As for the services to be procured by the Applicant for the purposes of the conference, the services by way of transportation to the students, faculty and staff; catering, and security or cleaning or house-keeping are exempt under entry 66 of the Notification No. 12/2017-Central Tax (Rate), as the services would be received by the applicant who is an educational institution. Accordingly, any such services received by the Applicant for the purposes of the conference would merit exemption from GST.
- E.** The participants in the conference would be from within India as well as from outside India. Therefore, the two-respective provisions for ascertaining the place of supply in the present case would be clause (5) of section 13 of the Integrated Goods & Services Tax Act, 2017 and clause (6) of Section 12 of the Integrated Goods & Services Tax Act, 2017.

- i. Clause (5) of section 13 which applies in case of attendees from international schools (cross-border)

*“The place of supply of services supplied by way of admission to, or organisation of a cultural, artistic, sporting, scientific, educational or entertainment event, or a celebration, conference, fair, exhibition or similar events, and of services ancillary to such admission or organisation, shall be the place where the event is actually held.”*

- ii. Clause (6) of section 12 which applies in case of attendees from domestic schools (within India)

*“The place of supply of services provided by way of admission to a cultural, artistic, sporting, scientific, educational, entertainment event or amusement park or any other place and services ancillary thereto, shall be the place where the event is actually held or where the park or such other place is located.”*

In both the above cases, the place of supply would be the place of event, i.e. the State of Madhya Pradesh.

In the backdrop of the above facts and the legal position as understood by us, we place our questions regarding taxability, of the education services of conference to be provided by the Applicant under the agreement before the Advance Ruling authority of the State of Madhya Pradesh.

## **7. DISCUSSIONS AND FINDINGS:**

**7.1** We find that the question before us broadly pertains to classification of the service question, input tax rebate and the rate of duty applicable on supply of such service. We, therefore observe that the issue before us is squarely covered under Section 97(2)(a) and therefore we admit the application for consideration.

**7.1** We have carefully considered the submissions made by the applicant in the application and during time of personal hearing.

**7.2** The first question on which the Applicant seeks an Advance Ruling is – Will the consideration received by the school from the participant school(s) for participation of their students and staff in the conference would be exempted under Entry No. 66 or Entry No. 1 or Entry No. 80 of the Notification No. 12/2017-Central Tax (Rate) :

**7.3** After going through the provisions of Act/Rules/notification it is clear that Supply of all services to an Educational Institution are not exempt. Only the specified services are exempt. For example, even the entrance examinations conducted by an Educational Institution will not be exempt, if there is no specific clause for its exemption.

**7.4** Similarly, supply of services pertaining to transportation of students, faculty and staff is exempt only because of eligibility of an Educational Institution for exemption for educational services for pre-school education and education up to higher secondary school or equivalent.

**7.5** supply of such services to an Educational Institution for any other purpose, say for education beyond higher secondary level, shall not be exempt.

**7.6** Now let us see the exemption to such services in different entries of Notification No. 12/2017-Central Tax (Rate). dt. 28-6-2017.

Entry 1 is pertaining to Services by an entity registered u/s 12AA of the Income-tax Act, 1961 by way of charitable activities. This clause is not applicable to the proposed activities to be carried on by the applicant, as the School is not an entity registered u/s 12AA of I.T. Act for charitable activities.

Clause (a) of Entry 80 is not applicable to the proposed activities to be carried on by the applicant, as the said clause is applicable to services by way of training or coaching in recreational activities relating to arts or culture.

The activities of holding educational conference / gathering of of students. faculty and staff of other Schools, can not be said to be training or coaching in recreational activities relating to arts or culture.

Clause (b) of Entry 80 is also not applicable, as the said clause is applicable to services by way of training or coaching in recreational activities relating to sports by charitable entities registered u/s 12AA of I.T. Act.

**7.7** Now there remains entry 66.

- Clause (a) of Entry 66 is pertaining to services provided by an educational institution to its students, faculty and staff.

The activities of holding educational conference / gathering of students, faculty and staff of other Schools, can not be treated as services provided by an educational institution to its students, faculty and staff;



- Clause (aa) of Entry 66 is pertaining to conduct of entrance examination. Therefore, this clause is not applicable to the activities of holding educational conference / gathering of students and staff of other Schools;
- Clause (b)(i) of Entry 66 is pertaining to transportation of students, faculty and staff. This clause is not applicable to holding of educational conference / gathering of students and staff of other Schools. This is also because such other Schools may or may not be providing educational services for pre-school education or education up to higher secondary school or equivalent.
- Clause (b)(ii) of Entry 66 is pertaining to the services provided to an educational institution by way of catering. This clause shall not be applicable to catering services provided to an educational institution for holding of educational conference / gathering of students and staff of other Schools, because the activities of organising an educational conference / gathering of students and staff of other Schools, itself is not eligible for exemption in any of the Entries of Notification No. 12/2017-Central Tax (Rate).

It can not be contended that supply of certain services to an educational institute should be exempt from tax, even if such catering services are for organizing an educational conference / gathering of students and staff of other Schools, otherwise, the supply of catering services to an educational institution for any other non-exempted activities would also become eligible for exemption, which can not be the intention of the Legislature.

- Same principle will apply for deciding the eligibility for exemption to security or cleaning or house-keeping services performed in such educational institution. If such services are for security or cleaning or house-keeping of the premises of the educational institution, then the same shall be exempt, otherwise the same shall not be exempt from tax. If the educational conference / gathering of students and staff of other Schools is at some other place, then the same shall not be exempt from tax.

**7.8** The second question raised by the applicant reads as follow -

If not exempted then what would be the appropriate category of the service and the appropriate Tax Rate ?

**7.9** The authority is of opinion that various services provided for organizing an educational conference / gathering of students and staff of other Schools, shall be liable to tax at the rate applicable to the respective services. For example, the catering services shall be liable to tax @ 5% (2.5% + 2.5%)

without eligibility for Input tax credit. Similarly, the services of security or cleaning or house-keeping services shall be liable to tax @ 18%.

**7.9** The third question raised by the applicant reads as follow -

What would be the Place of Supply for such services?

**7.10** According to the provisions of the Act to decide the Place of supply is beyond the jurisdiction of AAR.

**7.11** The fourth question raised by the applicant reads as follow-

Whether exemption provided to service providers of catering, security, cleaning, house-keeping, transportation etc. to an educational institution up to higher secondary be available to the Service Providers of the Applicant for services related to such conference?

**7.12** Authority is of the opinion that Exemption provided to service providers of catering, security, cleaning, house-keeping, transportation etc. to an educational institution up to higher secondary shall not be available for services provided for such conference.

**7.13** The fifth question raised by the applicant reads as follow-

Whether ITC would be eligible of all the input services availed for the purpose of the above conference ?

**7.14** On this question the provision of the act very clear that no ITC shall be available on food and catering, as rate is 5% without ITC. ITC in respect of other services shall be available as per provisions of the GST Act and the Rules.

### **RULING**

**(Under section 98 of Central Goods and Services Tax Act, 2017 and the Madhya Pradesh Goods and Services Tax Act, 2017)**

**A.** The consideration received by the school from the participant school(s) for participation of their students and staff in the impugned conference would not be exempted under entry No. 66 or entry No. 1 or entry No. 80 or any other entry of the Notification No. 12/2017 - Central Tax (Rate) or will be chargeable to GST under CGST Act, 2017 & MP GST Act, 2017 or IGST Act, 2017? and concurrent notifications issued by the State Tax authorities.

**B.** The authority is of opinion that various services provided for organizing the impugned conference / gathering of students and staff of other Schools,

shall be liable to tax at the rate applicable to the respective services.

**C.** To decide the place of supply is beyond the jurisdiction of AAR.

**D.** Authority is of the opinion that Exemption provided to service providers of catering, security, cleaning, house-keeping, transportation etc. to an educational institution up to higher secondary shall not be available for services provided for the impugned conference for which the applicant has asked for ruling.

**E.** On the fifth question raised by the applicant, the authority is of opinion that the provision of the act very clear that no ITC shall be available on food and catering, as rate is 5% without ITC. ITC in respect of other services shall be available as per provisions of the GST Act and the Rules.

**8.2** This ruling is valid subject to the provisions under section 103(2) until and unless declared void under Section 104(1) of the GST Act.



**(2019) 63 TLD 273** Authority for Advance Ruling, Madhya Pradesh  
Rajiv Agrawal & Manoj Kumar Choubey, Members  
**Directorate of Skill Development, Bhopal**

Case No. : 09/2019

Advance Ruling No. : 10/2019

July 18, 2019

**AAR-MP - Directorate of Skill Development, Bhopal shall be liable to pay IGST on import of Service under Reverse Charge Mechanism for business in terms of Notification No. 10/2017-IT(R).**

**:: PROCEEDINGS ::**

**(Under sub-section (4) of Section 98 of Central Goods and Service Tax Act, 2017 and the Madhya Pradesh Goods & Service Tax Act, 2017)**

**1.** The present application has been filed u/s 91 of the Central Goods & Services Tax Act, 2017 and MP Goods & Services Tax Act, 2017 (hereinafter also referred to CGST Act and MPGST Act respectively) by M/s. Directorate of Skill Development (hereinafter referred to as the Applicant), registered under the Goods & Services Tax.

**2.** The provisions of the CGST Act and MPGST Act are identical, except for certain provisions. Therefore, unless a specific mention of the dissimilar

provision is made, a reference to the CGST Act would also mean a reference to the same provision under the MP GST Act. Further, henceforth, for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST or MP GST Act would be mentioned as being under the GST Act.

### 3. BRIEF FACTS OF THE CASE:

1. M/s. Director of Skills Development Department of Technical Education Skill Development and Employment Govt. of Madhya Pradesh (hereinafter referred to as 'the Applicant'), having their registered office at Global Skill Park ITI Building Raisen Road Govindpura Bhopal Madhya Pradesh is unregistered in GST.
2. The project for the Establishment of Centre for Occupational Skills Acquisition within the Global Skills Park (herein after referred as GSP) in Bhopal, Madhya Pradesh was awarded to Directorate of Skill Development, Department of Technical Education, Skill Development & Employment, Government of Madhya Pradesh.
3. The said Project will assist the Government of Madhya Pradesh (GOMP) in transforming its technical and vocational education and training (TVET) system to create a skilled workforce that meets the evolving development needs of the state.
4. The project will establish a new advanced TVET Institute of international standards to introduce high quality, technology oriented skills training for the state's priority sectors.
5. ITE Education Services Pte. Ltd, a Singapore based Consultancy Company having its registered office at ITE Headquarters, Blk A, A2-01, 2 Ang Mo Kio Drive, Singapore 567720 is to provide certain Consulting Services to the Directorate of Skill Development for the said Project.
6. An agreement was executed on 28-9-2018 between Directorate of Skill Development, Department of Technical Education, Skill Development & Employment, Government of Madhya Pradesh ("Client") and ITE Education Services Pte. Ltd, a Singapore based Consultancy Company.
7. The Project is to be executed by the ITE Education Services Pte. Ltd, Singapore between Nov. 2018 to May 2023 the total consideration has been decided to be USD \$ 38,12,740/- .Which is to be paid in 11

installments.

8. In this regard applicant reproduce the Clause 38.1 of the Agreement describing the consideration agreed between the parties:-
9. The Contract price is US \$ 3,812,740 (inclusive of Consultant country taxes). The lump sum amount is exclusive of provisional sums and contingency, which will be covered separately under the project, if required.
10. The lump sum amount is exclusive of all Indian taxes, levies and duties imposed by the Applicable Law. If the Applicable Law requires any Indian taxes, levies or duties to be paid, the Consultant shall be entitled to invoice the Client for a higher amount such that, after the payment/ withholding of the relevant Indian taxes, levies or duties, the Consultant shall receive the original amounts state in Appendix C.
11. The GSP would benchmark quality skills training institutions in order to arrive at desired competency standards with an appropriate assessment mechanism and offer market responsive employability skills training across various learner segments leading to -
  - a. Wage Employment – Regional, National & International
  - b. Self-Employment
  - c. Group Entrepreneurship
  - d. Incubation of ancillary start-ups
12. The Global skill park will impart Training to 10,000 students every year by trainers of international standard. The park will function on the spirit of 'With Industry-For Industry' and the Trained students will be given placement in India and outside India at international level.
13. **Some Key features of GSP:-**
  - a. International Training Method with On-Job trainings.
  - b. World Class Industrial Machinery, Tools & Equipment's.
  - c. State of art classrooms, workshops and other facilities for students.
  - d. Partnership with Institute of Technical Education Singapore for course curriculum and teacher training.
14. Global Skills Park (GSP), is a new-age world class technical training institution for providing career cluster curriculum skilling courses and

opportunities of overseas employment, is getting established in Bhopal, Madhya Pradesh, India.

15. GSP will provide world-class technical training in precision engineering sector with six career oriented trades namely Conventional Lathe, Conventional Milling, CNC Milling, CNC Turning, Surface Grinding and Machining and Metrology with soft skills add on courses like IT Skills and Communication Skills.
16. As the state of Madhya Pradesh is developing state of India and mainly dependent of agricultural activities hence government wants to stimulate the industrial growth in the State of M.P. .

To promote this objective skilled manpower is the need of the hour keeping this objective in mind the Global skill Park is being established. There is no commercial or business motive behind establishment of this GSP hence the activity being performed by the Directorate of Skill development is the execution of functions entrusted to the government hence it cannot be considered as Business Activity.

#### **4. QUESTIONS RAISED BEFORE THE AUTHORITY:-**

The applicant desired to know, whether the services received by it from a provider of service located in a non taxable territory would attract the provision of sec 5(3) read along with Notification No 10/2017 IT(R). In other words, whether applicant is liable to pay tax under reverse charge mechanism on the transaction mentioned above?

#### **5. CONCERNED OFFICER'S VIEW POINT:**

The Concerned Officer Submitted that Applicant shall be liable to pay IGST on import of services under Reverse Charge Mechanism in terms of Notification No. 10/2017 dated 28th June 2019- IT (Rate) and Notification No.8/2017 dated 28th June 2019 - IT(Rate).

#### **6. RECORD OF PERSONAL HEARING:**

Shree Navneet Garg, CA of the applicant for personal hearing .He reiterated submissions already made in the application. The argument in brief are as follows-

**6.1** Directorate of Skill Development (herein after referred as Applicant) is part of Department of Technical Education, Skill Development & Employment, Government of Madhya Pradesh hence the applicant is a government department.

**6.2** The project for the Establishment of Centre for Occupational Skills Acquisition within the Global Skills Park in Bhopal, Madhya Pradesh was awarded to Directorate of Skill Development, Department of Technical Education, Skill Development & Employment, Government of Madhya Pradesh.

**6.3** The said Project will assist the Government of Madhya Pradesh (GOMP) in transforming its technical and vocational education and training (TVET) system to create a skilled workforce that meets the evolving development needs of the state.

**6.4** The project will establish a new advanced TVET Institute of international standards to introduce high quality, technology oriented skills training for the state's priority sectors.

**6.5** ITE Education Services Pte. Ltd, a Singapore based Consultancy Company having its registered office at ITE Headquarters, Blk A, A2-01, 2 Ang Mo Kio Drive, Singapore 567720 is to provide certain Consulting Services to the Directorate of Skill Development for the said Project.

**6.6** An agreement was executed on 28-9-2018 between Directorate of Skill Development, Department of Technical Education, Skill Development & Employment, Government of Madhya Pradesh ("Client") and ITE Education Services Pte. Ltd, a Singapore based Consultancy Company.

**6.7** The Project is to be executed by the ITE Education Services Pte. Ltd, Singapore between Nov. 2018 to May 2023 the total consideration has been decided to be USD \$ 38,12,740/- .Which is to be paid in 11 installments.

**6.8** In this regard we would like to reproduce here the Clause 38.1 of the Agreement describing the consideration agreed between the parties:-

The Contract price is US \$ 3,812,740 (inclusive of Consultant country taxes). The lump sum amount is exclusive of provisional sums and contingency, which will be covered separately under the project, if required.

The lump sum amount is exclusive of all Indian taxes, levies and duties imposed by the Applicable Law. If the Applicable Law requires any Indian taxes, levies or duties to be paid, the Consultant shall be entitled to invoice the Client for a higher amount such that, after the payment/withholding of the relevant Indian taxes, levies or duties, the Consultant shall receive the original amounts state in Appendix C.

**6.9** The ITE Education Services Pte. Ltd, Singapore shall raise invoices as



per the applicable taxation laws of the Singapore against the services provided to the Department of Skill Development in respect of the said Project in India.

1. The consideration is to be paid in foreign Currency (i.e. US Dollar).
2. The Department of Skill Development is **recipient of services** and ITE Education Services Pte. Ltd. Singapore is **supplier of services**.
3. Section 2(11) of The IGST Act 2017, define the word Import of Services as follows

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import of services” means the supply of any service, where-

- (i) the supplier of service is located outside India;
- (ii) the recipient of service is located in India; and
- (iii) the place of supply of service is in India.

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**6.10 Place of supply of services where location of supplier or location of recipient is outside India is defined in Sec 13 of IGST Act, 2017:**

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- (1) The provisions of this section shall apply to determine the place of supply of services where the location of the supplier of services or the location of the recipient of services is outside India.
- (2) The place of supply of services except the services specified in sub-sections (3) to (13) shall be the location of the recipient of services:

Provided that where the location of the recipient of services is not available in the ordinary course of business, the place of supply shall be the location of the supplier of services.

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**6.11** As the case do not fall under any of sub sections (3) to (13) of section 13 of IGST Act, 2017 the Place of supply shall be the state of Madhya Pradesh, (i.e. Place of recipient).

**6.12** Hence considering the above mentioned points services being availed by the Department of Skill Development from ITE Education Services Pte. Ltd, Singapore can be said to Import of services within the meaning of 2(11) of IGST Act 2017.

**6.13** Sec 5(3) of IGST Act, 2017 read along with Notification No. 10/2017 Integrated Tax (Rate) dated 28th June 2017 provide for the tax to be paid on Reverse Charge Basis in case of Import of service by any person located

in the taxable territory other than non-taxable online recipient

Sec 5(3) The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

Extract from Notification No. 10/2017 Integrated Tax (Rate) dated 28th June 2017

Table Sl.No.	Category of Supply of Services	Supplier of service	Recipient of Service
(1)	(2)	(3)	(4)
1.	Any service supplied by any person who is located in a non-taxable territory to any person other than non-taxable online recipient.	Any person located in a non-taxable territory	Any person located in the taxable territory other than non-taxable online recipient

**6.14** Extracts of Notification No. 9/2017 dated 28 June 2017, exempts certain services received from a provider of service located in a non taxable territory by the State Government in relation to any purpose other than commerce, industry or any other business or profession;

Chapter 99	Services received from a provider of service located in a non- taxable territory by- (a) the Central Government, State Government, Union territory, a local authority, a governmental authority or an individual in relation to any purpose other than commerce, industry or any other business or profession; (b) an entity registered under section 12AA of the Income-tax Act, 1961 (43 of 1961) for the purposes of providing charitable activities; or (c) a person located in a non-taxable territory: Provided that the exemption shall not apply to- (i) online information and database access or	Nil	Nil
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retrieval services received by persons specified in entry (a) or entry (b); or  
(ii) services by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India received by persons specified in the entry.

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Mr. Garg further argued that-

**6.15** The service recipient is department of Government of Madhya Pradesh.

**6.16** The Supplier of services is located in Singapore i.e. non taxable territory and the recipient is located in Madhya Pradesh.

**6.17** The Place of Supply of Service is state of Madhya Pradesh

**6.18** The transaction mentioned above is the transaction of import of Services as defined under section 2(11) of the IGST Act, 2017.

**6.19** As per Entry no. 10 of Notification No. 9/2017 Integrated Tax (Rate) dtd. 28th June 2017, there has been an exemption on services received by the government from the provider of service located in a non taxable territory. Hence the above mentioned transaction is exempted by said notification.

**6.20** Section 5(3) of the IGST Act 2017 read along with Notification No.10/2017 provide for payment of tax on Reverse Charge Mechanism on "Any service supplied by any person who is located in a non-taxable territory to any person other than non-taxable online recipient".

**6.21** However, as discussed in the point no. 5 above, as the services being received by the directorate of skill development are exempt vide Entry no. 10 of Notification No. 9/2017 Integrated Tax (Rate) hence the liability of payment of Tax u/s 5(3) of IGST Act 2017 does not arise and hence directorate of Skill development is not liable to make the payment under reverse charge mechanism.

**6.22** The applicant desired to know, whether the services received by it from a provider of service located in a non taxable territory would attract the provision of sec 5(3) read along with Notification No. 10/2017 IT(R). In other words, whether applicant is liable to pay tax under reverse charge mechanism on the transaction mentioned above?

## **7. DISCUSSIONS AND FINDINGS:**

### **7.1 According to Section 7 of CGST Act**

- (1) For the purposes of this Act. the expression “supply” includes-
- (a) 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;
  - (b) Import of services for a consideration whether or not in the course or furtherance of business; and
  - (c) the activities specified in Schedule I made or agreed to be made without a consideration;

So there are 2 important elements to categorise any transaction as a supply i.e.

- Consideration and
- in the course or furtherance of business.

**7.2 According to Section 2(17) of CGST Act “business” includes-**

- (a) Any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;
- (b) Any activity or transaction in connection with or incidental or ancillary to subclause (a):
- (c) Any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;
- (d) Supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;
- (e) 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;
- (f) Admission, for a consideration, of persons to any premises;
- (g) Services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;
- (h) Activities of a race club including by way of totalisator or a license to book maker or activities of a licensed book maker in such club; and
- (i) Any activity or transaction undertaken by the Central Government, a

State Government or any local authority in which they are engaged as public authorities;

As per Order dated 8th August 2018, Global Skill Park is constituted as a Society under Madhya Pradesh Firms and Societies Act 1973 which is running under M.P. Technical Education Skills development and employment department. This scheme is a Joint Asian Development Bank and MP State. म.प्र. शासन तकनीकी शिक्षा कौशल विकास एवं रोजगार विभाग मंत्रालय के आदेश क्रमांक एफ 4-1/2018/42 (2) भोपाल, दिनांक 08 अगस्त, 2018 के द्वारा मंत्री परिषद् की बैठक दिनांक 30-7-2018 को लिए गए निर्णयानुसार ग्लोबल स्किल्स पार्क, भोपाल की स्थापना, प्रशासन एवं प्रबंधन के लिए मध्यप्रदेश फर्म्स एवं सोसायटी अधिनियम, 1973 के अंतर्गत “ग्लोबल स्किल्स पार्क समिति” का गठन “मध्यप्रदेश स्किल्स डेवलपमेंट प्रोजेक्ट” के अंतर्गत स्थापित किया गया है। ग्लोबल स्किल्स पार्क समिति, म.प्र. शासन तकनीकी शिक्षा कौशल विकास एवं रोजगार विभाग के अंतर्गत संचालित है। उक्त योजना में एशियन डेवलपमेंट बैंक, ऋणांश एवं मध्यप्रदेश राज्यांश सम्मिलित है।

**7.3 As per the Order dated 8th August 2018, main object of Global Skills Park is Followings are the objective for establishment of this project:-**

- a. Establish internationally recognized standards in management, teaching quality, training infrastructure, and curriculum content in Madhya Pradesh and use it as a model to stimulate improvement in all TVET institutions;
- b. Produce occupation-ready skilled workers in accordance with cluster-sector approach in design, thinking and delivery;
- c. Strengthen linkages and cooperation with industries through either partnership training in GSP and / or various structured apprenticeship programs; and
- d. To be truly global in perspective, GSP will stimulate and enhance innovations in skills development through international and national research, analysing future skills need, introducing lifelong learning concepts, and improve productivity through innovative training in products and processes.

Therefore we can say that applicant is engaged in Business or profession as defined in the Section 2(17) of CGST Act. Further the supply might be chargeable to tax if it is falling under Notification No. 11/2019 - Central Tax (Rate) dated 28th June 2019 (Similar Notification

No. 08/2017 - Integrated Tax (Rate)].

Or vice versa exempt from tax if the outward supply of service falling under Notification No. 12/2017 - CT (R) dated 28th June 2019 [Similar Notification No. 09/2017 - IT (R)].

#### **7.4 Applicability of Reverse Charge under IGST for Import of Services**

The applicant desired to know, whether the services received by it from a provider of service located in a non-taxable territory would attract the provision of sec 5(3) read along with Notification No. 10/2017 IT(R). In other words, whether applicant is liable to pay tax under reverse charge mechanism on the transaction mentioned above?

According to Section 5(3) of IGST Act, the Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

#### **7.5 Applicability of Reverse Charge on Import of Services**

Relevant Extract of Notification No. 10/2017 – Integrated Tax (Rate) are produced as under-

S. No.	Category of Supply of Services	Supplier of service	Recipient of service
1.	Any service supplied by any person who is located in a non-taxable territory to any person other than non-taxable online recipient.	Any person located in a non-taxable territory	Any person located in the taxable territory other than non-taxable online recipient

Now we need to determine whether the service is falling under exemption notification if yes then recipient need not to pay GST under RCM.

#### **7.6 Exemption from Tax on Import of Services**

Relevant Extract of Exemption Notification No.9/2017-Integrated Tax (Rate) dated June 28, 2017-

Chapter, Section, Heading	Description of Services	Rate	Condition
Chapter	<p>Services received from a provider of service located in a non- taxable territory by -</p> <p><b>(a) the Central Government, State Government, Union territory, a local authority, a governmental authority or an individual in relation to any purpose OTHER THAN commerce, industry or any other business or profession;</b></p> <p>(b) an entity registered under section 12AA of the Income-tax Act, 1961 (43 of 1961) for the purposes of providing charitable activities; or</p> <p>(c) a person located in a non-taxable territory: Provided that the exemption shall not apply to –</p> <p>(i) <b>online information</b> and database access or retrieval services received by persons specified in entry (a) or entry (b); or(ii) services by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India received by persons specified in the entry.</p>	Nil	Nil

**7.7** As per the above entry clause (a), we need to ensure that service is exempt only if following conditions are satisfied –

1. Supplier is located in a non-taxable territory
2. Recipient is Central Government, State Government, Union territory, a local authority, a governmental authority or an individual
3. Purpose of service is OTHER THAN commerce, industry or any other business or profession



4. Service is not in the nature of Online Information and Database Access and retrieval services (OIDAR)

**7.8** So now we need to focus on specially point no. 3. We can say if the service is imported for the purpose of business or commerce even by the Govt. then exemption would not be available and Govt. need to pay GST under Reverse Charge.

**7.9** This can be further substantiated as per Q.No. 14 of GST Sectorial Series on Government Service.

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**Question 14:** Would services received by Government, a local authority, a governmental authority from a provider of service located outside India be taxable?

**Answer:** No tax is payable on the services received by the Government / local authority/governmental authority from a provider of service located outside India. However, the **exemption is applicable to only those services which are received for the purpose other than commerce, industry or any other business or profession.** In other words, if the Government receives such services for the purpose of business or commerce, then tax would apply on the same.

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**7.10** As analysed above in para no. 7.1 and then 7.2 that applicant is engaged in activities which is to be treated as Business or profession as defined in the Section 2(17) of CGST Act. Further applicant is taking the service from non taxable territory **for the purpose of business or profession** therefore exemption provided in the Notification No. 9/2017-Integrated Tax (Rate) dated June 28, 2017 **would not be available to the applicant.** Therefore the applicant needs to pay the IGST under Reverse Charge.

### **RULING**

**(Under section 98 of Central Goods and Services Tax Act, 2017 and the Madhya Pradesh Goods and Services Tax Act, 2017)**

**8.1.** The Applicant shall be liable to pay IGST on import of Service under Reverse Charge Mechanism in terms of Notification No. 10/2017-IT(R).

**8.2.** This ruling is valid subject to the provisions under section 103(2) until and unless declared void under Section 104(1) of the GST Act.



**(2019) 63 TLD 286** Authority for Advance Ruling, Madhya Pradesh  
Rajiv Agrawal & Manoj Kumar Choubey, Members

**Indo Thai Securities Ltd., Indore**

Case No. : 12/2019

Advance Ruling No. : 08/2019

June 25, 2019

**AAR-MP - Interest for delayed payment - The additional amount being charged in delay of payment by whatever named called should be classified as principal supply and the classification of the same cannot differ from the original supply - Hence the additional amount charged on delayed payment shall be taxed as per original supply i. e. supply of Stock broking services.**

**:: PROCEEDINGS ::**

**(Under sub-section (4) of Section 98 of  
Central Goods and Service Tax Act, 2017 and  
the Madhya Pradesh Goods & Service Tax Act, 2017)**

1. The present application has been filed u/s 97 of the Central Goods & Services Tax Act, 2017 and MP Goods & Services Tax Act, 2017 (hereinafter also referred to CGST Act and SGST Act respectively) by M/s. INDO THAI SECURITIES LIMITED (hereinafter referred to as the Applicant), registered under the Goods & Services Tax.

2. The provisions of the CGST Act and MPGST Act are identical, except for certain provisions. Therefore, unless a specific mention of the dissimilar provision is made, a reference to the CGST Act would also mean a reference to the same provision under the MPGST Act. Further, henceforth, for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST or MP GST Act would be mentioned as being under the GST Act.

**3. BRIEF FACTS OF THE CASE:**

Applicant is a registered stock broker dealing in purchase/sale of securities for and on behalf of its clients and charges brokerage for its activities.

**4. QUESTIONS RAISED BEFORE THE AUTHORITY:-**

The following questions have been posted before the Authority in the application :-

Applicant charges interest from customers for delayed payment. The amount on which interest is charged consists of two components – cost of securities and brokerage. Interest charged on cost of securities is exempt under notification no. 12/2017 Central Tax(Rate) dated 28-6-2017 as amended. Then what will be the tax liability on such interest charged from customers?

## **5. RECORD OF PERSONAL HEARING:**

**5.1** Shree Sunil P Jain, CA of the applicant for personal hearing the submissions already made in the application. The Applicant states that –

**5.2** Indo Thai Securities Limited is a public limited company. It is NSE/BSE Broker. It acquires/sells securities to and on behalf of clients and charges brokerage for its activities. Securities are neither goods nor services under GST law. But brokerage is basically facilitating or arranging transaction in securities and thus service under section 2(102) of CGST Act 2017

**5.3** When company acquires securities for clients, total due amount is amount towards cost of securities and brokerage on such transaction (eg. Brokerage is 0.50% and security purchased is worth Rs. 100 then total due is Rs. 100.50). If payment is not received in time interest is charged on such due amount.

**5.4** Question is about GST on interest charged/ late payment charges on such due amount.

**5.5** Legal Position **a)** Under section 15(2)(d) interest on late fee or penalty or delayed payment of any consideration for any supply, forms part of value **b)** In accordance with Notification No. 12/2017(Rate) of Central Tax dated 28-6-2017 as amended interest is exempted as per sr. no. 27 (relevant extract of notification enclosed).

**5.6** It is ample clear that in mentioned above transaction Rs. 100 is not supply and Rs.0.50 being brokerage is supply, hence any interest towards brokerage shall only constitute supply {Section 15(2)(d)} and interest of other loan/advance is exempted as explained in Point 4(b) above.

**5.7** However such transaction is in ordinary course of trade, thus constitutes composite supply under section 2(30) of CGST Act, 2017 and principal supply constituted therein is towards outstanding of securities, thus whole supply will be treated supply of principal supply in accordance with section 8 of CGST Act 2017. Thus wholly exempted.

## 6. DISCUSSIONS AND FINDINGS:

The matter has been brought to us for seeking advance ruling on the matter that the Indo Thai Securities Limited dealing in purchase and sales of securities for and on behalf of their clients and charging Brokerage there on. The applicant acquires securities for and on behalf of its customers and recovers its dues. The dues are mainly consist of two components i.e. amount due towards the security and the brokerage. However sometimes clients delayed the payment and on such delay an additional amount is charged which is termed as Interest/Late fee/ Penalty.

Advance ruling is sought on the matter whether there is any Tax Liability on such additional amount (termed as Interest) charged on delayed payment?

There are three issues on which advance ruling is Sought:-

1. Classification of any goods or services or both.
2. Applicability of a Notification issued under the provision of this act.
3. Determination of the liability to pay tax on goods or services or both.

### 1. Classification

The question is regarding the Classification of additional amount termed as interest is being charged on the delayed payment from customers.

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Sec 15 (2) The value of supply shall include -

(d)- interest or late fee or penalty for delayed payment of any consideration for any supply;

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It is clear from the simple reading of 15(2)(d) that the interest, late fee or penalty charged from customer shall be added to the transaction value and hence shall be taxable at the rate at which such goods/ services are taxable or in other words the classification of interest, late fee or penalty cannot be different from the classification of goods or services.

Here in the given case applicant is stock broker engaged in the activity of purchase and sales of securities for & on behalf of it's customers and the consideration is being charged in the form of brokerage as a fixed percentage of transaction value. Having regard to the trade parlance it is also clear that stock broker gives a reasonable time to its customer to make the payment however if the customer do not make the payment within the stipulated time then an additional amount is being charged it may be termed as different names i.e. Interest, Late fee or Penalty.

Stock broker recovered amount from its customer is having two components i.e. Brokerage and the amount of security purchased by it. In case of delay in payment interest, late fee or penalty is charged on entire amount due including the amount of security. As far as classification of interest, Late fee or penalty is concern it shall be same as nature of principal service. The classification of interest, late fee or penalty cannot be different from the principal supplies. In this case the principal supply is stock broking services for which the consideration is charged in the form of brokerage.

The additional amount being charged on delayed payment termed as Interest, late fee or penalty on the amount of brokerage and the amount of securities cannot be bifurcated as such additional payment do not have its own classification, It is taking colour from original supply i.e. supply of stock broking services.

Moreover this view is also confirmed by the explanation inserted to sec 2(102) of CGST Act 2017 w.e.f. 01st February 2019.

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**Section 2(102) of CGST Act: Definition of “Services”**

“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.**

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**The explanation to the sec 2(102) has been inserted from 01st February 2019 onwards to clarify that the definition of services includes facilitating or arranging transaction in securities.**

**Further Section 8 of CGST Act 2017 deals with composite supply-**

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**Sec 8 – Composite supply means a supply is comprising two or more goods/services, which are naturally bundled and supplied in with each other in the ordinary course of business, one of which is a principal supply.**

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In this case stock broking service is the principal supply and all other ancillary supplies shall take colors from the principal supply itself and it shall

be classified as principal supplies i.e. Stock Broking Services.

## 2. Applicability of Notification No. 12/2017.

Applicant's contention is, on the delay of payment, the additional amount is charged is interest in nature. To qualify the amount as interest, there must be some specific percentage to be charged on daily / monthly or some periodic basis. However as per information gathered from the industry the additional amount charged from the customer by the share brokers on delay of payment is not on specific percentage basis. Hence the amount charged cannot be qualified as interest.

Here it is necessary to differentiate between the Interest, late fee and Penalty. Interest: interest is charged to compensate for late payment etc. Interest is charged to compensate for time value of money. Interest is charged at the specified percentage and cannot be fixed.

**Late Fee:** Late fee is generally charges as fixed amount on a daily basis depending on the [period of delay.

**Penalty:** Penalty is levied for something wrong you have done or what you should have done but could not do so. Penalty can be in absolute as well as in percentage terms.

Hence the additional amount being charged on delayed payment is in the nature of penalty which is being charged for the payments which the customer has to make within the stipulated time but failed to do so.

Here the entry no. 27 of Notification no. 12/2017 of CGST exempt the services by the way of extending deposits, loans or advances in so far as the consideration is represent by way of interest or discount (other than interest involved in credit card services).

Further this Matter has been discussed in detail in the Circular No. 102/21/2019-GST issued on 28th June 2019, the relevant extracts are being produces here:-

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Generally, following two transaction options involving EMI are prevalent in the trade:-

**Case – 1:** X sells a mobile phone to Y. The cost of mobile phone is Rs 40,000/-. However, X gives Y an option to pay in installments. Rs 11,000/- every month before 10th day of the following month, over next four months (Rs 11,000/- \*4 = Rs. 44,000/-). Further, as per the contract, if there is

any delay in payment by Y beyond the scheduled date, Y would be liable to pay additional / penal interest amounting to Rs. 500/- per month for the delay. In some instances, X is charging Y Rs. 40,000/- for the mobile and is separately issuing another invoice for providing the services of extending loans to Y, the consideration for which is the interest of 2.5% per month and an additional / penal interest amounting to Rs. 500/- per month for each delay in payment.

**Case – 2:** X sells a mobile phone to Y. The cost of mobile phone is Rs 40,000/-. Y has the option to avail a loan at interest of 2.5% per month for purchasing the mobile from M/s. ABC Ltd. The terms of the loan from M/s ABC Ltd. allows Y a period of four months to repay the loan and an additional / penal interest @ 1.25% per month for any delay in payment.

As per the provisions of sub-clause (d) of sub-section (2) of section 15 of the CGST Act, the value of supply shall include “interest or late fee or penalty for delayed payment of any consideration for any supply”. Further in terms of SI. No. 27 of notification No. 12/2017- Central Tax (Rate) dated the 28-6-2017 “services by way of (a) 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)” is exempted. Further, as per clause 2 (zk) of the notification No. 12/2017-Central Tax (Rate) dated the 28th June, 2017, “‘interest’ means interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) but does not include any service fee or other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilised;”.

Accordingly, based on the above provisions, the applicability of GST in both cases listed in para 3 above would be as follows:

**Case 1:** As per the provisions of sub-clause (d) of sub-section (2) of section 15 of the CGST Act, the amount of penal interest is to be included in the value of supply transaction between X and Y is for supply of taxable goods i.e. mobile phone. Accordingly, **the penal interest would be taxable** as it would be included in the value of the mobile, irrespective of the manner of invoicing.

**Case 2:** The additional / penal interest is charged for a transaction between Y and M/s. ABC Ltd., and the same is getting covered under SI. No. 27 of notification No. 12/2017- Central Tax (Rate) dated 28-6-2017.



Accordingly, in this case the 'penal interest' charged thereon on a transaction between Y and M/s ABC Ltd. would not be subject to GST, as the same would not be covered under notification No. 12/2017-Central Tax (Rate) dated 28-6-2017. The value of supply of mobile by X to Y would be Rs. 40,000/- for the purpose of levy of GST.

In the matter mentioned above, having regard to the nature of transaction it cannot be said that the share broker has extended any deposit, loans or advances to its clients hence the additional amount being charged cannot be treated as interest hence the exemption granted under entry no. 27 of notification no. 12/2017 is not applicable on the transaction on which advance ruling is sought.

### **3. Determination of Tax Liability**

As discussed in point no. 1 above, the additional amount being charged in delay of payment by whatever named called should be classified as principal supply and the classification of the same cannot differ from the original supply. Hence the additional amount charged on delayed payment shall be taxed as per original supply i. e. supply of Stock broking services.

Moreover the applicability of Notification No. 12/2017 has been discussed in point No. 2 Above hence the additional amount being charged cannot be termed as interest and the exemption vide entry no. 27 of such notification cannot be applied on the same.

### **RULING**

#### **(Under section 98 of Central Goods and Services Tax Act, 2017 and the Madhya Pradesh Goods and Services Tax Act, 2017)**

**7.1.** In this case stock broking service is the principal supply and all other ancillary supplies shall take colors from the principal supply itself and it shall be classified as principal supplies i.e. Stock Broking Services.

**7.2.** In respect of the question raised by the applicant we hold that the applicability of Notification No. 12/2017 has been discussed in point No. 2 Above hence the additional amount being charged cannot be termed as interest and the exemption vide entry no. 27 of such notification cannot be applied on the same.

**7.3.** This ruling is valid subject to the provisions under section 103(2) until and unless declared void under Section 104(1) of the GST Act.



**(2019) 63 TLD 293** Authority for Advance Ruling, Madhya Pradesh  
Rajiv Agrawal & Manoj Kumar Choubey, Members  
**Madhya Pradesh Power Generating Company Ltd., Jabalpur**  
Case No. : 10/2019  
Advance Ruling No. : 12/2019  
July 26, 2019

**AAR-MP - Construction for MPPGCL - Contract for construction of building and structure for colony - The GST will be applicable @18% under SAC 9954, in as much as it refers to construction of residential quarters, which was awarded to M/s.Shreeji Infrastructure P. Ltd. by the applicant.**

**:: PROCEEDINGS ::**

**(Under sub-section (4) of Section 98 of Central Goods and Service Tax Act, 2017 and the Madhya Pradesh Goods & Service Tax Act, 2017)**

1. The present application has been filed u/s 97 of the Central Goods & Services Tax Act, 2017 and MP Goods & Services Tax Act, 2017 (hereinafter also referred to CGST Act and SGST Act respectively) by M/s. Madhya Pradesh Power generating Company Limited (hereinafter referred to as the Applicant), registered under the Goods & Services Tax.
2. The provisions of the CGST Act and MP GST Act are identical, except for certain provisions. Therefore, unless a specific mention of the dissimilar provision is made, a reference to the CGST Act would also mean a reference to the same provision under the MP GST Act. Further, henceforth, for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST or MP GST Act would be mentioned as being under the GST Act.

**3. BRIEF FACTS OF THE CASE:**

**3.1.** The company M.P. Power Generating Co. Ltd is 100% Madhya Pradesh State Government Hold Company.

**3.2.** Deputy Secretary, Energy Department, Government of Madhya Pradesh, vide its Letter No. 192/01/2011/13 dated 7-1-2011 entrusted the liability to construct 2 X 660 MV Shree Singaji Thermal Power Project Stage -II Khandwa on MP Power Generating Co. Ltd.

**3.3.** It was also mentioned that an SPV (Special Purpose Vehicle) to be constituted for the same, which was constituted in the form of Company Shree Singaji Power Project Limited on 12-10-2017.

**3.4.** The total cost of the project was estimated at Rs. 6500 Crore which was revised to Rs. 7738 Crore. This cost includes cost of Colony Building.

**3.5.** Company has awarded contract to M/s Shreeji Infrastructure India Pvt. Ltd. towards construction of residential quarters at 2×660 MW Shree Singaji Thermal Power Project Stage -II Khandwa.

**3.6.** Contract was awarded to Shreeji Infrastructure India Pvt. Ltd. under old law including all taxes. The same was renewed under the new law excluding tax. This says that whatever tax is payable same will be provided by MPPGCL.

**3.7.** This Advance Ruling is sort with respect to the Rate applicable on the contract given to Shreeji Infrastructure India Pvt. Ltd. in the light of notification No. 11/2017 amended vide notification no. 20/2017, 24/2017 and 31/2017.

**3.8.** M.P. Power Generating Co. Ltd. was constituted with the object to generate electricity in the state of Madhya Pradesh. For generation of Power, Power Plant are to be established at various locations. As the locations are remote no plant can be set up or start functioning without having residential quarter available at Plant site. Hence, construction of residential quarter is part and parcel of the project of establishment of Power Plant.

#### **4. QUESTIONS RAISED BEFORE THE AUTHORITY:-**

**4.1** Rate of GST on contract for construction of building and structure for colony at village Siveria at 2×660 MW Shree Singaji Thermal Power Project Stage -II Khandwa. As per Notification No. 11/2017 as amended by Notification No. 24/2017 further amended vide Notification No. 31/2017.

**4.2** Rate of GST on construction contract of residential quarters at various power houses of MPPGCL as per Notification No. 11/2017 as amended by Notification No. 24/2017 further amended vide Notification No. 31/2017.

#### **5. CONCERNED OFFICER'S VIEW POINT:**

The Concerned Officer Submitted that the work contract awarded to Shreeji Infrastructure P.Ltd. for construction of 599 residential quarters at Shree Singaji Thermal Power Project Stage-II, shall attract GST @18%

under SAC 9954.

**6. RECORD OF PERSONAL HEARING:**

**6.1** Shree Neeraj Agrawal, CA, authorized by the applicant, appeared for personal hearing and reiterated the submissions already made in the application. He reiterated the facts submitted along with the application. The Applicant states that -

**6.2** Company has awarded contract to M/s. Shreeji Infrastructure India Pvt. Ltd. towards construction of residential quarters at 2×660 MW Shree Singaji Thermal Power Project Stage -II Khandwa.

**6.3** Company is a Government entity as per the definition provided in Notification No. 31/2017 dated 13-10-2017.

**6.4** Construction of residential quarters is covered by Notification No. 11/2017 read with Notification No. 24/2017 under SAC Code 9954 under serial No. 3 (vi)(c).

**6.5** Work of establishment of at 2×660 MW Shree Singaji Thermal Power Project Stage -II Khandwa including residential quarters was entrusted to M P Power Generating Co. Ltd. by Government of Madhya Pradesh vide order dated 7-1-2011 of Deputy Secretary M.P. Government, Energy Ministry.

**6.6** GST rate on construction of residential quarters should be 6%+6% as per Notification No. 11/2017 as amended vide Notification No. 24/2017.

**6.7** M.P. Power Generating Co. Ltd. was constituted with the object to generate electricity. For generation of Power, Power Plant are to be established at various locations. As the locations are remote no plant can be set up or start functioning without having residential quarter available at Plant site, construction of residential quarter is part of the project of establishment of Power Plant.

**6.8** Notification No. 11/2017 dated 28-6-2017 under SAC Code 9954 under serial No. 3 covers construction Services in three points (i to iii) and prescribes rate of tax at 9%

**6.9** The said Notification was amended by notification No. 20/2017 dated 22-8-2017 was further amended vide Notification No. 24/2017 dated 21-9-2017 was further amended vide Notification No. 31/2017 dated 13-10-2017.

**6.10** As per amendment “Government Entity” means an authority or a board or any other body including a society, trust, corporation,

- i. set up by an Act of Parliament or State Legislature; or
- ii. established by any Government, with 90 per cent, or more participation by way of equity or control, to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority.”.

**6.11** Company is a 100% State Government owned undertaking hence a Government entity as defined in Notification No. 11/2017 dated 28-6-2017 amended vide Notification No. 31/2017 dated 13-10-2017.

**6.12** Company awarded contract to M/s. Shreeji Infrastructure India Pvt. Ltd. on turnkey basis at Village Siveria which include 599 staff quarters for plant personal, all internal connection road and drain at 2×660 MW Shree Singaji Thermal Power Project Stage -II Khandwa

**6.13** Shreeji Infrastructure India Pvt. Ltd. has obtained an advance ruling on this issue vide order No. 15/2018 dated 18-10-2018, but this fact was not brought to the notice of the Authority that this work is being entrusted to company by Government of Madhya Pradesh, hence we are filing a fresh advance ruling application.

**6.14** M.P. Power Generating Co. Ltd. was constituted with the object to generate electricity in the state of Madhya Pradesh. For generation of Power, Power Plant are to be established at various locations. As the locations are remote no plant can be set up or start functioning without having residential quarter available at Plant site. Hence, construction of residential quarter is part and parcel of the project of establishment of Power Plant.

## **7. Discussions and Findings:**

**7.1** We have carefully considered the submissions made by the applicant in the application and during time of personal hearing.

**7.2** We find that the question before us essentially pertains to classification of the service question and the rate of duty applicable on supply of such service, particularly the applicability of concessional rate of tax in terms of Notification No.11/2017-Central Tax (Rate) dtd. 28-6-2017 and corresponding notification issued under MPGST Act. We, therefore observe that the issue before us is squarely covered under Section 97(2)(a) of the Act and therefore we admit the application for consideration.

**7.3** Before we proceed to discuss the merits of the application, it is pertinent to mention here that the issue raised in the present application has been duly decided by this Authority in the matter of Application filed by M/s. Shreeji Infrastructure India Private Limited vide order number 15/2018 dtd.18-10-2018. The applicant in the present application are the service receivers while M/s.Shreeji Infrastructure P. Ltd. are the service providers. This authority vide order dtd.18-10-2018 had ruled that *“The works contract service of construction of 599 residential quarters allotted to the applicant (Shreeji Infrastructure P.Ltd.) by MPPGCL will merit classification under SAC 9954 and would attract GST @18% (9%CGST + 9%SGST)”*.

**7.4** In the present application the applicant viz. MPPGCL have sought a fresh ruling on the same contract awarded to M/s. Shreeji Infrastructure P.Ltd., arguing that the said order is not applicable as the information before the Authority was insufficient and inconclusive to arrive at the ruling. The applicant have specifically mentioned Para 8 of the said order wherein it has been mentioned that *“Though we do not have details of the work entrusted by the State Government to MPPGCL, on the basis of facts brought on record through the present application we safely conclude that the essential sole work entrusted to MPPGCL by the Government of Madhya Pradesh is of electricity (power) generation.”* The applicant has solely made this narration a ground for seeking fresh ruling on the same contract.

**7.5** We have given a careful consideration to the arguments adduced by the applicant and the counsel at the time of personal hearing. The applicant have argued that the Government of Madhya Pradesh incorporated MPPGCL with an object to construct, operate, and maintain electricity system as defined in Section 2(25) of Electricity Act 2003 (Power Projects). It has been argued by the applicant that *‘... the work of power project includes the entrusting all work related to that project including the work of construction of residential colonies as they are in relation to the power project which is entrusted by the Government.’*

**7.6** Having duly considered the arguments put forth by the Applicant, we are not inclined to subscribe to the contentions of the Applicant. The fact still remains that the sole work entrusted by the Government of Madhya Pradesh to the Applicant viz. MPPGCL is of Generation of Electricity (Power) in the State of Madhya Pradesh. Construction of residential quarters, though within the precincts of Power Plant’ cannot by any stretch of argument and imagination be tenned as the work entrusted to applicant.

**7.7** The applicant has further argued that the entry no.3(vi) of Notification No. 11/2017-CT(R) dtd. 28-6-2017 provides a concessional rate of GST @12% with the conditions mentioned in Column 5 of the table as under:

*Provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to is by the Central Government, State Government, Union Territory or local authority, as the case may be.*

**7.8** Now, the applicant have tried to argue that they have been entrusted the work of construction of residential quarters also by the State Government. However, nothing has been placed before us to substantiate such claim. And in absence of any specific mention of construction of residential quarters having been entrusted to the applicant by the Government of Madhya Pradesh, we do not find any reason to deviate from our stand taken in order no. 15/2018 dtd. 18-10-2018.

**7.9** In yet another question placed before us the applicant has sought ruling on rate of GST applicable on construction contracts of residential quarters at various power stations of the Applicant. However, we find that it is a very generic question which cannot be decided without looking into specific contracts being awarded. We thus refrain ourselves from giving any categorical ruling on the second question posed before us.

**7.10** In view of the discussions foregoing, we find that in as much as the tender document covered in the application is concerned, the GST will be applicable @18% under SAC 9954, in as much as it refers to construction of residential quarters, which was awarded to M/s. Shreeji Infrastructure P.Ltd., as already ruled vide our order no.15/2018 dtd. 18-10-2018.

### **RULING**

**(Under section 98 of Central Goods and Services Tax Act, 2017 and the Madhya Pradesh Goods and Services Tax Act, 2017)**

**8.1** The work contract awarded to Shreeji Infrastructure P. Ltd. for construction of 599 residential quarters at Shree Singaji Thermal Power Project Stage-II shall attract GST @18% (9% CGST +9% SGST) under SAC 9954.

**8.2** This ruling is valid subject to the provisions under section 103(2) until and unless declared void under Section 104(1) of the GST Act.





**(2019) 63 TLD 299** Authority for Advance Ruling, Madhya Pradesh  
Rajiv Agrawal & Manoj Kumar Choubey, Members

**Prakash Chand Jain, Indore**

Case No. : 05/2019

Advance Ruling No. : 07/2019

May 8, 2019

**AAR-MP - Nano Rechargeable LED Torch Light - Nano Rechargeable LED Torch Light is classifiable under Chapter Head 8513 attracting GST @18% - The same is not a 'Solar Based Device'.**

**:: PROCEEDINGS ::**

**(Under sub-section (4) of Section 98 of  
Central Goods and Service Tax Act, 2017 and the  
Madhya Pradesh Goods & Service Tax Act, 2017)**

1. The present application has been filed u/s 97 of the Central Goods & Services Tax Act, 2017 and MP Goods & Services Tax Act, 2017 (hereinafter also referred to CGST Act and SGST Act respectively) by M/s. PRAKASH CHAND JAIN (hereinafter referred to as the Applicant), not registered but desirous of obtaining registration under the Goods & Services Tax.
2. The provisions of the CGST Act and MPGST Act are identical, except for certain provisions. Therefore, unless a specific mention of the dissimilar provision is made, a reference to the CGST Act would also mean a reference to the same provision under the MPGST Act. Further, henceforth, for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST or MPGST Act would be mentioned as being under the GST Act.

**3. BRIEF FACTS OF THE CASE:**

**3.1** The Applicant intend to trade and/or manufacture/assemble solar LED Torch, used generally in agriculture/ rural area.

**3.2** Such torch has internal assembly to charge battery through solar panel and also with AC adaptor, solar panel is also provided. Sometimes it is supplied without solar panel, but with solar charging socket.

**4. QUESTIONS RAISED BEFORE THE AUTHORITY:-**

The following questions have been posted before the Authority in the application:-

- a) What shall be GST rate on such product?
- b) What will happen, if torch is having solar panel input socket, but provided without solar charging panel?

**5. CONCERNED OFFICER'S VIEW POINT:**

The Concerned Officer Submitted that the product in the question is not a solar based device so it will not be entitled to concessional rate of GST @ 5% under Sr. No. 234 of Schedule-I to Notification No. 01/2017-CT(Rate) dtd. 28-6-2017.

**6. RECORD OF PERSONAL HEARING:**

**6.1** Shree Sunil P. Jain, CA of the applicant for personal hearing the submissions already made in the application. The Applicant states that –

**6.2** The product “Solar Powered Torch is classified under HSN 8469/8513 and applicable tax rate is 5%.

**6.3** In market both type of product i.e. Solar LED Torch with solar panel, and solar LED Torch without solar panel (charging socket is there on its body) is charged with GST @ 5% under HSN 8469/8513. Both kind of sample invoices enclosed.

**6.4** Relevant extract of Not. 1/2017 dated 28-6-2017 as amended enclosed.

**6.5** The applicant reiterated the submissions he already made in the application during course of hearing and made additional submission later on–

**6.6** Product number 1(b) above is torch with solar panel and internal assembly with socket to recharge it with solar panel. This has about 5-meter cable as well to connect solar panel with torch. Buyer can alternatively recharge it through AC by buying and charging through AC adapter.

**6.7** Almost all product which are solar based e.g. solar water heater, solar street light, solar traffic signal always comes with separate panel, but usually supplied together. They have alternative system of AC charging, still known as solar devices as normal trade practice, though panel is available in market separately. Moreover, product like torch which is basically of plastic material, if kept in direct sunlight will be damaged. Therefore 5-meter cable is provided to put panel in sun and torch is shade.

**6.8** There are other products also which are solar based besides mentioned in Para 2 above and over years it is being supplied in **ordinary course of**

**trade** and basically covered in Government Supply and treated as Solar based devices only. In many a case even, government is giving subsidy on such products. There is plethora of Court decisions to held that when legislature language is not conclusive, then trade parlance must be seen and classified and technical meaning is not desirable. **Few of such decisions are mentioned in annexure including jurisdictional court.**

**6.9** Government has reduced GST to 5% vide **notification no. 1/2017** on such solar based devices through corrigendum dated 12-7-2017 for all items covered under Chapter 84, 85 or 94.

Since mentioned product is covered under Chapter 84 hence squarely eligible for GST rate @5%.

Jurisdictional court has even a step ahead mentioned that ambiguity to be decided in favour of tax payer.

**[1984] 1984 taxmann.com 9 (Madhya Pradesh) Hind Syntex Ltd. Vs. Union of India\***

**Benefit of doubt: Ambiguity in a taxing provision must be interpreted in favour of the subject**

**6.10** Similarly product no. 1(a) above is especially designed for solar recharging, though being sold without solar panel is also eligible for the same classification.

We have submitted photographs of the product also and also invoice showing market trend i.e. trade parlance including sales at Amazon which is also @ 5% (evidences already submitted).

If your honor requires further clarification, we can further clarify the facts by another personal hearing.

## **7. DISCUSSIONS AND FINDINGS:**

**7.1** We have carefully considered the submissions made by the applicant in the application and during time of personal hearing.

**7.2** We find that the question before us essentially pertains to classification of the product in question viz. LED Torches, and the rate of duty applicable on such products. We, therefore observe that the issue before us is squarely covered under Section 97(2)(a) and therefore we admit the application for consideration.

**7.3** We find that the applicant has sought ruling on the following products which are being traded by them:

- i. Torch with input socket to recharge from solar panel;
- ii. Torch with solar panel, having alternate socket to recharge from Alternating current (AC)

**7.4** It has been argued by the applicant, through the written submission, additional submission and also at the time of personal hearing, that the product at (ii) above is a torch with solar panel and internal assembly with socket to recharge it with solar panel. This has about 5-meter long cable as well to connect solar panel with torch. Buyer can alternatively recharge it through AC by buying and charging through AC adapter. It has been further argued that *'almost all products which are solar based e.g. solar water heater. Solar street light, solar traffic signals always come with a separate panel, but usually supplied together. They have alternative system of AC Charging, still known as solar devices as normal trade practice, though panel is available in market separately. Moreover, product like torch which is basically of plastic material, if kept in direct sunlight will be damaged. Therefore, 5-meter cable is provided to put panel in sun and torch in shade.'* It has been argued by the counsel of the applicant that when the legislature language is not conclusive, then trade parlance must be seen and classified and technical meaning is not desirable.'

**7.5** We have given a careful consideration to the arguments adduced by the applicant and the counsel and also various legal citations mentioned by them. As we can gather from the facts put forth by the applicant, the product in question is essentially a Rechargeable LED Torch Light (as also mentioned on the packing of the product provided by the applicant). It comes equipped with an inbuilt rechargeable battery with AC adapter for recharging purpose. The product, thus, unquestionably merits classification under 85131010 of the GST Tariff.

**7.6** Now, coming to the issue raised by the applicant we have to examine whether the product can be brought under the ambit of 'Solar Powered Device' in order to make it eligible for concessional rate of tax @5% in terms of Serial Number 234 of Schedule-I of Notification no.01/2017-CT(Rate) dtd.28-6-2017 and concurrent notification issued by the State Tax. We find that the product in question i.e. Rechargeable LED Torch, though essentially and primarily rechargeable through an AC adapter, also has mechanism which

can be put to use for charging through solar power. The product is provided with a socket and a 5-meter long cable for the purpose, and in some cases a solar panel is also supplied with the product. While the product is also having capability and facility of being charged through solar power, it remains a fact on record that the product is essentially and predominantly made to be charged through AC adapter. Thus, we find the argument of the applicant a bit too overstretched to call it and classify it as Solar Based Device.

**7.7** The Serial Number 234 of Schedule-I to Notification No.01/2017-CT (Rate) dtd. 28-6-2017, provides concessional rate of GST @5% to 'Renewable Energy Devices & parts for their manufacture', and it incorporates 'Solar Based Devices'. The product in question cannot be termed as solar based device, as solar power mechanism has been provided as an alternate to AC charging. The product i.e. Rechargeable LED Torch is therefore not a solar based device per se, though it can also be charged with a solar panel which is to be attached externally through a power cable. The solar panel is not an integral part of the device and the product can be perfectly put to use even without such solar panel. Even the applicant have admittedly mentioned that in one case the product is sold without solar panel and in other case solar panel is also provided separately, not naturally bundled with the product. We, therefore, do not find any force in the arguments of the applicant that the impugned product is a solar bases device.

**7.8** In addition to our observations above, we also wish to discuss the argument of the counsel of the applicant regarding taking into consideration the trade parlance for deciding classification when the legislature language is not conclusive. The learned counsel has attempted to fortify his argument citing various case laws and judicial pronouncements. We have carefully gone through the case laws cited by applicant and we find that these citations do not come to their rescue as the circumstances and facts of the instant issue are clearly distinguishable. In the instant case, we do not find any ambiguity in the GST legislation in as much as it clearly provides concessional rate of tax to 'Solar power based devices' being 'Renewable energy devices'. The applicant have made a vague and vain attempt to get their product within the ambit of 'Solar power based devices', while as we have already discussed above, the product merely provides solar power as an alternate source to predominantly AC power sourced device. We also find it interesting to note that even the packing of the impugned product does not intend to describe it as solar power based device. That being the case we find the

argument of the applicant outlandish and arbitrary and a weak attempt to avail concessional rate.

**7.9** In view of our findings above, we do not see any reason to term the impugned product as a 'Solar Power Based Device' for the purpose of Serial Number 234 of Schedule-I to Notification 01/2017-CT(R) dtd. 28-6-2017. The product merits classification under Chapter Head 8513 and chargeable to GST @ 18%.

### **RULING**

**(under section 98 of Central Goods and Services Tax Act, 2017 and the Madhya Pradesh Goods and Services Tax Act, 2017)**

**8.1** In respect of the question raised by the applicant we hold that the product Nano Rechargeable LED Torch Light is classifiable under Chapter Head 8513 presently attracting GST @ 18%.

**8.2** We also hold that the product in the question will not be entitled to concessional rate of GST @ 5% under Sr.No.234 of Schedule-I to Notification No.01/2017-CT(Rate) dtd. 28-6-2017 as the same is not a 'Solar Based Device'.

**8.3** This ruling is valid subject to the provisions under section 103(2) until and unless declared void under Section 104(1) of the GST Act. □

**(2019) 63 TLD 304** Authority for Advance Ruling, Madhya Pradesh  
Rajiv Agrawal & Manoj Kumar Choubey, Members

**Ravi Masand, Indore**

Case No. : 06/2019

Advance Ruling No. : 11/2019

July 24, 2019

**AAR-MP - Agriculture Knapsack Sprayer - Agriculture Mechanical Sprayers will be classifiable under Chapter Head 8424 of the GST Tariff and such product would attract GST @ 12%.**

### **:: PROCEEDINGS ::**

**(Under sub-section (4) of Section 98 of Central Goods and Service Tax Act, 2017 and the Madhya Pradesh Goods & Service Tax Act, 2017)**

1. The present application has been filed u/s 97 of the Central Goods & Services Tax Act, 2017 and MP Goods & Services Tax Act, 2017 (hereinafter also referred to as CGST Act and SGST Act respectively) by M/s. RAVI MASAND (hereinafter referred to as the Applicant), not registered but desirous of obtaining registration under the Goods & Services Tax.

2. The provisions of the CGST Act and MP GST Act are identical, except for certain provisions. Therefore, unless a specific mention of the dissimilar provision is made, a reference to the CGST Act would also mean a reference to the same provision under the MP GST Act. Further, henceforth, for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST or MP GST Act would be mentioned as being under the GST Act.

### 3. BRIEF FACTS OF THE CASE:

3.1 The Applicant is engaged in intend import, trade and/or manufacture/assemble “Agriculture Knapsack Sprayer” both mechanical and hand operated which is used generally in agriculture.

3.2 The “Agriculture Knapsack Sprayer” is classified under chapter sub heading No. 84248200 of the Customs Excise Tariff Act. GST tariff just mentions HSN of 8424. Now confusion is whether product lies in entry 325 of Sch. III or entry 195B of Sch. II of Notification no. 1/2017 as amended? IN market most of dealers are charging GST @ 12% except a few who still charging @ 18%.

### 4. QUESTIONS RAISED BEFORE THE AUTHORITY:-

The following questions have been posted before the Authority in the application:-

- a) Applicant believes that the product “Agriculture Knapsack Sprayer” is classified under HSN 8424 and applicable tax rate is 12%. Details as per Annexure.
- b) Relevant extract of Notification No. 1/2017 dated 28-6-2017 as amended vide Notification No. 6/2018-Integrated Tax (Rate) dt. 25-1-2018 is enclosed.
- c) What shall be GST rate on such product?



## 5. CONCERNED OFFICER'S VIEW POINT:

The Concerned Officer Submitted that the product Agriculture Mechanical Sprayer will merit classification under Chapter Head 8424 of the GST Tariff and with effect from 25-1-2018, the said product would attract GST @ 12% in terms of Sr.No.195B of Schedule-II to Notification No. 01/2017-CT(R) as amended vide Notification No. 06/2018-CT(R) dtd. 25-12-2018 and concurrent notifications issued by the State Tax authorities.

## 6. RECORD OF PERSONAL HEARING:

**6.1** Shree Sunil P. Jain, CA of the applicant for personal hearing .He reiterated submissions already made in the application. The Applicant in support of his contention that the product - Agriculture Knapsack Sprayer” is classified under HSN 8424 and applicable tax rate is 12%. gives following argument -

**6.2** The Applicant produce relevant extract of Not. 1/2017 as amended

S. No.	Chapter/ Heading/ Sub-heading/ Tariff item	Description of Goods Sch. -II 6%
195A	8424	Nozzles for drip irrigation equipment or nozzles for sprinklers. (wef 22-9-2017 vide Not. 27/2017).
195B	8424	Sprinklers; drip irrigation system including laterals; mechanical sprayers (wef 25-1-2018 vide Not. No. 06/2018)
<b>Sch. -III-9%</b>		
325	8424	Mechanical appliances (whether or not hand-operated) for projecting, dispersing or spraying liquids or powders; spray guns and similar appliances; steam or sand blasting machines and similar jet projecting machines *[other than fire extinguishers, whether or not charged]  *Substituted to “other than fire extinguishers. whether or not charged and Nozzles for drip irrigation equipment or nozzles for sprinklers” (wef 22-9-2017

**vide Not. 27/2017)**

**(Substituted wef 15-11-2017 vide not. 41/2017 dated 14-11-2017)**

Mechanical appliances (whether or not hand-operated) for projecting, dispersing or spraying liquids or powders; fire extinguishers, whether or not charged; spray guns and similar appliances; steam or sand blasting machines and similar jet projecting machines [other than and Nozzles for drip irrigation equipment or nozzles for sprinklers]

**(Substituted wef 25-1-2018 vide Not. No. 06/2018)**

Mechanical appliances (whether or not hand-operated) for projecting, dispersing or spraying liquids or powders; fire extinguishers, whether or not charged; spray guns and similar appliances; steam or sand blasting machines and similar jet projecting machines [other than sprinklers; drip irrigation systems including laterals; mechanical sprayer; nozzles for drip irrigation equipment or nozzles for sprinklers)] shall be substituted;

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**6.3** All items were covered under Chapter 8424 were covered under Schedule III of Notification 1/2017 dated 28-6-2017 i.e. 9%. However, vide Not.6/2018 wef 25-1-2018 (25th GST Council Meeting), mechanical sprayers, drip irrigation and sprinklers items GST rate is reduced to 6%.

**6.4** The Applicant argued that it clearly indicates Council's intention to support agriculture / irrigation systems. Now, therefore Headings/Subheadings of Chapter 8424 as specified in Sr.No.325 of Schedule III (as mentioned above) though covering words "mechanical appliances" does not cover mechanical devices used for agricultural/irrigation purposes.

**6.5** Such mechanical sprayers used for agriculture though backed up with battery support are still mechanical sprayers and covered under Not.6/2018 dated 25-1-2018 and subject to GST @6% (effectively 12%).

**6.6** The Applicant also enclosed catalogue of mechanical sprayer for reference.

**6.7** Thus the mechanical sprayer must be taxed @ of 12% in GST.

## **7. DISCUSSIONS AND FINDINGS:**

**7.1** We have carefully considered the submissions made by the applicant in the application and during time of personal hearing.

**7.2** We find that the question before us essentially pertains to classification of the product in question viz. Agriculture Knapsack Sprayer, and the rate of duty applicable on such products, particularly the applicability of concessional rate of tax in terms of Notification No. 01/2017-Central Tax (Rate) dtd. 28-6-2017 as amended vide notification no. 06/2018-CT(R) dtd. 25-1-2018 and the corresponding notification issued under MPGST Act, 2017. We, therefore observe that the issue before us is squarely covered under Section 97(2)(a) and therefore we admit the application for consideration.

**7.3** We find that the applicant has sought ruling on the product viz. Agriculture Knapsack Sprayers which are being traded by them. As per Sr.No.14 of the application the applicant has desired a ruling on a specific question '*What shall be the rate of GST on such product.*'

**7.4** It has been argued by the applicant, through the written submission, additional submission and also at the time of personal hearing, that the impugned product is a Mechanical Sprayer which is used for agriculture and would be covered under Notification no. 06/2018-CT(R) and the corresponding notification issued under MPGST Act thus subjected to GST @12%.

**7.5** We have given a careful consideration to the arguments adduced by the applicant and the counsel and also various legal citations mentioned by them. As we can gather from the facts put forth by the applicant, the product in question is essentially a Mechanical Sprayer which can be carried on back and can be operated either by hand or through a battery. We find. that there is no dispute to the classification of product, which even as per the own admission of the applicant would be under Chapter Head 8424 of the GST Tariff.

**7.6** We find that even the applicable rate of GST is not disputed prior to 25-1-2018 as the product 'Mechanical Sprayers' were subject to GST @18% as these were squarely covered under Sr.No.325 of the Notification no. 01/2017-CT(R) dtd. 28-6-2017 and the corresponding notification issued under MPGST Act. However, with effect from 25-1-2018, by dint

of amending notification no. 06/2018-CT(R) dtd. 25-1-2018, and the corresponding notification issued under MPGST Act the item 'Mechanical sprayers' has been brought in the ambit of Schedule-II vide Sr.No.195B Thus, the question posed before us has relevance only for the period post 25-1-2018.

**7.6** The Serial Number 195B of Schedule-no. the Notification no. 01/2017-CT(R), post amendment vide Notification No.06/2018-CT(R) and the corresponding notification issued under MPGST Act reads as under:

Sr. No.	Chapter/ Heading/ Sub-heading/ Tariff Item	Description 195B
195B	8424	Sprinklers; drip irrigation system including laterals; mechanical sprayers

The Schedule-II specifies GST @12% (CGST @6% +SGST @6%) for the goods specified under the schedule. We find that the Sr.No.195B has been inserted into the Schedule-II vide Notification No.06/2018-CT(R) and the product under question Mechanical Sprayers is categorically mentioned there under. Thus, that hardly leaves any doubt that Mechanical Sprayers classifiable under Chapter head 8424 shall attract GST @12% with effect from 25-1-2018.

**7.7** We now take a look at the Sr.No.325 of Schedule-III to the Notification No.01/2017-CT(R), which reads as under:

Sr. No.	Chapter/ Heading/ Sub-heading/ Tariff Item	Description 195B
325	8424	Mechanical appliances(Whether or not hand operated) Or projecting dispersing or spraying liquids or powders; .fire extinguishers, whether or not charged; spray guns and similar appliances; steam or sand blasting machines and similar jet projecting machines [other than sprinklers; drip irrigation systems including laterals; mechanical sprayer; nozzles for drip irrigation equipment or nozzles for sprinklers]

The above Schedule-III specifies GST. @ 18% for the products/goods specified therein. It is noteworthy that the Description against Sr.No. 325, as mentioned above, has also been substituted vide Notification no. 06/2018-CT(R) dtd. 25-1-2018 and the corresponding notification issued under MPGST Act. Moreover, the exclusion part in this description specifically excludes Mechanical Sprayers from the ambit of Sr. No. 325 to Schedule-III. We, therefore, find no ambiguity, whatsoever, as regards classification of impugned product viz. Agriculture Mechanical Sprayers as also the rate of GST that would be applicable on such Mechanical Sprayers with effect from 25-1-2018.

**7.7** We are inclined to agree with the argument of the applicant that mere provision of a battery for operating the said Mechanical Sprayers would in no way alter the nomenclature or classification of the impugned product.

**7.8** In view of our findings above, we observe that Agriculture Mechanical Sprayers will be classifiable under Chapter Head 8424 of the GST Tariff and such product would attract GST @ 12% in terms of Sr. No. 195B of Schedule-II of Notification no. 01/2017-CT(R) dtd. 28-6-2017 as amended vide Notification No. 01/2018-CT(R) dtd. 25-1-2018, and the corresponding notification issued under MPGST Act with effect from 25-1-2018.

### **RULING**

#### **(Under section 98 of Central Goods and Services Tax Act, 2017 and the Madhya Pradesh Goods and Services Tax Act, 2017)**

**8.1** The product Agriculture Mechanical Sprayer will merit classification under Chapter Head 8424 of the GST Tariff and with effect from 25-1-2018, the said product would attract GST @ 12% in terms of Sr.No. 195B of Schedule-II to Notification No. 01/2017-CT(R) as amended vide Notification No.06/2018-CT(R) dtd. 25-1-2018 and concurrent notifications issued by the State Tax authorities.

**8.2** This ruling is valid subject to the provisions under section 103(2) until and unless declared void under Section 104(1) of the GST Act.



(2019) 63 TLD 311 Authority for Advance Ruling, Madhya Pradesh  
Rajiv Agrawal & Manoj Kumar Choubey, Members  
NMDC Limited, Majhgawan, Diamond Mining Project  
Case No. : 26/2018  
Advance Ruling No. : 09/2019  
July 18, 2019

**AAR-MP - Mining lease - Clarification on classification of royalty payments to Government in respect of Mining lease - The said service shall be classified under Tariff Heading 99733.**

**AAR-MP - Additional contributions - The said contributions are nothing but additions to the royalty payable for the original supply itself, and is therefore liable to be added to the value of the original supply and treated accordingly for the purposes of GST.**

**8.2** In respect of the second question raised by the Applicant regarding the taxability or otherwise of the additional contributions made to DMF and NMET, we rule that the said contributions are nothing but additions to the royalty payable for the original supply itself, and is therefore liable to be added to the value of the original supply and treated accordingly for the purposes of GST.

**:: PROCEEDINGS ::**

**(Under sub-section (4) of Section 98 of Central Goods and Service Tax Act, 2017 and the Madhya Pradesh Goods & Service Tax Act, 2017)**

1. The present application has been filed u/s 97 of the Central Goods & Services Tax Act, 2017 and M.P. Goods & Services Tax Act, 2017 (hereinafter also referred to CGST Act and MPSGT Act respectively) by M/s. NMDC Limited (hereinafter referred to as the Applicant), registered under the Goods & Services Tax.
2. The provisions of the CGST Act and MPGST Act are identical, except for certain provisions. Therefore, unless a specific mention of the dissimilar provision is made, a reference to the CGST Act would also mean a reference to the same provision under the MPGST Act. Further, henceforth, for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST or MP GST Act would be mentioned as being under the GST Act.

### 3. BRIEF FACTS OF THE CASE:

**3.1** M/s. NMDC Limited (hereinafter referred to as 'the Applicant'), having their registered office at NMDC Limited, Majhgawan, Diamond Mining Project, 488001 and are registered with the GSTN holding GSTIN 23AAACN7325A2Z2.

**3.2** The Applicant is engaged in mining and sale of "rough diamonds".

**3.3** Thus the Applicant have approached the Authority for limited and specific ruling about clarification on classification of royalty payments to Government in respect of Mining lease under "Licensing services for Right to use minerals falling under the heading 99733 and determination of the liability to pay tax on contributions made to District Mineral Foundation (DMF) and National Mineral Exploration trust (NMET) as per MMDR Act, 1957.

### 4. QUESTIONS RAISED BEFORE THE AUTHORITY:-

The following questions have been posted before the Authority:-

**4.1** Whether royalty paid in respect of Mining Lease can be classified under "Licensing services for the right to use minerals including its exploration and evaluation falling under the heading 9973 attracting GST at the same rate of tax as applicable on supply of like goods involving transfer of title in goods"?

**4.2** Determination of the liability to pay tax on contributions made to District Mineral Foundation (DMF) and National Mineral Exploration trust (NMET) as per MMDR Act, 1957.

### 5. RECORD OF PERSONAL HEARING:

Shree Ananthanarayanan S. Counsel of the applicant for personal hearing and he reiterated the submissions already made in the application and attached submission. The Applicant argued the case as following-

#### 5.1 "Background of operations -

NMDC Limited is a state-controlled mineral producer of the Government of India. It is owned by the Government of India and is under administrative control of the Ministry of Steel.

**5.2** It is India's largest iron ore producer and exporter producing about 30 million tons of iron ore from 3 fully mechanised mines in Chhattisgarh and Karnataka.



**5.3** NMDC Ltd. also has Diamond Mining Project at Majhgawan, Panna (M.P) (hereinafter referred to as “NMDC” or “the Company” or “the Applicant”) which is engaged in mining and sale of “rough diamonds” falling under Chapter Heading 7201 attracting GST Rate of 0.25%.

Operating Mines of NMDC includes the following –

- I) Bailadila Iron Ore Mine, Kirandul Complex, Distt. South Bastar, Dantewada (Chhattisgarh)
- II) Bailadila Iron Ore Mine, Bacheli Complex, Distt. South Bastar, Dantewada (Chhattisgarh)
- III) Donimalai Iron Ore Mine, Donimalai, Distt. Bellary (Karnataka)
- IV) Diamond Mining Project, Majhgawan, Panna (Madhya Pradesh)

**5.4 Payment of Royalty, DMF and NMET -**

- I) The question raised above for which the Advance ruling is sought is in relation to Diamond Mining Project, Majhgawan, Panna of NMDC.
- II) Govt. of Madhya Pradesh has issued in principle approval to NMDC Ltd (Panna) for renewal of IBM No.270/17MPR26001 for period of 20 years w.e.f. 15-7-2005 for an area of 280.08 acres (597.54 ha. as per CEC).
- III) Pursuant to the agreement, NMDC Panna is required to pay royalty as per Mines and Minerals (Development & Regulation) Act, 1957.
- IV) As per Section 9 of the said Act, NMDC is required to pay royalty @ 15%. The Applicant seeks clarification as to whether royalty paid in respect of Mining Lease can be classified under “Licensing services for the right to use minerals including its exploration and evaluation” falling under the heading 9973 attracting GST at the same rate of tax as applicable on supply of like goods.
- VI) Further, Section 9B and 9C of Mines and Minerals (Development & Regulation) Act, 1957 mandates that NMDC shall contribute 30% of royalty to District Mineral Foundation and 2% of Royalty to National Mineral Exploration Trust. In this regard, the Applicant seeks clarifications whether such statutory contributions made amounts to “Supply” and whether the same is liable for GST under reverse charge.

**5.5 Admissibility of Application**

As per Section 97(2) of CGST Act, advance ruling can be sought for

following question under GST:

- (a) *classification of any goods or services or both;*

Based on above, the Applicant requests to admit its application in respect of clarification sought on classification of service by way of royalty paid in respect of Mining Lease.

Further, as per Section 97(2) of CGST Act, 2017, advance ruling can be sought for following questions under GST:

- (e) *determination of the liability to pay tax on any goods or services or both;*
- (g) *whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term*

Based on the said Section, the Applicant wishes to seek clarification whether statutory contributions made to District Mineral Foundation (DMF) and National Mineral Exploration trust (NMET) as per MMDR Act, 1957 amounts to “Supply” and determination of liability to pay tax on such contributions made.

#### **5.6 Classification of royalty paid in respect of mining lease under “Licensing services for the right to use minerals including its exploration and evaluation falling under the heading 9973”**

The Applicant prefers to present the application before this Authority on the following, among other, grounds, each of which is taken in the alternative and without prejudice to the others.

1. As stated above, Govt. of Madhya Pradesh has issued in principle approval to NMDC Ltd (Panna) for renewal of IBM No. 270/17MPR26001 for period of 20 years w.e.f. 15-7-2005 for an area of 280.08 acres (597.54 ha. as per CEC).
2. Royalty is in the nature of periodical payments to be made by the lessee under his covenants in consideration of the various benefits granted by the lessor. Royalty is collected by the State Government from the business entities for right given to them to extract mineral and is payable based on quantum mineral removed or consumed.
3. The Applicant is of the view that payment of royalty is classifiable under heading:

*Heading 9973 Leasing or rental services with or without operator*

*Sub-category 997337 Licensing services for the right to use minerals including its exploration and evaluation*

*Sub-category 997338 Licensing services for right to use other natural resources including telecommunication spectrum*

The Applicant wishes to submit the following grounds for classification of royalty under SAC 997337.

4. Royalty is required to be paid as per Section 9(1) of Mines and Mineral (Development and Regulation) Act, 1957 (MMDR Act) which is read as under:
5. *“The holder of a mining lease granted shall, **notwithstanding anything contained in the instrument of lease** or in any law in force at such commencement, pay royalty in respect of any [mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee] from the leased area after such commencement, at the rate for the time being specified in the Second Schedule in respect of that minerals”*
6. **Further as per Section 9(2) of MMDR Act,**  
*“The holder of a mining lease granted on or after the commencement of this Act shall pay royalty in respect of any 1 [mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee] from the leased area at the rate for the time being specified in the Second Schedule in respect of that mineral”.*
7. The term ‘Royalty’ is not defined in MMDR Act. However, the meaning of the word royalty has been considered in some judicial decisions. Many of these judicial decisions have been summed up in the judgement delivered by the Supreme Court in the case of the India Cement Ltd., etc. v. State of Tamil Nadu, etc. (AIR 1990 SC 85). The case was primarily on the legality of the cess on royalty. However, the meaning and concept of royalty has also been discussed in the judgement in an incidental manner. Although royalty has not been explicitly defined, the Supreme Court held that **royalty is separate and distinct from land revenue and that it is not related to land as a unit. On the other hand, royalty is payable on a proportion of the minerals extracted and it has relationship to mining** as also to the mineral won from the mine under a contract by which royalty is payable on the quantity of the mineral extracted.

8. Further, the Applicant tried to draw attention to the Sectoral FAQ's published by CBEC wherein it is categorically stated that Royalty payment is made towards **Licensing services for exploration of natural resources**. The extract of the same is produced as under:-
9. *"The Government provides license to various companies including Public Sector Undertakings for exploration of natural resources like oil, hydrocarbons, iron ore, manganese, etc. For having assigned the rights to use the natural resources, the licensee companies are required to pay consideration in the form of annual license fee, lease charges, royalty, etc to the Government. The activity of assignment of rights to use natural resources is treated as supply of services and the licensee is required to pay tax on the amount of consideration paid in the form of royalty or any other form under reverse charge mechanism"*
10. Therefore, the payment of royalty is for license given to extract minerals and the amount of royalty paid is based on quantum of mineral extracted.
11. Further, referring to the note on 'Mineral Royalties' published by Indian bureau of Mines concept of Royalty is explained as under:

*"A lessee is a person who is granted mineral concessions. The lessee is required to pay a certain amount in respect of the mineral extracted in proportion to the quantity extracted. Such payment is called royalty. The royalties in respect of mining leases is specified in Section 9 of the MMDR Act, 1957. Royalty is a variable return and it varies with the quantity of minerals extracted or removed"*
12. Also, it is important to draw reference to the definition of the term 'royalty' in various dictionaries, case law and other sources, which are as follows –
  - Strond's Judicial Dictionary (Vol. 4, P. 2414)

*"In its secondary sense, the word 'royalties' signifies, in mining leases, that part of the reddendum which is variable, and depends upon the quantity of mineral gotten"*
  - Bouvier's Law Dictionary

*"Royalty, a payment reserved by the grantor of a patent, mining lease, etc., and payable proportionately to the use made of such right"*

- The New Oxford Illustrated Dictionary (Vol. 2, P.1478) (USU pl);  
*“Royal Prerogative or privilege of licence to work minerals, etc”*
- **An Introduction to Mineral Economics – by Dr. K.K. Chatterjee**

“Royalty means dues payable to a land owner for mining rights”

13. Without prejudice to the above, the Applicant would like to draw reference to the meaning of the expression ‘renting’ in common parlance which indicates ‘allowing’, ‘permitting or granting access’, ‘use’, ‘entry’, ‘occupation’ ‘use or any such facility’ which infers the enjoyment of immoveable property on ‘as is’ basis. The expression ‘renting’ cannot be extended to activities like ‘exploration’, ‘extraction’ etc. Therefore, mining land which is used for purpose of extraction of minerals and by which the immoveable property cannot be used on “as is” basis, will not fall within the ambit of ‘renting of immovable property’.
14. Upon harmonious reading from the above, what is intended to be transferred is the right and title to the interest over immoveable property (i.e. mineral). Such an interest over immoveable property cannot be equated with ‘Renting of Immoveable Property’.
15. Further, the Applicant would like to quote Section 65(105)(zzzz) of Finance Act, 1994, which defines “Immovable Property” in relation of “Renting of Immovable Property”
16. As per the said Section, immovable property does not include “vacant land solely used for agriculture, farming, forestry, animal husbandry, mining purposes”.
17. In a nutshell, it can be stated that royalty is a charge by the owner of a mineral in consideration of the exploitation of mineral resources by the lessee. In any case, it cannot be considered as payment made for renting of immovable property. The payment of royalty is a statutory levy as per MMDR act and the same is as well categorically emphasized in the Mining lease agreement. Therefore it is against Licensing services by the Government for right to extract minerals.
18. Since the services are covered under the service code classification 997337, we now need to refer to the rate of GST on services as specified under Notification 11/2017 – Central Tax (Rate) dated June

28, 2017.

19. Notification 11/2017 dated June 20, 2017, notifies the rate, description of service and the Chapter, Section, Heading. Heading provided here is at 4 digit level. In terms of Explanation 4(2) of the said Notification, reference to “Chapter”, “Section” “Heading”, wherever they occur, unless the context otherwise require, shall mean respectively as “Chapter,, “Section” and “Heading” in the annexed scheme of classification of services (Annexure). Therefore, any reference to classification to determine the rate of services should be read in conjunction with the Annexure.
20. Heading 9973 covers various types of leasing, rental, licensing services. The group under heading 99737 largely appears to cover right to use intangible property, Entry 997337, covers licensing services for the right to use minerals including its exploration and evaluation.
21. It is pertinent to note that for every entry for the Heading in Notification 11/2017, the last description of service in the heading states “Other than the above”. This means any service at 6 digit level of the annexure not specified in the 4 digit level in Notification will fall in the residual clause of that particular heading.
22. The entries prescribing the rate of tax for the service code 9973 does not specifically cover the Licensing services for the right to use minerals including its exploration and evaluation and therefore it will be covered under the residuary entry “leasing or rental services, with or without the operator, other than (i), (ii), (iii), (iv) and (v) above”, **with applicable tax rate as the same rate of tax as applicable on the supply of like goods** involving transfer of title in goods. Accordingly, in such cases, the relevant tax rate as applicable on the underlying natural resource would be applicable on the amount of royalty paid.
23. The Applicant wishes to quote the recent decision by Haryana Authority for Advance Ruling in the case of M/s. Poiner Partners, wherein it was held that Royalty paid towards mining rights of ‘stone boulders’ taxable at 5% under ‘reverse charge’. The extract of the relevant para in stated below:

*“the services for the right to use minerals including its exploration and evaluation, as per sr. No. 257 of the annexure appended to notification no. 11/2017- CT (Rate), dated 28-6-2017 is included*

*in group 99733 under heading 9973. Hence, it attracts the same rate of tax as on supply of like goods involving transfer of title in goods. As per notification no. 1/2017-CT (Rate), dated 28-6-2017 under the CGST Act, 2017 and the corresponding State Tax notification under HGST Act, 2017, Schedule – I the stone boulders extracted by the applicant attract 5% GST (2.5% CGST + 2.5% HGST) as covered under HSN 2516 (At Sr. No. 124 of the notification).”*

Copy of the Advance Ruling is enclosed as **Annexure -1**

24. Based on the above, the Applicant wishes to submit that the entries prescribing the rate of tax for the service code 9973 does not specifically cover the Licensing services for the right to use minerals including its exploration and evaluation and therefore it will be covered under the residuary entry “leasing or rental services, with or without the operator, other than (i), (ii), (iii), (iv) and (v) above”, with applicable tax rate as the same rate of tax as applicable on the supply of like goods involving transfer of title in goods. Accordingly, in such cases, the relevant tax rate as applicable on the underlying natural resource would be applicable on the amount of royalty paid. Since, rough diamonds attracts 0.25% GST Rate, royalty paid for mining of rough diamonds will attract 0.25% GST Rate.

**I II. Determination of liability to pay tax on contribution made to District Mineral Foundation (DMF) and National Mineral Exploration trust (NMET) as per MMDR Act, 1957**

**Contribution made to District Mineral Foundation (DMF)**

25. District Mineral Foundation (DMF) is a trust set up as a non-profit body, in those districts where mining operations are carried out. The objective of the District Mineral Foundation is to work for the interest and benefit of persons, and areas affected by mining related operations in such manner as may be prescribed by the State Government. It is funded through the contributions from miners.
26. The holder of a mining lease granted before the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, shall, in addition to the royalty, pay to the District Mineral Foundation of the district in which the mining operations are carried an amount of 30% of royalty.



27. It is submitted that as per Rule 3 of District Mineral Foundation Rules, 2016 in the state of Madhya Pradesh, District Mineral Foundation (DMF) is a foundation which shall be a Non Profit Making Trust. The objective of the foundation as per Rule 4 of the said rules is as under:
- “The Trust shall prepare schemes and plans as per guidelines of the Pradhan Mantri Khanij Kshetra Kalyan Yojna (PMKKKY) and instructions issued by the State Government from time to time to ensure their implementation for the development of mining affected areas.”*
28. As per Notification 13/2017 Central tax (Rate), Services supplied by the Central Government, State Government, Union territory or local authority to a business entity excluding the specified services are chargeable to tax under reverse charge. Therefore, the Applicant wishes to seek clarification on liability to pay tax under reverse charge on such contribution made to the funds.
29. In this regard the Applicant would like to quote Section 7 of CGST Act, 2017. As per Section 7, supply includes:
- “(a) all forms of supply of goods or 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”
30. **Therefore, it is to be noted that liability to pay will result only if all the following conditions are satisfied:**
- There is a supply in terms of Section 7
  - The supply is in the course of or furtherance of business
  - The supply is not exempt under Section 7(2) or Section 11(1)
31. In order to determine whether tax is payable on payment to District Mineral Foundation following has to be tested:
- Whether there is supply of goods or service by the trust to which such payment is made
  - If at all there is a supply, whether such supply is in the course of or furtherance of business of the trust?
  - Whether such supply is exempt under Section 7(2) or Section 11(1)

32. As stated above, the objective of DMF Trust is to mitigate adverse impact of mining, to work towards welfare and development of people inhabited near mining area and to ensure sustainable livelihood. In order to carry out the said objective, the contribution to such fund is made by Minors. It is pertinent to note that in lieu of such contribution made, there is no supply made by the trust to the Applicant (i.e., as a quid pro quo for the service is not received).
33. Further, as seen in Section 7, one also has to evaluate whether the supply is in the course of business. It is pertinent to note that the trust is a non-profit body organization and not involved in the course of any business, trade or commerce. Based on the above, there is no supply made in terms of Section 7 therefore liability to pay tax does not arise.
34. Without prejudice to the above, the Applicant wishes to state that the liability to pay tax under reverse charge on the said payments will arise only if such trust/fund falls under the definition of Government or local authority.
35. As per Section 2(53) of CGST Act, 2017, government means “Central Government” and as per Section 2(53) of Madhya Pradesh GST Act, government means “State Government”. Further, the said trust does not fall within the definition of local authority which is defined under Section 2(69) of the CGST Act, 2017:
- “local authority” means-*
- (a) a “Panchayat” as defined in clause (d) of article 243 of the Constitution;
  - (b) a “Municipality” as defined in clause (e) of article 243P of the Constitution;
  - (c) 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;
  - (d) a Cantonment Board as defined in section 3 of the Cantonments Act, 2006;
  - (e) a Regional Council or a District Council constituted under the Sixth Schedule to the Constitution;
  - (f) a Development Board constituted under article 371 of the

*Constitution; or*

*(g) a Regional Council constituted under article 371A of the Constitution;*

36. It is submitted that, an autonomous trust set up for an independent purpose do not fall under the definition of Government or local authority. At the max such trust may fall under the definition of Governmental Authority which is defined in Explanation of Section 2(16) of IGST Act. The same is stated below for your reference.

*the expression “governmental authority” means an authority or a board or any other body,-*

*(i) set up by an Act of Parliament or a State Legislature; or*

*(ii) established by any Government,*

*with ninety per cent or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution.*

37. Based on above, the Applicant wishes to submit that services provided by Governmental Authority is not covered under reverse charge and therefore the supplier is liable to charge GST and remit to the credit of Government.
38. It is to be noted that the trust established under Section 9B(1) of the MMDR Act does not fall under the definition of Government. The same is an independent non-profit body to carry out operations entrusted to it. Since the payment is not made to government, there is no requirement of payment of GST under reverse charge in terms of Notification 13/2017 – Central Tax (Rate).

#### **Contribution to National Mineral Exploration Trust**

39. It is submitted that as per National Mineral Exploration Trust Rules, 2015 it is submitted that National Mineral Exploration trust (NMET) is a trust which was set up as a non-profit body for the purpose of detailed exploration of minerals that would facilitate high growth in the mining sector.
40. As per Section 9C(2) of MMDR Act, the object of the Trust shall be to use the funds accrued to the Trust for the purposes of regional and detailed exploration in such manner as may be prescribed by the Central Government. The funds accumulated with the NMET will be utilised to

step up the exploration activities.

41. The holder of a mining lease granted before the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, shall, pay to the Trust, a sum equivalent to two per cent, of the royalty paid in terms of the Second Schedule.
42. As per Notification 13/2017 Central tax (Rate), Services supplied by the Central Government, State Government, Union territory or local authority to a business entity excluding the specified services are chargeable to tax under reverse charge. Therefore, the Applicant wishes to seek clarification on liability to pay tax under reverse charge on such contribution made to the funds.
43. In this regard the Applicant would like to quote Section 7 of CGST Act, 2017. As per Section 7, supply includes:  
*“(a) all forms of supply of goods or 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”*
44. Therefore, it is to be noted that liability to pay will result only if all the following conditions are satisfied:
  - There is a supply in terms of Section 7
  - The supply is in the course of or furtherance of business
  - The supply is not exempt under Section 7(2) or Section 11(1)
45. In order to determine whether tax is payable on payment made to NMET, following has to be tested:
  - Whether there is supply of goods or service by the trust to which such payment is made
  - If at all there is a supply, whether such supply is in the course of or furtherance of business of the trust?
  - Whether such supply is exempt under Section 7(2) or Section 11(1)
46. The Applicant would like to state that there is no supply made by the trust to the Applicant in return of payment made to such trust (i.e., as a quid pro quo for the service received). As stated above, the objective of the trust is exploration of minerals that would facilitate high growth

in the mining sector. There is no service/supply made to the payee. The payment made by the Applicant is purely in the nature of contribution and cannot be regarded as consideration.

47. Further, as seen in Section 7, one also has to evaluate whether the supplier is in the course of business. It is pertinent to note that the trust is a non-profit body organization and not involved in the course of any business, trade or commerce. Based on the above, there is no supply made in terms of Section 7 therefore liability to pay tax does not arise.
48. Without prejudice to the above, the Applicant wishes to state that the liability to pay tax under reverse charge on the said payments will arise only if such trust/fund falls under the definition of Government or local authority.
49. As per Section 2(53) of CGST Act, 2017, government means “Central Government” and as per Section 2(53) of Madhya Pradesh GST Act, government means “State Government”. Further, the said trust does not fall within the definition of local authority which is defined under Section 2(69) of the CGST Act, 2017:  
*“local authority” means-*
  - (a) a “Panchayat” as defined in clause (d) of article 243 of the Constitution;
  - (b) a “Municipality” as defined in clause (e) of article 243P of the Constitution;
  - (c) 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;
  - (d) a Cantonment Board as defined in section 3 of the Cantonments Act, 2006;
  - (e) a Regional Council or a District Council constituted under the Sixth Schedule to the Constitution;
  - (f) a Development Board constituted under article 371 of the Constitution; or
  - (g) a Regional Council constituted under article 371A of the Constitution;

50. Based on above, the Applicant wishes to submit that services provided by Governmental Authority is not covered under reverse charge and therefore the supplier is liable to charge GST and remit to the credit of Government.
51. It is to be noted that the trust established under Section 9C(1) of the MMDR Act does not fall under the definition of Government. The same is an independent non-profit body to carry out operations entrusted to it. Since the payment is not made to government, there is no requirement of payment of GST under reverse charge in terms of Notification 13/2017 – Central Tax (Rate).

Therefore, the contribution to DMF and NMET will not attract GST under reverse charge.”

**5.7** During discussion the applicant further argued that –

1. In addition to the submission given in our Application, the Applicant wishes to quote the recent decision by Haryana Authority for Advance Ruling in the case of M/s. Pioneer Partners, wherein it was held that Royalty paid towards mining rights of ‘stone boulders’ taxable at 5% under ‘reverse charge’. The extract of the relevant para is stated below:

*“the services for the right to use minerals including its exploration and evaluation, as per sr. No. 257 of the annexure appended to notification no. 11/2017-CT (Rate), dated 28-6-2017 is included in group 99733 under heading 9973. Hence, it attracts the same rate of tax as on supply of like goods involving transfer of title in goods. As per notification no. 1/2017-CT (Rate), dated 28-6-2017 under the CGST Act, 2017 and the corresponding State Tax notification under HGST Act, 2017, Schedule I the stone boulders extracted by the applicant attract 5% GST (2.5 % CGST + 2.5% HGST) as covered under HSN 2516 (At Sr. No. 124 of the notification).”*

Based on the above, the Applicant wishes to submit that the entries prescribing the rate of tax for the service code 9973 does not specifically cover the Licensing services for the right to use minerals including its exploration and evaluation and therefore it will be covered under the residuary entry “leasing or rental services, with or without the operator, other than (i), (ii), (iii), (iv) and (v) above”, **with applicable tax rate as the same rate of tax as applicable on the supply of like goods involving transfer of title in goods.** Accordingly, in such cases, the

relevant tax rate as applicable on the underlying natural resource would be applicable on the amount of royalty paid. Since, rough Diamond attracts 0.25% GST Rate, royalty paid for mining of rough Diamonds will attract 0.5% GST Rate.

**Submission in relation to Contribution to District Mineral Fund and National Mineral Exploration Trust**

2. The Applicant wishes to submit that Section 9B and 9C of Mines and Minerals (Development & Regulation) Act, 1957 mandates that NMDC shall contribute 30% of royalty to District Mineral Foundation and 2% of Royalty to National Mineral Exploration Trust.

**No “Supply” in terms of Section 7**

3. It is submitted that as per Rule 3 of District Mineral Foundation Rules, 2016 in the state of Madhya Pradesh, District Mineral Foundation (DMF) is a foundation which shall be a Non Profit Making Trust. The objective of the foundation is prescribed under Rule 4 as under:  
*“The Trust shall prepare schemes and plans as per guidelines of the Pradhan Mantri Khanij Kshetra Kalyan Yojna (PMKKKY) and instructions issued by the State Government from time to time to ensure their implementation for the development of mining affected areas.”*
4. As stated above, the objective of DMF Trust is to mitigate adverse impact of mining. In order to carry out the said objective, the contribution to such fund is made by Minors. It is pertinent to note that in lieu of such contribution made, there is no supply made by the trust to the Applicant (i.e., as a quid pro quo for the service is not received).
5. Also, as per National Mineral Exploration Trust Rules, 2015 it is submitted that National Mineral Exploration trust (NMET) is a trust which was set up as a non-profit body for the purpose of detailed exploration of minerals that would facilitate high growth in the mining sector.
6. As per Section 9C(2) of MMDR Act. the object of the Trust shall be to use the funds accrued to the Trust for the purposes of regional and detailed exploration in such manner as may be prescribed by the Central Government. The funds accumulated with the NMET will be utilised to step up the exploration activities.



7. The Applicant would like to state that in the said rules for DMF and NMET, the collections are defined as ‘contribution’ as against consideration. Also, in no manner such contribution made to DMF/ NMET can be regarded as payment towards service by way of royalty or right to use minerals. Had such contribution been towards mining rights, the same would have been retained by State Government. The said sum is towards benefit of the interest and benefit of persons and areas affected by mining related operations, exploration activities and cannot be considered as consideration towards mining right.
8. In order to tax a particular transaction as “Supply” under Section 7 of CGST Act, there should be supply of goods or services agreed to be made for a consideration. In the instant case, supply of service is missing and therefore the main test of levy of tax under Section 7 is not satisfied.

**No liability under Reverse charge**

9. Without prejudice to the above, assuming but not admitting that there is a service provided by the trust in lieu of contribution made by the Applicant, the said service will not under notified services under Reverse charge.
10. As per Serial No. 5 of Notification 13/2017 – Central Tax (Rate), dated June 28, 2017, the recipient is liable to pay tax under reverse charge for following service:

**Services supplied by the Central Government, State Government, Union territory or local authority** to a business entity excluding, –

- (i) services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Central Government, State Government or Union territory or local authority;
  - (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
  - (iii) transport of goods or passengers.
11. It is to be noted that only services supplied by Central Government, State Government or local authority is liable to tax under reverse charge. The definition of the same are stated in Para 10 of the Application. As noted, an autonomous trust set up for an independent purpose do not fall under the definition of Government or local authority. At the max

such, trust may fall under the definition of Governmental Authority which is defined in Explanation of Section 2(16) of IGST Act. The same is stated below for your reference.

*the expression “governmental authority” means an authority or a board or any other body,-*

- (i) *set up by an Act of Parliament or a State Legislature; or*
- (ii) *established by any Government,*

*with ninety per cent or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution.*

12. Based on above, the Applicant wishes to submit that services provided by Governmental Authority is not covered under reverse charge and therefore the supplier is liable to charge GST and remit to the credit of Government.
13. Since the DMF and NMET Trust falls under the definition of Governmental Authority and not under Government or Local Authority, the Applicant is not liable to pay tax under reverse charge on the contribution made to such funds. If at all such contribution is taxable, it is the supplier's responsibility to charge GST and remit the same to Government.

**The Contribution made cannot be clubbed under the valuation of Royalty**

14. Further, we would like to state that Section 15 of CGST Act, 2017 does not mention to include value paid to third party in the transaction value of supply. In this regard, we would like to quote clause (b) of Section 15;

*“ Value of supply shall include any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;”*

15. In the instant case, the Government is not liable to incur the cost of development of people near mining area. The cost has to be borne by mining lease holder. There is no diversion of cost by supplier of royalty service to the recipient i.e. lessee. At the first place contribution to trusts is not for obtaining mining rights but is towards interest and benefit of affected people and for exploration activities. Therefore, the payment

made to trust cannot be linked to mining rights and cannot be included in the valuation of royalty.

16. Further, it is submitted that even the Sectoral FAQs only talk about royalty paid under “*Licensing services for the right to use minerals including its exploration and evaluation*”. Contribution to DMF/ NMET Trusts are not mentioned under such services in FAQ. Therefore, the same is not liable to GST under reverse charge.
17. We request your good office to consider our above submissions and pass such other orders and directions as may be deemed proper and necessary.

**6. Concerned officer’s view point:** The Concerned Officer in his view submitted that the service by way of granting of license to extract minerals is classified under Tariff Heading 99733 and the additional contributions made to DMF and NMET are nothing but additions to the royalty and shall be treated under addition of value of original supply.

## **7. DISCUSSIONS AND FINDINGS:**

The arguments and assertions made by the applicant along with supporting case law and the documents in support of such claims were studied and the following are noted:

Regarding the first question of the applicant as to the classification and taxability and the applicability of reverse charge on the mining lease provided by the Central Government to the applicant, the following points are worth noting:

**7.1** It is clear that the supply made by the government, i.e. the right to mine the resources is taxable under Section 9 of the Act and is within the meaning of the term ‘supply as covered by Section 7. That, in order to classify as a supply, two important conditions are to be met. First, it should be in the course or furtherance of business. It must also be noted that as per Section 2(17), inter alia, any activity undertaken by the Central Government in which they are engaged as public authorities shall be deemed to be a business. Hence, the royalty received by the Government in lieu of the mining rights shall also be deemed to be for business purposes.

**7.2** Furthermore, this is a service which is provided by the Central Government to the applicant being a business entity, and is therefore liable to be paid by the recipient under reverse charge, in terms of Sr. No. 5 of Notification No. 13/2017 - CT (Rate) dated 28-6-2017. Hence, the said

service is taxable under reverse charge basis.

**7.3** Regarding the additional issue raised by the applicant after the filing of the application, that the royalty is profit a prendre and hence not liable to tax under the GST Act cannot be accepted because the said lease is for mining of minerals and the main product of the mining is the mineral ore. The extraction of mineral ore being the main activity and product and the royalty is paid on the activity of extraction and usage of the mineral ore so extracted, this does not amount to an additional benefit out of the main transaction being something else and hence the royalty would not amount to profit a prendre. The judgments relied upon by the applicant have no application to the transactions of the applicant as the main activity is extraction of mineral ore for which royalty is paid.

**7.4** Regarding classification of services, the following points are noted:

- a. The Annexure to the Notification No. 11/2017 – Central Tax (Rate) dated 28-6-2017 which prescribed the Service Accounting Code for each type of service gives the following services which are relevant to the transaction of the applicant. They are:

**Heading 9973 Leasing or rental services with or without operator**

Group 99731	Leasing or rental services concerning machinery and equipment with or without operator
Group 99732	Leasing or rental services concerning other goods
Group 99733	Leasing services for the right to use intellectual property and similar products

Since the service received by the applicant is not covered under Group 99731 or Group 99732 and hence it may get covered under Group 99733, i.e. leasing service for the right to use 'other similar products'.

**7.5** Additionally, as per the guidelines on the Scheme of Classification issued by the Central Board of Indirect Taxes and Customs, the classification of this service is clarified under the above mentioned heading, i.e. 99733 only. In this respect, the relevant entry from the guidelines is reproduced below:

**997337**

*Licensing services for right to use minerals including its exploration and evaluation*

*This service code includes licensing services for the right to use, mineral exploration and evaluation information, such as mineral exploration for petroleum, natural gas and non-petroleum deposits*

From the above, it becomes clear that the services received by the applicant is of the above nature only, and it shall be classified under heading 997337.

**7.6** Coming to the issue whether the license to extract mineral ore and also the right to use such minerals extracted is a leasing or rental service, it is clear that what is supplied by the Government is the service by way of license to extract and use mineral ores and that is not covered by any specific entries in the serial no. 17 of the Notification and hence falls under the residual entry.

**7.7** Regarding the question who is liable to pay the above tax, Notification No. 13/2017 Central Tax (Rate) dated 28-6-2017 stipulates in Serial No.5, that the tax leviable under section 9 of the CGST Act shall be paid on reverse charge basis by the recipient of such services, and the entry reads as under:

Sl. No.	Category of Supply of Services	Supplier of Service	Recipient of Service
5	Services supplied by the Central Government, State Government, Union territory or local authority to a business entity excluding – (1) renting of immovable property, and (2) services specified below- (i) services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Central Government, State Government or Union territory or local authority; (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or	Central Government, State Government, Union territory or local authority	Any business entity located in the taxable territory.

an airport;

(iii) transport of goods or passengers.

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**7.8** Since the transaction is between the State Government and the applicant and the services are supplied by the state government to the applicant which is a business entity, and the transaction being a supply not covered under the exception, the applicant being the recipient of such service shall have to pay tax on the said supply under reverse charge mechanism as per Notification No. 13/2017 - Central Tax (Rate) dated 28-6-2017.

Now, coming to the second issue of taxability of the contributions made to District Mineral Foundation (DMF) and the National Mineral Exploration Trust (NMDF), we note that:

**7.9** The first question is whether such activity is liable to GST in the first place or not. In order for an activity to be charged to tax, it must fall within the meaning of “supply” as defined by Section 7 of the CGST Act, 2017. That, the Section 7 makes it clear that any activity shall be called supply only if it fulfills two important conditions:

- A) It should be in the course of or furtherance of business
- B) It should be for a consideration

**7.10** In the case of contributions made to the DMF and NMET, it is important to note that the applicant is a recipient of this service, and not the supplier. Since it is an inward supply for the applicant and not the outward supply, it becomes important to judge the taxability of the transaction from the point of view of the supplier, and not the recipient.

This stands true regardless of whether the given supply is subject to reverse charge mechanism. In other words, whether or not something is taxable must be examined from the point of view of the supplier, even if the tax liability thereon falls upon the recipient under Section 9 of the Act.

**7.11** Thus, in the given context, it is important to question whether the transaction or activity carried out by the DMF or NMET falls in the purview of “supply” within the meaning of it as prescribed by Section 7 of the CGST Act and MP SGST Act, 2017. As mentioned earlier, any activity or transaction can be called a supply if it fulfils certain important conditions, i.e. it must be for a consideration and it must be in the course or furtherance of business.

**7.12** Regarding the question of whether the activities carried out by the DMF

or NMET are to be considered for the purposes of business, we refer to Section 2(17) of the CGST Act, which defines the term ‘business’ as follows:

(17) “ *Business*” includes-

- (a) *Any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;*
- (b) *Any activity or transaction in connection with or incidental or ancillary to sub-clause (a);*
- (c) *Any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;*
- (d) *Supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;*
- (c) *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;*
- (f) *Admission, for a consideration, of persons to any premises;*
- (g) *Services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;*
- (h) *Services provided by a race club by way of totalisator or a license to book maker in such club; and*
- (i) *Any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities;*

In view of above, the applicant’s first contention that these are trusts set up by an Act and are working for non-profit purposes is not relevant. This is because the term ‘business’ includes any trade, commerce etc. ‘whether or not it is for a pecuniary benefit’ in terms of Section 2(17).

**7.13** But before even judging whether activities undertaken by the DMF and NMET are for business purposes or not. we have to understand that the underlying service is not actually being provided by these trusts, but rather the payments made to these trusts is nothing but addition to royalty itself. That is to say, such payments are part of the original supply itself. The original



supply, i.e. the mining rights given by the Central Government to the applicant was for a consideration payable in the form of royalty. It can be seen that the payments made to the DMF and the NMET are also part of the same royalty, and consideration paid in respect of the same supply.

**7.14** For this purpose, the definition of ‘consideration’ is important, and it is defined in the Act as follows:

*“Consideration” in relation to the supply of goods or services or both includes-*

*(a) 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 but shall not include any subsidy given by the Central Government or a State Government;*

**7.15** The first question is whether the payment made to the DMF and NMET are “in respect of, in response to, or for the inducement of, the supply of service by way of granting leasing rights”? For this purpose, we may note the provisions of the MMDR Act, 1957 which provides for the payment of royalty as well as the contributions made to the DMF and the NMET. It is interesting to note that, as per Section 9 of the MMDR Act, the payment of royalty is ‘in respect of the minerals removed by the holder of the mining rights. The said Section 9 is reproduced here -

*9. Royalties in respect of mining leases.- (1) The holder of a mining lease granted before the commencement of this Act shall, notwithstanding anything contained in the instrument of lease or in any law in force at such commencement, pay royalty **in respect of** any mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee from the leased area*

It is worth noting that the payment of royalty is described as being in respect of the mineral removed or consumed by the holder of the mining rights. Therefore, it is no doubt a consideration for the said mining rights.

**7.16** Further, Section 9B and Section 9C of the MMDR Act, which talk about contributions made to the DMF and the NMET, state that such contributions are to be made by the holder of the mining rights ‘in addition to the royalty’. Since the said Sections 9B and 9C use the word ‘in addition to the royalty’, these contributions are also in the nature of royalty and as such are to be treated just like they were royalty. Per this view, the amounts

payable to DMF and NMET are nothing but payments of royalty, albeit by a different name.


**7.17** This Authority is of the view that money payable to the DMF and the NMET may be treated as nothing but royalty itself, since these contributions are described as being ‘in addition to’ the payment of royalty, which itself is “in respect of the mining rights. As such, therefore, such amounts are paid in respect of mining rights and the said supply is already deemed to be taxable under reverse charge basis.

**7.18** Further support for this view comes from the intent behind the contributions to be made to these trusts. The intention behind setting up these trusts is to rehabilitate the affected areas and the affected people as a result of the mining operations being carried out. Had the government not started these trusts, the onus of rehabilitation would fall on the government itself, and as such would result in an additional cost directly related to royalty. By way of such contributions, the government has transferred such responsibility and cost thereof to the recipient, i.e. the applicant in this case. It should be seen that under regular valuation rules of GST, if any amount which the supplier is liable to pay has been incurred by the recipient, then such amount would also be added to the value of supply. While there is no legal liability on the government in this case, the intent behind such contribution is the same, i.e. to pass on the liability of the supplier to the recipient. In other words, if no such funds were set up, then the government might be forced to increase the royalty itself in order to meet the cost for rehabilitation. Therefore, the intent behind such contributions is clear, and therefore it is nothing but an addition to royalty.

## **8. RULING**

**8.1** In respect of the first question raised by the Applicant regarding the classification of service by way of granting of license to extract minerals, we rule that the said service shall be classified under Tariff Heading 99733.

**8.2** In respect of the second question raised by the Applicant regarding the taxability or otherwise of the additional contributions made to DMF and NMET, we rule that the said contributions are nothing but additions to the royalty payable for the original supply itself, and is therefore liable to be added to the value of the original supply and treated accordingly for the purposes of GST.

**8.3** This ruling is valid subject to the provisions under section 103(2) until and unless declared void under Section 104(1) of the GST Act. 

(2019) 63 TLD 336

In the High Court of Allahabad  
Hon'ble Anil Kumar & Saurabh Lavania, JJ.

**Swastik Traders****Vs.****State of U.P.**

Misc. Bench No. : 19798 of 2019

July 22, 2019

*Deposition : In favour of Petitioner*

**First appeal - GST - Order has been passed without hearing to the petitioner and in violation of principles of natural justice - The High Court remanded the matter back to the Appellate Authority.**

**Petition allowed****Cases referred :**

- \* Bishambhar Nath Kohli Vs. State of U.P., AIR 1955 SC 65
- \* Cooper Vs. Wandsworth Board of Works
- \* Kanda Vs. Govt. of Malaya, 1962 AC 322
- \* Ridge Vs. Baldwin (1963) 2 All ER 66 (HL)

Himanshu Suryavanshi & Amithabh Agrawal for the petitioner.  
C.S.C. for the respondent.

**:: ORDER ::**

Heard Shri Amitabh Agarwal, learned counsel for the petitioner and learned Standing Counsel.

Facts in brief of the present case are that the petitioner is a registered dealer having GSTIN No.09ABYFS0479C1ZN under the relevant provisions of Goods and Services Tax Act, 2017 and deals in purchase and sale of Aluminium Section, Aluminium Sheets and their related hardware goods.

During the year 2017-18, one of the consignment of the sale made by the petitioner vide Tax Invoice No.GR-17-18/224 dated 16-12-2017 disclosing sale of Aluminium Section weighing 4013.16 Kgs. was being transported to the purchasing customer i.e. Maa Kripa Plywood & Hardware of Faizabad having GSTIN No.09AUXPM8745R1Z2 through Truck No.UP-70 DT/5611. The said truck was intercepted by Mobile Squad Officer vide Interception Memo No.13 dated 17-12-2017.

The Assistant Commissioner, State Tax, Mobile Squad Unit, Faizabad was not satisfied with the explanation made by the petitioner and goods as

well as vehicle were seized under Section 129 (1) of the UPGST Act vide Seizure Memo No.14 dated 19-12-2017 merely on the ground that Tax Invoice discloses the sale of Aluminium Section only whereas Aluminium Section and Aluminium Composite Sheets were found in the vehicle in question.

Apart from seizing the goods and vehicle, Mobile Squad Officer issued a show cause notice being No.014 dated 19-12-2017 under Section 129 (3) of UPGST Act proposing to levy demand tax @ 18% on the total valuation of goods of Rs.6,66,665/- i.e. amounting to Rs.1,20,000/- and equivalent amount of penalty of Rs.1,20,000/- (cumulatively Rs.2,40,000/-) which was deposited by the petitioner by the Demand Draft.

The petitioner was not satisfied with the levy of demand of tax and penalty to the tune of Rs.2,40,000/- as the relevant documents were duly produced at the time of interception of the vehicle by the Mobile Squad Officer. As such, the petitioner preferred First Appeal before the Additional Commissioner, Grade-II (Appeals) Ist, Commercial Tax, Ayodhya. By order dated 12-3-2019 served on 18-4-2019, the appeal was dismissed and the order dated 19-12-2017 passed under Section 129 (3) of the UPGST Act was upheld.

From the perusal of the record, the position which emerges is that the judgment and order dated 12-3-2019 has been passed without hearing to the petitioner, as such, the same is in violation of principles of natural justice.

Natural justice is an important concept in administrative law. In the words of Megarry J it is “justice that is simple and elementary, as distinct from justice that is complex, sophisticated and technical”. The principles of natural justice or fundamental rules of procedure for administrative action are neither fixed nor prescribed in any code. They are better known than described and easier proclaimed than defined.

Natural justice is another name for common-sense justice. Rules of natural justice are not codified cannone. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a common-sense liberal way. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form.

The expressions “natural justice” and “Legal justice” do not present a watertight classification. It is the substance of justice which is to be secured by both, and whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice. Natural justice relieves legal justice from unnecessary technicality, grammatical pedantry or logical prevarication. It supplies the omissions of a formulated law. As Lord Buckmaster said, no form or procedure should ever be permitted to exclude the presentation of a litigant’s defense.

The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should apprise the party determinatively of the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades with time. When the historic document was made at Runnymede in 1215, the first statutory recognition of this principle found its way into the “Magna Carta”. The classic exposition of Sir Edward Coke of natural justice requires to “vocate, interrogate and adjudicate”. In the celebrated case of **Cooper Vs. Wandsworth Board of Works** the principle was thus stated:

“Even God himself did not pass sentence upon Adam before he was called upon to make his defense. ‘Adam’ (says God), ‘where art thou? hast thou not eaten of the tree whereof, I commanded thee that thou shouldest not eat?’”

Since then the principle has been chiselled, honed and refined, enriching its content. Judicial treatment has added light and luminosity to the concept, like polishing of a diamond.

It is not possible to define precisely and scientifically the expression “natural justice”. Though highly attractive and potential, it is a vague and

ambiguous concept and, having been criticised as “sadly lacking in precision, has been consigned more than once to the lumberroom. It is a confused and unwarranted concept and encroaches on the field of ethics. Though eminent judges have at times used the phrase “the principles of natural justice”, even now the concept differs widely in countries usually described as civilised.

It is true that the concept of natural justice is not very clear and therefore, it is not possible to define it; yet the principles of natural justice are accepted and enforced. In reply to the aforesaid criticism against natural justice, Lord Reid in the historical decision of **Ridge Vs. Baldwin (1963) 2 All ER 66 (HL)** observed:

“In Modern times opinions have sometimes been expressed to the effect that natural justice is so vague as to be practically meaningless. But I would regard these as tainted by the perennial fallacy that because something cannot be cut and dried or nicely weighed or measured therefore it does not exist. ....”

Further, Natural justice is a branch of public law. It is a formidable weapon which can be wielded to secure justice to citizens. Rules of natural justice are “basic values” which a man has cherished throughout the ages. They are embedded in our constitutional framework and their pristine glory and primacy cannot be allowed to be submerged by exigencies of particular situations or cases. Principles of natural justice control all actions of public authorities by applying rules relating to reasonableness, good faith and justice, equity and good conscience. Natural justice is a part of law which relates to administration of justice. Rules of natural justice are indeed great assurances of justice and fairness.

The golden rule which stands firmly established is that the doctrine of natural justice is not only to secure justice but to prevent miscarriage of justice. Its essence is good conscience in a given situation; nothing more-but nothing less.

As Lord Denning in the case of **Kandaa Vs. Govt. of Malaya, 1962 AC 322** observed that “*if the right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused person to know the case which is made against him. He must know what evidence has been given and what statements have been made affecting him; and then he must be given a fair opportunity to correct or contradict them.*”

Hon'ble the Apex Court in the case of ***Bishambhar Nath Kohli Vs. State of U.P., AIR 1955 SC 65*** held that “*in revision proceedings, the Custodian General accepted new evidence produced by one party, but no opportunity was given to the other side to meet with the same. The Supreme Court held that the principles of natural justice were violated.*”

For the foregoing reasons, writ petition is **allowed** and the impugned order dated 12-3-2019 passed by opposite party no.3 is set aside. The matter is remanded back to the Appellate Authority to decide the same within a period of eight weeks from the date of receiving a certified copy of this order. The petitioner shall not take any unnecessary adjournment before the Appellate Authority.

□

**(2019) 63 TLD 340**

In the High Court of Delhi  
Hon'ble S. Muralidhar & Talwant Singh, JJ.  
**Blue Bird Pure Pvt. Ltd.**  
**Vs.**

**Union of India & Ors.**

W.P. (C) 3798/2019

July 22, 2019

***Deposition : In favour of Petitioner***

**TRAN-1 - The High Court directed the respondents to either open the online portal so as to enable the Petitioner to again file the rectified TRAN-1 Form electronically or accept the manually filed TRAN-1 Form with the correction.**

**Writ petition disposed of****Cases referred :**

- \* Bhargava Motors Vs. Union of India, decision dated 13th May, 2019 in WP(C) 1280/2018
- \* Kusum Enterprises Pvt. Ltd Vs. Union of India, 2019-TIOL-1509-HC-DEL-GST

Mrs. Anjali J. Manish and Mr. Priyadarshi Manish, Advocates for the petitioner.

Mr. Anil Dabas and Mr. Praveen Kumar, Advocates for Respondent No. 1, Mr. Harpreet Singh, Senior Standing Counsel for Respondent Nos. 2 and 3 with Ms. Suhani Mathur, Advocate Mr. Satyakam, ASC, Govt. of NCT



of Delhi/Respondent Nos. 4 and 5.

**:: ORDER ::**

The Order of the Court was made by **Dr. S. MURALIDHAR, J. :**

1. Notice. Notice is accepted by learned counsel for the Respondents.
2. Counter-affidavit filed on behalf of Respondent Nos. 2 and 3 is already on record.
3. The Petitioner is a company having its registered office in New Delhi, engaged in the manufacturing and trading of water purifiers. It is duly registered with the Excise Department and under the Central Excise Act, 1944 and the Rules under which it is entitled to take the CENVAT credit on input used for manufacturing of the finished goods. After the enactment of Central Goods and Services Act, 2017 (CGST Act), the Petitioner got itself registered with the Goods and Service Tax Department. A registration number was issued to it on 26th September, 2017.
4. The Central Government in exercise of the powers under Section 140(5) read with Section 164 of CGST Act read with Rule 117 of the CGST Rules prescribed the GST TRAN- 1 Form which was required to be filed online as a condition precedent for allowing the Petitioner to carry forward the CENVAT credit that was available to it as on the date of coming into force of the CGST Act. The Petitioner states that it filled and filed online the GST TRAN-1 Form on 27th December, 2017. The specific averment is that it committed an inadvertent error in showing the available stock of goods as on 30th June, 2017 in column 7(d) of the Form instead of column 7(a) of the Form. It is stated that as a result of this error, the Petitioner has been unable to avail of the Central GST Credit in respect thereof.
5. It is further averred in the petition that after the due date for filing of the TRAN-1 Form was crossed, the system got locked down at the portal and no tax payer was able to view/mend their TRAN-1 forms. The portal opened up on 15th March, 2018 for filing the TRAN- 2 Returns. It was at that stage that the Petitioner realised that it had committed an inadvertent error in the TRAN-1 Form. The system, however, did not permit the Petitioner to revise the TRAN-1 Form.
6. On 23rd April, 2018, the Petitioner addressed a representation to Officer, Single Point of Contact (SPOC) Delhi, GST-ITO (Respondent No. 5), admitting to having committed the abovementioned inadvertent error and

seeking permission to rectify the mistake. The credit amount involved was Rs. 20,34,807/-. It is pointed out that on account of inability to avail of the above credit amount, the Petitioner was not in a position to file the GSTR-3B returns.

7. The Petitioner further states that on the said representation, the GSTO stated that it will be forwarded to the GST Council for further action. However, nothing happened. The Petitioner addressed further letters on 19th September, 2018 to SPOC and 24th September, 2018 to the Commissioner, Delhi GST, but was not permitted to rectify the TRAN-1 Form already filed online. An e-mail was addressed to the GSTN Nodal Officer on 22nd October, 2018 explaining the Petitioner's difficulty. After several reminders bore no results, the present petition was filed.

8. Learned counsel for the Petitioner has referred to the two decisions of this Court, namely, *Bhargava Motors Vs. Union of India*, decision dated 13th May, 2019 in WP(C) 1280/2018 and *Kusum Enterprises Pvt. Ltd Vs. Union of India, 2019-TIOL-1509-HC-DEL-GST*, where in similar circumstances, the Court issued directions to the Respondents to either open the portal to enable the Petitioner to rectify the TRAN-1 Form electronically or permit the Petitioner to do it manually.

9. Learned counsel for Respondents sought to distinguish the applicability of the above decisions on the ground that in those cases there was a glitch in the system which prevented those Petitioners from correcting the credit amount in the TRAN-1 Form, whereas in the present case the mistake was by the Petitioner in filling up the stock quantity in the wrong column.

10. Having carefully examined those decisions, the Court is unable to find any distinguishing feature that should deny the Petitioner a relief similar to the one granted in those cases. In those cases also, there was some error committed by the Petitioners which they were unable to rectify in the TRAN-1 Form and as a result of which, they could not file the returns in TRAN-2 Form and avail of the credit which they were entitled to. In both the said decisions, the Court noticed that GST system is still in the 'trial and error phase' insofar as its implementation is concerned. It was observed in *Bhargava Motors (supra)* as under:

"10. The GST System is still in a 'trial and error phase' as far as its implementation is concerned. Ever since the date the GSTN became operational, this Court has been approached by dealers facing genuine

difficulties in filing returns, claiming input tax credit through the GST portal. The Court's attention has been drawn to a decision of the Madurai Bench of the Madras High Court dated 10th September, 2018 in W.P. (MD) No. 18532/2018 ( Tara Exports Vs. Union of India) where after acknowledging the procedural difficulties in claiming input tax credit in the TRAN-1 form that Court directed the respondents "either to open the portal, so as to enable the petitioner to file the TRAN1 electronically for claiming the transitional credit or accept the manually filed TRAN1" and to allow the input credit claimed "after processing the same, if it is otherwise eligible in law".

11. In the present case also the Court is satisfied that the Petitioner's difficulty in filling up a correct credit amount in the TRAN-1 form is a genuine one which should not preclude him from having its claim examined by the authorities in accordance with law. A direction is accordingly issued to the Respondents to either open the portal so as to enable the Petitioner to again file TRAN-1 electronically or to accept a manually filed TRAN-1 on or before 31st May, 2019. The Petitioner's claims will thereafter be processed in accordance with law.

12. With a view to ensure that in future such glitches can be overcome, the Court directs the Respondents to consider providing in the software itself a facility of the trader/dealer being able to save onto his/her system the filled up form and also a facility for reviewing the form that has been filled up before its submission. It should also permit the dealer to print out the filled up form which will contain the date/time of its submission online. The Respondents will also consider whether there can be a message that pops up by way of an acknowledgement that the Form with the credit claimed has been correctly uploaded.'

11. Similar directions were issued by this Court in ***Kusum Enterprises Pvt. Ltd.***(*supra*).

12. In the present case, the Court is satisfied that, although the failure was on the part of the Petitioner to fill up the data concerning its stock in Column 7(d) of Form TRAN-1 instead of Column 7(a), the error was inadvertent. The Respondents ought to have provided in the system itself a facility for rectification of such errors which are clearly bona fide. It should be noted at this stage that although the system provided for revision of a return, the

deadline for making the revision coincided with the last date for filing the return i.e. 27th December, 2017. Thus, such facility was rendered impractical and meaningless.

**13.** The Court also notes with some concern that the representations repeatedly made by the Petitioner were not attended to by the Respondents which resulted in the Petitioner having to approach this Court for relief. The apprehension of the Respondents that orders of the kind in ***Bhargava Motors*** (*supra*) and ***Kusum Enterprises*** (*supra*) can open the ‘flood gates’ can easily be allayed by the Respondents themselves if they provide a robust Grievance Redressal Mechanism that can address such genuine grievances of the traders instead of compelling every trader to approach this Court for relief.

**14.** Mr. Harpreet Singh, learned counsel for the Respondents 2 and 3 informs the Court that there is in fact, an Information Technology Grievances Redressal Committee (ITGRC) to address the technical glitches encountered by the traders and to enable them to avail of the input tax and other credit which they are entitled to under the law. When enquired why the said ITGRC was unable to redress the Petitioner’s complaint, Mr. Harpreet Singh speculated that the Petitioner’s case perhaps did not fall within the ‘parameters’ for consideration of the grievance by the said ITGRC. There is nothing on record to suggest that the Petitioner’s repeated representations were ever placed before the ITGRC for its consideration. Even the counter affidavit filed in the present case does not suggest so.

**15.** Accordingly, this Court directs the Respondents to either open the online portal so as to enable the Petitioner to again file the rectified TRAN-I Form electronically or accept the manually filed TRAN-I Form with the correction on or before 31st July, 2019.

**16.** The Petitioner will correspondingly be permitted to thereafter file the return in TRAN-2. The penalty and interest for the late filing of GSTR-3B will be waived off in view of the above directions, subject, of course, to the Petitioner being permitted to and in fact filing the rectified TRAN-1 Form as directed.

**17.** The writ petition is disposed of in the above terms.

**18.** A copy of this order be given *dasti* to the parties under the signatures of the Court Master.



# टैक्स बार एण्ड प्रैक्टिसनर्स एसोसिएशन छतरपुर (म.प्र.) के पदाधिकारी एवं कार्यकारिणी सदस्य



संजय कुमार नामदेव  
अध्यक्ष



एड. मुकेश अग्रवाल  
सचिव



एड. श्री प्रकाश पाण्डेय  
उपाध्यक्ष



एड. अभिषेक खरे  
उपाध्यक्ष



एड. संजय मिश्रा  
कोषाध्यक्ष



एड. भरत भूषण द्विवेदी  
सह सचिव



अखिलेश अग्रिहोत्री  
सह कोषाध्यक्ष



एड. अनुराग असाठी  
पी.आर.ओ.



अरुण अग्रवाल  
प्रतिनिधि पन्ना



केदार प्रसाद पाण्डेय  
प्रतिनिधि नौगाँव



एड. निरंजन खरे  
पूर्व अध्यक्ष



एड. संतोष कुमार गुप्ता  
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संरक्षक सदस्य



सीए. आनंद जैन  
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संतोष अग्रिहोत्री  
सदस्य



सीए. स्वप्निल त्रिपाठी  
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गौरव मिश्रा  
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भरत सोनी  
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एड. अंशुल गुप्ता  
सदस्य



सीए. सौरभ चौरसिया  
सदस्य



हरीश साहू  
सदस्य



**टैक्स बार एण्ड  
प्रैक्टिसनर्स  
एसोसिएशन, छतरपुर  
के चुनाव सम्पन्न एवं  
एमपीटीएलबी के  
नवनियुक्त सहसचिव  
श्री संतोषजी गुप्ता  
का स्वागत**



### **Outcomes of New Notification Nos. 44 to 49 / Central Tax issued on 9-10-2019**

- ❖ GSTR1 & GSTR3B notified till March 2020 for all category of tax payer.
- ❖ Mandatory to match ITC with 2A, otherwise total unmatched credit cannot exceed 20% of ITC as available in 2A.
- ❖ GSTR3B now declared return from 1-7-2017 (Amended Rule 61(5)) wherever the time limit for filing GSTR-1 or GSTR-2 has been extended. Thus, the judgement of the Gujarat High Court in the case of AAP and Company has been circumvented.
- ❖ Voluntary payment of tax to be intimated vide DRC-01A and not DRC-03.
- ❖ Annual Return for assessee below 2 crore turnover is deemed to have filed, if not filed.

**See CGST Notifications Nos. 44 to 49 dtd. 9-10-2019 - Page 273-280**

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