

29/6

GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI
DEPARTMENT OF TRADE & TAXES
(POLICY BRANCH)

VYAPAR BHAWAN, I.P ESTATE, NEW DELHI -110002

No. F.3 (279)/Policy-GST/2019/ 610-15

Dated: 27-11-19

CIRCULAR NO. 11/2019-GST

(Ref. Circular No. 102/21/2019-GST of Central Tax)

Sub: Clarification regarding applicability of GST on additional / penal interest – reg.

Various representations have been received from the trade and industry regarding applicability of GST on delayed payment charges in case of late payment of Equated Monthly Instalments (EMI). An EMI is a fixed amount paid by a borrower to a lender at a specified date every calendar month. EMIs are used to pay off both interest and principal every month, so that over a specified period, the loan is fully paid off along with interest. In cases where the EMI is not paid at the scheduled time, there is a levy of additional / penal interest on account of delay in payment of EMI.

2. Doubts have been raised regarding the applicability of GST on additional / penal interest on the overdue loan i.e. whether it would be exempt from GST in terms of Sl. No. 27 of notification No. 12/2017-State Tax (Rate) dated 30 June, 2017 or such penal interest would be treated as consideration for liquidated damages [amounting to a separate taxable supply of services under GST covered under entry 5(e) of Schedule II of the State Goods and Services Tax Act, 2017 (hereinafter referred to as the DGST Act) i.e. "agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act"]. In order to ensure uniformity in the implementation of the provisions of the law, the Commissioner, in exercise of its powers conferred by section 168 (1) of the DGST Act, hereby issues the following clarification.

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

- **Case – 1:** X sells a mobile phone to Y. The cost of mobile phone is Rs 40,000/-. However, X gives Y an option to pay in installments, Rs 11,000/- every month before 10th day of the following month, over next four months (Rs. 11,000/- *4 = Rs. 44,000/-). Further, as per the contract, if there is any delay in payment by Y beyond the scheduled date, Y would be liable to pay additional / penal interest amounting to Rs. 500/- per month for the delay. In some instances, X is charging Y Rs. 40,000/- for the mobile and is separately issuing another invoice for providing the services of extending loans to Y, the consideration for which is the interest of 2.5% per month and an additional / penal interest amounting to Rs. 500/- per month for each delay in payment.

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

4. As per the provisions of sub-clause (d) of sub-section (2) of section 15 of the DGST Act, the value of supply shall include *"interest or late fee or penalty for delayed payment of any consideration for any supply"*. Further in terms of Sl. No. 27 of notification No. 12/2017- State Tax (Rate) dated the 30 June, 2017 *"services by way of (a) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services)"* is exempted. Further, as per clause 2 (zk) of the notification No. 12/2017-State Tax (Rate) dated the 30 June, 2017, *"'interest' means interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) but does not include any service fee or other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilised;"*.

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

- Case 1: As per the provisions of sub-clause (d) of sub-section (2) of section 15 of the CGST Act, the amount of penal interest is to be included in the value of supply. The transaction between X and Y is for supply of taxable goods i.e. mobile phone. Accordingly, the penal interest would be taxable as it would be included in the value of the mobile, irrespective of the manner of invoicing.
- Case 2: The additional / penal interest is charged for a transaction between Y and M/s ABC Ltd., and the same is getting covered under Sl. No. 27 of notification No. 12/2017- State Tax (Rate) dated 30 June, 2017. Accordingly, in this case the 'penal interest' charged thereon on a transaction between Y and M/s ABC Ltd. would not be subject to GST, as the same would not be covered under notification No. 12/2017-State Tax (Rate) dated 30 June, 2017. The value of supply of mobile by X to Y would be Rs. 40,000/- for the purpose of levy of GST.

6. It is further clarified that the transaction of levy of additional / penal interest does not fall within the ambit of entry 5(e) of Schedule II of the DGST Act i.e. "agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act", as this levy of additional / penal interest satisfies the definition of "interest" as contained in notification No. 12/2017- State Tax (Rate) dated 30 June, 2017. It is further clarified that any service fee/charge or any other charges that are levied by M/s ABC Ltd. in respect of the transaction related to extending deposits, loans or advances does not qualify to be interest as defined in notification No. 12/2017- State Tax (Rate) dated 30 June, 2017, and accordingly will not be exempt.

7. Difficulty if any, in the implementation of this circular may be brought to the notice of Policy Branch, Trade & Taxes Department, Government of NCT of Delhi.

(H. RAJESH PRASAD)
COMMISSIONER, GST

No. F.3 (275)/Policy-GST/2019/ 610-15

Dated: 27-11-19

Copy forwarded for information and necessary action to:

1. All Spl./Addl./Joint Commissioners, Department of Trade & Taxes, GNCT of Delhi, Vyapar Bhawan I.P. Estate, New Delhi-02.
2. Joint Director (IT), Department of Trade & Taxes, GNCT of Delhi, Vyapar Bhawan I.P. Estate, New Delhi-02 for uploading the circular on the website of the department.
3. The President/General Secretary, Sales Tax Bar Association (Regd.), Vyapar Bhawan I.P. Estate, New Delhi-02
4. All Assistant Commissioner/AVATOs, Department of Trade & Taxes, GNCT of Delhi, Vyapar Bhawan I.P. Estate, New Delhi-02 *through Zonal Incharge*
5. PS to the Commissioner, VAT Department of Trade & Taxes, GNCT of Delhi, Vyapar Bhawan I.P. Estate, New Delhi-02
6. Guard File.

27/11/19
ASSISTANT COMMISSIONER (POLICY)

GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI
DEPARTMENT OF TRADE & TAXES
(POLICY BRANCH)
VYAPAR BHAWAN, 1P ESTATE, NEW DELHI -110002

No. F.3 (293)/Policy-GST/2019/ 603-09

Dated: 27-11-19

CIRCULAR NO. 10/2019-GST

(Ref. Circular No. 120/39/2019-GST of Central Tax)

Sub.: Clarification on the effective date of explanation inserted in notification No. 11/2017- STR dated 30.06.2017, Sr. No. 3(vi) – reg.

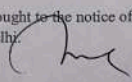
Representations have been received to amend the effective date of notification No. 17/2018-STR dated 02.09.2019 whereby explanation was inserted in notification No. 11/2017-STR dated 30.06.2017, Sr. No. 3(vi) to the effect that for the purpose of the said entry, the activities or transactions under taken by Government and Local Authority are excluded from the term 'business'.

2. The matter has been examined. Section 11(3) of DGST Act provides that the Government may insert an explanation in any notification issued under section 11, for the purpose of clarifying its scope or applicability, at any time within one year of issue of the notification and every such explanation shall have effect as if it had always been the part of the first such notification.

3. As recommended by GST Council, the explanation in question was inserted vide notification No. 17/2018-STR dated 02.09.2019 in exercise of powers under section 11(3) within one year of the insertion of the original entry prescribing concessional rate, so that it would have effect from the date of inception of the entry i.e. 21.09.2017. However, the said notification also contained a line in the last paragraph that the notification shall come into effect from 27.07.2018.

4. It is hereby clarified that the explanation having been inserted under section 11(4) of the DGST Act, is effective from the inception of the entry at Sl. No. 3(vi) of the notification No. 11/2017- STR dated 30.06.2017, that is 21.09. 2017. The line in notification No. 17/2018-STR dated 02.09.2019 which states that the notification shall come into effect from 27.07.2018 does not alter the operation of the notification in terms of Section 11(3) as explained in para 3 above.

5. Difficulty, if any, in implementation of this circular may be brought to the notice of the Policy Branch, Trade & Taxes Department, Government of NCT of Delhi.


(H. RAJESH PRASAD)
COMMISSIONER, GST

Copy forwarded for information and necessary action to:

1. All Spl./Addl./Joint Commissioners, Department of Trade & Taxes, GNCT of Delhi, Vyapar Bhawan I.P. Estate, New Delhi-02.
2. Special Commissioner (PR), Department of Trade & Taxes, GNCT of Delhi, Vyapar Bhawan I.P. Estate, New Delhi-02 for wide publicity of the contents of this circular.
Joint Director (IT), Department of Trade & Taxes, GNCT of Delhi, Vyapar Bhawan I.P. Estate, New Delhi-02 for uploading the circular on the website of the department.
The President/General Secretary, Sales Tax Bar Association (Regd.), Vyapar Bhawan, I.P. Estate, New Delhi-02
5. All Assistant Commissioner/AVATOs Department of Trade & Taxes, GNCT of Delhi, Vyapar Bhawan I.P. Estate, New Delhi-02 *Through Zones*.
6. PS to the Commissioner, VAT Department of Trade & Taxes, GNCT of Delhi, Vyapar Bhawan I.P. Estate, New Delhi-02
7. Guard File.


(VIVEK MITTAL)

ASSISTANT COMMISSIONER (POLICY)

GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI
DEPARTMENT OF TRADE & TAXES
(POLICY BRANCH)
VYAPAR BHAWAN, I.P ESTATE, NEW DELHI -110002

No. F.3(289)/Policy-GST/2019 / 537-43

Dated: 20-11-19

CIRCULAR NO. 8 /2019-GST

(Ref. Circular No. 116/35/2019-GST of Central Tax)

Subject: Levy of GST on the service of display of name or placing of name plates of the donor in the premises of charitable organisations receiving donation or gifts from individual donors- Reg.

Representations have been received seeking clarification whether GST is applicable on donations or gifts received from individual donors by charitable organisations involved in advancement of religion, spirituality or yoga which is acknowledged by them by placing name plates in the name of the individual donor.

2. The issue has been examined. Individual donors provide financial help or any other support in the form of donation or gift to institutions such as religious institutions, charitable organisations, schools, hospitals, orphanages, old age homes etc. The recipient institutions place a name plate or similar such acknowledgement in their premises to express the gratitude. When the name of the donor is displayed in recipient institution premises, in such a manner, which can be said to be an expression of gratitude and public recognition of donor's act of philanthropy and is not aimed at giving publicity to the donor in such manner that it would be an advertising or promotion of his business, then it can be said that there is no supply of service for a consideration (in the form of donation). There is no obligation (quid pro quo) on part of recipient of the donation or gift to do anything (supply a service). Therefore, there is no GST liability on such consideration.

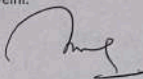
2.1 Some examples of cases where there would be no taxable supply are as follows:-

- (a) "Good wishes from Mr. Rajesh" printed underneath a digital blackboard donated by Mr. Rajesh to a charitable Yoga institution.
- (b) "Donated by Smt. Malati Devi in the memory of her father" written on the door or floor of a room or any part of a temple complex which was constructed from such donation.

2.2. In each of these examples, it may be noticed that there is no reference or mention of any business activity of the donor which otherwise would have got advertised. Thus where all the three conditions are satisfied namely the gift or donation is made to a charitable organization, the payment has the character of gift or donation and the purpose is

philanthropic (i.e. it leads to no commercial gain) and not advertisement, GST is not leviable.

3. Difficulty if any, in the implementation of this circular may be brought to the notice of Policy Branch, Trade & Taxes Department, Government of NCT of Delhi.



(H. Rajesh Prasad)

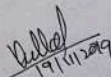
Commissioner, GST

No. F.3 (289) / Policy-GST/2019 / 537-43

Dated: 20-11-19

Copy forwarded for information and necessary action to:

1. All Spl./Addl./Joint Commissioners, Department of Trade & Taxes, GNCT of Delhi, Vyapar Bhawan I.P. Estate, New Delhi-02.
2. Special Commissioner (PR), Department of Trade & Taxes, GNCT of Delhi, Vyapar Bhawan I.P. Estate, New Delhi-02 for wide publicity of the contents of this circular.
3. Joint Director (IT), Department of Trade & Taxes, GNCT of Delhi, Vyapar Bhawan I.P. Estate, New Delhi-02 for uploading the circular on the website of the department.
4. The President/General Secretary, Sales Tax Bar Association (Regd.), Vyapar Bhawan I.P. Estate, New Delhi-02
5. All Assistant Commissioner/AVATOs Department of Trade & Taxes, GNCT of Delhi, Vyapar Bhawan I.P. Estate, New Delhi-02 *through zones.*
6. PS to the Commissioner, VAT Department of Trade & Taxes, GNCT of Delhi, Vyapar Bhawan I.P. Estate, New Delhi-02
7. Guard File.



(VIVEK MITTAL)

Assistant Commissioner (Policy)

GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI
DEPARTMENT OF TRADE & TAXES
(POLICY BRANCH)
VYAPAR BHAWAN, I.P ESTATE, NEW DELHI -110002

No. F.3 (280)/Policy-GST/2019 / 530-36

Dated: 26-11-19

CIRCULAR NO. 07 /2019-GST

(Ref. Circular No. 115/34/2019-GST of Central Tax)

Subject: Clarification on issue of GST on Airport levies – reg.

Various representations have been received seeking clarification on issues relating to GST on airport levies and to clarify that airport levies do not form part of the value of services provided by the airlines and consequently no GST should be charged by airlines on airport levies. In order to ensure uniformity in the implementation of the provisions of law across the field formations, the Commissioner, in exercise of its powers conferred by section 168 of the Delhi Goods and Services Tax Act, 2017 (hereinafter referred to as "DGST Act"), hereby clarifies the issues in the succeeding paras.

2. Passenger Service Fee (PSF) is charged under rule 88 of Aircraft Rules, 1937 according to which the airport licensee may collect PSF from embarking passengers at such rates as specified by the Central Government. According to the rule the airport license shall utilize the said fee for infrastructure and facilitation of the passengers. User Development Fee (UDF) is levied under rule 89 of the Aircraft rules 1937 which provides that the licensee may levy and collect, at a major airport, the User Development Fee at such rate as may be determined under clause (b) of sub-section (1) of section 13 of the Airports Economic Regulatory Authority of India Act, 2008.

2.1 Though the rule does not prescribe the specific purpose of levy and whether it is to be charged from the airlines or the passengers. However, it is seen from section 2(n) of Airports Economic Regulatory Authority of India Act, 2008, that the authority which manages the airport is eligible to levy and charge UDF from the embarking passengers at any airport.

2.2 Further, Director General of Civil Aviation has clarified vide order No. AIC Sl. No. 5/2010 dated 13.09.2010 that in order to avoid inconvenience to passengers and for smooth and orderly air transport/airport operations, the User Development Fees (UDF) shall be collected from the passengers by the airlines at the time of issue of air ticket and the same shall be remitted to Airports Authority of India in the line system/procedure in vogue. For this collection charges of Rs. 5/- shall be receivable by the airlines from AAI, which shall not to be passed on to the passengers in any manner.

2.3 The above facts clearly indicate that PSF and UDF are charged by airport operators for providing the services to passengers.

2.4 Section 2(31) of the DGST Act states that "consideration" in relation to the supply of goods or services or both includes any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person. Thus, PSF and UDF charged by airport operators are consideration for providing services to passengers.

2.5 Thus, services provided by an airport operator to passengers against consideration in the form of UDF and PSF are liable to GST. UDF was also liable to service tax. It is also clear from notification of Director General of Civil Aviation AIC Sl. No. 5 /2010 dated 13.09.2010, which states that UDF approved by MoCA, GoI is inclusive of service tax. It is also seen from the Air India website that the UDF is inclusive of service tax. Further in order No. AIC S. Nos. 3/2018 and 4/2018, both dated 27.2.2018, it has been laid down that GST is applicable on the charges of UDF and PSF.

2.6 PSF and UDF being charges levied by airport operator for services provided to passengers, are collected by the airlines as an agent and is not a consideration for any service provided by the airlines. Thus, airline is not responsible for payment of ST/GST on UDF or PSF provided the airline satisfies the conditions prescribed for a pure agent under Rule 33 of the DGST Rules. It is the licensee, that is the airport operator (AAI, DIAL, MIAL etc) which is liable to pay ST/GST on UDF and PSF.

2.7 Airlines may act as a pure agent for the supply of airport services in accordance with rule 33 of the DGST rules. Rule 33 of the DGST rules provides that the expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply, if all the following conditions are satisfied, namely, -

(i) the supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorisation by such recipient;

(ii) the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and

(iii) the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.

"Pure agent" has been defined to mean a person who-

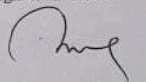
(a) enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both; (b) neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply; (c) does not use for his own interest such goods or services so procured; and (d) receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account.

2.8 Accordingly, the airline acting as pure agent of the passenger should separately indicate actual amount of PSF and UDF and GST payable on such PSF and UDF by the airport licensee, in the invoice issued by airlines to its passengers. The airline shall not take ITC of GST payable or paid on PSF and UDF. The airline would only recover the actual PSF and UDF and GST payable on such PSF and UDF by the airline operator. The amount so recovered will be excluded from the value of supplies made by the airline to its passengers. In other words, the airline shall not be liable to pay GST on the PSF and UDF (for airport services provided by airport licensee), provided the airline satisfies the conditions prescribed for a pure agent under Rule 33 of the DGST Rules. The registered passengers, who are the ultimate recipient of the airport services, may take ITC of GST paid on PSF and UDF on the basis of pure agent's invoice issued by the airline to them.

2.9 The airport operators shall pay GST on the PSF and UDF collected by them from the passengers through the airlines. Since, the airport operators are collecting PSF and UDF inclusive of ST/GST, there is no question of their not paying ST/GST collected by them to the Government.

2.10 The collection charges paid by airport operator to airlines are a consideration for the services provided by the airlines to the airport operator (AAI, DAIL, MAIL etc) and airlines shall be liable to pay GST on the same under forward charge. ITC of the same will be available with the airport operator.

3. Difficulty if any, in the implementation of this circular may be brought to the notice of Policy Branch, Trade & Taxes Department, Government of NCT of Delhi.


(H. Rajesh Prasad)
Commissioner, GST

No. F.3 ()/Policy-GST/2019 / 530-36


Dated: 20-11-19

Copy forwarded for information and necessary action to:

1. All Spl./Addl./Joint Commissioners, Department of Trade & Taxes, GNCT of Delhi, Vyapar Bhawan I.P. Estate, New Delhi-02.
2. Special Commissioner (PR), Department of Trade & Taxes, GNCT of Delhi, Vyapar Bhawan I.P. Estate, New Delhi-02 for wide publicity of the contents of this circular.
3. Joint Director (IT), Department of Trade & Taxes, GNCT of Delhi, Vyapar Bhawan I.P. Estate, New Delhi-02 for uploading the circular on the website of the

Department.

- The President/General Secretary, Sales Tax Bar Association (Regd.), Vyapar Bhawan I.P. Estate, New Delhi-02
5. All Assistant Commissioner/AVATOs Department of Trade & Taxes, GNCT of Delhi, Vyapar Bhawan I.P. Estate, New Delhi-02 *Through Zones*
 6. PS to the Commissioner, VAT Department of Trade & Taxes, GNCT of Delhi, Vyapar Bhawan I.P. Estate, New Delhi-02
 7. Guard File.


19/11/2019
(VIVEK MITTAL)

Assistant Commissioner (Policy)

GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI
DEPARTMENT OF TRADE & TAXES
(POLICY BRANCH)
VYAPAR BHAWAN, I.P ESTATE, NEW DELHI -110002

(290)
No. F.3 ()/Policy-GST/2019 / 544-50

Dated: 20-11-19

CIRCULAR NO. 9 /2019-GST

(Ref. Circular No. 117/36/2019-GST of Central Tax)

Subject: Clarification on applicability of GST exemption to the DG Shipping approved maritime courses conducted by Maritime Training Institutes of India – reg.

A representation has been received regarding applicability of GST exemption to the Directorate General of Shipping approved maritime courses conducted by the Maritime Training Institutes of India. The same has been examined and following is clarified.

2. Under GST Law, vide SL No. 66 of the notification No. 12/2017- State Tax (Rate) dated 30.06.2017, services provided by educational institutions to its students, faculty and staff are exempt from levy of GST. In the above notification, "educational institution" has been defined to mean an institution providing services by way of education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force.
3. GST exemption on services supplied by an educational institution would be available, if it fulfils the criteria that the education is provided as part of a curriculum for obtaining a qualification/ degree recognized by law.
4. Section 76 of the Merchant Shipping Act, 1958 (44 of 1958) provides for the certificates of competency to be held by the officers of ships. It states that every Indian ship, when going to sea from any port or place, shall be provided with officers duly certificated under this Act in accordance with such manning scales as may be prescribed. Section 78 of the Act provides for several Grades of certificates of competency. Further, Section 79 provides that the Central Government or a person duly authorised by it shall appoint persons for the purpose of examining the qualifications of persons desirous of obtaining certificate of competency under section 78 of the Act.
5. In order to streamline and monitor the maritime education and trainings by maritime institutes and to administer the assessment agencies, the Merchant Shipping (standards of training, certification and watch-keeping for Seafarers) Rules, 2014 has been notified. Under Rule 9 of the said Rules, the Director General of Shipping is empowered to designate assessment centres. Further the provisions of sub- rules (6), (7) and (8) of the Rule 4 of the said Rules, empowers the Director General of Shipping, to approve (i) the training course,

(ii) training, examination and assessment programme, and (iii) approved training institute etc.

6. From the above discussion, it is seen that the Maritime Training Institutes and their training courses are approved by the Director General of Shipping which are duly recognised under the provisions of the Merchant Shipping Act, 1958 read with the Merchant Shipping (standards of training, certification and watch-keeping for Seafarers) Rules, 2014. Therefore, the Maritime Institutes are educational institutions under GST Law and the courses conducted by them are exempt from levy of GST. The exemption is subject to meeting the conditions specified at Sl. No. 66 of the notification No. 12/ 2017-State Tax (Rate) dated 30.06.2017.

7. This clarification applies, *mutatis mutandis*, to corresponding entries of respective IGST, UTGST, SGST exemption notifications. Difficulty if any, in the implementation of this circular may be brought to the notice of the Policy Branch, Trade & Taxes Department, Government of NCT of Delhi.



(H. Rajesh Prasad)
Commissioner, GST

(290)
No. F.3 ()/Policy-GST/2019 / 544-50


Dated: 20-11-19

Copy forwarded for information and necessary action to:

1. All Spl./Addl./Joint Commissioners, Department of Trade & Taxes, GNCT of Delhi, Vyapar Bhawan I.P. Estate, New Delhi-02.
2. Special Commissioner (PR), Department of Trade & Taxes, GNCT of Delhi, Vyapar Bhawan I.P. Estate, New Delhi-02 for wide publicity of the contents of this circular.
3. Joint Director (IT), Department of Trade & Taxes, GNCT of Delhi, Vyapar Bhawan I.P. Estate, New Delhi-02 for uploading the circular on the website of the department.
4. The President/General Secretary, Sales Tax Bar Association (Regd.), Vyapar Bhawan I.P. Estate, New Delhi-02
5. All Assistant Commissioner/AVATOs Department of Trade & Taxes, GNCT of Delhi,

Vyapar Bhawan I.P. Estate, New Delhi-02

6. PS to the Commissioner, VAT Department of Trade & Taxes, GNCT of Delhi, Vyapar Bhawan I.P. Estate, New Delhi-02
7. Guard File.


19/11/2019

(VIVEK MITTAL)

Assistant Commissioner (Policy)

GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI
DEPARTMENT OF TRADE & TAXES
(POLICY BRANCH)
VYAPAR BHAWAN, I.P ESTATE, NEW DELHI -110002

No. F.3 (250)/Policy-GST/2019 / 518-24

Dated: 19-11-19

CIRCULAR NO. 6 / 2019-GST

(Ref. Circular No. 105/24/2019-GST of Central Tax)

Subject: Clarification on various doubts related to treatment of secondary or post-sales discounts under GST - reg.

Circular No. 92/11/2019-GST dated 7th March, 2019 was issued providing clarification on various doubts related to treatment of sales promotion schemes under GST. Post issuance of the said Circular various representations have been received from the trade and industry seeking clarifications in respect of tax treatment in cases of secondary discounts or post sales discount. The matter has been examined in order to ensure uniformity in the implementation of the law across the field formations, the Commissioner, in exercise of its powers conferred under section 168(1) of the Delhi Goods and Services Tax Act, 2017 (hereinafter referred to as "the DGST Act") clarifies the issues in succeeding paragraphs.

2. For the purpose of value of supply, post sales discounts are governed by the provisions of clause (b) of sub-section (3) of section 15 of the DGST Act. It is crucial to examine the true nature of discount given by the manufacturer or wholesaler, etc. (hereinafter referred to as "the supplier of goods") to the dealer. It would be important to examine whether the additional discount is given by the supplier of goods in lieu of consideration for any additional activity / promotional campaign to be undertaken by the dealer.
3. It is clarified that if the post-sale discount is given by the supplier of goods to the dealer without any further obligation or action required at the dealer's end, then the post sales discount given by the said supplier will be related to the original supply of goods and it would not be included in the value of supply, in the hands of supplier of goods, subject to the fulfilment of provisions of sub-section (3) of section 15 of the DGST Act. However, if the additional discount given by the supplier of goods to the dealer is the post-sale incentive requiring the dealer to do some act like undertaking special sales drive, advertisement

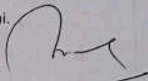
campaign, exhibition etc., then such transaction would be a separate transaction and the additional discount will be the consideration for undertaking such activity and therefore would be in relation to supply of service by dealer to the supplier of goods. The dealer, being supplier of services, would be required to charge applicable GST on the value of such additional discount and the supplier of goods, being recipient of services, will be eligible to claim input tax credit (hereinafter referred to as the "ITC") of the GST so charged by the dealer.

4. It is further clarified that if the additional discount is given by the supplier of goods to the dealer to offer a special reduced price by the dealer to the customer to augment the sales volume, then such additional discount would represent the consideration flowing from the supplier of goods to the dealer for the supply made by dealer to the customer. This additional discount as consideration, payable by any person (supplier of goods in this case) would be liable to be added to the consideration payable by the customer, for the purpose of arriving value of supply, in the hands of the dealer, under section 15 of the DGST Act. The customer, if registered, would be eligible to claim ITC of the tax charged by the dealer only to the extent of the tax paid by the said customer to the dealer in view of second proviso to sub-section (2) of section 16 of the DGST Act.

5. There may be cases where post-sales discount granted by the supplier of goods is not permitted to be excluded from the value of supply in the hands of the said supplier not being in accordance with the provisions contained in sub-section (3) of section 15 of DGST Act. It has already been clarified vide Circular No. 92/11/2019-GST dated 7th March, 2019 that the supplier of goods can issue financial / commercial credit notes in such cases but he will not be eligible to reduce his original tax liability. Doubts have been raised as to whether the dealer will be eligible to take ITC of the original amount of tax paid by the supplier of goods or only to the extent of tax payable on value net of amount for which such financial / commercial credit notes have been received by him. It is clarified that the dealer will not be required to reverse ITC attributable to the tax already paid on such post-sale discount received by him through issuance of financial / commercial credit notes by the supplier of goods in view of the provisions contained in second proviso to sub-rule (1) of rule 37 of the DGST Rules read with second proviso to sub-section (2) of section 16 of the DGST Act as long as the dealer pays the value of the supply as reduced after adjusting the amount of post-sale discount in terms of financial / commercial credit notes received by him from the supplier of goods plus the amount of original tax charged by the supplier.

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

7. Difficulty if any, in the implementation of this circular may be brought to the notice of Policy Branch, Trade & Taxes Department, Government of NCT of Delhi.

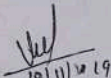

(H. Rajes Prasad)
Commissioner, GST

No. F.3 (250)/Policy-GST/2019 / 518-24

Dated: 19-11-19

Copy forwarded for information and necessary action to:

1. All Spl./Addl./Joint Commissioners, Department of Trade & Taxes, GNCT of Delhi, Vyapar Bhawan I.P. Estate, New Delhi-02.
2. Special Commissioner (PR), Department of Trade & Taxes, GNCT of Delhi, Vyapar Bhawan I.P. Estate, New Delhi-02 for wide publicity of the contents of this circular.
3. Joint Director (IT), Department of Trade & Taxes, GNCT of Delhi, Vyapar Bhawan I.P. Estate, New Delhi-02 for uploading the circular on the website of the department.
4. The President/General Secretary, Sales Tax Bar Association (Regd.), Vyapar Bhawan I.P. Estate, New Delhi-02
5. All Assistant Commissioner/AVATOs Department of Trade & Taxes, GNCT of Delhi, Vyapar Bhawan I.P. Estate, New Delhi-02 *Through Zonal In-charge*
6. PS to the Commissioner, VAT Department of Trade & Taxes, GNCT of Delhi, Vyapar Bhawan I.P. Estate, New Delhi-02
7. Guard File.


19/11/19
(VIVEK MITTAL)
Assistant Commissioner (Policy)

GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI
DEPARTMENT OF TRADE & TAXES
(POLICY BRANCH)
VYAPAR BHAWAN, I.P ESTATE, NEW DELHI -110002

No. F.3 (283)/Policy-GST/2019/ 509 -14

Dated: 08/11/2019

CIRCULAR NO. 5 /2019-GST

(Ref. Circular No. 103/22/2019-GST of Central Tax)

Subject: Clarification regarding determination of place of supply in certain cases – reg.

Various representations have been received from trade and industry seeking clarification in respect of determination of place of supply in following cases: -

- (I) **Services provided by Ports** - place of supply in respect of various cargo handling services provided by ports to clients;
- (II) **Services rendered on goods temporarily imported in India** - place of supply in case of services rendered on unpolished diamonds received from abroad, which are exported after cutting, polishing etc.

2. The provisions relating to determination of place of supply as contained in the Integrated Goods & Services Tax Act, 2017 (hereinafter referred to as "the IGST Act") have been examined. In order to ensure uniformity in the implementation of the provisions of the law, the Commissioner, in exercise of its powers conferred by sub-section (1) of section 168 of the Delhi Goods & Services Tax Act, 2017 (hereinafter referred to as "the DGST Act") clarifies the same as below: -

S. No.	Issue	Clarification
1	Various services are being provided by the port authorities to its clients in relation to cargo handling. Some of such services are in respect of arrival of wagons at port, haulage of wagons inside	It is hereby clarified that such services are ancillary to or related to cargo handling services and are not related to immovable property. Accordingly, the place of supply of such services will be

	<p>port area up-to place of unloading, siding of wagons inside the port, unloading of wagons, movement of unloaded cargo to plot and staking hereof, movement of unloaded cargo to berth, shipment/loading on vessel etc.</p> <p>Doubts have been raised about determination of place of supply for such services i.e. whether the same would be determined in terms of the provisions contained in sub-section (2) of Section 12 or sub-section (2) of Section 13 of the IGST Act, as the case may be or the same shall be determined in terms of the provisions contained in sub-section (3) of Section 12 of the IGST Act.</p>	<p>determined as per the provisions contained in sub-section (2) of Section 12 or sub-section (2) of Section 13 of the IGST Act, as the case may be, depending upon the terms of the contract between the supplier and recipient of such services.</p>
2	<p>Doubts have been raised about the place of supply in case of supply of various services on unpolished diamonds such as cutting and polishing activity which have been temporarily imported into India and are not put to any use in India?</p>	<p>Place of supply in case of performance based services is to be determined as per the provisions contained in clause (a) of sub-section (3) of Section 13 of the IGST Act and generally the place of services is where the services are actually performed. But an exception has been carved out in case of services supplied in respect of goods which are temporarily imported into India for repairs or for any other treatment or process and are exported after such repairs or treatment or process without being put to any use in India, other than that which is required for such repairs or treatment or process.</p> <p>In case of cutting and polishing activity on unpolished diamonds which are temporarily imported into India are not</p>

		put to any use in India, the place of supply would be determined as per the provisions contained in sub-section (2) of Section 13 of the IGST Act.
--	--	--

3 Difficulty if any, in the implementation of this circular may be brought to the notice of Policy Branch, Trade & Taxes Department, Government of NCT of Delhi.


(H. Rajesh Prasad)
Commissioner, GST

N F.3 (283)/Policy-GST/2019/509-14

Dated: 08/11/2019,

Copy forwarded for information and necessary action to:

1. All Spl./Addl./Joint Commissioners, Department of Trade & Taxes, GNCT of Delhi, Vyapar Bhawan I.P. Estate, New Delhi-02.
2. Joint Director (IT), Department of Trade & Taxes, GNCT of Delhi, Vyapar Bhawan I.P. Estate, New Delhi-02 for uploading the circular on the website of the department.
3. The President/General Secretary, Sales Tax Bar Association (Regd.), Vyapar Bhawan I.P. Estate, New Delhi-02
4. All Assistant Commissioner/AVATOs Department of Trade & Taxes, GNCT of Delhi, Vyapar Bhawan I.P. Estate, New Delhi-02
5. PS to the Commissioner, VAT Department of Trade & Taxes, GNCT of Delhi, Vyapar Bhawan I.P. Estate, New Delhi-02
6. Guard File.

1 SCHI M
13/11/19

9

2 SCTT-V P
13/11/19

3 SCTT-PT - 2-1
13.11.19


4 SCTT-IV 8/11/19

5 SCTT-VI M/11

6 JCTT-I A
13/11/19

7 SCTT-2-IX P
13/11/19

8 ACTT (2-XI) A
13/11/19


(Vivek Mittal)
Assistant Commissioner (Policy)