

GST – SYNOPSIS NOTIFICATIONS AND CLARIFICATIONS ISSUED W.R.T 45TH GST COUNCIL MEETING [09.10.2021]

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SYNOPSIS

Notifications Issued

- Not. No. 35/2021-CT
- Not. No. 36/2021-CT
- Not. No. 06/2021-CT (R)
- Not. No. 07/2021-CT (R)
- Not. No. 08/2021-CT (R)
- Not. No. 09/2021-CT (R)
- Not. No. 10/2021-CT (R)
- Not. No. 11/2021-CT (R)
- Not. No. 12/2021-CT (R)

Clarifications Issued

- 159/15/2021-GST
- 160/15/2021-GST
- 161/15/2021-GST
- 162/15/2021-GST
- 163/15/2021-GST
- 164/15/2021-GST





Changes Which are
Notified – Related to
Compliances

1. Relaxation in Filing FORM
GST ITC-04
(Notified – Ref Not. No.
35/2021-CT dated 24.09.2021

Relaxation in filing FORM GST ITC-04 – Rule 45 Amended

Annual Aggregate Turnover is Last FY above 5 Cr



Required to Furnish ITC-04 once in **six months**

Annual Aggregate Turnover is Last FY is up to 5 Cr



Furnish ITC-04 **Annually**

Key Highlights

Instead of Quarterly Now Six
Monthly or yearly

Difficulty to upload data on online
portal could increase due to
increase in number of transaction
for 6 month instead quarter

2. Amendment with Respect to
GST Registration
(Notified – Ref Not. No.
35/2021-CT dated 24.09.2021

Amendment with Respect to GST Registration

What is Rule 10 A ?

- Furnishing of Bank Account Details during Registration within 45 days from the date of grant of registration or the date on which the return required under section 39 is due to be furnished, whichever is earlier,

What is Amendment ?

- The Bank Account uploaded should be of of the registered person and obtained on PAN of the registered person
- Also in case of proprietorship concern, the PAN of the proprietor shall also be linked with the Aadhaar number

3. Authentication of the Aadhaar number for Prescribed Scenario

(Notified – Ref Not. No.
35/2021-CT dated 24.09.2021)

Authentication of the Aadhaar number for Prescribed Scenario

New Section 10 B Inserted so that to specify the Authentication of the Aadhaar number in the scenario given below

- For filing of application for revocation of cancellation of registration
- For filing of refund application under Rule 89
- For refund under rule 96 of the IGST paid on goods exported out of India

If Aadhaar number has not been assigned

- Furnish identification documents (like Adhar enrollment ID, Bank Passbook etc)
- Subject to Adhar Authentication should be completed within 30 days from allotment of Adhar Number

4. GSTR-1 unable to be
furnished on Non Filing of 3B
(Notified – Ref Not. No.
35/2021-CT dated 24.09.2021
applicable w.e.f 01.01.2022)

GSTR-1 unable to be furnished on Non Filing of 3B

What is Rule 59

- GSTR-1 unable to be furnished if GSTR-3B for the preceding two month has not been furnished

Amendment

- From 01.01.2022 GSTR-1 unable to be furnished if GSTR-3B for the preceding month has not been furnished.

5. Amendment with respect Refund

(Notified – Ref Not. No.
35/2021-CT dated 24.09.2021)

Amendment with respect Refund

What is Rule 89?

- Application for Refund

Amendment

- Sub Rule 1 Inserted
- Refund of GST wrong paid considering transaction of intra-State supply, which is subsequently held to be an inter-State supply
- time limit for filing refund of tax wrongfully will be now 2 years from the date of payment of the tax on the inter-State supply.
- For earlier transaction it should be 2 years should be from the date Rule Notified

Circular No. 162/18/2021-GST

Instances	Date of payment of correct taxes	Last date for filing the refund claim
Having realized on his own that the said transaction is an inter-State supply, "A" paid IGST	10.05.2021	23.09.23 (two years from date of notification)
	10.11.2021	09.11.2023 (two years from the date of payment of tax under the correct head)
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	10.05.2021	23.09.23 (two years from date of notification)
	10.11.2022	09.11.2024 (two years from the date of payment of tax under the correct head)



Changes with respect
to Rates – Services

1. Rates for Services (Not. No.6/2021-CT(Rate))

GST Rate Services

Service

- Heading 9954 (Construction services) – GST Rate 12%

Earlier

- *(iv) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, {other than that covered by items (i), (ia), (ib), (ic), (id), (ie) and (if) above}13 supplied by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,-*
- *[(g) a building owned by an entity registered under section 12AA of the Income Tax Act, 1961 (43 of 1961), which is used for carrying out the activities of providing, centralized cooking or distribution, for mid-day meals under the mid-day meal scheme sponsored by the Central Government, State Government, Union territory or local authorities.]*

GST Rate Services

Now

- *(iv) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, {other than that covered by items (i), (ia), (ib), (ic), (id), (ie) and (if) above}13 supplied by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,-*
- *[(g) a building owned by an entity registered under section 12AA or 12AB of the Income Tax Act, 1961 (43 of 1961), which is used for carrying out the activities of providing, centralized cooking or distribution, for mid-day meals under the mid-day meal scheme sponsored by the Central Government, State Government, Union territory or local authorities.]*

GST Rate Services – Substituted

No.	Chapter, Section or Heading	Description of Service	Rate (%)	Condition
17.	Heading 9973 (Leasing or rental services without operator)	(i) Temporary or permanent transfer or permitting the use or enjoyment of Intellectual Property (IP) right in respect of goods other than Information Technology software.	6	
		(ii) Temporary or permanent transfer or permitting the use or enjoyment of Intellectual Property (IP) right in respect of Information Technology software. [Please refer to Explanation no. (v)] “(ii) Temporary or permanent transfer or permitting the use or enjoyment of Intellectual Property (IP) right	9	

GST Rate Services – New Entry Inserted

No.	Chapter, Section or Heading	Description of Service	Rate (%)	Condition
26.	Heading 9988 (Manufacturing services on physical inputs (goods) owned by others)	<i>“(ica) Services by way of job work in relation to manufacture of alcoholic liquor for human consumption</i>	9	

Key Highlight

Alcoholic liquor for human consumption is not food and food products for the purpose of the entry prescribing 5% GST rate on job work services in relation to food and food products. Thus new entry is now inserted

What is the impact for previous period ?

GST Rate Services – Substituted

No.	Chapter, Section or Heading	Description of Service	Rate (%)	Condition
27.	Heading 9989	[[i] Services by way of printing of all goods falling under Chapter 48 or 49 [including newspapers, books (including Braille books), journals and periodicals], which attract CGST @ 6 per cent. or 2.5 per cent. or Nil, where only content is supplied by the publisher and the physical inputs including paper used for printing belong to the printer.	6	
		[(ii) Other manufacturing services; publishing, printing and reproduction services; materials recovery services, other than (i) above <i>“Other manufacturing services; publishing, printing and reproduction services; material recovery services</i>	9	

GST Rate Services – Substituted

No	Chapter, Section or Heading	Description of Service	Rate (%)	Condition
37	Heading 9996 (Recreational, cultural and sporting services)	[(iii) Services by way of admission to amusement parks including theme parks water parks, joy rides, merry go rounds, go carting and ballet	9	
		<i>“(iii) Services by way of admission to;(a) theme parks, water parks and any other place having joy rides, merry- go rounds, go carting, or (b) ballet, - other than any place covered by (iiia) below</i>	9	
		[(iiia) 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.	14	
		<i>iiia) Services by way of admission to (a) casinos or race clubs or any place having casinos or race clubs or (b) sporting events like Indian Premier League.</i>	14	

2. Scheme of Classification of Services (Not. No.6/2021-CT(Rate))

Scheme of Classification of Services – ‘ New Entry Inserted’

No.	Chapter, Section or Heading	Service Code (Tariff)	Service Description
118a	Group 99654		Multimodal Transport of goods from a place in India to another place in India
118b		996541	Multimodal Transport of goods from a place in India to another place in India”.

2. Changes with respect to
exempted services
(Not. No.7/2021-CT(Rate))

Exemption of Services – Substituted

No.	Chapter, Section or Heading	Description of Service	Rate (%)	Condition
1.	Chapter 99	Services by an entity registered under section 12AA or 12AB of the Income-tax Act, 1961 (43 of 1961) by way of charitable activities.	Nil	Nil
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 <i>whenever rescheduled</i>	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.]

Exemption of Services – New Entry

No.	Chapter, Section or Heading	Description of Service	Rate (%)	Condition
9AB	Chapter 99	<i>Services provided by and to Asian Football Confederation (AFC) and its subsidiaries directly or indirectly related to any of the events under AFC Women's Asia Cup 2022 to be hosted in India.</i>	Nil	<i>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 AFC Women's Asia Cup 2022.”;</i>

Exemption of Services – Substituted

No.	Chapter, Section or Heading	Description of Service	Rate (%)	Condition
9D	Chapter 99	<i>Services by an old age home run by Central Government, State Government or by an entity registered under section 12AA or 12AB of the Income-tax Act, 1961 (43 of 1961) to its residents (aged 60 years or more) against consideration upto twenty-five thousand rupees per month per member, provided that the consideration charged is inclusive of charges for boarding, lodging and maintenance.</i>	Nil	Nil

Exemption of Services – Substituted

No.	Chapter, Section or Heading	Description of Service	Rate (%)	Condition
13	Chapter 99	<i>Services by a person by way of (b) renting of precincts of a religious place meant for general public, owned or managed by an entity registered as a charitable or religious trust under section 12AA or 12AB of the Income-tax Act, 1961 (hereinafter referred to as the Income-tax Act) or a trust or an institution registered under sub clause (v) of clause (23C) of section 10 of the Income-tax Act or a body or an authority covered under clause (23BBA) of section 10 of the said Income-tax Act:</i>	Nil	Nil

Exemption of Services – Substituted

No.	Chapter, Section or Heading	Description of Service	Rate (%)	Condition
19A	Chapter 99	<i>Services by way of transportation of goods by an aircraft from customs station of clearance in India to a place outside India</i>	Nil	Nothing contained in this serial number shall apply after the 30th day of September 2021 2022
72	Heading 9992	<i>Services provided to the Central Government, State Government, Union territory administration under any training programme for which 75% or more of the total expenditure is borne by the Central Government, State Government, Union territory administration</i>	Nil	Nil

Exemption of Services – Omitted

No.	Chapter, Section or Heading	Description of Service	Rate (%)	Condition
43	Heading 9973	Services of leasing of assets (rolling stock assets including wagons, coaches, locos) by the Indian Railways Finance Corporation to Indian Railways.	Nil	Nil

Exemption of Services – New Entry Inserted

No.	Chapter, Section or Heading	Description of Service	Rate (%)	Condition
61A	<i>Heading 9991</i>	<i>Services by way of granting National Permit to a goods carriage to operate through-out India / contiguous States.</i>	Nil	Nil

Exemption of Services – New Entry Inserted

No.	Chapter, Section or Heading	Description of Service	Rate (%)	Condition
82B	<i>Heading 9996</i>	<i>Services by way of right to admission to the events organised under AFC Women's Asia Cup 2022</i>	Nil	Nil



Changes with respect
to Rates – Goods

1. Changes with respect to – Nil
Rated Goods
(Not. No.8/2021-CT(Rate))

GST Rate – Goods – From 1.10.2021

Services	Earlier	From 1.10.2021
Retro fitment kits for vehicles used by the disabled Appl	Appl. rate	5%
Medicine Keytruda for treatment of cancer	12%	5%
Bio-diesel supplied to Oil Marketing Companies for blending with High Speed Diesel”;	12%	5%
Iron ores and concentrates, including roasted iron pyrites.	5%	18%
Cartons, boxes, cases, bags and other packing containers, of paper, paperboard, cellulose wadding or webs of cellulose fibres; box files, letter trays, and similar articles, of paper or paperboard of a kind used in offices, shops or the like.”;	12%/18%	18%

GST Rate – Goods – From 1.10.2021

Services	Earlier	From 1.10.2021
Waste, Parings and Scrap, of Plastics	5%	18%
Ball point pens; felt tipped and other porous-tipped pens and markers; fountain pens; stylograph pens and other pens; duplicating stylos; pen holders, pencil holders and similar holders; parts (including caps and clips) of the foregoing articles, other than those of heading 9609.”, shall be substituted	12%/18%	18%
Railway parts, locomotives & other goods in Chapter 86	12%	18%

GST Rate – Goods – From 1.10.2021

Services	Earlier	From 1.10.2021
Miscellaneous goods of paper like cards, catalogue, printed material (Chapter 49 of tariff)	12%	18%
Tamarind seeds meant for any use other than sowing heading 1209 However Seeds for sowing will continue at nil rate.	Nil	5%
Carbonated Beverages of Fruit Drink or Carbonated Beverages with Fruit Juice.”;		GST- 28% and Cess of 12%.

GST Rate – Goods – From 1.10.2021 – Sr. No 26C Inserted

(c) in Schedule III – 9%, -

(i) after S. No. 26B and the entries relating thereto, the following S. No. and entries shall be inserted, namely: -

“26C	2601	Iron ores and concentrates, including roasted iron pyrites.
26D	2602	Manganese ores and concentrates, including ferruginous manganese ores and concentrates with a manganese content of 20% or more, calculated on the dry weight.
26E	2603	Copper ores and concentrates.
26F	2604	Nickel ores and concentrates.
26G	2605	Cobalt ores and concentrates.
26H	2606	Aluminium ores and concentrates.
26I	2607	Lead ores and concentrates.
26J	2608	Zinc ores and concentrates.
26K	2609	Tin ores and concentrates.

Renewable Energy Devices and Parts -

GST Rate 12%

Following renewable energy devices and parts for their manufacture:-

- *(a) Bio-gas plant;*
- *(b) Solar power based devices;*
- *(c) Solar power generator;*
- *(d) Wind mills, Wind Operated Electricity Generator (WOEG);*
- *(e) Waste to energy plants / devices;*
- *(f) Solar lantern / solar lamp;*
- *(g) Ocean waves/tidal waves energy devices/plants;*
- *(h) Photo voltaic cells, whether or not assembled in modules or made up into panels.*

Renewable Energy Devices and Parts -

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 28th June, 2017 [G.S.R. 690(E)], 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.”;*

2. Changes with respect to – Nil
Rated Goods
(Not. No.9/2021-CT(Rate))

Exemption of Goods – New Entry Inserted

No.	Chapter, Section or Heading	Description of Service	Rate (%)	Condition
86	1209	<i>Seeds, fruit and spores, of a kind used for sowing</i> <i>Explanation: This entry does not cover seeds meant for any use other than sowing.”;</i>	Nil	Nil

3. Changes with respect to –
RCM u/s 9(3)
(Not. No.10/2021-CT(Rate))

Exemption of Goods – New Entry Inserted

No.	Chapter, Section or Heading	Description of supply of Goods	Supplier of goods	Recipient of supply
86	33012400, 33012510, 33012520, 33012530, 33012540	<p><i>Following essential oils other than those of citrus fruitnamely: -</i></p> <p><i>a) Of peppermint (Menthapiperita);</i></p> <p><i>b) Of other mints : Spearmint oil (exmenthaspicata), Water mint-oil (exmentha aquatic), Horsemint oil (exmenthasylvestries), Bergament oil (ex-mentha citrate).</i></p>	Any Unregistered Person	Any Registered Person.";

4. Amendment in Not.
No.39/2017-CT(Rate)
(Not. No.11/2021-CT(Rate))

What is Not. No.39/2017-CT(Rate)

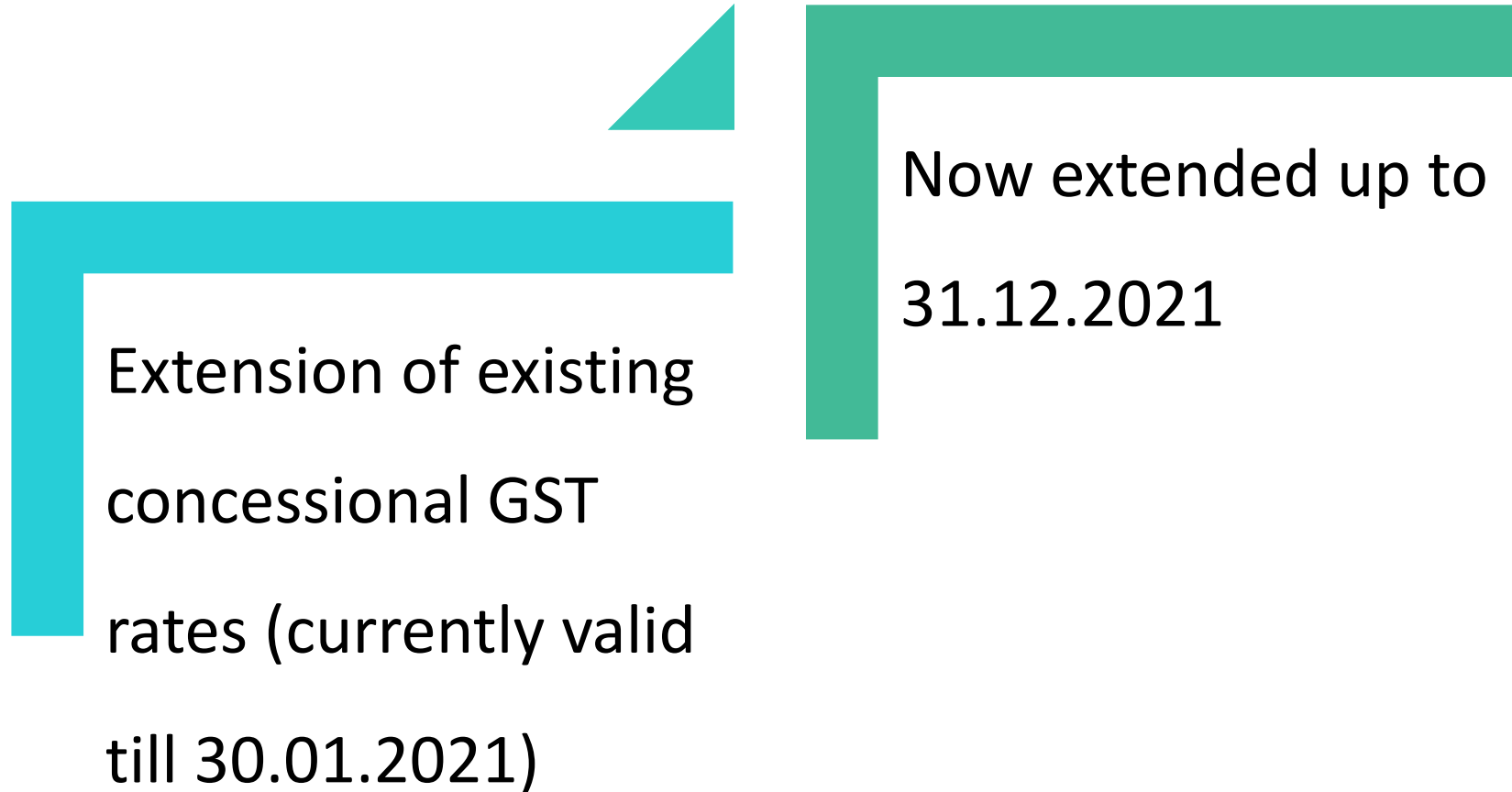


Exemption of Services – New Entry Inserted

No.	Tariff	Description of Goods	Condition
1.	19 or 21	<p>Food preparations put up in unit containers and intended for free distribution to economically weaker sections of the society under a programme duly approved by the Central Government or any State Government.</p> <p>“(a) Food preparations put up in unit containers and intended for free distribution to economically weaker sections of the society under a programme duly approved by the Central Government or any State Government;</p> <p>(b) Fortified Rice Kernel (Premix) supply for ICDS or similar scheme duly approved by the Central Government or any State Government.”</p>	<p>When the supplier of such food preparations goods produces a certificate from an officer not below the rank of the Deputy Secretary to the Government of India or the Deputy Secretary to the State Government or the Deputy Secretary in the Union Territory concerned to the effect that such food preparations goods have been distributed free to the economically weaker sections of the society under a programme duly approved by the Central Government or the State Government concerned, within a period of five months from the date of supply of such goods or within such further period as the jurisdictional commissioner of the Central tax or jurisdictional commissioner of the State tax, or jurisdictional officer of the Union Territory Tax as the case maybe, may allow in this regard.</p>

5. Extension of existing
concessional GST rates
(Not. No.12/2021-CT(Rate))

Extension of existing concessional GST rates



Goods Prescribed for Concessional Rate

Table

Sl. No.	Chapter, Heading, Sub-heading or Tariff item	Description of Goods	Rate
(1)	(2)	(3)	(4)
1	30	Tocilizumab	Nil
2	30	Amphotericin B	Nil
3	30	Remdesivir	2.5%
4	30	Heparin (anti-coagulant)	2.5%
5	30	Itolizumab	2.5%
6	30	Posaconazole	2.5%
7	30	Infliximab	2.5%
8	30	Bamlanivimab & Etesevimab	2.5%
9	30	Casirivimab & Imdevimab	2.5%
10	30	2-Deoxy-D-Glucose	2.5%
11	30	Favipiravir	2.5%



Clarifications issued
dated 20.09.2021

Overview



Link for Circulars

- [Circular No. 159/15/2021-GST](#)
- [Circular No. 160/16/2021-GST](#)
- [Circular No. 161/17/2021-GST](#)
- [Circular No. 163/15/2021-GST](#)
- [Circular No. 164/15/2021-GST](#)



Clarification - Scope of “Intermediary”

[Circular No. 159/15/2021-GST]

Definition of Intermediary Services

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.”

Scope of Intermediary Services

Clarification

- Clarification is issued on scope of “intermediary services”!

Key Aspects of Circular

- Primary Requirement of intermediary services are specified (Para 3)
- 4 illustrations are included for clarification (Para 4)
- Required to be decided by examining the facts of the case and the terms of contract (Para 5)

What Is the Primary Requirements for Intermediary Services

1. Minimum of Three Parties

- An intermediary is someone who arranges or facilitates the supplies of goods or services or securities between two or more persons
- Main supply is between Two Persons and third person arranges main supply

2. Two distinct supplies

- Main supply –Supply of Goods or Services or securities between two principals
- Ancillary supply - Service of facilitating or arranging the main supply
- between the two principals. This supply is clearly identifiable and distinguished from the main supply

What Is the Primary Requirements for Intermediary Services

3. Intermediary service provider to have the character of an agent, broker or any other similar person

- As per definition, intermediary service provider '*means a broker, an agent or any other person, by whatever name called.....*'
- Thus uses the expression "**means**" and not the term "**and includes**". Thus, intermediary must be a person who arrange or facilitate some other supply and does not include any other person.

4. Does not include a person who supplies **such** goods or services or both or securities **on his own account**

- 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".

What Is the Primary Requirements for Intermediary Services

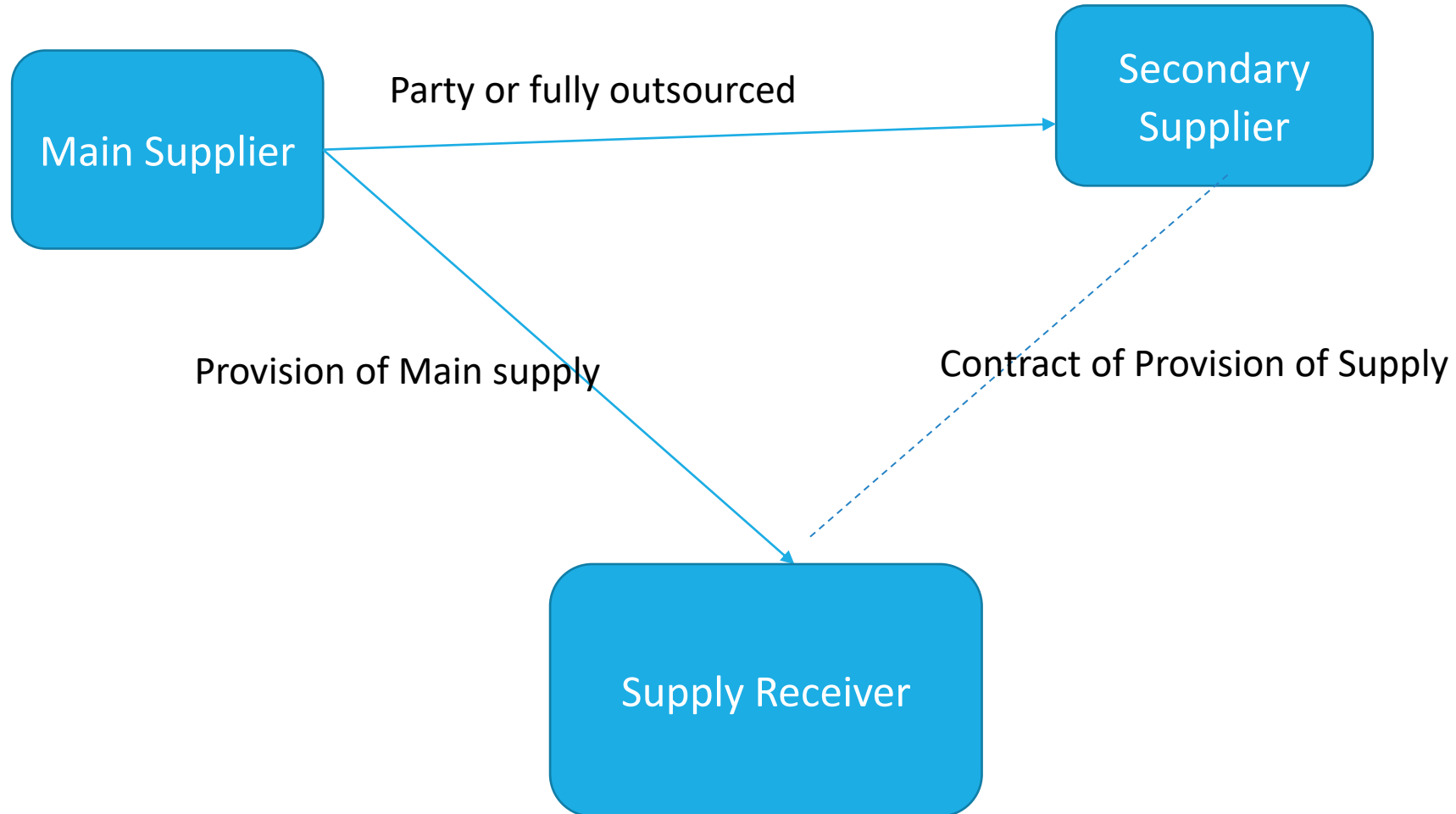
5. Sub-contracting for a service is not an intermediary service:

- The supplier of main service may outsource the supply of the main service, either fully or partly, to one or more sub-contractors who provides the main supply to his customers, is not an intermediary
- e.g. , Annual Maintenance of tools and machinery between 'A' and 'B' subcontracted to 'C'

6. Place of Supply of 'intermediary services'

- Place of Supply as per section 13 of the IGST Act shall be invoked only when either the location of the supplier or the recipient of intermediary services is outside India.

Supply – scenario 1 – Not an Intermediary



Supply – scenario 1 – an Intermediary

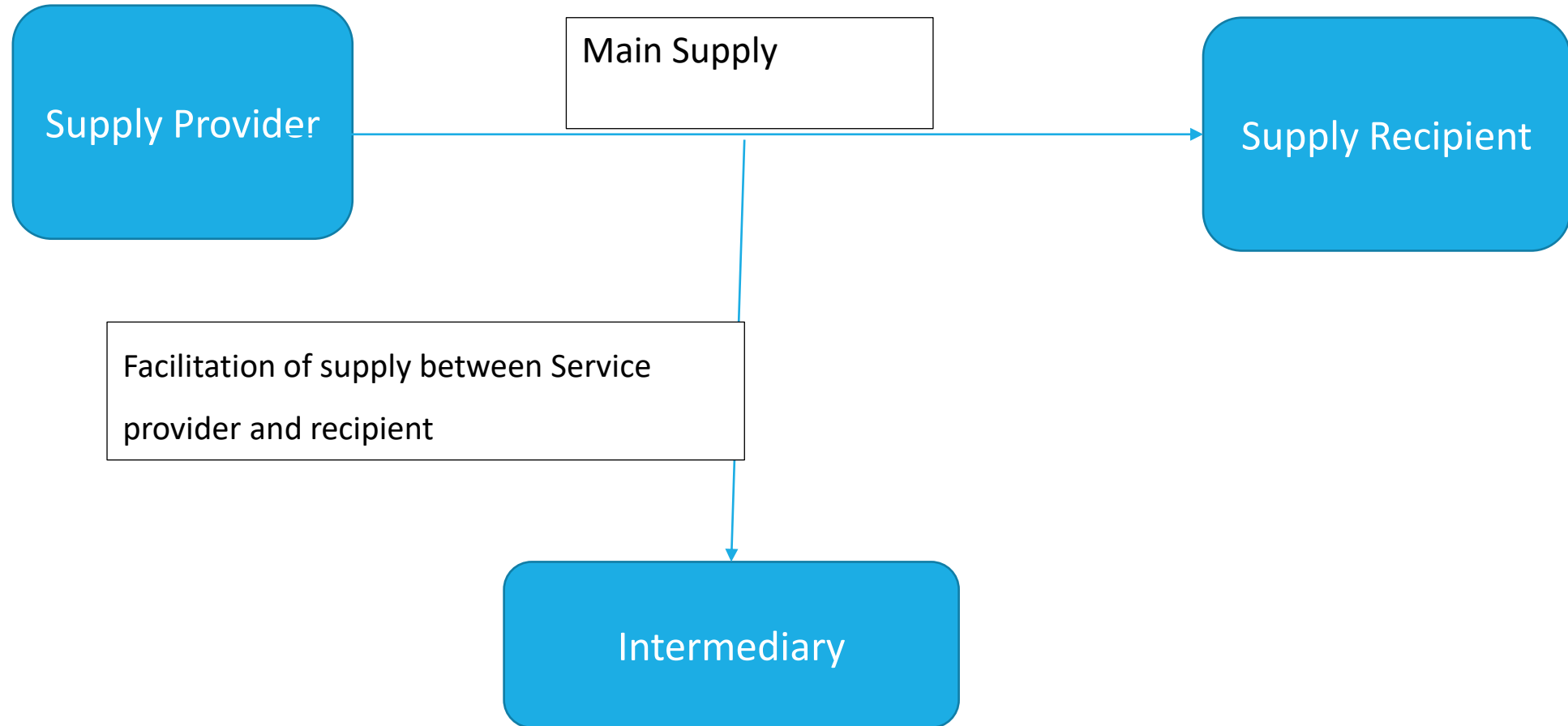


Illustration for Intermediary

A' manufacturer and Supplier selling the machine
by identifying client 'B with the help of "C'

'P', an insurance Company located outside India,
process insurance claim to clients. Where Q
appointed who is located in India, for arranging
insurance claims processing service from other
service providers in India

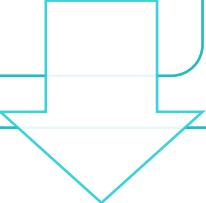
Illustration for Not an Intermediary

'A' is a software company which develops software for B under contract A' outsources design and development to 'C'

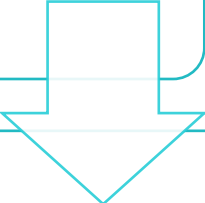
'A' is a manufacturer and supplier of computers based in USA. For India appoints B for customer care service so that to address their queries and complains related to the supply of computers in India

Key Highlights

Whether or not, a specific service would fall under intermediary services, would depend upon the facts of the specific case.



While examining the facts of the case and the terms of contract, should be kept in consideration.



Whether this will minimize litigation or not ?



Clarification In Respect Of Certain GST Related Issues

[Circular No. 160/16/2021-GST]

What is clarified?

- Financial Year for availment of ITC with respect to Debit Note

1.



- Whether Physical copy of 'Tax Invoice' required if E-invoice is applicable

2.



- Whether proviso to section 54(3) of CGST Act related to prohibiting refund of unutilized ITC is applicable in case of exports of goods which are of 'Nil' rated export

3.



1. Financial Year for availment of ITC with respect to Debit Note



What is amendment

Section 16(4) of the CGST Act

“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 invoice or ~~invoice relating to such~~ debit note pertains or furnishing of the relevant annual return, whichever is earlier.”

- **Amendment Act - FA 2020**

1. in sub-section (4), the words “invoice relating to such” shall be omitted. [NT-92/2020-CT](#)-Certain sections of Finance Act 2020 effective from 01-01-2020.

Financial year for issuance of debit note

Issue

- Whether date of issuance of debit note, or date of issuance of underlying invoice is relevant to determine the 'financial year' after the amendment of Section 16(4) of the CGST Act (i.e. w.e.f 01.01.2021)
- Whether amended provision will be applicable only in respect of the debit notes issued after 01.01.2021?

Clarification

- It is clarified that w.e.f. 01.01.2021, the date of issuance of debit note (and not the date of underlying invoice) shall determine the relevant FY

Financial year for issuance of debit note for Section 16(4)

Debit note issued after 01.01.2021

Debit note shall determine the relevant FY

e.g. Debit note issued dated 07.07.2021 for Invoice 16.03.2021.

- Relevant FY for ITC for invoice is 2020-21 whereas for debit note shall be 2021-22

Financial year for issuance of debit note for Section 16(4)

Debit note prior to 01.01.2021 however availed ITC after 01.01.2021

Debit note shall determine the relevant FY

e.g. Debit note issued dated 10.11.2020 for Invoice 15.07.2019 and availed ITC after 01.01.2021.

ITC with respect to Invoice is FY 2019-20. However, FY of debit note is 2020-21 and thus last date September 2021

2. whether Physical copy of 'Tax Invoice'
required if E-invoice is applicable



Physical copy of 'Tax Invoice' required in case of E-invoice issued

It is clarified that there is no need to carry the physical copy of tax invoice in cases where E-Invoice with QR code issued

3. Applicability of proviso to section 54(3)
for 'Nil' rated export



What is the proviso to section 54(3) of the CGST Act

3) Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilised input tax credit at the end of any tax period:

Provided that no refund of unutilised input tax credit shall be allowed in cases other than—

(i) zero-rated supplies made without payment of tax;

(ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council:

Provided further that no refund of unutilised input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty

Provided also that no refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies.

Applicability of proviso to section 54(3) for 'Nil' rated export

Issue

- Whether proviso to section 54(3) of CGST Act related to prohibiting refund of unutilized ITC is applicable in case of exports of goods which are of 'Nil' rated export?

Clarification

- It is clarified that only those goods which are actually subjected to export duty will be covered under the restriction imposed under section 54(3) from availment of refund of accumulated ITC.
- Thus, goods which are not subject to any export duty or NIL rated or exempted fully 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.



Clarification relating to “export of services”

[Circular No. 161/17/2021-GST]

Applicability of proviso to section 54(3) for 'Nil' rated export

Issue

- 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 section 2(6) of IGST Act.

Clarification

- The company incorporated in India and a body corporate incorporated by or under the laws of a country outside India (i.e. Foreign Company) 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.

Applicability of proviso to section 54(3) for 'Nil' rated export

Clarification

- Therefore, supply of services by a subsidiary/ sister concern/ group concern, etc. of a foreign company, incorporated in India under the Companies Act, 2013 to the establishments of the said foreign company located 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



Clarification regarding GST rates & classification (goods)

[Circular No. 163/19/2021-GST]

1. Distinction between Fresh and Dried Fruits and Nuts



1. Distinction between Fresh and Dried Fruits and Nuts

Issue

- What is the distinction between fresh and dried fruits and nuts and applicable GST rates as
 - Fresh nuts alling under heading 0801 and 0802 are exempt from GST
 - Dried nuts under heading 0801 and 0802 attract GST at the rate of 5%/ 12%

Clarification

- Exemption from GST to fresh **fruits and nuts covers only such products which are not frozen or dried in any manner**
- Accordingly, 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.**

2. Classification and Applicable GST rates on Tamarind Seeds



2. Classification and Applicable GST rates on Tamarind Seeds

Issue

- What is Classification and applicable GST rates on tamarind seeds due to dispute between tariff heading 1207 and 1209
- 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 attract nil GST rate, irrespective of its use (for the period 01.07.2017 to 30.09.2021).

2. Classification and Applicable GST rates on Tamarind Seeds

Clarification

- w.e.f 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% and
- Nil rate would apply only to seeds for 1209 heading if used for sowing purposes (S. No. 86 of schedule of notification No. 2/2017-Central Tax (Rate) dated 28.06.2017)

Our Comment

- Sudden change in GST rate could affect cost benefit analysis of the Industry.

2. Classification and Applicable GST rates on Tamarind Seeds

01.07.2017 to 30.09.2021

- Irrespective of use GST rate Nil

From 01.10.2021

- If used for sowing – Nil
- Not used of sowing – 5%

3. Clarification of definition of Copra



3. Clarification of definition of Copra

Issue

- What is classification and applicable GST rates on Copra. Whether exemption as per S. No. 47 of notification No. 2/2017- CT(R) is applicable.

Clarification

- 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-CT(R) 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-CT (R) dated 28.06.2017, irrespective of use

4. Applicability of GST on Pure Henna Powder and Leaves



4. Applicability of GST on Pure Henna Powder and Leaves

Issue

- What is classification and applicable GST rates on henna powder and henna leaves

Clarification

- 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-CT (R).
- Mehndi paste in cones falling under heading 1404 and 3305 shall be 5% (S. No. 78A of schedule I of notification No. 1/2017-CT(R) dated 28.06.2017).

5. Applicability of GST on scented sweet supari & flavored and coated illaichi



5. GST on scented sweet supari & flavored and coated illaichi

Issue

- What is classification and applicable GST rates on flavored and coated illaichi, and scented sweet supari.

Clarification

- Flavored and coated illaichi generally consists of Cardamom Seeds, Aromatic Spices, Silver Leaf, Saffron, Artificial Sweeteners. It is distinct from illaichi or cardamom
- Thus flavored and coated illaichi is a value added product and falls under sub-heading 2106.
- Accordingly attract GST at the rate of 18% (S. No. 23 of schedule III of notification No. 1/2017-CT (R))

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



6. Applicability of GST on (BSG), [DDGS] and other such residues

Issue

- What is 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.

Clarification

- 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-CT(R))

7. Scope of GST rate on all pharmaceutical goods falling under heading 3006



7.Scope of GST rate on all pharmaceutical goods falling under heading 3006

Issue

- What is scope of GST rate on all pharmaceutical goods falling under heading 3006

Clarification

- 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.

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



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

Issue

- Whether the benefit of concessional rate of 12% would be available to laboratory agents and other goods falling under heading 3822.
- Entry at S. No. 80 of Schedule II of Noti. No.1/2017- IGST (R) prescribes GST rate of 12% for “All diagnostic kits and reagents”.

Clarification

- Intention of this entry was to prescribe GST rate of 12% to all goods, whether diagnostic or laboratory reagents, falling under heading 3822.
- Accordingly, 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.

9. GST rates applicable on External batteries sold along with UPS Systems/Inverter



9. GST rates applicable on External batteries sold with UPS Systems

Issue

- 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.

Clarification

- 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.

9. GST rates applicable on External batteries sold with UPS Systems

Clarification

- 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).

Our Comment

- What about the concept of Composite Supply and Mixed Supply under GST Law?

10. Applicability of GST rates on Solar PV Power Projects



10. Applicability of GST rates on Solar PV Power Projects

Issue

- What is the GST Rate applicable on Solar PV Power Projects on or before 1.01.2019.
- 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 1st January, 2019. The request has been that same ratio (for deemed value) may be applied in respect of supplies made before 1.1.2019

Clarification

- 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 1.07.2017 to 31.12.2018, in the same manner as has been prescribed for the period on or after 1.01 2019, as per the explanation in the Noti. No.24/2018.

10. Applicability of GST rates on Solar PV Power Projects

Clarification

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

Our Comment

- What if opted for actual proportion to determine Goods and Services in Contract for Prior Period [i.e before 01.01.2019?
- What if treated as Composite supply before clarification?
- What if Refund has been claimed under inverted duty structure?
- What if GST less paid up to 01.01.2019 in the absence of specific clarification.

11. Applicability of GST rates on Fibre Drums, whether corrugated or noncorrugated



11. Applicability of GST rates on Fibre Drums

Issue

- What is GST on fibre drums, which is partially corrugated (as to whether it is be treated as corrugated or otherwise) for the period prior to 1.10.2021.
- On or after 01.10.2021 thus issue resolved as a uniform GST rate of 18% on all goods classifiable under heading 4819 (under S. No. 153A of Schedule III of Noti. No.1/2017-CT(R)

Clarification

- It is 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
- However, no refund if paid 18%



Clarification regarding GST rates & classification (goods)

[Circular No. 164/19/2021-GST]

1.Services by cloud kitchens/central kitchens



1.Services by cloud kitchens/central kitchens

Issue

- What is Classification and rate of GST on services rendered by Cloud kitchen or Central Kitchen.

Clarification

- 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, takeaway services and door delivery services for consumption of food are also considered as restaurant service

1.Services by cloud kitchens/central kitchens

Clarifications

- Accordingly, service 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.
- Thus 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].

2. Supply of ice cream by ice cream parlors



2. Supply of ice cream by ice cream parlors

Issue

- What is classification and rate of GST on services supplies provided in an ice cream outlet

Clarification

- 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, takeaway services and door delivery services for consumption of food are also considered as restaurant service

3. Supply of ice cream by ice cream parlors



3. Supply of ice cream by ice cream parlors

Issue

- What is classification and rate of GST on services supplies provided in an ice cream outlet.

Clarification

- Ice cream parlors sell already manufactured ice- cream and they do not have a character of a restaurant.
- 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.

3. Supply of ice cream by ice cream parlors

Clarification

- Accordingly, 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.
- Thus, ice cream sold by a parlor or any similar outlet would attract GST at the rate of 18%

Our Comment

- It can be seen that certain scenario is completely ignored while clarifying the aspect. Like What about ice-cream which is prepared as per flavor demand, ice-cream served at restaurant, waffles etc.

4. Coaching services supplied by coaching institutions and NGOs



4. Coaching services supplied by coaching institutions and NGOs

Issue

- 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.

Legal Provision

- In this regard, it is to mention that entry 72 of noti. No. 12/2017-CT (R) dated 28.06.2017, exempts services provided to the Central Government, State Government, Union territory administration under any training program for which total expenditure is borne by the Central Government, State Government, Union territory administration.

4. Coaching services supplied by coaching institutions and NGOs

Clarification

- 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.
- Accordingly, 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 noti. No. 12/2017-CT (R) and hence exempt.

5. Satellite launch services provided by NSIL.



5. Satellite launch services provided by NSIL

Issue

- Whether 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 qualify as 'Export of Service'.

Clarification

- As per 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.

5. Satellite launch services provided by NSIL

Clarification

- 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.

6. GST on overloading charges at toll plaza.



6.GST on overloading charges at toll plaza

Issue	<ul style="list-style-type: none">• What is applicability of GST on Overloading charges collected at Toll Plazas.
Legal Provision	<ul style="list-style-type: none">• Entry 23 of noti. No. 12/2017-CT (R) dated 28th June, 2017, exempts Service by way of access to a road or a bridge on payment of toll charges.
Clarification	<ul style="list-style-type: none">• Vide notification dated 25th 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.• Accordingly, it will get same treatment as given to toll charges

7. Renting of vehicles to State Transport Undertakings and Local Authorities



7. Renting of vehicles to State Transport Undertakings and Local Authorities

Issue

- What is the eligibility of the service of renting of vehicles to State Transport Undertakings (STUs) and Local Authorities for exemption from GST.

Legal Provision

- Sl. No. 22 of Noti. No. 12/2017-CT(R) dated 28.06.2017 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*”

Clarification

- 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]

7. Renting of vehicles to State Transport Undertakings and Local Authorities

Clarification

- 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]
- “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 .**

8. Services by way of grant of mineral exploration and mining rights



8. Services by way of grant of mineral exploration and mining rights

Issue	<ul style="list-style-type: none">• What is 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.
Legal Provision	<ul style="list-style-type: none">• w.e.f. 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%.• from 1.07.2017 to 31.12.2018 Service Code 997337 (licensing services for the right to use minerals including its exploration and evaluation) attracted rate of GST @ 5%.
Clarification	<ul style="list-style-type: none">• 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 14th meeting of the Council for residuary GST rate.

9. Admission to indoor amusement parks having rides etc.



9. Admission to indoor amusement parks having rides etc.

Issue

- What is 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 Noti. No. 11/2017-CTR.

Legal Provision

- 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.
- Entry No. 34(iiiia) 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.

9. Admission to indoor amusement parks having rides etc.

Clarification

- It is clarified that 28% rate [entry 34 (iiia)] 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.
- 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(iiia) as they existed prior to their amendment w.e.f 01.10.2021.

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



10. Services supplied by contract manufacturers to brand owners for manufacture of alcoholic liquor

Issue

- What is applicable rate of GST on Job work services provided for manufacture of alcoholic liquor for human consumption attract

Legal Provision

- 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 [Sl. No. 26 [Item 1(i)f] of noti. No. 11/2017-CT (R).

10. Services supplied by contract manufacturers to brand owners for manufacture of alcoholic liquor

Clarification

- 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%.



Key Attention

Key Highlights

Some of the changes are yet to notified or clarified like

- Cash ledger to be utilized between distinct Person
- Interest on ineligible ITC availed **and** utilized at 18% w.e.f. 01.07.2017
- GST law related changes

What about due date of GSTR-9 and GSTR-9C for FY 2020-21?

What about last date for ITC availment and Other Amendments for FY 2020-21 as due date of Income tax filings are extended?



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