

GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI
DEPARTMENT OF TRADE AND TAXES
(POLICY BRANCH)
VYAPAR BHAWAN, I.P. ESTATE, NEW DELHI-110 002

No.F.3 (66)//Policy-GST/2017/ 519-24

Dated: 31-8-18

CIRCULAR NO. 14/2018-GST
(Ref. Circular No. 52/26/2018-GST of Central Tax)

Subject: Clarification regarding applicability of GST on various goods and services-- regarding.

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

- (i) Fortified Toned Milk
- (ii) Refined beet and cane sugar
- (iii) Tamarind Kernel Powder (Modified & Un Modified form)
- (iv) Drinking water
- (v) Plasma products
- (vi) Wipes using spun lace non-woven fabric
- (vii) Real Zari Kasab (Thread)
- (viii) Marine Engine
- (ix) Quilt and comforter
- (x) Bus body building as supply of motor vehicle or job work
- (xi) Disc Brake Pad

2. The matter has been examined. The issue-wise clarifications are discussed below:

3.1 Applicability of GST on Fortified Toned Milk: Representations have been received seeking clarification regarding applicability of GST on Fortified Toned Milk.

3.2 Milk is classified under heading 0401 and as per S.No. 25 of notification No. 2/2017- State Tax (Rate) dated 30.06.2017, fresh milk and pasteurised milk, including separated milk, milk and cream, not concentrated nor containing added sugar or other sweetening matter, excluding Ultra High Temperature (UHT) milk falling under tariff head 0401 attracts NIL rate of GST. Further, as per HSN Explanatory Notes, milk enriched with vitamins and minerals is classifiable under HSN code 0401. Thus, it is clarified that toned milk fortified (with vitamins 'A' and 'D') attracts NIL rate of GST under HSN Code 0401.

4.1 Applicable GST rate on refined beet and cane sugar: Doubts have been raised regarding GST rate applicable on refined beet and cane sugar. *Vide* S. No. 91 of schedule I of

2

notification No. 1/2017-StateTax dated 30.06.2017, 5% GST rate has been prescribed on all kinds of beet and cane sugar falling under heading 1701.

4.2 Doubts seem to have arisen in view of S.No. 32 A of the Schedule II of notification No. 1/2017-StateTax dated 30.06.2017, which prescribes 12% GST rate on "All goods, falling under tariff items 1701 91 and 1701 99 including refined sugar containing added flavouring or colouring matter, sugar cubes (other than those which attract 5% or Nil GST)".

4.3 It is clarified that by virtue of specific exclusion in S.No. 32 A, any sugar that falls under 5% category [at the said S.No. 91 of schedule I of notification No. 1/2017-StateTax dated 30.06.2017] gets excluded from the S.No. 32 A of Schedule II. As all kinds of beet and cane sugar falling under heading 1701 are covered by the said entry at S. No. 91 of Schedule I, these would get excluded from S.No. 32 A of Schedule II, and thus would attract GST @ 5%.

4.4 Accordingly, it is clarified that beet and cane sugar, including refined beet and cane sugar, will fall under heading 1701 and attract 5% GST rate.

5.1 **Applicable GST rate on treated (modified) tamarind kernel powder and plain (unmodified) tamarind kernel powder:** Representation have been received seeking clarification regarding GST rate applicable on treated (modified) tamarind kernel powder and plain (unmodified) tamarind kernel powder.


5.2 There are two grades of Tamarind Kernel Powder (TKP):- Plain (unmodified) form (hot, water soluble) and Chemically treated (modified) form (cold, water soluble).

5.3 As per S.No. 76 A of schedule I of notification No. 1/2017-StateTax dated 30.06.2017, 5% GST rate was prescribed on Tamarind Kernel powder falling under chapter 13. However, certain doubts have been expressed regarding GST rate on Tamarind kernel powder, as the said notification does not specifically mention the word "modified".

5.4 As both plain (unmodified) tamarind kernel powder and treated (modified) tamarind kernel powder fall under chapter 13, it is hereby clarified that both attract 5% GST in terms of the said notification.

6.1 **Applicability of GST on supply of safe drinking water for public purpose:** Representations have been received seeking clarification regarding applicability of GST on supply of safe drinking water for public purpose.

6.2 Attention is drawn to the entry at S.No. 99 of notification No. 2/2017-StateTax (Rate) dated 30.06.2017, by virtue of which water [other than aerated, mineral, purified, distilled, medicinal, ionic, battery, de-mineralized and water sold in sealed container] falling under HS code 2201 attracts NIL rate of GST.



6.3 Accordingly, supply of water, other than those excluded from S. No. 99 of notification No. 2/2017-StateTax (Rate) dated 30.06.2017, would attract GST at "NIL" rate. Therefore, it is clarified that supply of drinking water for public purposes, if it is not supplied in a sealed container, is exempt from GST.

7.1 **GST rate on Human Blood Plasma:** References have been received about the varying practices being followed in different parts of the country regarding the GST rates on "human blood plasma".

7.2 Plasma is the clear, straw coloured **liquid** portion of blood that remains after red blood cells, white blood cells, platelets and other cellular components have been removed. As per the explanatory notes to the Harmonized System of Nomenclature (HSN), plasma would fall under the description antisera and other blood fractions, whether or not modified or obtained by means of biotechnological processes and would fall under HS code 3002.

7.3 Normal human plasma is specifically mentioned at S.No. 186 of List I under S.No. 180 of Schedule I of the notification No. 1/2017-StateTax dated 30th June, 2017, and attracts 5% GST. Other items falling under HS Code 3002 (including plasma products) would attract 12% GST under S.No. 61 of Schedule II of the said notification, not specifically covered in the said List I.

7.4 Thus, a harmonious reading of the two entries would mean that normal human plasma would attract 5% GST rate under List I (S.No. 186), whereas plasma products would attract 12% GST rate, if otherwise not specifically covered under the said List.

8.1 **Appropriate classification of baby wipes, facial tissues and other similar products:** Varied practices are being followed regarding the classification of baby wipes, facial tissues and other similar products, and references have been received requesting for correct classification of these products. As per the references, these products are currently being classified under different HS codes namely 3307, 3401 and 5603 by the industry.

8.2 Commercially, wipes are categorized into various types such as baby wipes, facial wipes, disinfectant wipes, make-up remover wipes etc. These products are generally made by using non-woven fabrics of viscose and polyviscous blend and are sprinkled with demineralized water and various chemicals and fragrances, which impart the essential character to the product. The base raw materials are moisturising and cleansing agents, preservatives, aqua base, cooling agents, perfumes etc. The textile material is present as a carrying medium of these cleaning/wiping components.

8.3 According to the General Rules for Interpretation [GRI- 3(b)] of the First Schedule to the Customs Tariff Act (CTA), 1975: "Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3 (a), shall be classified as if they consisted of the



material or component which gives them their essential character, insofar as this criterion is applicable." Since primary function of the article should be taken into consideration while deciding the classification, it is clear that the essential character of the wipes in the instant case is imparted by the components which are to be mixed with the textile material.

8.4 As per the explanatory notes to the HSN, the HS code 5603 clearly excludes non-woven, impregnated, coated or covered with substances or preparations such as perfumes or cosmetics, soaps or detergents, polishes, creams or similar preparations. The HSN is reproduced as follows: "The heading also excludes:

Nonwoven, impregnated, coated or covered with substances or preparations (i.e. perfumes or cosmetics (Chapter 33), soaps or detergents (heading 3401), polishes, creams, or similar preparations (heading 3405), fabric, softeners (heading 3809)) where the textile material is present merely as a carrying medium. Further, HS code 3307 covers wadding, felt and non-woven, impregnated, coated or covered with perfumes or cosmetics. The HS code 3401, would cover paper, wadding, felt and non-woven impregnated, coated or covered with soap or detergent whether or not perfumed".

8.5 Further, as per the explanatory notes to the HSN, the heading 3307 includes wadding, felt and nonwovens impregnated, coated or covered with perfume or cosmetics. Similarly, as per explanatory notes to the HSN, the heading 3401 includes wipes made of paper, wadding, felt and nonwovens, impregnated, coated or covered with soap or detergent, whether or not perfumed or put up for retail sale.

8.6 Thus, the wipes of various kinds (as stated above) are classifiable under heading 3307 or 3401 depending upon their constituents as discussed above. Therefore, if the baby wipes are impregnated with perfumes or cosmetics, then the same would fall under HS code 3307 and would attract 18% GST rate. Similarly, if they are coated with soap or detergent, then it would fall under HS code 3401 and would attract 18% GST.

9.1 **Classification and applicable GST rate on real zari Kasab (thread):** Certain doubts have been raised regarding the classification and applicable GST rate on Kasab thread (a metallised yarn) as yarn falling under heading 5605 attracts 12% GST, as per entry 137 of the Schedule-II-12% of the notification No.01/2017-StateTax dated 30.06.2017, while specified embroidery product falling under 5809 and 5810 attracts GST @ 5%, as per entry no. 220 of the Schedule-I-5% of the above-mentioned notification.

9.2 The heading 5809 and 5810 cover embroidery and zari articles. These heading do not cover yarn of any kinds. Hence, while these headings apply to embroidery articles, embroidery in piece, in strips, or in motifs, they do not apply to yarn, including Kasab yarn.

9.3 Further all types of metallised yarns or threads are classifiable under tariff heading 5605. Kasab (yarn) falls under this heading. Under heading 5605, real zari manufactured with silver wire gimped (vitai) on core yarn namely pure silk and cotton and finally gilted with gold would attract 5% GST under tariff item 5605 00 10, as specified at entry no. 218A of Schedule-I-5% of the GST rate schedule. Other goods falling under this heading attract

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12% GST. Accordingly, kasab (yarn) would attract 12% GST along with other metallised yarn, whether or not gimped, being textile yarn, combined with metal in the form of thread, strip or powder or covered with metal including imitation zari thread (S.No. 137 of the Schedule-II-12%). Therefore, it is clarified that imitation zari thread or yarn known as "Kasab" or by any other name in trade parlance, would attract a uniform GST rate of 12% under tariff heading 5605.

10.1 Applicability of GST on marine engine: Reference has been received seeking clarification regarding GST rates on Marine Engine. The fishing vessels are classifiable under heading 8902, and attract GST @ 5%, as per S. No. 247 of Schedule I of the notification No. 01/2017-StateTax (Rate) dated 30.06.2017. Further, parts of goods of heading 8902, falling under any chapter also attracts GST rate of 5%, vide S. No. 252 of Schedule I of the said notification. The Marine engine for fishing vessel falling under Tariff item 8408 1093 of the Customs Tariff Act, 1975 would attract a GST rate of 5% by virtue of S. No. 252 of Schedule I of the notification No. 01/2017-StateTax dated 28.06.2017.

10.2 Therefore, it is clarified that the supplies of marine engine for fishing vessel (being a part of the fishing vessel), falling under tariff item 8408 10 93 attracts 5% GST.

11.1 Applicable GST rate on cotton quilts under tariff heading 9404-Scope of the term "Cotton Quilt".


11.2 Cotton quilts falling under tariff heading 9404 attract a GST rate of 5% if the sale value of such cotton quilts does not exceed Rs. 1000 per piece [as per S. No. 257 A of Schedule I of the notification No. 27/2017-StateTax (rate) dated 06.11.2017]. However, such cotton quilts, with sale value exceeding Rs.1000 per piece attract a GST rate of 12% (as per S. No. 224A of Schedule II of the said notification). Doubts have been raised as to what constitutes cotton quilt, i.e. whether a quilt filled with cotton with cover of cotton, or filled with cotton but cover made of some other material, or filled with material other than cotton.

11.3 The matter has been examined. The essential character of the cotton quilt is imparted by the filling material. Therefore, a quilt filled with cotton constitutes a cotton quilt, irrespective of the material of the cover of the quilt. The GST rate would accordingly apply.

12.1 Applicable GST rate for bus body building activity: Representations have been received seeking clarifications on GST rates on the activity of bus body building. The doubts have arisen on account of the fact that while GST applicable on job work services is 18%, the supply of motor vehicles attracts GST @ 28%.

12.2 Buses [motor vehicles for the transport of ten or more persons, including the driver] fall under headings 8702 and attract 28% GST. Further, chassis fitted with engines [8705] and whole bodies (including cabs) for buses [8707] also attract 28% GST. In this context, it is mentioned that the services of bus body fabrication on job work basis attracts 18% GST on such service. Thus, fabrication of buses may involve the following two situations:

a) Bus body builder builds a bus, working on the chassis owned by him and supplies the built-up bus to the customer, and charges the customer for the value of the bus.



Bus body builder builds body on chassis provided by the principal for body building, and charges fabrication charges (including certain material that was consumed during the process of job-work).

12.3 In the above context, it is hereby clarified that in case as mentioned at Para 12.2(a) above, the supply made is that of bus, and accordingly supply would attract GST @28%. In the case as mentioned at Para 12.2(b) above, fabrication of body on chassis provided by the principal (not on account of body builder), the supply would merit classification as service, and 18% GST as applicable will be charged accordingly.

13.1 **Applicable GST rate on Disc Brake Pad:** Representations have been received seeking clarification on disc brake pad for automobiles. It is stated that divergent practices of classifying these products, in Chapter 68 or heading 8708 are being followed. Chapter 68 attracts a GST rate of 18%, while heading 8708 attracts a GST rate of 28%.

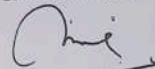
13.2 Parts and accessories of motor vehicles of headings 8701 to 8705 are classified under heading 8708 and attract 28% GST. Further, friction material and articles thereof (for example, sheets, rolls, strips, segments, discs, washers, pads), not mounted, for brakes, for clutches or the like, with a basis of asbestos, of other mineral substances or of cellulose, whether or not combined with textiles or other mineral substances or of cellulose, whether or not combined with textiles or other materials are classifiable under heading 6813 and attract 18% GST.

13.3 In the above context, it is mentioned that as per HSN Explanatory Notes, heading 8708 covers "Brakes (shoe, segment, disc, etc.) and parts thereof (plates, drums, cylinders, mounted linings, oil reservoirs for hydraulic brakes, etc.); servo-brakes and parts thereof, while Chapter 68 covers articles of Stone, Plaster, Cement, Asbestos, Mica or similar materials. Further, HSN Explanatory Notes to the heading 6813 specifically excludes:

- i) Friction materials not containing mineral materials or cellulose fibre (e.g., those of cork);
- ii) Mounted brake linings (including friction material fixed to a metal plate provided with circular cavities, perforated tongues or similar fittings, for disc brakes) which are classified as parts of the machines or vehicles for which they are designed (e.g. heading 8708).

13.4 Thus, it is clear, in view of the HSN Explanatory Notes that the said goods, namely "Disc Brake pad" for automobiles, are appropriately classifiable under heading 8708 of the Customs Tariff Act, 1975 and would attract 28% GST.

14. Difficulty, if any, may be brought to the notice of the Policy Branch immediately.



(H. Rajesh Prasad)
Commissioner, GST (State Tax)

Copy forwarded for information and necessary action to:

1. All Spl./Addl./Joint Commissioners, Department of Trade and Taxes, GNCT of Delhi, Vyapar Bhawan, I.P.Estate, New Delhi-02.
2. Joint Director (IT), Department of Trade and 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.
4. All Assistant Commissioners/GSTOs, Department of Trade and Taxes, GNCT of Delhi, Vyapar Bhawan, I.P.Estate, New Delhi-02. *Through zone ..*
5. PS to the Commissioner, GST(State Tax), Department of Trade and Taxes, GNCT of Delhi Vyapar Bhawan, I.P.Estate, New Delhi-02.
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(31/8/18)
(Sadar and Sah)
Assistant Commissioner (Policy-I)

CIRCULAR NO. 15/2018-GST
(Ref. Circular No. 53/27/2018-GST of Central Tax)

Subject: Clarification regarding applicability of GST on the petroleum gases retained for the manufacture of petrochemical and chemical products – regarding.

References have been received regarding the applicability of GST on the petroleum gases retained for the manufacture of petrochemical and chemical products during the course of continuous supply, such as Methyl Ethyl Ketone (MEK) feedstock, petroleum gases etc.

2. In this context, it may be recalled that clarifications on similar issues for specific products have already been issued vide Circular number 12/12/2017-GST dated 26th October, 2017 of, Ministry of Finance, Government of India and circular No. 08/2018-GST dated: 30.01.2018 of State Tax. These circulars apply *mutatis mutandis* to other cases involving same manner of supply as mentioned in these circulars. However, references have again been received from some of the manufacturers of other petrochemical and chemical products for issue of clarification on applicability of GST on petroleum gases, which are supplied by oil refineries to them on a continuous basis through dedicated pipelines, while a portion of the raw material is retained by these manufacturers (recipient of supply), and the remaining quantity is returned to the oil refineries. In this regard, an issue has arisen as to whether in this transaction GST would be leviable on the whole quantity of the principal raw materials supplied by the oil refinery or on the net quantity retained by the manufacturers of petrochemical and chemical products.

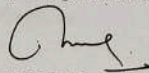
3. The GST Council in its 28th meeting held on 21.7.2018 discussed this issue and recommended for issuance of a general clarification for petroleum sector that in such transactions, GST will be payable by the refinery on the value of net quantity of petroleum gases retained for the manufacture of petrochemical and chemical products.

4. Accordingly, it is hereby clarified that, in the aforesaid cases, GST will be payable by the refinery only on the net quantity of petroleum gases retained by the recipient manufacturer for the manufacture of petrochemical and chemical products. Though, the refinery would be liable to pay GST on such returned quantity of petroleum gases, when the same is supplied by it to any other person. It is reiterated that this clarification would be

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net billing is done on the amount retained by the recipient.

5. This clarification is issued in the context of the Goods and Service Tax (GST) law only and past issues, if any, will be dealt in accordance with the law prevailing at the material time.



(H. Rajesh Prasad)
Commissioner, GST(State Tax)

No.F.3 (66)/Policy-GST/2017/ 525-30

Dated: 31-8-18

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4. All Assistant Commissioners/GSTOs Department of Trade and Taxes, GNCT of Delhi, Vyapar Bhawan, I.P.Estate, New Delhi-02.
5. PS to the Commissioner, GST(State Tax), Department of Trade and Taxes, GNCT of Delhi Vyapar Bhawan, I.P.Estate, New Delhi-02.
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(Sadanand Sah)

Assistant Commissioner (Policy-I)

GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI
DEPARTMENT OF TRADE AND TAXES
(POLICY BRANCH)
VYAPAR BHAWAN, I.P. ESTATE, NEW DELHI-110 002

No.F.3 (66)/Policy-GST/2017/ 531-36

Dated: 31-8-18

CIRCULAR NO. 16/2018-GST
(Ref. Circular No. 54/28/2018-GST of Central Tax)


Subject: Classification of fertilizers supplied for use in the manufacture of other fertilizers at 5% GST rate- reg.

References have been received regarding a clarification as to whether simple fertilizers, such as MOP (Murate of Potash) classified under Chapter 31 and supplied for use in manufacturing of a complex fertilizer, are entitled to the concessional GST rate of 5%, as applicable in general to fertilizers (i.e. fertilizers which are cleared to be used as fertilizers).

2.1 The matter has been examined. Chapter 31 of the Customs Tariff Act, 1975 covers Fertilizers. The fertilizers are mostly used for increasing soil and land fertility, either directly, or by use in manufacturing of complex fertilizers. However, certain fertilizers and similar goods falling under this Chapter may be used for individual purposes like use of molten urea for manufacture of melamine and urea used in manufacturing of urea-formaldehyde resins or organic synthesis.

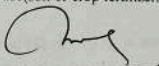
2.2 In the pre-GST regime, the concessional duty rate was prescribed for fertilizers falling under Chapter 31 of the Tariff (notification No. 12/2012-Central Excise). This concessional rate was applied to goods falling under Chapter 31 which are clearly to be used directly as fertilizers or in the manufacture of other fertilizers, whether directly or through the stage of an intermediate product.

3. In the GST regime, tax structure on fertilizers has been prescribed on the lines of pre-GST tax incidence. The wording of the GST notification is similar to the central excise notification except certain changes to meet the requirements of GST. These changes were necessitated as GST is applicable on the supply of goods while central excise duty was applicable on manufacture of goods. Accordingly, fertilizers falling under heading 3102, 3103,



3104 and 3105, other than those which are clearly not to be used as fertilizers, attract 5% GST [S. No. 182A to 182D of the First schedule to the notification No.1/2017-State Tax (Rate) dated 30.06.2017]. However, the fertilizers items falling under the above mentioned headings, which are *clearly not to be used as fertilizer* attract 18% GST [S.No. 42 to 45 of the III schedule to the notification No. 1/2017 State Tax (Rate)]. The intention has been to provide concessional rate of GST to the fertilizers which are used directly as fertilizers or which are used in the manufacturing of complex fertilizers which are further used as soil or crop fertilizers. The phrase "*other than clearly to be used as fertilizers*" would not cover such fertilizers that are used for making complex fertilizers for use as soil or crop fertilizers.

4. Thus, it is clarified that the fertilizers supplied for direct use as fertilizers, or supplied for use in the manufacturing of other complex fertilizers for agricultural use (soil or crop fertilizers), will attract 5% IGST.



(H. Rajesh Prasad)

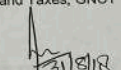
Commissioner, GST(State Tax)

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31/8/18

(Sadanand Sah)
Assistant Commissioner (Policy-I)

GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI
DEPARTMENT OF TRADE AND TAXES
(POLICY BRANCH)
VYAPAR BHAWAN, I.P.ESTATE, NEW DELHI-110 002

No.F.3 (201)/Policy-GST/2018/ 854-59

Dated: 2-11-18

CIRCULAR NO. 17 /2018-GST
(Ref. Circular No. 71/45/2018-GST of Central Tax)

Subject: Clarifications of issues under GST related to casual taxable person and recovery of excess Input Tax Credit distributed by an Input Service distributor-Reg.

Representations have been received seeking clarification on certain issues under the GST laws. The same have been examined and the clarifications on the same are as below:

S. No	Issue	Clarification
1	Whether the amount required to be deposited as advance tax while taking registration as a casual taxable person (CTP) should be 100% of the estimated gross tax liability or the estimated tax liability payable in cash should be calculated after deducting the due eligible ITC which might be available to CTP?	<p>1. It has been noted that while applying for registration as a casual taxable person, the FORM GST REG-1 (S. No. 11) seeks information regarding the "<i>estimated net tax liability</i>" only and not the gross tax liability.</p> <p>2. It is accordingly clarified that the amount of advance tax which a casual taxable person is required to deposit while obtaining registration should be calculated after considering the due eligible ITC which might be available to such taxable person.</p>
2.	As per section 27 of the Delhi Goods and Services Tax Act, 2017 (hereinafter referred to as the said Act), period of operation by casual taxable person is ninety days with provision for extension of same by the proper officer for a	<p>1. It is clarified that in case of long running exhibitions (for a period more than 180 days), the taxable person cannot be treated as a CTP and thus such person would be required to obtain registration as a normal taxable</p>

<p>further period not exceeding ninety days. Various representations have been received for further extension of the said period beyond the period of 180 days, as mandated in law.</p>	<p>person.</p> <p>2. While applying for normal registration the said person should upload a copy of the allotment letter granting him permission to use the premises for the exhibition and the allotment letter/consent letter shall be treated as the proper document as a proof for his place of business.</p> <p>3. In such cases he would not be required to pay advance tax for the purpose of registration.</p> <p>4. He can surrender such registration once the exhibition is over.</p>
<p>3. Representations have been received regarding the manner of recovery of excess credit distributed by an Input Service Distributor (ISD) in contravention of the provisions contained in section 20 of the DGST Act.</p>	<p>1. According to Section 21 of the DGST Act where the ISD distributes the credit in contravention of the provisions contained in section 20 of the DGST Act resulting in excess distribution of credit to one or more recipients of credit, the excess credit so distributed shall be recovered from such recipients along with interest and penalty if any.</p> <p>2. The recipient unit(s) who have received excess credit from ISD may deposit the said excess amount voluntarily along with interest if any by using FORM GST DRC-03.</p> <p>3. If the said recipient unit(s) does not come forward voluntarily, necessary proceedings may be initiated against the said unit(s) under the provisions of</p>

section 73 or 74 of the DGST Act as the case may be, **FORM GST DRC-07** can be used by the tax authorities in such cases.

4. It is further clarified that the ISD would also be liable to a general penalty under the provisions contained in section 122(1)(ix) of the DGST Act.

2. Difficulty, if any, in the implementation of this circular should be brought to the Policy Branch, Trade & Taxes Department, Govt. of NCT of Delhi.

(H. Rajesh Prasad)

Commissioner, GST(State Tax)

Dated: 2-11-18

No.F.3 (201)/Policy-GST/2018/ 854-59

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(Sadanand Sah)

Assistant Commissioner (Policy)

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No.F.3 (201)/Policy-GST/2018/ 860-65

Dated: 2-11-18

CIRCULAR NO.18/2018-GST
(Ref. Circular No. 72/46/2018-GST of Central Tax)

Subject: Circular to clarify the procedure in respect of return of time expired drugs or medicines-Reg.

Various representations have been received seeking clarification on the procedure to be followed in respect of return of time expired drugs or medicines under the GST laws. The issues raised in the said representations have been examined and 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") hereby clarifies the issue in succeeding paragraphs.

2. The common trade practice in the pharmaceutical sector is that the drugs or medicines (hereinafter referred to as "goods") are sold by the manufacturer to the wholesaler and by the wholesaler to the retailer on the basis of an invoice/bill of supply as case may be. It is significant to mention here that such goods have a defined life term which is normally referred to as the date of expiry. Such goods which have crossed their date of expiry are colloquially referred to as time expired goods and are returned back to the manufacturer, on account of expiry, through the supply chain.

3. It is clarified that the retailer/ wholesaler can follow either of the below mentioned procedures for the return of the time expired goods:

(A) Return of time expired goods to be treated as fresh supply:

a) In case the person returning the time expired goods is a registered person (other than a composition taxpayer), he may, at his option, return the said goods by treating it as a fresh supply and thereby issuing an invoice for the same (hereinafter referred to as the, "return supply"). The value of the said goods as shown in the invoice on the basis of which the goods were supplied earlier may be taken as the value of such return supply. The wholesaler or manufacturer, as the case may be, who is the recipient of such return supply, shall be eligible

2

supply subject to the fulfilment of the conditions specified in Section 16 of the DGST Act.

b) In case the person returning the time expired goods is a composition taxpayer, he may return the said goods by issuing a bill of supply and pay tax at the rate applicable to a composition taxpayer. In this scenario there will not be any availability of ITC to the recipient of return supply.

c) In case the person returning the time expired goods is an unregistered person, he may return the said goods by issuing any commercial document without charging any tax on the same.

d) Where the time expired goods which have been returned by the retailer/wholesaler are destroyed by the manufacturer, he/she is required to reverse the ITC availed on the return supply in terms of the provisions of clause (h) of sub-section (5) of section 17 of the DGST Act. It is pertinent to mention here that the ITC which is required to be reversed in such scenario is the ITC availed on the return supply and not the ITC that is attributable to the manufacture of such time expired goods.

Illustration: Supposedly, manufacturer has availed ITC of Rs. 10/- at the time of manufacture of medicines valued at Rs. 100/-. At the time of return of such medicine on the account of expiry, the ITC available to the manufacturer on the basis of fresh invoice issued by wholesaler is Rs. 15/-. So, when the time expired goods are destroyed by the manufacturer he would be required to reverse ITC of Rs. 15/- and not of Rs. 10/-.

(B) Return of time expired goods by issuing Credit Note:

a) As per sub-section (1) of Section 34 of the DGST Act the supplier can issue a credit note where the goods are returned back by the recipient. Thus, the manufacturer or the wholesaler who has supplied the goods to the wholesaler or retailer, as the case may be, has the option to issue a credit note in relation to the time expired goods returned by the wholesaler or retailer, as the case may be. In such a scenario, the retailer or wholesaler may return the time expired goods by issuing a delivery challan. It may be noted that there is no time limit for the issuance of a credit note in the law except with regard to the adjustment of the tax liability in case of the credit notes issued prior to the month of September following the end of the financial year and those issued after it.

b) It may further be noted that if the credit note is issued within the time limit specified in sub-section (2) of section 34 of the DGST Act, the tax liability may be adjusted by the



not availed the ITC or if availed has reversed the ITC so availed against the goods being returned.

c) However, if the time limit specified in sub-section (2) of section 34 of the DGST Act has lapsed, a credit note may still be issued by the supplier for such return of goods but the tax liability cannot be adjusted by him in his hands. It may further be noted that in case time expired goods are returned beyond the time period specified in the sub-section (2) of section 34 of the DGST Act and a credit note is issued consequently, there is no requirement to declare such credit note on the common portal by the supplier (i.e. by the person who has issued the credit note) as tax liability cannot be adjusted in this case.

d) Further, where the time expired goods, which have been returned by the retailer/wholesaler, are destroyed by the manufacturer, he/she is required to reverse the ITC attributable to the manufacture of such goods, in terms of the provisions of clause (h) of sub-section (5) of section 17 of the DGST Act. This has been illustrated in table below:

	Date of Supply of goods from manufacturer/ wholesaler to wholesaler/ retailer	Date of return of time expired goods from retailer / wholesaler to wholesaler / manufacturer	Treatment in terms of tax liability & credit note
Case 1	1 st July, 2017	20 th September, 2018	Credit note will be issued by the supplier (manufacturer / wholesaler) and the same to be uploaded by him on the common portal. Subsequently, tax liability can be adjusted by such supplier provided the recipient (wholesaler / retailer) has either not availed the ITC or if availed has reversed the ITC.

2

Case 2	1 st July, 2017	20 th October, 2018	Credit note will be issued by the supplier (manufacturer / wholesaler) but there is no requirement to upload the same on the common portal. Subsequently tax liability cannot be adjusted by such supplier.
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3. It may be noted that though this circular discusses the scenarios in relation to return of goods on account of expiry of the same, it may be applicable to such other scenarios where the goods are returned on account of reasons other than the one detailed above.

4. Difficulty, if any, in the implementation of this circular should be brought to the Policy Branch, Trade & Taxes Department, Govt. of NCT of Delhi.

(H. Rajesh Prasad)

Commissioner, GST(State Tax)

Dated: 2-11-18

No.F.3 (201)/Policy-GST/2018/ 860-65

Copy forwarded for information and necessary action to:

1. All Spl./Addl./Joint Commissioners, Department of Trade and Taxes, GNCT of Delhi, Vyapar Bhawan I.P.Estate, New Delhi-02.
2. Joint Director (IT), Department of Trade and 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.
4. All Assistant Commissioners/GSTOs, Department of Trade and Taxes, GNCT of Delhi, Vyapar Bhawan, I.P.Estate, New Delhi-02.
5. PS to the Commissioner, GST(State Tax), Department of Trade and Taxes, GNCT of Delhi Vyapar Bhawan, I.P.Estate, New Delhi-02.
6. Guard File.

(Sadapand Sah)

Assistant Commissioner (Policy)

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GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI
DEPARTMENT OF TRADE AND TAXES
POLICY (GST) Branch
VYAPAR BHAVAN: L.P. ESTATE: NEW DELHI-02

F. No. 3(66)/Policy-GST/2017/ 1434-40

Dated: 30/01/2018

Circular No. 09/2018-GST
(Ref: Central Circular No. 04/2018-GST)
30/04/2018

Subject: Clarification on supplies made to the Indian Railways classifiable under any chapter, other than Chapter 86 – regarding.

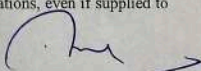
Representations have been received that certain suppliers are making supplies to the railways of items classifiable under any chapter other than chapter 86, charging the GST rate of 5%.

2. The matter has been examined. Vide State Notification No. 1/2017 –State Tax (Rate) dated 30th June, 2017, read with State Notification No. 5/2017- State Tax (Rate) dated 30th June, 2017, goods classifiable under Chapter 86 are subjected to 5% GST rate with no refund of unutilised input tax credit (ITC). Goods classifiable in any other chapter attract the applicable GST, as specified under state notification No. 1/2017 –State Tax (Rate) dated 30th June, 2017 or state notification No. 2/2017-State Tax (Rate) dated 30th June, 2017.

3. The GST Council during its 25th meeting held on 18th January, 2018, discussed this issue and recorded that a clarification regarding applicable GST rates on various supplies made to the Indian Railways may be issued.

4. Accordingly, it is hereby clarified that


- only the goods classified under Chapter 86, supplied to the railways attract 5% GST rate with no refund of unutilised input tax credit and
- other goods [falling in any other chapter], would attract the general applicable GST rates to such goods, under the aforesaid notifications, even if supplied to the railways.


(H. Rajesh Prasad)
Commissioner (GST)

Copy forwarded for information and necessary action to:

Dated: 30/01/2018

- 1) All Spl./Addl./Joint Commissioners, Department of Trade and Taxes, GNCT of Delhi, Vyapar Bhawan, I.P.Estate, New Delhi-02.
- 2) Special Commissioner (PR), Department of Trade and 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 and 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.
- 5) All Assistant Commissioners/GSTOs, Department of Trade and Taxes, GNCT of Delhi, Vyapar Bhawan, I.P. Estate, New Delhi-02.
- 6) PS to the Commissioner, GST, Department of Trade and Taxes, GNCT of Delhi Vyapar Bhawan, I.P. Estate, New Delhi-02.
- 7) Guard File.


30/01/2018
(Sadanand Sah)

Assistant Commissioner (Policy)-V