

**178****Clarifications regarding applicable GST rates & exemptions on certain services-reg.  
Circular No. 177/09/2022-TRU****3rd August, 2022**

Representations have been received seeking clarification on the following issues:

1. Rate of GST applicable on supply of ice-cream by ice-cream parlors during the period from 01.07.2017 to 05.10.2021;
2. Applicability of GST on application fee charged for entrance or the fee charged for issuance of eligibility certificate for admission or for issuance of migration certificate by educational institutions;
3. Whether storage or warehousing of cotton in baled or ginned form is covered under entry 24B of Notification No. 12/2017-Central Tax (Rate) which exempted services by way of storage and warehousing of raw vegetable fibres such as cotton before 18.07.2022;
4. Whether exemption under Sl. No. 9B of notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 covers services associated with transit cargo both to and from Nepal and Bhutan;
5. Applicability of GST on sanitation and conservancy services supplied to Army and other Central and State Government departments;
6. Whether the activity of selling of space for advertisement in souvenirs is eligible for concessional rate of 5%;
7. Taxability and applicable rate of GST on transport of minerals from mining pit head to railway siding, beneficiation plant etc., by vehicles deployed with driver for a specific duration of time;
8. Whether location charges or preferential location charges (PLC) collected in addition to the lease premium for long term lease of land constitute part of the lease premium or upfront amount charged for long term lease of land and are eligible for the same tax treatment;
9. Applicability of GST on payment of honorarium to the Guest Anchors;
10. Whether the additional toll fees collected in the form of higher toll charges from vehicles not having fastag is exempt from GST;
11. Applicability of GST on services in the form of Assisted Reproductive Technology (ART)/ In vitro fertilization (IVF);
12. Whether sale of land after levelling, laying down of drainage lines etc., is taxable under GST;
13. Situations in which corporate recipients are liable to pay GST on renting of motor vehicles designed to carry passengers;
14. Whether hiring of vehicles by firms for transportation of their employees to and from work is exempt under Sr. No. 15(b) of Notification No. 12/2017-Central Tax (Rate) transport of passengers by non-air conditioned contract carriage;



15. Whether supply of service of construction, supply, installation and commissioning of dairy plant on turn-key basis constitutes a composite supply of works contract service and is eligible for concessional rate of GST prior to 18.07.2022;

16. Applicability of GST on tickets of private ferry used for passenger transportation.

2. The issues have been examined by GST Council in the 47th meeting held on 28th and 29th June, 2022. The issue-wise clarifications as recommended by the GST Council are below:

**3. Rate of GST applicable on supply of ice-cream by ice-cream parlors during the period from 01.07.2017 to 05.10.2021**

3.1 On the recommendation of the GST Council in its 45th meeting, it was **clarified** vide circular 164/20/2021-GST dated 06.10.2021 that ice cream parlours sell already manufactured ice-cream and they do not have a character of a restaurant and hence, ice cream sold by a parlour or any similar outlet attracts standard rate of GST @ 18% with ITC.

3.2 Representations have been received requesting that GST at 18% may be levied on supply of ice-cream by ice-cream parlors with effect from 06.10.2021.

3.3 It has been represented that ice cream parlors which paid GST @ 5% without ITC in view of prevailing doubt before the issuance of the Circular dated 6.10.2021 did not avail ITC and paid 5% in cash. Such ice-cream parlors have thus foregone significant ITC benefit.

3.4 Considering the overall circumstances of the case, it is **clarified** that past cases of payment of GST on supply of ice-cream by ice-cream parlors @ 5% without ITC shall be treated as fully GST paid to avoid unnecessary litigation. Since the decision is only to regularize the past practice, no refund of GST shall be allowed, if already paid at 18%. With effect from 6.10.2021, the ice Cream parlors are required to pay GST on supply of ice-cream at the rate of 18% with ITC.

**4. Applicability of GST on application fee charged for entrance or the fee charged for issuance of eligibility certificate for admission or for issuance of migration certificate by educational institutions**

4.1 Representations have been received regarding applicability of GST on application fee charged for entrance or the fee charged for issuance of eligibility certificate for admission or for issuance of migration certificate by educational institutions.

4.2 In this regard, it is stated that educational services supplied by educational institutions to its students are exempt from GST vide entry 66 of the notification No. 12/2017 Central Tax (Rate) dated 28.06.2017 relevant portion of which reads as under, -

*"Services provided -*

*a. by an educational institution to its students, faculty and staff;*

*[(aa) by an educational institution by way of conduct of entrance examination against consideration in the form of entrance fee;]..."*

4.3 Therefore, it can be seen that all services supplied by an 'educational institution' to its students are exempt from GST. Consideration charged by the educational institutes by way of entrance fee for conduct of entrance examination is also exempt. The exemption is wide enough to cover the amount or fee charged for admission or entrance, or amount charged for application fee for entrance, or the fee charged from prospective students for issuance of eligibility certificate to them in the process of their entrance/admission to the educational institution. Services supplied by an educational institution by way of issuance of migration



certificate to the leaving or ex-students are also covered by the exemption. Accordingly, such activities of educational institution are also exempt.

4.4 Accordingly, it is **clarified** that the amount or fee charged from prospective students for entrance or admission, or for issuance of eligibility certificate to them in the process of their entrance/admission as well as the fee charged for issuance of migration certificates by educational institutions to the leaving or ex-students is covered by exemption under Sl. No. 66 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017.

**5. Whether storage or warehousing of cotton in baled or ginned form is covered under entry 24B of Notification No. 12/2017-Central Tax (Rate) which exempted services by way of storage and warehousing of raw vegetable fibres such as cotton before 18.07.2022.**

5.1 Representations have been received regarding applicability of GST exemption on the service of storage or warehousing of cotton in baled or ginned form.

5.2 Prior to 18.07.2022, entry 24 B of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 exempted services by way of storage and warehousing of, inter alia, raw vegetable fibers such as cotton, flax, jute etc. Cotton Fiber glossary by barnhardtcotton.net defines 'cotton staple, virgin cotton or raw cotton' as cotton fibers that are removed from the cotton seed by the gin. Further, CESTAT Chandigarh in the case of R.K.& Sons vs CCE, Rohtak dated 14th July 2016 has observed as under:

*"Cotton (with seeds) as plucked from cotton plants can hardly be called cotton fibre in which case cotton fibre would come into existence only after the seeds are ginned away from cotton plucked from cotton plants. Cotton fibre obtained by ginning cotton plucked cotton plants is nothing but raw cotton fibre because there cannot be rawer form of cotton fibre obtained from cotton-with-seeds plucked from cotton plants."*

5.3 Accordingly, it is **clarified** that service by way of storage or warehousing of cotton in ginned and or baled form was covered under entry 24B of notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 in the category of raw vegetable fibres such as cotton. It may however be noted that this exemption has been withdrawn w.e.f 18.07.2022

**6. Whether exemption under Sl. No. 9B of notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 covers services associated with transit cargo both to and from Nepal and Bhutan**

6.1 Representations have been received regarding applicability of GST on transportation of empty containers returning from Nepal and Bhutan after delivery of transit cargo, to India.

6.2 GST on supply of services associated with transit cargo to Nepal and Bhutan was exempted w.e.f 29.09.2017 based on recommendations of the 20th GST Council Meeting. The opening sentence of the Agenda Item 7(ix) placed before the GST Council on this issue, makes it clear that the proposal was to exempt supply of services associated with transit cargo both to and from Nepal and Bhutan.

6.3 Accordingly, as recommended by the GST Council, it is **clarified** that exemption under Sl. No. 9B of Notification 12/2017- Central Tax (Rate) covers services associated with transit cargo both **to and from** Nepal and Bhutan.

6.4 It is also **clarified** that movement of empty containers from Nepal and Bhutan, after delivery of goods there, is a service associated with the transit cargo to Nepal and Bhutan and is therefore covered by the exemption.



6.5 Needless to say that the cargo has to be transhipped / transited to Nepal and Bhutan, as per Regulations under the Customs Act read with the Treaties for Trade & Transit with Nepal & Bhutan. Under the regulations/procedures, the container number, which is a unique alpha numeric identifier for the container, is declared. Further, the Customs broker / shipping line / carrier is responsible for making available a track and trace facility for locating goods brought for transhipment.

6.6 With respect to transit or transhipment of cargo to Nepal, specific regulations namely Transhipment of Cargo to Nepal under Electronic Cargo Tracking System Regulations, 2019 have been notified. It is relevant to mention here that as per these regulations also, the authorized carrier has to execute a general bond for an amount as directed by the proper officer. The authorized carrier also has to procure ECTS (Electronic Cargo Tracking System) from a bi-laterally appointed managed service provider. In order to discharge the bond, the proper officer of customs has to extract trip reports from the ECTS web application as proof of completion of transhipment. The reconciliation of transhipment of consignments shall be carried out on the basis of trip report, by the proper officer at the Ports of Kolkata, Haldia or Visakhapatnam, as the case may be, and then only the general bond submitted by the authorised carrier will be re-credited or discharged.

6.7 As can be seen from the above, the regulations governing transit / transhipment have to be followed in addition to the ensuring that an electronic track and trace facility is in place. This facility uses container numbers to locate the cargo. Thus, it is verifiable that the empty container returning from Nepal or Bhutan is the same container which was used to deliver goods to Nepal or Bhutan.

## **7. Applicability of GST on sanitation and conservancy services supplied to Army and other Central and State Government departments**

7.1 Representations have been received regarding taxability of sanitation and conservancy services supplied to Army and other Central and State Government departments.

7.2 Municipalities and Panchayats and other local authorities such as Cantonment Boards listed in Section 2(69) of the Central Goods and Services Tax act, 2017 carry out functions entrusted to them under articles 243W & 243G of the Constitution respectively. Functions that may be entrusted to panchayats and municipalities are listed in Schedule 11 & 12 of the Constitution. Central Government, State Governments & Union Territories also perform functions listed in Schedule 11 & 12 such as irrigation, public health etc.

7.3 Services by Central Government, State Government, Union Territory or any local authority by way of any activity in relation to a function entrusted to a Panchayat under article 243G of the constitution or to a municipality under article 243W of the constitution have been declared as 'neither a supply of goods nor a supply of service' vide notification no. 14/2017-Central Tax (Rate) dated 28.06.2017.

7.4 The exemption under entry 3& 3A of notification 12/2017- Central Tax (Rate) dated 28.06.2017 has been given on pure services & composite supplies procured by Central Government, State Government, Union Territories or local authorities for performing functions listed in the 11th and 12th schedule of the constitution.

7.5 It is **clarified** that if such services are procured by Indian Army or any other Government Ministry/Department which does not perform any functions listed in the 11th and 12th Schedule, in the manner as a local authority does for the general public, the same are not eligible for exemption under Sl. No. 3 and 3A of Notification 12/2017- Central Tax (Rate).



**8. Whether the activity of selling of space for advertisement in souvenirs is eligible for concessional rate of 5%.**

8.1 Representation has been received regarding the GST rate applicable on selling of space for advertisement in souvenirs published in the form of books by different institutions/organizations like educational institutions, social, cultural and religious organizations including clubs etc.

8.2 As per serial number (i) of entry 21 of notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 selling of space for advertisement in print media attracts GST @ 5%. The term 'print media' has been defined in clause (zt) of notification No.12/2017-Central Tax (Rate) dated 28.06.2017 as under:

*"print media" means, -*

- i. 'book' as defined in sub-section (1) of section 1 of the Press and Registration of Books Act, 1867 (25 of 1867), but does not include business directories, yellow pages and trade catalogues which are primarily meant for commercial purposes;
- ii. ....

8.3 Further, sub-section (1) of section 1 of the Press and Registration of Books Act, 1867 defines 'book' as follows:

*"Book" includes every volume, part or division of a volume, and pamphlet, in any language and every sheet of music, map, chart or plan separately printed.*

8.4 It therefore appears that 'book' has been defined in the Press and Registration of Books Act, 1867 in an inclusive manner with a wide ambit which would cover souvenir book also.

8.5 Accordingly, as recommended by the GST Council, it is **clarified** sale of space for advertisement in souvenir book is covered under serial number (i) of entry 21 of Notification No. 11/2017-Central Tax (Rate) and attracts GST @ 5%.

**9. Taxability and applicable rate of GST on transport of minerals from mining pit head to railway siding, beneficiation plant etc., by vehicles deployed with driver for a specific duration of time.**

9.1 Representations have been received to clarify the taxability of transport of minerals within a mining area, say from mining pit head to railway siding, beneficiation plant etc., by vehicles deployed with driver for a specific duration of time and whether the same would be covered under Sr. No. 18 of notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 which exempts transport of goods by road except by a GTA.

9.2 Usually in such cases the vehicles such as tippers, dumpers, loader, trucks etc., are given on hire to the mining lease operator. Expenses for fuel are generally borne by the recipient of service. The vehicles with driver are at the disposal of the mining lease operator for transport of minerals within the mine area (mining pit to railway siding, beneficiation plant etc.) as per his requirement during the period of contract.

9.3 Such services are nothing but "rental services of transport vehicles with operator" which fall under heading 9966 and attract GST @ 18% under Sr. No. 10 part (iii) of notification No. 11/2017- Central Tax (Rate) dated 28.06.2017. The person who takes the vehicle on rent defines how and when the vehicles will be operated, determines schedules, routes and other operational considerations. The person who gives the vehicles on rent with operator can not be said to be supplying the service by way of transport of goods.



9.4 Accordingly, as recommended by the GST Council, it is **clarified** that such renting of trucks and other freight vehicles with driver for a period of time is a service of renting of transport vehicles with operator falling under Heading 9966 and not service of transportation of goods by road. This being so, it is not eligible for exemption under Sl. No. 18 of notification No. 12/2017- Central Tax (Rate) dated 28.06.2017. On such rental services of goods carriages where the cost of fuel is included in the consideration charged from the recipient of service, GST rate has been reduced from 18% to 12% with effect from 18.07.2022. Prior to 18.07.2022, it attracted GST at the rate of 18%.

**10. Whether location charges or preferential location charges (PLC) collected in addition to the lease premium for long term lease of land constitute part of the lease premium or of upfront amount charged for long term lease of land and are eligible for the same tax treatment;**

10.1 Representation has been received seeking clarification whether location charges or preferential location charges (PLC) collected in addition to the lease premium for long term lease of land constitute part of the lease premium or upfront amount charged for long term lease of land and are eligible for the same tax treatment.

10.2 As per entry 41 of the notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 upfront amount, which is defined as *"upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable in respect of service by way of granting of long term lease (of thirty years, or more) of industrial plots or plots for development of infrastructure for financial business, provided by the State Government Industrial Development Corporations or Undertakings or by any other entity having 20 per cent or more ownership of Central Government, State Government, Union territory to the industrial units or the developers in any industrial or financial business area"*, is exempt from GST

10.3 Allowing choice of location of plot is integral part of supply of long-term lease of plot and therefore, location charge is nothing but part of consideration charged for long term lease of plot. Being charged upfront along with the upfront amount for the lease, the same is exempt.

10.4 Accordingly, as per recommendation of the GST Council, it is **clarified** that location charges or preferential location charges (PLC) paid upfront in addition to the lease premium for long term lease of land constitute part of upfront amount charged for long term lease of land and are eligible for the same tax treatment, and thus eligible for exemption under Sl. No. 41 of notification no. 12/2017- Central Tax (Rate) dated 28.06.2017.

**11. Applicability of GST on payment of honorarium to the Guest Anchors**

11.1 Representation has been received regarding applicability of GST on honorarium paid to Guest Anchors. Sansad TV and other TV channels invite guest anchors for participating in their shows and pays remuneration to them in the form of honorarium. Some of the guest anchors have requested payment of GST @ 18% on the honorarium paid to them for such appearances.

11.2 It is **clarified** that supply of all goods & services are taxable unless exempt or declared as 'neither a supply of goods nor a supply of service'. Services provided by the guest anchors in lieu of honorarium attract GST liability. However, guest anchors whose aggregate turnover in a financial year does not exceed Rs 20 lakhs (Rs 10 lakhs in case of special category states) shall not be liable to take registration and pay GST.



**12. Whether the additional toll fees collected in the form of higher toll charges from vehicles not having fastag is exempt from GST**

12.1 Representation has been received regarding taxability of additional toll fees collected by the Concessionaires from the vehicles which is not having Fastag.

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

12.3 Ministry of Road Transport & Highways (MORTH) vide circular dated 16.02.2021 has directed to collect additional amount from the users of the road to the extent of two times of the fees applicable to that category of vehicle which is not having a valid functional Fastag.

12.4 Essentially, the additional amount collected from the users of the road not having a functional Fastag, is in the nature of Toll Charges and should be treated as additional toll charges.

12.5 On a similar issue of collection of overloading charges in the form of a higher toll (2/4/6/7 times of the base rate of toll), it has already been **clarified** vide circular number 164/20/2021-GST dated 06.10.2021, which was issued on the basis of recommendation of GST Council that overloading charges at toll plazas would get the same treatment as given to toll charges.

12.6 Therefore, it is **clarified** that additional fee collected in the form of higher toll charges from vehicles not having Fastag is essentially payment of toll for allowing access to roads or bridges to such vehicles and may be given the same treatment as given to toll charges.

**13. Applicability of GST on services in form of Assisted Reproductive Technology (ART)/ In vitro fertilization (IVF)**

13.1 Representations have been received to clarify whether GST is applicable on services by way of Assisted Reproductive Technology (ART) procedures such as In vitro fertilization (IVF).

13.2 Health care services provided by a clinical establishment, an authorized medical practitioner or para-medics are exempt. [Sl. No. 74 of notification No. 12/2017- Central Tax (Rate) dated 28.06. 2017].

13.3 Health care services is defined vide 2(zg) of the notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 as –

*“health care services” means any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India and includes services by way of transportation of the patient to and from a clinical establishment, but does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma.”*

13.4 The abnormality/disease/ailment of infertility is treated using ART procedure such as IVF. It is **clarified** that services by way of IVF are also covered under the definition of health care services for the purpose of above exemption notification.

**14. Whether sale of land after levelling, laying down of drainage lines etc., is taxable under GST**

14.1 Representation has been received requesting for clarification regarding applicability of GST on sale of land after levelling, laying down of drainage lines etc.



14.2 As per Sl no. (5) of Schedule III of the Central Goods and Services Tax Act, 2017, 'sale of land' is neither a supply of goods nor a supply of services, therefore, sale of land does not attract GST.

14.3 Land may be sold either as it is or after some development such as levelling, laying down of drainage lines, water lines, electricity lines, etc. It is **clarified** that sale of such developed land is also sale of land and is covered by Sr. No. 5 of Schedule III of the Central Goods and Services Tax Act, 2017 and accordingly does not attract GST.

14.4 However, it may be noted that any service provided for development of land, like levelling, laying of drainage lines (as may be received by developers) shall attract GST at applicable rate for such services.

### **15. Situations in which corporate recipients are liable to pay GST on renting of motor vehicles designed to carry passengers**

15.1 In case of services provided by a non-body corporate to a body corporate by way of renting of any motor vehicle for transport of passengers, tax is required to be paid by the body corporate under RCM.

15.2 Representations have been received to clarify whether RCM is applicable on service of transportation of passengers (Heading 9964) or on renting of motor vehicle designed to carry passengers (Heading 9966).

15.3 Renting of motor vehicle with operator for transport of passengers falls under Heading 9966. According to the explanatory notes to heading 9966, the service covered here is renting of motor vehicle for transport of passengers for a period of time where the renter defines how and when the vehicles will be operated, determining schedules, routes and other operational considerations.

15.4 'Passenger transport services' on the other hand fall under Heading 9964. According to the explanatory notes Heading 9964 covers passenger transport services over pre-determined routes on pre-determined schedules.

15.5 Therefore, a clear distinction exists in service of transport of passengers and renting of a vehicle that is used for transport.

15.6 Accordingly, as recommended by the GST Council, it is **clarified** that where the body corporate hires the motor vehicle (for transport of employees etc.) for a period of time, during which the motor vehicle shall be at the disposal of the body corporate, the service would fall under Heading 9966, and the body corporate shall be liable to pay GST on the same under RCM. It may be seen that reverse charge thus would apply on act of renting of vehicles by body corporate and in such a case, it is for the body corporate to use in the manner as it likes subject to agreement with the person providing vehicle on rent.

15.7 However, where the body corporate avails the passenger transport service for specific journeys or voyages and does not take vehicle on rent for any particular period of time, the service would fall under Heading 9964 and the body corporate shall not be liable to pay GST on the same under RCM.

### **16. Whether hiring of vehicles by firms for transportation of their employees to and from work is exempt under Sr. No. 15(b) of Notification No. 12/2017-Central Tax (Rate) transport of passengers by non-air conditioned contract carriage**

16.1 Representations have been received to clarify whether the engagement of non-air conditioned contract carriages by firms for transportation of their employees to and from



work is exempt under entry at Sr. No. 15(b) of notification No. 12/2017-Central Tax (Rate) dated 28.06.2017.

16.2 Sr. No. 15 (b) of notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 exempts *"transport of passengers, with or without accompanied belongings, by non-air conditioned contract carriage, other than radio taxi, for transport of passengers, excluding tourism, conducted tour, charter or hire."*

16.3 It is **clarified** that 'charter or hire' excluded from the above exemption entry is charter or hire of a motor vehicle for a period of time, where the renter defines how and when the vehicles will be operated, determining schedules, routes and other operational considerations.

16.4 In other words, the said exemption would apply to passenger transportation services by non-air conditioned contract carriages falling under Heading 9964 where according to explanatory notes, transportation takes place over pre-determined route on a pre-determined schedule. The exemption shall not be applicable where contract carriage is hired for a period of time, during which the contract carriage is at the disposal of the service recipient and the recipient is thus free to decide the manner of usage (route and schedule) subject to conditions of agreement entered into with the service provider.

**17. Whether supply of service of construction, supply, installation and commissioning of dairy plant on turn-key basis constitutes a composite supply of works contract service and is eligible for concessional rate of GST prior to 18.07.2022.**

17.1 Representation has been received seeking clarification regarding the applicable GST rate on service of construction, supply, installation and commissioning of a 2.00 LLPD dairy plant on turn-key basis.

17.2 In case of a turn key project for construction, supply, installation and commissioning of a 2.00 LLPD dairy plant, it has been held by Advance Ruling Authorities of Bihar and Gujarat that the same does not result into an immovable property and is therefore not a supply of works contract. This being so, such supply is not eligible for concessional rate of 12% applicable on works contract supplied by way of construction, erection, commissioning, or installation of original works pertaining to mechanized food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages.

17.3 In this regard, it may be seen that prior to 18.07.2022, serial number 3(v)(f) of notification no. 11/2017 Central Tax (Rate) dated 28.06.2017 prescribes GST rate of 12 % on the composite supply of works contract by way of construction, erection, commissioning, or installation of original works pertaining to *mechanized food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages*.

17.4 It is **clarified** that a contract of the nature described here for construction, installation and commissioning of a dairy plant constitutes supply of works contract. There is no doubt that dairy plant which comes into existence as a result of such contracts is an immovable property.

17.5 It is also **clarified** that such works contract services were eligible for concessional rate of 12% GST under serial number 3(v)(f) of notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 prior to 18.07.2022. With effect from 18.07.2022, such works contract services



would attract GST at the rate of 18% in view of amendment carried out in notification No. 11/2017- Central Tax (Rate) vide notification No. 03/2022- Central Tax (Rate).

### **18. Applicability of GST on tickets of private ferry used for passenger transportation.**

18.1 Representations have been received seeking clarification on applicability of GST on private ferry tickets. It has been stated that these private ferries are used as means of transport from one island to another in Andaman and Nicobar Islands.

18.2 As per Sl. No 17 (d) of notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 *"transportation of passengers by public transport, other than predominantly for tourism purpose, in a vessel between places located in India"* is exempted.

18.3 It is **clarified** that this exemption would apply to tickets purchased for transportation from one point to another irrespective of whether the ferry is owned or operated by a private sector enterprise or by a PSU/government.

18.4 It is further **clarified** that, the expression 'public transport' used in the exemption notification only means that the transport should be open to public. It can be privately or publicly owned. Only exclusion is on transportation which is predominantly for tourism, such as services which may combine with transportation, sightseeing, food and beverages, music, accommodation such as in shikara, cruise etc.

## **179**

### **GST applicability on liquidated damages, compensation and penalty arising out of breach of contract or other provisions of law - reg.**

**Circular No. 178/10/2022-GST**

**3rd August, 2022**

In certain cases/instances, questions have been raised regarding taxability of an activity or transaction as the supply of service of agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act. Applicability of GST on payments in the nature of liquidated damage, compensation, penalty, cancellation charges, late payment surcharge etc. arising out of breach of contract or otherwise and scope of the entry at para 5 (e) of Schedule II of Central Goods and Services Tax Act, 2017 (hereinafter referred to as, "CGST Act") in this context has been examined in the following paragraphs.

2. *"Agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act"* has been specifically declared to be a supply of service in para 5 (e) of Schedule II of CGST Act if the same constitutes a "supply" within the meaning of the Act. The said expression has following three limbs: -

a. **Agreeing to the obligation to refrain from an act-**

Example of activities that would be covered by this part of the expression would include non-compete agreements, where one party agrees not to compete with the other party in a product, service or geographical area against a consideration paid by the other party.

Another example of such activities would be a builder refraining from constructing more than a certain number of floors, even though permitted to do so by the municipal authorities, against a compensation paid by the neighbouring housing project, which wants to protect its sunlight, or an industrial unit refraining from manufacturing