

EY Tax Alert

CBIC issues further clarifications based on recommendations made in the 52nd GST Council Meeting

Executive summary

EY Alerts cover significant tax news, developments and changes in legislation that affect Indian businesses. They act as technical summaries to keep you on top of the latest tax issues. For more information, please contact your EY advisor.

This Tax Alert summarizes the recent Circulars¹ issued by the Central Board of Indirect Taxes and Customs (CBIC) based on the recommendations made in the 52nd Goods and Services Tax (GST) Council meeting.

The key clarifications are:

- ▶ Suppliers opting to pay GST @5% on passenger transport services by motor vehicle (SAC 9964) or rental services of motor vehicles with operator (SAC 9966) cannot claim input tax credit (ITC) on inward supply of leasing of motor vehicles without operator (SAC 9973).
- ▶ Reimbursement of electricity charges received by real estate companies, malls, airport operators etc., from the lessee form part of composite supply of renting of immovable property and/or maintenance of premises, whether or not billed separately.
- ▶ Where the electricity charges are recovered by real estate owners, residential welfare associations, real estate developers, etc., as a pure agent, it will not form part of the value of supply.
- ▶ Job work services in relation to conversion of barley into malt attracts tax @5%, irrespective of the end use.
- ▶ District Mineral Foundation Trust (DMFT) set up by State Governments are "Governmental Authorities" and thus eligible for the same exemptions from GST as available to any other Governmental Authority.
- ▶ Supply of pure services and composite supplies by way of horticulture/ horticulture works (where the value of goods constitutes not more than 25% of the total value) to Central Public Works Department (CPWD) is exempt from GST.

¹ Circular No. 205/17/2023 & 206/18/2023-GST dated 31 October 2023

Background

- The Goods and Services Tax (GST) Council in its 52nd meeting made recommendations for issuance of clarifications on certain matters.
- In view of the above, Central Board of Indirect Taxes and Customs (CBIC) had earlier issued Circulars to give effect to some of the recommendations.²
- Further Circulars³ are now issued to clarify on balance issues.

Key Clarifications

Meaning of "same line of business" for passenger transport service and rental services of transport vehicle with operators

- In case where the suppliers is providing (1) services of transport of passengers by any motor vehicle (SAC 9964), or (2) rental services of motor vehicles with operator (SAC 9966) and opts to discharge GST @5%, then input tax credit (ITC) is available only on input service in the "same line of business".
- In this regard, it is clarified that "same line of business" would only include transport of passengers (SAC 9964) or renting of motor vehicle with operator (SAC 9966) and not leasing of motor vehicles without operator (SAC 9973) which attracts GST and/or compensation cess at the same rate as supply of motor vehicles by way of sale.

GST on reimbursement of electricity charges from lessees/ occupants

- An issue persisted whether GST is leviable on reimbursement of electricity charges received by real estate companies, malls, airport operators etc., from their lessees/ occupants.
- In this regard, it is clarified that where the supply of electricity is bundled with renting of immovable property and/or maintenance of premises, it forms part of composite supply and shall be taxed accordingly, whether or not billed separately.
- However, where the electricity charges are recovered by real estate owners, residential welfare associations, real estate developers, etc., as a pure agent, it will not form part of the value of supply.

In cases where the above persons charge electricity on actual basis, they will still be deemed to be acting as a pure agent for the said supply.

Job work services for processing of barley

- An issue was raised whether job work services for processing of barley into malt would attract GST @5% as "job work in relation to all food and food products falling under Chapter 1 to 22 of the customs tariff" or at 18% as "services by way of job

work in relation to manufacture of alcoholic liquor for human consumption".

- Malt is a food product. It can be directly consumed as part of food preparations or can be used as an ingredient in food products. It is also used for manufacture of beer and alcoholic liquor for human consumption.
- However, irrespective of end-use, conversion of barley into malt amounts to job work in relation to food products.
- Accordingly, it is clarified that job work services in relation to conversion of barley into malt attracts tax @5%, irrespective of the end use.

GST exemption for District Mineral Foundation Trusts (DMFTs)

- DMFTs work for the interest and benefit of persons and areas affected by mining related operations by regulating receipt and expenditure from the respective Mineral Development Funds created in the concerned district.
- These activities are similar to activities that are enlisted in Eleventh and Twelfth Schedule of the Constitution.
- The ultimate users of the various schemes under DMFT are individuals, families, women and children, farmers/producer groups, SHGs of the mining affected areas etc. The services/supplies out of DMF fund are provided free of charge.
- Accordingly, it is clarified that DMFT set up by the State Governments are "Governmental Authorities" and thus eligible for the same exemptions from GST as available to any other Governmental Authority.

GST exemption on services to Central Public Works Department (CPWD)

- Public parks in government residential colonies, government offices and other public areas are developed and maintained by CPWD.
- Maintenance of community assets, urban forestry, protection of the environment and promotion of ecological aspects are functions entrusted to Panchayats and Municipalities under Article 243G and 243W of the Constitution.
- Accordingly, it is clarified that supply of pure services and composite supplies by way of horticulture/horticulture works (where the value of goods constitutes not more than 25% of the total value of supply) made to CPWD are eligible for GST exemption⁴.

GST rate on imitation zari or yarn

- There was a confusion regarding whether metal coated plastic film converted to metallized yarn and twisted with nylon, cotton, polyester or any other

² Refer our alert "CBIC issues Circulars pursuant to recommendations made in 52nd GST Council meeting" dated 31 October 2023

³ Circular No. 205/17/2023-GST and 206/18/2023-GST both dated 31 October 2023

⁴ SI. No. 3 and 3A of Notification No. 12/2017 - Central Tax (Rate) dated 28 June 2017

yarn to make imitation zari thread is covered under SI. No. 218AA of Schedule I to Notification No. 1/2017-CT(R) attracting GST @5%, or under SI. No.137 of Schedule II attracting GST @12%.

- It is clarified that such imitation zari thread or yarn falling under HS 5605 is covered under SI. No. 218AA of Schedule I attracting GST @5%.
- It has been further clarified that no refund of utilized ITC is permitted on polyester film (metalized)/ plastic film on account of inversion of tax rate⁵.

Comments

- a. The cost of providing passenger transport services and rental services of motor vehicles with operator may increase due to ITC denial on account of leased motor vehicles.
- b. Businesses may have to re-evaluate their tax positions on recovery of electricity charges pursuant to the Circular.
- c. Clarification regarding reimbursement of electricity charges may also apply to gas, water and other charges recovered in similar fashion.
- d. CBIC *vide* GST flyer on Co-operative Housing Societies had clarified that charges collected by society on account of property tax, electricity charges and other statutory levies would be excluded while calculating the threshold maintenance limit of INR7500 per month for the purpose of exemption.
- e. It is relevant to note that Chhattisgarh Appellate Authority for Advance Ruling [2022 (62) G.S.T.L. 53 (App. A.A.R. - GST - Chh.)] had held that DMFTs fall within ambit of "local authority".

⁵ Notification No. 20/2023 - Central Tax (Rate) dated 19 October 2023

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