

**Commissionerate of CT and GST, Odisha (At Cuttack)**

**(Finance Department, Government of Odisha)**

No. CCT-PEI-POL-0155-2021 13074/CT&GST,

Dated 29/10/2021

To

All CT & GST Range Heads, Territorial Ranges

All CT & GST Circle Heads, Circle Offices

All CT & GST Assessment Unit Heads, Assessment Units

Sub: Circulation of Circulars on GST Acts/Rules issued by the Govt of India, Ministry of Finance, Department of Revenue, New Delhi –reg.

Madam/Sir,

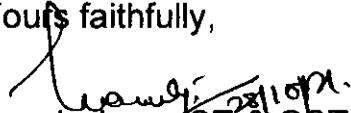
In inviting a reference to the subject cited above, I am directed to say that the following Circulars issued by CBIC, Government of India under the CGST Act; are adopted under the OGST Act as well. The copies of the said Circulars are enclosed herewith for information and guidance.

Sl. No	Circular No	Description
1	159/15/2021-GST dated 20.09.2021	Clarification on doubts related to scope of "intermediary"
2	160/16/2021-GST dated 20.09.2021	Clarification in respect of certain GST related issues
3	161/17/2021 dated 20.09.2021	Clarification relating to export of Services- condition (v) of section 2(6) of the IGST Act 2017
4	162/18/2021 dated 25.09.2021	Clarification in respect of refund of tax specified in section 77(1) of the CGST Act and section 19(1) of the IGST Act



5	163/19/2021 dated 06.10.2021	Clarification regarding GST rates & classification (goods) based on the recommendations of the GST Council in its 45 <sup>th</sup> meeting held on 17th September, 2021 at Lucknow -reg.
6	164/20/2021 06.10.2021	dated Clarifications regarding applicable GST rates & exemptions on certain services

Yours faithfully,

  
Special Commissioner CT & GST

(Policy)



**F.No. CBIC-20001/8/2021-GST**  
**Government of India**  
**Ministry of Finance**  
**Department of Revenue**  
**Central Board of Indirect Taxes and Customs**  
**GST Policy Wing**  
**\*\*\***

New Delhi, dated the 20<sup>th</sup> September, 2021

To,

The Principal Chief Commissioners/ Chief Commissioners/ Principal Commissioners/  
Commissioners of Central Tax (All)

The Principal Directors General/ Directors General (All)

Madam/Sir,

**Subject: Clarification on doubts related to scope of "Intermediary"—reg.**

Representations have been received citing ambiguity caused in interpretation of the scope of "Intermediary services" in the GST Law. The matter has been examined. In view of the difficulties being faced by the trade and industry 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 in succeeding paragraphs.

**2. Scope of Intermediary services**

**2.1** 'Intermediary' has been defined in the sub-section (13) of section 2 of the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as "IGST" Act) as under—

*"Intermediary means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account."*

**2.2** The concept of 'intermediary' was borrowed in GST from the Service Tax Regime. The definition of 'intermediary' in the Service Tax law as given in Rule 2(f) of Place of Provision of Services Rules, 2012 issued vide notification No. 28/2012-ST, dated 20-6-2012 was as follows:

*"intermediary" means a broker, an agent or any other person, by whatever name called, who arranges or facilitates a provision of a service (hereinafter called the 'main service') or a*

*supply of goods, between two or more persons, but does not include a person who provides the main service or supplies the goods on his account."*

2.3 From the perusal of the definition of "intermediary" under IGST Act as well as under Service Tax law, it is evident that there is broadly no change in the scope of intermediary services in the GST regime vis-a-vis the Service Tax regime, except addition of supply of securities in the definition of intermediary in the GST Law.

### 3. Primary Requirements for intermediary services

The concept of intermediary services, as defined above, requires some basic pre-requisites, which are discussed below:

3.1 **Minimum of Three Parties:** By definition, an intermediary is someone who arranges or facilitates the supplies of goods or services or securities between two or more persons. It is thus a natural corollary that the arrangement requires a minimum of three parties, two of them transacting in the supply of goods or services or securities (the main supply) and one arranging or facilitating (the ancillary supply) the said main supply. An activity between only two parties can, therefore, NOT be considered as an intermediary service. An intermediary essentially "arranges or facilitates" another supply (the "main supply") between two or more other persons and, does not himself provide the main supply.

3.2 **Two distinct supplies:** As discussed above, there are two distinct supplies in case of provision of intermediary services:

(1) Main supply, between the two principals, which can be a supply of goods or services or securities;

(2) Ancillary supply, which is the service of facilitating or arranging the main supply between the two principals. This ancillary supply is supply of intermediary service and is clearly identifiable and distinguished from the main supply.

A person involved in supply of main supply on principal to principal basis to another person cannot be considered as supplier of intermediary service.

3.3 **Intermediary service provider to have the character of an agent, broker or any other similar person:** The definition of "intermediary" itself provides that intermediary service provider *means a broker, an agent or any other person, by whatever name called,...*. This part of the definition is not inclusive but uses the expression "means" and does not expand the definition by any known expression of expansion such as "and includes". The use of the expression "arranges or facilitates" in the definition of "intermediary" suggests a subsidiary role for the intermediary. It must arrange or facilitate some other supply, which is the main supply, and does not himself provides the main supply. Thus, the role of intermediary is only supportive.

3.4 **Does not include a person who supplies such goods or services or both or securities on his own account:** The definition of intermediary services specifically mentions

that intermediary “does not include a person who supplies *such* goods or services or both or securities on his own account”. Use of word “*such*” in the definition with reference to supply of goods or services refers to the main supply of goods or services or both, or securities, between two or more persons, which are arranged or facilitated by the intermediary. It implies that in cases wherein the person supplies the main supply, either fully or partly, on principal to principal basis, the said supply cannot be covered under the scope of “intermediary”.

**3.5 Sub-contracting for a service is not an intermediary service:** An important exclusion from intermediary is sub-contracting. The supplier of main service may decide to outsource the supply of the main service, either fully or partly, to one or more sub-contractors. Such sub-contractor provides the main supply, either fully or a part thereof, and does not merely arrange or facilitate the main supply between the principal supplier and his customers, and therefore, clearly is not an intermediary. For instance, ‘A’ and ‘B’ have entered into a contract as per which ‘A’ needs to provide a service of, say, Annual Maintenance of tools and machinery to ‘B’. ‘A’ subcontracts a part or whole of it to ‘C’. Accordingly, ‘C’ provides the service of annual maintenance to ‘A’ as part of such sub-contract, by providing annual maintenance of tools and machinery to the customer of ‘A’, i.e. to ‘B’ on behalf of ‘A’. Though ‘C’ is dealing with the customer of ‘A’, but ‘C’ is providing main supply of Annual Maintenance Service to ‘A’ on his own account, i.e. on principal to principal basis. In this case, ‘A’ is providing supply of Annual Maintenance Service to ‘B’, whereas ‘C’ is supplying the same service to ‘A’. Thus, supply of service by ‘C’ in this case will not be considered as an intermediary.

**3.6** The specific provision of place of supply of ‘intermediary services’ under section 13 of the IGST Act shall be invoked **only when** either the location of supplier of intermediary services or location of the recipient of intermediary services is outside India.

**4.** Applying the abovementioned guiding principles, the issue of intermediary services is clarified through the following illustrations:

Illustration 1

‘A’ is a manufacturer and supplier of a machine. ‘C’ helps ‘A’ in selling the machine by identifying client ‘B’ who wants to purchase this machine and helps in finalizing the contract of supply of machine by ‘A’ to ‘B’. ‘C’ charges ‘A’ for his services of locating ‘B’ and helping in finalizing the sale of machine between ‘A’ and ‘B’, for which ‘C’ invoices ‘A’ and is paid by ‘A’ for the same. While ‘A’ and ‘B’ are involved in the main supply of the machinery, ‘C’, is facilitating the supply of machine between ‘A’ and ‘B’. In this arrangement, ‘C’ is providing the ancillary supply of arranging or facilitating the ‘main supply’ of machinery between ‘A’ and ‘B’ and therefore, ‘C’ is an intermediary and is providing intermediary service to ‘A’.

Illustration 2

‘A’ is a software company which develops software for the clients as per their requirement. ‘A’ has a contract with ‘B’ for providing some customized software for its business operations.

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'A' outsources the task of design and development of a particular module of the software to 'C', for which 'C' may have to interact with 'B', to know their specific requirements. In this case, 'C' is providing main supply of service of design and development of software to 'A', and thus, 'C' is not an intermediary in this case.

Illustration 3

An insurance company 'P', located outside India, requires to process insurance claims of its clients in respect of the insurance service being provided by 'P' to the clients. For processing insurance claims, 'P' decides to outsource this work to some other firm. For this purpose, he approaches 'Q', located in India, for arranging insurance claims processing service from other service providers in India. 'Q' contacts 'R', who is in business of providing such insurance claims processing service, and arranges supply of insurance claims processing service by 'R' to 'P'. 'Q' charges P a commission or service charge of 1% of the contract value of insurance claims processing service provided by 'R' to 'P'. In such a case, main supply of insurance claims processing service is between 'P' and 'R', while 'Q' is merely arranging or facilitating the supply of services between 'P' and 'R', and not himself providing the main supply of services. Accordingly, in this case, 'Q' acts as an intermediary as per definition of sub-section (13) of section 2 of the IGST Act.

Illustration 4

'A' is a manufacturer and supplier of computers based in USA and supplies its goods all over the world. As a part of this supply, 'A' is also required to provide customer care service to its customers to address their queries and complains related to the said supply of computers. 'A' decides to outsource the task of providing customer care services to a BPO firm, 'B'. 'B' provides customer care service to 'A' by interacting with the customers of 'A' and addressing / processing their queries / complains. 'B' charges 'A' for this service. 'B' is involved in supply of main service 'customer care service' to 'A', and therefore, 'B' is not an intermediary.

5. The illustrations given in para 4 above are only indicative and not exhaustive. The illustrations are also generic in nature and should not be interpreted to mean that the service categories mentioned therein are inherently either intermediary services or otherwise. Whether or not, a specific service would fall under intermediary services within the meaning of sub-section (13) of section 2 of the IGST Act, would depend upon the facts of the specific case. While examining the facts of the case and the terms of contract, the basic characteristics of intermediary services, as discussed in para 3 above, should be kept in consideration.

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

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7. Difficulty, if any, in the implementation of this Circular may be brought to the notice of the Board. Hindi version will follow.

(Sanjay Mangal)  
Principal Commissioner (GST)



Circular No. 160/16/2021-GST

**F. No. CBIC-20001/8/2021-GST**  
**Government of India**  
**Ministry of Finance**  
**Department of Revenue**  
**Central Board of Indirect Taxes and Customs**  
**GST Policy Wing**  
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New Delhi, dated the 20<sup>th</sup> September, 2021

To

The Pr. Chief Commissioners / Chief Commissioners / Principal Commissioners /  
Commissioners of Central Tax (All)  
The Principal Directors General / Directors General (All)

Madam / Sir,

**Subject: Clarification in respect of certain GST related issues - reg.**

Various representations have been received from taxpayers and other stakeholders seeking clarification in respect of certain issues pertaining to GST laws. The issues have been examined. In order 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 each of these issues as under:

S. No.	Issue	Clarification
1.	Section 16 (4), as amended with effect from 01.01.2021, provides that a registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such	1. With effect from 01.01.2021, section 16(4) of the CGST Act, 2017 was amended <i>vide</i> the Finance Act, 2020, so as to delink the date of issuance of debit note from the date of issuance of the underlying invoice for purposes of availing input tax credit. The amendment made is shown as below: <i>"A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both</i>

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<p><b>invoice or debit note pertains</b> or furnishing of the relevant annual return, whichever is earlier.</p>	<p><i>after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier.</i></p>
<p>Doubts have been raised seeking following clarification:</p>	<p>As can be seen, the words "invoice relating to such" were omitted w.e.f. 01.01.2021.</p>
<p>1. Which of the following dates are relevant to determine the 'financial year' for the purpose of section 16(4):</p>	<p>2. The intent of law as specified in the Memorandum explaining the Finance Bill, 2020 states that "<i>Clause 118 of the Bill seeks to amend sub-section (4) of section 16 of the Central Goods and Services Tax Act so as to delink the date of issuance of debit note from the date of issuance of the underlying invoice for purposes of availing input tax credit.</i></p>
<p>(a) date of issuance of debit note, or (b) date of issuance of underlying invoice.</p>	<p>3. Accordingly, it is clarified that:</p>
<p>2. Whether any availment of input tax credit, on or after 01.01.2021, in respect of debit notes issued either prior to or after 01.01.2021, will be governed by the provisions of the amended section 16(4), or the amended provision will be applicable only in respect of the debit notes issued after 01.01.2021?</p>	<p>a) w.e.f. 01.01.2021, in case of debit notes, the date of issuance of debit note (not the date of underlying invoice) shall determine the relevant financial year for the purpose of section 16(4) of the CGST Act. b) The availment of ITC on debit notes in respect of amended provision shall be applicable from 01.01.2021. Accordingly, for availment of ITC on or after 01.01.2021, in respect of debit notes issued either prior to or after 01.01.2021, the eligibility for availment of ITC will be governed by the amended provision of section 16(4), whereas any ITC availed prior to 01.01.2021, in respect of debit notes, shall be governed under the</p>

		<p>provisions of section 16(4), as it existed before the said amendment on 01.01.2021.</p> <p><b>Illustration 1.</b> A debit note dated 07.07.2021 is issued in respect of the original invoice dated 16.03.2021. As the invoice pertains to F.Y. 2020-21, the relevant financial year for availment of ITC in respect of the said invoice in terms of section 16(4) of the CGST shall be 2020-21. However, as the debit note has been issued in FY 2021-22, the relevant financial year for availment of ITC in respect of the said debit note shall be 2021-22 in terms of amended provision of section 16(4) of the CGST Act.</p> <p><b>Illustration 2.</b> A debit note has been issued on 10.11.2020 in respect an invoice dated 15.07.2019. As per amended provision of section 16(4), the relevant financial year for availment of input tax credit on the said debit note, on or after 01.01.2021, will be FY 2020-21 and accordingly, the registered person can avail ITC on the same till due date of furnishing of FORM GSTR-3B for the month of September, 2021 or furnishing of the annual return for FY 2020-21, whichever is earlier.</p>
2.	Whether carrying physical copy of invoice is compulsory during movement of goods in cases where suppliers have issued invoices in the manner prescribed under rule 48 (4) of the CGST Rules, 2017 (i.e. in cases of e-invoice).	<ol style="list-style-type: none"> <li>1. Rule 138A (1) of the CGST Rules, 2017 <i>inter-alia</i>, provides that the person in charge of a conveyance shall carry— (a) the <b>invoice or bill of supply or delivery challan</b>, as the case may be; and (b) a copy of the e-way bill or the e-way bill number, either physically or mapped to a <b>Radio Frequency Identification Device</b> embedded on to the conveyance in such manner as may be notified by the Commissioner.</li> <li>2. Further, rule 138A (2) of CGST Rules, after being amended <i>vide</i> notification No. 72/2020-Central Tax dated 30.09.2020.</li> </ol>

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		<p>states that <i>"In case, invoice is issued in the manner prescribed under sub-rule (4) of rule 48, the Quick Reference (QR) code having an embedded Invoice Reference Number (IRN) in it, may be produced electronically, for verification by the proper officer in lieu of the physical copy of such tax invoice"</i></p> <p>3. A conjoint reading of rules 138A (1) and 138A (2) of CGST Rules, 2017 clearly indicates that there is no requirement to carry the physical copy of tax invoice in cases where e-invoice has been generated by the supplier. After amendment, the revised rule 138A (2) states in unambiguous words that whenever e-invoice has been generated, the Quick Reference (QR) code, having an embedded <b>Invoice Reference Number (IRN)</b> in it, may be produced electronically for verification by the proper officer <b>in lieu of the physical copy of such tax invoice.</b></p> <p>4. Accordingly, it is clarified that there is no need to carry the physical copy of tax invoice in cases where invoice has been generated by the supplier in the manner prescribed under rule 48(4) of the CGST Rules and production of the Quick Response (QR) code having an embedded Invoice Reference Number (IRN) electronically, for verification by the proper officer, would suffice.</p>
3.	Whether the first proviso to section 54(3) of CGST - SGST Act, prohibiting refund of unutilized ITC is applicable in case of exports of goods which	1. The term ' <b>subjected to export duty</b> ' used in first proviso to section 54(3) of the CGST Act, 2017 means where the goods are actually leviable to export duty and suffering export duty at the time of export. Therefore, goods in respect of which either Nil. rate is

	are having NIL rate of export duty.	<p>specified in Second Schedule to the Customs Tariff Act, 1975 or which are fully exempted from payment of export duty by virtue of any customs notification or which are not covered under Second Schedule to the Customs Tariff Act, 1975, cannot be considered to be subjected to any export duty under Customs Tariff Act, 1975.</p> <p>2. Accordingly, it is clarified that only those goods which are actually subjected to export duty i.e., on which some export duty has to be paid at the time of export, will be covered under the restriction imposed under section 54(3) from availment of refund of accumulated ITC. Goods, which are not subject to any export duty and in respect of which either NIL rate is specified in Second Schedule to the Customs Tariff Act, 1975 or which are fully exempted from payment of export duty by virtue of any customs notification or which are not covered under Second Schedule to the Customs Tariff Act, 1975, would not be covered by the restriction imposed under the first proviso to section 54(3) of the CGST Act for the purpose of availment of refund of accumulated ITC.</p>
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2. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

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

(Sanjay Mangal)  
Principal Commissioner



**F. No. CBIC-20001/8/2021-GST**  
**Government of India**  
**Ministry of Finance**  
**Department of Revenue**  
**Central Board of Indirect Taxes and Customs**  
**GST Policy Wing**  
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New Delhi, dated the 20<sup>th</sup> September, 2021

To

The Pr. Chief Commissioners / Chief Commissioners / Principal Commissioners /  
Commissioners of Central Tax (All)

The Principal Directors General / Directors General (All)

Madam / Sir,

**Subject: Clarification relating to export of services-condition (v) of section 2(6) of the IGST Act 2017-reg.**

Various representations have been received citing ambiguity caused in interpretation of the Explanation 1 under section 8 of the IGST Act 2017 in relation to condition (v) of export of services as mentioned in sub-section (6) of the section 2 of the IGST Act 2017. Doubts have been raised whether the supply of service by a subsidiary/ sister concern/ group concern, etc. of a foreign company in India, which is incorporated under the laws in India, to the foreign company incorporated under laws of a country outside India, will hit by condition (v) of sub-section (6) of section 2 of IGST Act.

2. The matter has been examined. In view of the difficulties being faced by the trade and industry 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 issue in succeeding paragraphs.

**Relevant legal provisions:**

3.1 The export of services has been defined in sub-section (6) of the section 2 of the IGST Act 2017 as under:

*(6) "export of services" means the supply of any service when,—*  
*(i) the supplier of service is located in India.*

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- (ii) the recipient of service is located outside India;
- (iii) the place of supply of service is outside India;
- (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange, and
- (v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8;

3.2 Explanation 1 of the Section 8 of the IGST Act provides for the conditions wherein establishments of a person would be treated as establishments of distinct persons, which is reproduced as under:

**Explanation 1.**—For the purposes of this Act, where a person has,—

- (i) an establishment in India and any other establishment outside India;
- (ii) an establishment in a State or Union territory and any other establishment outside that State or Union territory, or
- (iii) an establishment in a State or Union territory and any other establishment being a business vertical registered within that State or Union territory then such establishments shall be treated as establishments of distinct persons

As per the above Explanation, an establishment of a person in India and another establishment of the said person outside India are considered as establishments of distinct persons.

3.3 Reference is also invited to the Explanation 2 of Section 8 of IGST Act, which is reproduced below:

*Explanation 2.*—A person carrying on a business through a branch or an agency or a representational office in any territory shall be treated as having an establishment in that territory.

3.4 Reference is also invited to the definition of “person” as provided under CGST Act 2017, made applicable to IGST Act vide section 2(24) of IGST Act 2017. “Person” has been defined under sub-section (84) of the section 2 of the CGST Act 2017, as under:

(84) ‘person’ includes

- (a) an individual;
- (b) a Hindu Undivided Family;
- (c) a company;
- (d) a firm;
- (e) a Limited Liability Partnership;
- (f) an association of persons or a body of individuals whether incorporated or not, in India or outside India.

*(g) any corporation established by or under any Central Act, State Act or Provincial Act or a Government company as defined in clause (45) of section 2 of the Companies Act, 2013.*

*(h) any body corporate incorporated by or under the laws of a country outside India;*

*(i) a co-operative society registered under any law relating to co-operative societies.*

*(j) a local authority;*

*(k) Central Government or a State Government;*

*(l) society as defined under the Societies Registration Act, 1860;*

*(m) trust; and*

*(n) every artificial juridical person, not falling within any of the above.*

3.5. The definitions of company and foreign company have been provided under section 2 of Companies Act 2013, as under:

*(20) "company" means a company incorporated under this Act or under any previous company law.*

*(42) "foreign company" means any company or body corporate incorporated outside India which-*

*(a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and*

*(b) conducts any business activity in India in any other manner*

**Analysis of the issue:**

4.1 Clause (v) of sub-section (6) of section 2 of IGST Act, which defines "export of services", places a condition that the services provided by one establishment of a **person to another establishment of the same person, considered as establishments of distinct persons as per Explanation 1 of section 8 of IGST Act**, cannot be treated as export. In other words, any supply of services by an establishment of a foreign company in India to any other establishment of the said foreign company outside India will not be covered under definition of export of services.

4.2 Further, perusal of the Explanation 2 to section 8 of the IGST Act suggests that if a foreign company is conducting business in India through a branch or an agency or a representational office, then the said branch or agency or representational office of the foreign company, located in India, shall be treated as establishment of the said foreign company in India. Similarly, if any company incorporated in India, is operating through a branch or an agency or a representational office in any country outside India, then that branch or agency or representational office shall be treated as the establishment of the said company in the said country.

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4.3. In view of the above, it can be stated that supply of services made by a branch or an agency or representational office of a foreign company, not incorporated in India, to any establishment of the said foreign company outside India, shall be treated as supply between establishments of distinct persons and shall not be considered as "export of services" in view of condition (v) of sub-section (6) of section 2 of IGST Act. Similarly, any supply of service by a company incorporated in India to its branch or agency or representational office, located in any other country and not incorporated under the laws of the said country, shall also be considered as supply between establishments of distinct persons and cannot be treated as export of services.

4.4. From the perusal of the definition of "person" under sub-section (84) of section 2 of the CGST Act, 2017 and the definitions of "company" and "foreign company" under Section 2 of the Companies Act, 2013, it is observed that a company incorporated in India and a foreign company incorporated outside India, are separate "person" under the provisions of CGST Act and accordingly, are separate legal entities. Thus, a subsidiary/ sister concern/ group concern of any foreign company which is incorporated in India, then the said company incorporated in India will be considered as a separate "person" under the provisions of CGST Act and accordingly, would be considered as a separate legal entity than the foreign company.

### Clarification:

5.1. In view of the above, it is clarified that a company incorporated in India and a body corporate incorporated by or under the laws of a country outside India, which is also referred to as foreign company under Companies Act, are separate **persons** under CGST Act, and thus are separate legal entities. Accordingly, these two separate persons would not be considered as "merely establishments of a distinct person in accordance with Explanation 1 in section 8".

5.2. Therefore, supply of services by a subsidiary/ sister concern/ group concern, etc. of a foreign company, which is incorporated in India under the Companies Act, 2013 (and thus qualifies as a 'company' in India as per Companies Act), to the establishments of the said foreign company located outside India (incorporated outside India), would not be barred by the condition (v) of the sub-section (6) of the section 2 of the IGST Act 2017 for being considered as export of services, as it would not be treated as supply between merely establishments of distinct persons under Explanation 1 of section 8 of IGST Act 2017. Similarly, the supply from a company incorporated in India to its related establishments outside India, which are incorporated under the laws outside India, would not be treated as supply to merely establishments of distinct person under Explanation 1 of section 8 of IGST Act 2017. Such supplies, therefore, would qualify as 'export of services', subject to fulfilment of other conditions as provided under sub-section (6) of section 2 of IGST Act.

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

**Circular No. 161/17/2021-GST**

7. Difficulty, if any, in the implementation of this Circular may be brought to the notice of the Board. Hindi version will follow.

(Sanjay Mangal)  
Principal Commissioner

8351/CCT/2021

Circular No. 162/18/2021-GST



**F. No. CBIC-20001/8/2021-GST**  
**Government of India**  
**Ministry of Finance**  
**Department of Revenue**  
**Central Board of Indirect Taxes and Customs**  
**GST Policy Wing**  
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New Delhi, dated the 25<sup>th</sup> September, 2021

To,

The Principal Chief Commissioners/Chief Commissioners/Principal Commissioners/  
Commissioners of Central Tax (All)

The Principal Directors General/ Directors General (All)

Madam/Sir,

**Subject: Clarification in respect of refund of tax specified in section 77(1) of the CGST Act and section 19(1) of the IGST Act -Reg**

Representations have been received seeking clarification on the issues in respect of refund of tax wrongfully paid as specified in section 77(1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act") and section 19(1) of the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as "IGST Act"). In order to clarify these issues and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the CGST Act, hereby clarifies the issues detailed hereunder:

2.1 Section 77 of the CGST Act, 2017 reads as follows:

***"77. Tax wrongfully collected and paid to Central Government or State Government. — (1) A registered person who has paid the Central tax and State tax or, as the case may be, the Central tax and the Union territory tax on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall be refunded the amount of taxes so paid in such manner and subject to such conditions as may be prescribed.***

*(2) A registered person who has paid integrated tax on a transaction considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall not be required to pay any interest on the amount of central tax and State tax or, as the case may be, the Central tax and the Union territory tax payable."*

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Section 19 of the IGST Act, 2017 reads as follows:

***“19. Tax wrongfully collected and paid to Central Government or State Government-----(1) A registered person who has paid integrated tax on a supply considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall be granted refund of the amount of integrated tax so paid in such manner and subject to such conditions as may be prescribed.***

*(2) A registered person who has paid central tax and State tax or Union territory tax, as the case may be, on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall not be required to pay any interest on the amount of integrated tax payable.”*

### **3. Interpretation of the term “subsequently held”**

**3.1** Doubts have been raised regarding the interpretation of the term “**subsequently held**” in the aforementioned sections, and whether refund claim under the said sections is available only if supply made by a taxpayer as inter-State or intra-State, is subsequently held by tax officers as intra-State and inter-State respectively, either on scrutiny/ assessment/ audit/ investigation, or as a result of any adjudication, appellate or any other proceeding or whether the refund under the said sections is also available when the inter-State or intra-State supply made by a taxpayer, is subsequently found by taxpayer himself as intra-State and inter-State respectively.

**3.2** In this regard, it is clarified that the term “subsequently held” in section 77 of CGST Act, 2017 or under section 19 of IGST Act, 2017 covers both the cases where the inter-State or intra-State supply made by a taxpayer, is either subsequently found by taxpayer himself as intra-State or inter-State respectively or where the inter-State or intra-State supply made by a taxpayer is subsequently found/ held as intra-State or inter-State respectively by the tax officer in any proceeding. Accordingly, refund claim under the said sections can be claimed by the taxpayer in both the above mentioned situations, provided the taxpayer pays the required amount of tax in the correct head.

### **4. The relevant date for claiming refund under section 77 of the CGST Act/ Section 19 of the IGST Act, 2017**

**4.1** Section 77 of the CGST Act and Section 19 of the IGST Act, 2017 provide that in case a supply earlier considered by a taxpayer as intra-State or inter-State, is subsequently held as inter-State or intra-State respectively, the amount of central and state tax paid or integrated tax paid, as the case may be, on such supply shall be refunded in such manner and subject to such conditions as may be prescribed. In order to prescribe the manner and conditions for refund under section 77 of the CGST Act and section 19 of the IGST Act, sub-rule (1A) has been inserted after sub-rule (1) of rule 89 of the Central Goods and Services Tax Rules, 2017

(hereinafter referred to as “CGST Rules”) vide notification No. 35/2021-Central Tax dated 24.09.2021. The said sub-rule (1A) of rule 89 of CGST Rules, 2017 reads as follows:

*“(1A) Any person, claiming refund under section 77 of the Act of any tax paid by him, in respect of a transaction considered by him to be an intra-State supply, which is subsequently held to be an inter-State supply, may, before the expiry of a period of two years from the date of payment of the tax on the inter-State supply, file an application electronically in **FORM GST RFD-01** through the common portal, either directly or through a Facilitation Centre notified by the Commissioner:*

*Provided that the said application may, as regard to any payment of tax on inter-State supply before coming into force of this sub-rule, be filed before the expiry of a period of two years from the date on which this sub-rule comes into force.”*

**4.2** The aforementioned amendment in the rule 89 of CGST Rules, 2017 clarifies that the refund under section 77 of CGST Act/ Section 19 of IGST Act, 2017 can be claimed before the expiry of two years from the date of payment of tax under the correct head, i.e. integrated tax paid in respect of subsequently held inter-State supply, or central and state tax in respect of subsequently held intra-State supply, as the case may be. However, in cases, where the taxpayer has made the payment in the correct head before the date of issuance of notification No.35/2021-Central Tax dated 24.09.2021, the refund application under section 77 of the CGST Act/ section 19 of the IGST Act can be filed before the expiry of two years from the date of issuance of the said notification. i.e. from 24.09.2021.

**4.3** Application of sub-rule (1A) of rule 89 read with section 77 of the CGST Act / section 19 of the IGST Act is explained through following illustrations.

*A taxpayer “A” has issued the invoice dated 10.03.2018 charging CGST and SGST on a transaction and accordingly paid the applicable tax (CGST and SGST) in the return for March, 2018 tax period. The following scenarios are explained hereunder:*

Sl.no.	Scenario	Last date for filing the refund claim
1	Having realized on his own that the said transaction is an inter-State supply, “A” paid IGST in respect of the said transaction on 10.05.2021.	Since “A” has paid the tax in the correct head before issuance of notification No. 35/2021-Central Tax, dated 24.09.2021, the last date for filing refund application in <b>FORM GST RFD-01</b> would be <b>23.09.23</b> (two years from date of notification)
2	Having realized on his own that the said transaction is an inter-State supply, “A” paid	Since “A” has paid the correct tax on 10.11.2021, in terms of rule 89 (1A) of

	IGST in respect of the said transaction on <b>10.11.2021 i.e. after issuance of notification No. 35/2021-Central Tax</b> dated 24.09.2021	the CGST Rules, the last date for filing refund application in <b>FORM GST RFD-01</b> would be <b>09.11.2023</b> (two years from the date of payment of tax under the correct head, i.e. integrated tax)
3	Proper officer or adjudication authority or appellate authority of "A" has held the transaction as an inter-State supply and accordingly, "A" has paid the IGST in respect of the said transaction on <b>10.05.2019</b>	Since "A" has paid the tax in the correct head before issuance of notification No. 35/2021-Central Tax, dated 24.09.2021, the last date for filing refund application in <b>FORM GST RFD-01</b> would be <b>23.09.23</b> (two years from date of notification)
4	Proper officer or adjudication authority or appellate authority of "A" has held the transaction as an inter-State supply and accordingly, "A" has paid the IGST in respect of the said transaction on <b>10.11.2022 i.e. after issuance of notification No. 35/2021-Central Tax</b> dated 24.09.2021	Since "A" has paid the correct tax on 10.11.2022, in terms of rule 89 (1A) of the CGST Rules, the last date for filing refund application in <b>FORM GST RFD-01</b> would be <b>09.11.2024</b> (two years from the date of payment of tax under the correct head, i.e. integrated tax)

The examples above are only indicative one and not an exhaustive list. Rule 89 (1A) of the CGST Rules would be applicable for section 19 of the IGST Act also, where the taxpayer has initially paid IGST on a specific transaction which later on is held as intra-State supply and the taxpayer accordingly pays CGST and SGST on the said transaction. It is also clarified that any refund applications filed, whether pending or disposed off, before issuance of notification No.35/2021-Central Tax, dated 24.09.2021, would also be dealt in accordance with the provisions of rule 89 (1A) of the CGST Rules, 2017.

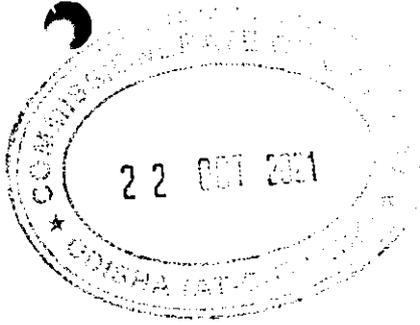
**4.4** Refund under section 77 of the CGST Act / section 19 of the IGST Act would not be available where the taxpayer has made tax adjustment through issuance of credit note under section 34 of the CGST Act in respect of the said transaction.

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

**6.** Difficulty, if any, in implementation of this Circular may please be brought to the notice of the Board. Hindi version would follow.

(Sanjay Mangal)  
Principal Commissioner (GST)

8352/cet/2021



Circular No. 163/19/2021-GST

F. No. 190354/206/2021-TRU  
Government of India  
Ministry of Finance  
Department of Revenue  
(Tax Research Unit)

\*\*\*\*\*

North Block, New Delhi

Date: 6<sup>th</sup> October, 2021

To,

Principal Chief Commissioners/ Principal Director Generals,  
Chief Commissioners/ Director Generals,  
Principal Commissioners/ Commissioners of Central Excise & Central Tax(All),

Madam/ Sir,

**Subject: Clarification regarding GST rates & classification (goods) based on the recommendations of the GST Council in its 45<sup>th</sup> meeting held on 17<sup>th</sup> September, 2021 at Lucknow-reg.**

Based on the recommendations of the GST Council in its 45<sup>th</sup> meeting held on 17<sup>th</sup> September, 2021, at Lucknow, clarification, with reference to GST levy, related to the following are being issued through this circular:

- i. Fresh vs dried fruits and nuts;
- ii. Classification and applicable GST rates on Tamarind seeds;
- iii. Coconut vs Copra;
- iv. Classification and applicable GST rate on Pure *henna* powder and leaves, having no additives;
- v. Scented sweet *supari* and flavored and coated *illaichi*;
- vi. Classification of Brewers' Spent Grain (BSG), Dried Distillers' Grains with Soluble [DDGS] and other such residues and applicable GST rate;
- vii. GST rates on goods [miscellaneous pharmaceutical products] falling under heading 3006;

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- viii. Applicability of GST rate of 12% on all laboratory reagents and other goods falling under heading 3822;
- ix. Requirement of Original/ import Essentiality certificate, issued by the Directorate General of Hydrocarbons (DGH) on each inter-State stock transfer of goods imported at concessional GST rate for petroleum operations;
- x. External batteries sold along with UPS Systems/ Inverter;
- xi. Specified Renewable Energy Projects;
- xii. Fiber Drums, whether corrugated or non-corrugated.

2. The issue-wise clarifications are discussed in detail below.

3. **Applicability of GST on fresh and dried fruits and nuts:**

3.1 Representations have been received seeking clarification regarding the distinction between fresh and dried fruits and nuts and applicable GST rates.

3.2 At present, fresh nuts (almond, walnut, hazelnut, pistachio etc) falling under heading 0801 and 0802 are exempt from GST, while dried nuts under these headings attract GST at the rate of 5%/ 12%. The general Explanatory Notes to chapter 08 mentions that this chapter covers fruit, nuts intended for human consumption. They may be **fresh (including chilled)**, **frozen** (whether or not previously cooked by steaming or boiling in water or containing added sweetening matter) or **dried (including dehydrated, evaporated or freeze-dried)**. Thus, HS chapter differentiates between fresh, frozen and dried fruits and nuts. Fresh fruit and nuts would thus cover fruit and nuts which are meant to be supplied in the state as plucked. They continue to be fresh even if chilled. However, fruit and nuts do not qualify as fresh, once frozen (cooked or otherwise), or intentionally dried to dehydrate including through sun drying, evaporation or freezing, for supply as dried fruits or nuts. It may be noted that in terms of note 3 to Chapter 8, dried fruits, even if partially re-hydrated, or subject to preservation say by moderate heat treatment, retain the character of dried fruits or dried nuts.

3.3. Therefore, exemption from GST to fresh fruits and nuts covers only such products which are not frozen or dried in any manner as stated above or otherwise processed. Supply of dried fruits and nuts, falling under heading 0801 and 0802 attract GST at the rate of 5%/12% as specified in the respective rate Schedules.

#### **4. Applicability of GST on tamarind seeds:**

4.1 Representations have been received seeking clarification regarding classification and applicable GST rates on tamarind seeds. The dispute is in classification of tamarind seeds between tariff heading 1207 and 1209.

4.2 As per general Explanatory Notes to HS 2017, heading 1209, covering seeds, fruit and spores, of a kind used for sowing, covers tamarind seeds. As per Chapter note 3 to Chapter 12, for the purposes of heading 1209, beet seeds, grass and other herbage seeds, seeds of ornamental flowers, vegetable seeds, seeds of forest trees, seeds of fruit trees, seeds of vetches (other than those of the species *Vicia faba*) or of lupines are to be regarded as "seeds of a kind used for sowing". Thus, tamarind seeds, even if used for any purpose other than sowing, is liable to be classified under heading 1209 and hitherto attracted nil GST rate, irrespective of its use (for the period 01.07.2017 to 30.09.2021).

4.3 The GST council in its 45<sup>th</sup> meeting recommended GST rate on seeds, falling under heading 1209, meant for any use other than sowing to 5% (S. No. 71A of schedule I of notification No. 1/2017- Central Tax (Rate) dated 28.06.2017) and Nil rate would apply only to seeds for this heading if used for sowing purposes (S. No. 86 of schedule of notification No. 2/2017- Central Tax (Rate) dated 28.06.2017). Hence, with effect from 1.10.2021, tamarind and other seeds falling under heading 1209, (i.e. including tamarind seeds), if not supplied as seed for sowing, would attract GST at the rate of 5%.

#### **5. Clarification of definition of Copra:**

5.1. Representations have been received seeking clarification regarding the definition of *Copra* and applicable GST rates.

5.2 As per Explanatory Notes to HS (2017 edition) to heading 1203, *Copra* is dried flesh of coconut generally used for the extraction of coconut oil. Coconut kernel turns into *copra*, when it separates from the shell skin, while still being inside the shell. The whole unbroken kernel could be taken out of shell only when it converts to *copra*. Once taken out of shell, *copra* could be supplied either whole or broken.

5.3. As per the Explanatory Notes to HS, the heading 0801 covers coconut fresh or dried but excludes *Copra*. Thus, exemption available to Coconut, fresh or dried, whether or not shelled or peeled, vide entry at S. No. 47 of notification No. 2/2017- Central Tax (Rate) dated 28.6.2017, is not available to *Copra*. Accordingly, *Copra*, classified under heading 1203, attracts GST rate of 5% vide entry at S. No. 66 of Schedule I of 1/2017-Central Taxes (Rate) dated 28.06.2017, irrespective of use.

6. **Applicability of GST on pure henna powder and leaves:**

6.1 Representations have been received seeking clarification regarding classification and applicable GST rates on henna powder and henna leaves.

6.2 As per the Explanatory Notes to HS 2017, heading 1404 is vegetable products not elsewhere specified or included. Further, as per the said Explanatory Notes, heading 1404 includes raw vegetable materials of a kind used primarily in dyeing or tanning. Such products are used primarily in dyeing or tanning either directly or in preparation of dyeing or tanning extracts. The material may be untreated, cleaned, dried, ground or powdered (whether or not compressed).

6.3 Accordingly, it is clarified that pure *henna* powder and *henna* leaves, having no additives, is classifiable under tariff item 1404 90 90 and shall attract GST rate of 5% (S. No. 78 of schedule I of notification No. 1/2017-Central Tax (Rate) dated 28.06.2017).

6.4 Further, the GST rate on *mehndi* paste in cones falling under heading 1404 and 3305 shall be 5% (S. No. 78A of schedule I of notification No. 1/2017-Central Tax (Rate) dated 28.06.2017).

7. **Applicability of GST on scented sweet supari & flavored and coated illaichi:**

7.1 Representations have been received seeking clarification regarding classification and applicable GST rates on flavored and coated *illaichi*, and scented sweet *supari*.

7.2 Scented sweet *supari* falls under tariff item 2106 90 30 as "Betel nut product" known as "*Supari*" and attracts GST rate of 18% vide entry at S. No. 23 of Schedule III of notification No. 1/2017-Central Tax (Rate) dated 28.6.2017.

7.3 Flavored and coated *illaichi* generally consists of Cardamom Seeds, Aromatic Spices, Silver Leaf, Saffron, Artificial Sweeteners. It is distinct from *illaichi* or cardamom (which falls under heading 0908). It is clarified that flavored and coated *illaichi* is a value added product and falls under sub-heading 2106. It accordingly attract GST at the rate of 18% (S. No. 23 of schedule III of notification No. 1/2017-Central Tax (Rate) dated 28.06.2017).

8. **Applicability of GST on Brewers' Spent Grain (BSG), Dried Distillers' Grains with Soluble [DDGS] and other such residues:**

8.1 Representations have been received seeking clarification regarding classification and applicable GST rates on Brewers' spent grain (BSG), Dried distillers' grains with soluble [DDGS] and other such residues of starch manufacture and similar residues,

beet-pulp, bagasse and other waste of sugar manufacture, brewing or distilling dregs and waste, whether or not in the form of pellets.

8.2 As per the Explanatory Notes to the HSN, heading 2303 includes residues of starch manufacture and similar residues (from maize (corn), rice, potatoes, etc.); beet-pulp; bagasse; other waste products of sugar manufacture; brewing or distilling dregs and waste, which comprises in particular - dregs of cereals obtained in the manufacture of beer and consisting of exhausted grains remaining after the wort has been drawn off; malts sprouts separated from the malted grain during the kilning process; spent hops; Dregs resulting from the distillation of spirits from grain, seeds, potatoes, etc; beet pulp wash (residues from the distillation of beet molasses). All these products remain classified in the heading whether presented in wet or dry.

8.3 Thus, Brewers' spent grain (BSG), Dried distillers' grains with soluble [DDGS] and other such residues are classifiable under heading 2303, attracting GST at the rate of 5% (S. No. 104 of schedule I of notification No. 1/2017-Central Tax (Rate) dated 28.06.2017).

#### **9. Scope of GST rate on all pharmaceutical goods falling under heading 3006.**

9.1 Entry at S. No. 65 of Schedule II of notification No. 1/2017-Central Tax (Rate) dated 28.6.2017, reads as "*Pharmaceutical goods specified in Note 4 to this Chapter [i.e. Sterile surgical catgut, similar sterile suture materials (including sterile absorbable surgical or dental yarns) and sterile tissue adhesives for surgical wound closure; sterile laminaria and sterile laminaria tents; sterile absorbable surgical or dental haemostatics; sterile surgical or dental adhesion barriers, whether or not absorbable; Waste pharmaceuticals] [other than contraceptives]*"

9.2 S. No. 65 of Second Schedule of Notification 1/2017- Central Tax (Rate) dated 28.6.2017 refers to the note 4 to Chapter 30 of the First schedule of the Customs Tariff Act, 1975 while mentioning an illustrative list. Certain representations were received seeking clarification on the applicable rate of goods falling under heading 3006 that are not specifically mentioned in the Entry at S. No. 65 of Schedule II of notification No. 1/2017-Central Tax (Rate) dated 28.6.2017.

9.3 Note 4 to Chapter 30 of the First schedule of the Custom Tariff Act, 1975 reads as follows:

*"(a) sterile surgical catgut, similar sterile suture materials (including sterile absorbable surgical or dental yarns) and sterile tissue adhesives for surgical wound closure;*

(b) sterile laminaria and sterile laminaria tents;

(c) sterile absorbable surgical or dental haemostatics sterile surgical or dental adhesion barriers, whether or not absorbable;

(d) opacifying preparations for X-ray examinations and diagnostic reagents designed to be administered to the patient, being unmixed products put up in measured doses or products consisting of two or more ingredients which have been mixed together for such uses;

(e) blood-grouping reagents;

(f) dental cements and other dental fillings; bone reconstruction cements;

(g) first-aid boxes and kits;

(h) chemical contraceptive preparations based on hormones, on other products of heading 2937 or on spermicides;

(i) gel preparations designed to be used in human or veterinary medicine as a lubricant for parts of the body for surgical operations or physical examinations or as a coupling agent between the body and medical instruments; and

(j) waste pharmaceuticals, that is, pharmaceutical products which are unfit for their original intended purpose due to, for example, expiry of shelf-life.

(k) appliances identifiable for ostomy use, that is colostomy, ileostomy and urostomy pouches cut to shape and their adhesive wafers or faceplates."

9.4 Thus, it is clarified that said entry 65 covers all goods as specified in Chapter Note 4 and Chapter Note 4 in turn covers all goods covered under Heading 3006. Therefore, said entry 65 covers all goods falling under heading 3006, irrespective of the fact that such goods are specifically mentioned in said entry. Therefore, all goods falling under heading 3006 attract GST rate of 12% under entry 65 in the 12% rate schedule.

10. **All laboratory reagents and other goods falling under heading 3822:**

10.1 Entry at S. No. 80 of Schedule II of notification No.1/2017- Integrated Tax (Rate) dated 28.6.2017 prescribes GST rate of 12% for "All diagnostic kits and reagents".

10.2. Representations have been received whether the benefit of concessional rate of 12% would be available to laboratory agents and other goods falling under heading 3822.

10.3 Heading 3822 covers "Diagnostic or Laboratory Reagents, Certified Reference Materials etc."

10.4 The issue was placed before the GST Council and on its recommendations, it is clarified that the intention of this entry was to prescribe GST rate of 12% to all goods, whether diagnostic or laboratory reagents, falling under heading 3822.

10.5 It is accordingly clarified that concessional GST rate of 12% is applicable on all goods falling under heading 3822, vide Entry at S. No. 80 of Schedule II of notification No.1/2017-Integrated Tax (Rate) dated 28.6.2017.

**11. Requirement of Original/ import Essentiality certificate, issued by the Directorate General of Hydrocarbons (DGH) on each inter-State stock transfer of goods imported at concessional GST rate for petroleum operations**

11.1 Notification No. 3/2017-Central Tax (Rate) prescribes concessional rate of 5% for specified goods which are used in connection with specified petroleum operations. Condition 1 (d) in notification No. 03/2017-Central Tax dated 28.06.2017 prescribes that "*whenever goods so supplied are transferred to other licensee or sub-contractor a certificate from Directorate General of Hydrocarbons (DGH) is to be produced that the goods may be transferred to the transferee*".

11.2. As per Section 7 read with Schedule-I of the CGST Act 2017, inter-state stock transfer between distinct persons (establishment of same person located in two different states) is considered as 'supply' of goods.

11.3. Representations have been received seeking clarification whether the original/ import Essentiality certificate can be used for such inter-state stock transfers or a fresh Essentiality certificate would be required for each inter-state stock transfer as it is being treated as supply subject to IGST.

11.4 GST Council deliberated upon this issue and a decision was taken that the original/ import Essentiality certificate, issued by the Directorate General of Hydrocarbons (DGH) is sufficient and there is no need for taking a certificate every time on inter-state movement of goods within the same company / stock transfer so long as the goods are the same as those imported by the company at concessional rate.

11.5. The importer is required to maintain records and should be able to establish nexus between the stock transfer of goods and the description in the essentiality certificate.

## **12. GST rates applicable on External batteries sold along with UPS Systems/ Inverter**

12.1 References have been received seeking clarification about whether, 'UPS Systems/inverter sold along with batteries as integral part' are classified under heading 8507 at 28% GST or under heading 8504 at 18% GST.

12.2 The matter has been examined and it is observed that even if the UPS/inverter and external battery are sold on the same invoice, their price are separately known, and they are two separately identifiable items. Thus, this constitutes supply of two distinctly identifiable items on one invoice. Therefore, it is clarified that in such supplies, UPS/inverter would attract GST rate of 18% under heading 8504, while external batteries would attract the GST rate as applicable to it under heading 8507 (28% for all batteries except lithium-ion battery).

## **13. Applicability of GST rates on Solar PV Power Projects**

13.1 Representations have been received seeking clarification regarding the GST rates applicable on Solar PV Power Projects on or before 1<sup>st</sup> January, 2019. The issue seems to have arisen in the context of Notification No.24/2018- Central Tax (Rate), dated 31<sup>st</sup> December, 2018. An explanation was inserted vide the said notification that GST on specified Renewable Energy Projects can be paid in terms of the 70:30 ratio for goods and services, respectively, with effect from 1<sup>st</sup> January, 2019. The request has been that same ratio (for deemed value) may be applied in respect of supplies made before 1.1.2019.

13.2 As per this explanation, if the goods specified in this entry are supplied, by a supplier, along with supplies of other goods and services, one of which being a taxable service specified in the entry at S. No. 38 of the Table mentioned in the notification No. 11/2017-Central Tax (Rate), dated 28<sup>th</sup> June, 2017, the value of supply of goods for the purposes of this entry shall be deemed as seventy per cent. of the gross consideration charged for all such supplies, and the remaining thirty per cent. of the gross consideration charged shall be deemed as value of the said taxable service. This mechanism for valuation of supply was recommended by the Council considering that it adequately represented the value of goods and services involved in the supply.

13.3 The GST Council has now decided to clarify that GST on such specified Renewable Energy Projects can be paid in terms of the 70:30 ratio for goods and services, respectively, for the period of 1<sup>st</sup> July, 2017 to 31<sup>st</sup> December, 2018, in the same manner as has been prescribed for the period on or after 1st January, 2019, as per the explanation in the Notification No.24/2018 dated 31<sup>st</sup> December, 2018. However, it is

specified that, no refunds will be granted if GST already paid is more than the amount determined using this mechanism.

**14. Applicability of GST rates on Fibre Drums, whether corrugated or non-corrugated**

14.1 Hitherto, corrugated boxes and cartons, falling under heading 4819 attracted GST at the rate of 12% (entry 122 of 12% rate schedule), while other cartons falling under this heading attracted GST at the rate of 18%. Disputes have arisen as regards applicable GST on fibre drums, which is partially corrugated (as to whether it is be treated as corrugated or otherwise). This dispute gets resolved on account of the recommendation of the GST Council, in its 45<sup>th</sup> meeting, to prescribe a uniform GST rate of 18% on all goods classifiable under heading 4819 (with effect from 1<sup>st</sup> October, 2021 under S. No. 153A of Schedule III of notification No.1/2017-Central Tax (Rate) dated 28.6.2017).

14.2 For the period prior to 1.10.2021, the Council upon taking note of the fact that there was an ambiguity regarding the GST rates applicable on a Fibre Drums, because of its peculiar construction (partially corrugated), has decided that supplies of such Fibre Drums even if made at 12% GST (during the period from 1.7.2017 to 30.9.2021), would be treated as fully GST-paid. Therefore, no action for recovery of differential tax (over and above 12% already paid) would arise. However, as this decision has only been taken to regularize the past practice in view of certain ambiguity, as detailed in para 14.1, no refund of GST already paid shall be allowed if already paid at 18%.

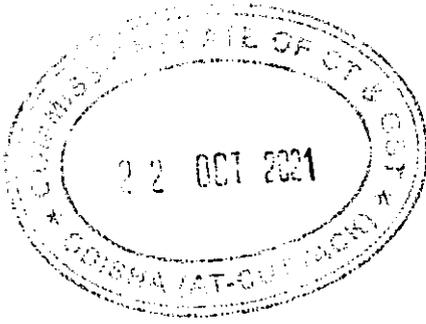
15. Difficulty if any, in the implementation of this circular may be brought to the notice of the Board. Hindi version shall follow.

Yours faithfully,

(Piyush Kumar Ankit)  
Technical Officer, TRU

8353/CCT/2021

Circular No. 164 /20 /2021-GST



CBIC-190354/207/2021-TO (TRU-II)-CBEC

Government of India  
Ministry of Finance  
Department of Revenue  
(Tax Research Unit)

\*\*\*\*\*

North Block, New Delhi,  
Dated the 6<sup>th</sup> October, 2021

To,  
The Principal Chief Commissioners/ Chief Commissioners/ Principal Commissioners/  
Commissioner of Central Tax (All),  
The Principal Director Generals/ Director Generals (All)

Madam/Sir,

**Sub: Clarifications regarding applicable GST rates & exemptions on certain services-reg.**

Representations have been received seeking clarification in respect of applicable GST rates on the following activities:

1. Services by cloud kitchens/central kitchens,
2. Supply of ice cream by ice cream parlors,
3. Coaching services to students provided by coaching institutions and NGOs under the central sector scheme of 'Scholarships for students with Disabilities',
4. Satellite launch services provided by NSIL.
5. Overloading charges at toll plaza,
6. Renting of vehicles by State Transport Undertakings and Local Authorities,
7. Services by way of grant of mineral exploration and mining rights attracted GST,
8. Admission to amusement parks having rides etc. ,
9. Services supplied by contract manufacture to brand owners or others for manufacture of alcoholic liquor for human consumption.

2. The issues have been examined by GST Council in the 45rd meeting of the Council held on 17th September, 2021. The issue-wise clarifications are given below:

3. **Services by cloud kitchens/central kitchens:**

3.1 Representations have been received requesting for clarification regarding the classification and rate of GST on services rendered by Cloud kitchen or Central Kitchen.

3.2 The word 'restaurant service' is defined in Notification No. 11/2017 – CTR as below: -  
*'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*

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*premises where such food or any other article for human consumption or drink is supplied.'*

3.3 The explanatory notes to the classification of service state that 'restaurant service' includes services provided by Restaurants, Cafes and similar eating facilities including takeaway services, room services and door delivery of food. Therefore, it is clear that takeaway services and door delivery services for consumption of food are also considered as restaurant service and, accordingly, service by an entity, by way of cooking and supply of food, even if it is exclusively by way of takeaway or door delivery or through or from any restaurant would be covered by restaurant service. This would thus cover services provided by cloud kitchens/central kitchens.

3.4 Accordingly, as recommended by the Council, it is clarified that service provided by way of cooking and supply of food, by cloud kitchens/central kitchens are covered under 'restaurant service', as defined in notification No. 11/2017- Central Tax (Rate) and attract 5% GST [without ITC].

**4. Supply of ice cream by ice cream parlors**

4.1 Representations have been received requesting for clarification regarding the supplies provided in an ice cream outlet.

4.2 Ice cream parlors sell already manufactured ice-cream and they do not have a character of a restaurant. Ice-cream parlors do not engage in any form of cooking at any stage, whereas, restaurant service involves the aspect of cooking/preparing during the course of providing service. Thus, supply of ice-cream parlor stands on a different footing than restaurant service. Their activity entails supply of ice cream as goods (a manufactured item) and not as a service, even if certain ingredients of service are present.

4.3 Accordingly, as recommended by the Council, it is clarified that where ice cream parlors sell already manufactured ice-cream and do not cook/prepare ice-cream for consumption like a restaurant, it is supply of ice cream as goods and not as a service, even if the supply has certain ingredients of service. Accordingly, it is clarified that ice cream sold by a parlor or any similar outlet would attract GST at the rate of 18%.

**5. Coaching services supplied by coaching institutions and NGOs under the central sector scheme of 'Scholarships for students with Disabilities'**

5.1 Representations have been received seeking clarification regarding applicability of GST on free coaching services provided by coaching institutions and NGOs under the central scheme of "Scholarships for students with Disabilities" where entire expenditure is provided by Government to coaching institutions by way of grant in aid.

5.2 In this regard, it is to mention that entry 72 of notification No. 12/2017-Central Tax (Rate) dated 28th June, 2017, exempts services provided to the Central Government, State Government, Union territory administration under any training programme

for which total expenditure is borne by the Central Government, State Government, Union territory administration.

5.3 The scope of this entry is wide enough to cover coaching services provided by coaching institutions and NGOs under the central scheme of 'Scholarships for students with Disabilities' where total expenditure is borne by the Government by way of funding to institute providing such coaching.

5.4 Accordingly, as recommended by the GST Council, it is clarified that services provided by any institutions/ NGOs under the central scheme of 'Scholarships for students with Disabilities' where total expenditure is borne by the Government is covered under entry 72 of notification No. 12/2017-Central Tax (Rate) dated 28th June, 2017 and hence exempt from GST.

#### **6. Satellite launch services provided by NSIL.**

6.1 Representation has been received for issuance of a clarification recognizing Satellite Launch Services supplied by M/s New Space India Limited (NSIL), a wholly-owned Government of India Company under the administrative control of Department of Space (DoS), to international customers as 'Export of Service'.

6.2 It has been clarified vide Circular No. 2/1/2017-IGST dated 27.09.2017 that Place of Supply (PoS) of satellite launch services supplied by ANTRIX Corporation Ltd to customers located outside India is outside India and such supply which meets the requirements of section 2(6) of IGST Act, constitutes export of service and shall be zero rated. If the service recipient is located in India, the satellite launch services would be taxable.

6.3 As recommended by the Council, it is clarified that as the satellite launch services supplied by NSIL are similar to those supplied by ANTRIX Corporation Ltd, the said circular No. 2/1/2017-IGST dated 27.09.2017, is applicable to them.

#### **7. GST on overloading charges at toll plaza.**

7.1 Representations have been received seeking clarification regarding applicability of GST on Overloading charges collected at Toll Plazas.

7.2 Entry 23 of notification No. 12/2017-Central Tax (Rate) dated 28th June, 2017, exempts Service by way of access to a road or a bridge on payment of toll charges.

7.3 *Vide* notification dated 25<sup>th</sup> Sep. 2018, issued by Ministry of Road Transport And Highways, overloaded vehicles were allowed to ply on the national highways after payment of fees with multiplying factor of 2/4/6/8/10 times the base rate of toll. Therefore, it essence overloading fees are effectively higher toll charges.

7.4 As recommended by the GST Council, it is clarified that overloading charges at toll plazas would get the same treatment as given to toll charges.

## **8. Renting of vehicles to State Transport Undertakings and Local Authorities**

8.1 Representations have been received seeking clarification regarding eligibility of the service of renting of vehicles to State Transport Undertakings (STUs) and Local Authorities for exemption from GST under notification No. 12/2017-Central Tax (Rate) dated 28.06.2017. Sl. No. 22 of this notification exempts "*services by way of giving on hire (a) to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers; or (aa) to a local authority, an Electrically Operate vehicle meant to carry more than twelve passengers*".

8.2 This issue has arisen in the wake of ruling issued by an Authority for Advance Ruling that the entry at Sl. No. 22 of notification No. 12/2017-Central Tax (Rate) exempts services by way of giving on hire vehicles to a State Transport Undertaking or a local authority and not renting of vehicles to them. The ruling referred to certain case laws pertaining to erstwhile positive list based service tax regime.

8.3 It is relevant to note in this context that Schedule II of CGST Act, 2017 declares supply of any goods without transfer of title as supply of service even if right to use is transferred. Transfer of right to use has been declared as a supply of service [Schedule II, Entry 5(f) *refers*]

8.4 The issue was placed before the 45<sup>th</sup> GST Council Meeting held on 17.09.2021. As recommended by the GST Council, it is clarified that the expression "*giving on hire*" in Sl. No. 22 of the Notification No. 12/2017-CT (Rate) includes renting of vehicles. Accordingly, services where the said vehicles are rented or given on hire to State Transport Undertakings or Local Authorities are eligible for the said exemption irrespective of whether such vehicles are run on routes, timings as decided by the State Transport Undertakings or Local Authorities and under effective control of State Transport Undertakings or Local Authorities which determines the rules of operation or plying of vehicles .

## **9. Services by way of grant of mineral exploration and mining rights**

9.1 Representations have been received requesting for clarification as to the rate of GST applicable on supply of services by way of granting mineral exploration and mining rights during the period from 1.07.2017 to 31.12.2018. With effect from 1.1.2019, the rate schedule has been specifically amended and it is undisputed since then that such service attracts GST at the rate of 18%.

9.2 For the disputed period [ 1.7.2017 to 31.12.2018], divergent rulings have been issued by Authorities for Advance Ruling (AAR) and Appellate Authorities for Advance Ruling (AAAR) of various States on the GST rate applicable on the same. AAR, Haryana in case of M/s Pioneer Partners and AAR, Chhattisgarh in case of M/s NMDC have ruled that the service of grant of mining leases is classifiable under Service Code 997337 (*licensing services for the right to use minerals including its exploration and evaluation*) and attracted, prior to 01.01.2019, the same rate of GST as applicable to minerals, that is, 5% as prescribed against Sl. No. 17, item (viii) of

Notification No. 11/2017-Central Tax (Rate). The rate prescribed against this entry prior to 01.01.2019 was “*the same rate as applicable on supply of like goods involving transfer of title in goods*”. In certain other advance rulings, a view has been taken that grant of rights for mineral exploration and mining would be covered under heading 9991 and would attract GST at the rate of 18%.

9.2.1 AAAR, Odisha, on the other hand has ruled vide Order dated 5.11.2019 in the case of M/s Penguin Trading and Agencies Limited that grant of mining lease was taxable @ 18% prior to 01.01.2019. The Appellate Authority in this case observed that GST rate applicable against Sl. No. 17 item (viii) of Notification No. 11/2017-Central Tax (Rate) prior to 01.01.2019 was not implementable. Unlike leasing or renting of goods, there are no underlying goods in case of leasing of mining area. The rate prescribed for goods cannot be made applicable to leasing of mining area, which confers the right to extract and appropriate minerals. The mining lease by Government, not being a lease of any goods, cannot attract the rate applicable to sale of like goods. Appellate Authority for Advance Ruling, Odisha has further held that the amendment carried out vide Notification No. 27/2018-Central Tax (Rate), dated 31.12.2018, which restricted the “*same rate as applicable to supply of goods involving transfer of title in goods*” only to leasing or renting of goods was to clarify the legislative intent as well as to resolve the unintended interpretation. It is a settled law that interpretation which defeats the intention of legislature cannot be adopted. It accordingly upheld that “*licensing services for the right to use minerals including its exploration and evaluation*” falling under service code 997337 were taxable @ 18% during 01.07.2017 to 31.12.2018.

9.2.2 It may be noted that the expression “same rate of tax as applicable on supply of like goods involving transfer of title in goods” applies in case of leasing or renting of goods. In case of grant of mining rights, there is no leasing or renting of goods. Hence, the said entry does not extend to grant of mining rights which is an entirely different activity.

9.3 The issue was placed before the GST Council in its 45<sup>th</sup> meeting held on 17.9.2021.

9.3.1 As regards classification of service, it was recommended by the Council that service by way of grant of mineral exploration and mining rights most appropriately fall under service code 997337, i.e. “*licensing services for the right to use minerals including its exploration and evaluation*”.

9.3.2 As regards the applicable rate for the period from 1.7.2017 to 31.12.2018, the council took note of the following facts, namely,-

(i) GST Council in its 4<sup>th</sup> meeting held on 3<sup>rd</sup> & 4<sup>th</sup> November, 2016 had decided that supply of services shall be generally taxed at the rate of 18%.

(ii) More importantly, the GST Council in its 14<sup>th</sup> meeting held on 18<sup>th</sup> & 19<sup>th</sup> May, 2019, while recommending the rate schedules of services (5%, 12%, 18% and 28%), specifically recommended that all the residuary services would attract GST at the rate of 18%.

(iii) The rate applicable on the service of grant of mineral exploration license and mining lease under Service Tax was also the standard rate of 15.5%. Services under this category have been standard rated in GST at 18%

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(iv) Therefore, the intention has always been to tax this activity / supply at standard rate of 18%

9.3.3 Accordingly, as recommended by the Council, it is clarified that even if the rate schedule did not specifically mention the service by way of grant of mining rights, during the period 1.7.2017 to 31.12.2018, it was taxable at 18% in view of principle laid down in the 14<sup>th</sup> meeting of the Council for residuary GST rate. Post, 1<sup>st</sup> January, 2019 no dispute remains as stated above.

**10. Admission to indoor amusement parks having rides etc.**

10.1 Representations have been received requesting for clarification regarding applicable rate of GST on services provided by Indoor Amusement Parks/Family Entertainment Centers, and scope of the word 'amusement park' under entry 34(iii) of Notification No. 11/2017-CTR.

10.2 Entry 34(iii) notification No.11/2017-CTR, prior to 01.10.2021, prescribed 18% GST on the services by way of admission to amusement parks including theme parks, water parks, joy rides, merry-go rounds, go-carting and ballet. On the other hand, Entry No. 34(iia) in Notification No. 11/2017- CT(R) dated 28.06.2017 prescribed GST rate of 28% on the services by way of admission to entertainment events or access to amusement facilities including casinos, race club, any sporting event such as Indian Premier League and the like.

10.3 On the recommendations of the Council, it is clarified that 28% rate [entry 34 (iia)] applies on admission to a place having casino or race club [even if it provides certain other activities] or admission to a sporting event like IPL. On the other hand, Entry 34 (iii), having a rate of 18%, covers all other cases of admission to amusement parks, or theme park etc or any place having joy rides, merry- go rounds, go- carting etc, whether indoor or outdoor, so long as no access is provided to a casino or race club. This clarification will also apply to Entries 34(iii) and 34(iia) as they existed prior to their amendment w.e.f 01.10.2021.

10.4 The entries in question have been suitably amended vide notification No. 6/2021-Central Tax(Rate) dated 30.09.2021 to make them clearer.

**11. Services supplied by contract manufacturers to brand owners for manufacture of alcoholic liquor for human consumption**

11.1 Representations have been received requesting for issuing a clarification that the job work services supplied by contract manufacturers to brand owners for manufacture of alcoholic liquor for human consumption attract GST @ 5% prescribed for job work services in relation to food and food products, in terms of Sl. No. 26 [Item 1(i)f] of notification No. 11/2017-Central Tax (R) dated 28-6-2017. This entry prescribes GST rate of 5% on services by way of job work in relation to food and food products falling under chapters 1 to 22 in the first Schedule to the Customs Tariff Act, 1975.

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11.2 The issue was placed before the GST Council in its 45<sup>th</sup> meeting held on 17<sup>th</sup> September, 2021. The Council had also deliberated upon this issue in its 39<sup>th</sup> and 40<sup>th</sup> meeting.

11.3 As recommended by GST Council, it is clarified that the expression “food and food products” in the said entry excludes alcoholic beverages for human consumption. As such, in common parlance also alcoholic liquor is not considered as food. Accordingly, services by way of job work in relation to manufacture of alcoholic liquor for human consumption are not eligible for the GST rate of 5% prescribed under the said entry. GST Council recommended that such job work would attract GST at the rate of 18%.

12. Difficulties, if any, in implementation of this circular may be brought to the notice of the Board.

Yours faithfully,

(Rajeev Ranjan)  
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