

seats much in advance of the travel, giving preferred seats with or without extra cost, lounge and waiting room facilities at airports, railway stations and bus terminals, provision of basic necessities such as soap and other toiletries in the wash rooms, clean drinking water in the waiting area etc. form part and parcel of the transportation service; they constitute the various elements of passenger transportation service, a composite supply. The facilitation service of allowing cancellation against payment of cancellation charges is also a natural part of this bundle. It is invariably supplied by all suppliers of passenger transportation service as naturally bundled and in conjunction with the principal supply of transportation in the ordinary course of business.

11.3 Therefore, facilitation supply of allowing cancellation of an intended supply against payment of cancellation fee or retention or forfeiture of a part or whole of the consideration or security deposit in such cases should be assessed as the principal supply. For example, cancellation charges of railway tickets for a class would attract GST at the same rate as applicable to the class of travel (i.e., 5% GST on first class or air-conditioned coach ticket and nil for other classes such as second sleeper class). Same is the case for air travel.

11.4 Accordingly, the amount forfeited in the case of non-refundable ticket for air travel or security deposit or earnest money forfeited in case of the customer failing to avail the travel, tour operator or hotel accommodation service or such other intended supplies should be assessed at the same rate as applicable to the service contract, say air transport or tour operator service, or other such services.

11.5 However, as discussed above, forfeiture of earnest money by a seller in case of breach of 'an agreement to sell' an immovable property by the buyer or such forfeiture by Government or local authority in the event of a successful bidder failing to act after winning the bid for allotment of natural resources, is a mere flow of money, as the buyer or the successful bidder does not get anything in return for such forfeiture of earnest money. Forfeiture of earnest money is stipulated in such cases not as a consideration for tolerating the breach of contract but as a compensation for the losses suffered and as a penalty for discouraging the non-serious buyers or bidders. Such payments being merely flow of money are not a consideration for any supply and are not taxable.

12. Field formations are advised that while the taxability in each case shall depend on facts of that case, the above guidelines may be followed in determining whether tax on an activity or transaction needs to be paid treating the same as service by way of agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act.

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**Clarification regarding GST rates & classification (goods) based
on the recommendations of the GST Council in its 47th meeting
held on 28th – 29th June, 2022 at Chandigarh –reg.**

Circular No. 179/11/2022-GST

3rd August, 2022

Based on the recommendations of the GST Council in its 47th meeting held on 28th-29th June at Chandigarh, clarifications, with reference to GST levy, related to the following are being issued through this circular:

2. Electric vehicles whether or not fitted with a battery pack, attract GST rate of 5%:

2.1. Representations have been received seeking clarification regarding the applicable rate of GST on electrically operated vehicle without any battery fitted to it.

2.2. The explanation of 'Electrically operated vehicles' in entry 242A of Schedule I of notification No. 1/2017-Central Tax (Rate) reads as: 'Electrically operated vehicles which run solely on electrical energy derived from an external source or from one or more electrical batteries fitted to such road vehicles and shall include E-bicycles.'

2.3. As is evident from the explanation above, electrically operated vehicle including three wheeled electric vehicle means vehicle that runs solely on electrical energy derived from an external source or from electrical batteries. Therefore, the fitting of batteries cannot be considered as a concomitant factor for defining a vehicle as an electrically operated electric vehicle.

2.4. It is also pertinent to state that the WCO's HSN Explanatory notes have also not considered batteries to be a component, whose absence changes the essential character of an incomplete, unfinished or unassembled vehicle.

2.5. Also, the HSN explanatory notes for Chapter 87 have clearly stated that Motor Chassis fitted with cabs i.e. the chassis fitted with cabin body falls under 87.02 to 87.04 and not in heading 87.06.

2.6. In view of the above, it is **clarified** that electrically operated vehicle is to be classified under HSN 8703 even if the battery is not fitted to such vehicle at the time of supply and thereby attract GST at the rate of 5% in terms of entry 242A of Schedule I of notification No. 1/2017-Central Tax (Rate).

3. Stones otherwise covered in S. No. 123 of Schedule-I (such as Napa stones), which are not mirror polished, are eligible for concessional rate under said entry:

3.1. Representations have been received seeking clarification regarding the applicable GST rates on building stones, in particular Napa Stones, which are ready to use and polished in ways other than mirror-polished.

3.2. Napa Stone is a variety of dimensional limestone, which is a brittle stone and cannot be subject to extensive mirror polishing. Currently, S. No. 123 of Schedule-I prescribes GST rate of 5% for 'Ecaussine and other calcareous monumental or building stone; alabaster [other than marble and travertine], other than mirror polished stone which is ready to use.' However, being brittle in nature, stones like Napa Stone, even though ready for use, are not subject to extensive polishing. Therefore, such minor polished stones do not qualify as mirror polished stones.

3.3. Therefore, it is **clarified** that S. No. 123 in schedule-I to the notification No. 1/2017-Central Tax (rate) dated 28.06.2017 covers minor polished stones.

4. Mangoes under CTH 0804 including mango pulp, but other than fresh mangoes and sliced, dried mangoes, attract GST at 12% rate:

4.1. Representations have been received seeking clarification regarding the applicable GST rate on different forms of Mangoes including Mango Pulp.

4.2. On the basis of the recommendation of the GST Council in its 22nd Meeting, the GST rate on 'Mangoes sliced, dried', falling under heading 0804, was reduced from 12% to 5% [S. No. 30A of Schedule I of notification No. 1/2017-Central Tax (Rate) dated the 28th June, 2017]. However, the GST rate on all forms of dried mangoes (other than sliced and dried mangoes),

falling under heading 0804, including mango pulp, was always meant to be at the rate of 12%.

4.3. Accordingly, it is hereby **clarified** that mangoes, fresh falling under heading 0804 are exempt; Mangoes, sliced and dried, falling under 0804 are chargeable to a concessional rate of 5%; while all other forms of dried mango, including Mango pulp, attract GST at the rate of 12%. To bring absolute clarity, the relevant entry at S. No. 16 of Schedule-II of notification no. 1/2017-Central Tax (Rate), dated 28th June, 2017, has been amended vide notification No. 6/2022-Central Tax (Rate), dated the 13th July, 2022.

4.4. Fresh mangoes, falling under heading 0804, continue to remain exempt from GST [S. No. 51 of notification No. 2/2017-Central Tax (Rate), dated the 28th June, 2017].

5. Treated sewage water attracts Nil rate of GST:

5.1. Representations have been received seeking clarification regarding the applicable GST rate on treated sewage water. Treated sewage water was not meant to be construed as falling under “purified” water for the purpose of levy of GST.

5.2. In general, Water, falling under heading 2201, with certain specified exclusions, is exempt from GST vide entry at S. No. 99 of notification No. 2/2017-Central Tax (Rate), dated the 28th June, 2017.

5.3. Accordingly, it is hereby **clarified** that supply of treated sewage water, falling under heading 2201, is exempt under GST. Further, to clarify the issue, the word ‘purified’ is being omitted from the above-mentioned entry vide notification No. 7/2022-Central Tax (Rate), dated the 13th July, 2022.

6. Nicotine Polacrilex Gum attracts a GST rate of 18%:

6.1. Representations have been received seeking clarification regarding the classification and applicable GST rate on Nicotine Polacrilex gum.

6.2. The WCO 2022 HS Codes has inter alia introduced a new entry 2404 91 00 comprising of products for oral application containing nicotine and intended to assist tobacco use cessation with effect from 01.01.2022. Accordingly, a technical change, without any consequential rate change, has been made vide notification No. 18/2021 – Central Tax (Rate), dated the 28th December, 2021, wherein S. No. 26B in Schedule III of notification no. 1/2017-Central Tax (Rate), dated the 28th June, 2017, has been inserted to include products for oral application containing nicotine and intended to assist in cessation of use of tobacco, and falling under tariff item 2404 91 00. The same is supplemented by the HS Explanatory notes 2022 which states that heading 2404 includes nicotine containing products for recreational use, as well as nicotine replacement therapy (NRT) products intended to assist tobacco use cessation, which are taken as part of a nicotine intake reduction programme in order to lessen the human body’s dependence on this substance.

6.3. Accordingly, it is hereby **clarified** that the Nicotine Polacrilex gum which is commonly applied orally and is intended to assist tobacco use cessation is appropriately classifiable under tariff item 2404 91 00 with applicable GST rate of 18% [Sl. No. 26B in Schedule III of notification no. 1/2017-Central Tax (Rate), dated the 28th June, 2017].

7. Fly ash bricks and aggregate - condition of 90% fly ash content applied only to fly ash aggregate, and not fly ash bricks:

7.1. Representations have been received seeking clarification regarding the applicable rate on the fly ash bricks and fly ash aggregates.

7.2. Hitherto, as per entry at S. No. 176B of the Schedule II the items of description "Fly ash bricks or fly ash aggregate with 90 per cent. or more fly ash content; Fly ash blocks" attracts a GST rate of 12%. Confusion has arisen about the applicability of 90 per cent. condition on fly ash aggregates and fly ash bricks. As per the recommendations of the GST Council in the 23rd Meeting, the condition of 90% or more fly ash content was applicable only for fly ash aggregate.

7.3. Therefore, it is **clarified** that the condition of 90 per cent. or more fly ash content applied only to Fly Ash Aggregates and not to fly ash bricks and fly ash blocks. Further, with effect from 18th July, 2022 the condition is omitted from the description.

8. Applicability of GST on by-products of milling of Dal/ Pulses such as Chilka, Khanda and Churi:

8.1. Representations have been received seeking clarification regarding the applicable GST rate on by-products of milling of Dal/ Pulses such as Chilka, Khanda and Churi.

8.2. The by-products of milling of pulses/ dal such as Chilka, Khanda and Churi are appropriately classifiable under heading 2302 that consists of goods having description as bran, sharps and other residues, whether or not in the form of pellets, derived from the sifting, milling or other working of cereals or of leguminous plants.

8.3. The applicable GST rate on goods falling under heading 2302 is detailed in the Table below:

Entry and notification No.	Description	GST Rate
S. No. 102 of notification No. 2/2017-Central Tax (Rate), dated the 28th June, 2017	Aquatic feed including shrimp feed and prawn feed, poultry feed & cattle feed, including grass, hay & straw, supplement & husk of pulses, concentrates & additives, wheat bran & de-oiled cake[other than rice bran]	Nil
S. No. 103A of Schedule- I of notification No. 1/2017-Central Tax (Rate), dated 28th June, 2017	Bran, sharps and other residues, whether or not in the form of pellets, derived from the sifting, milling or other working of cereals or of leguminous plants [other than aquatic feed including shrimp feed and prawn feed, poultry feed and cattle feed, including grass, hay and straw, supplement and husk of pulses, concentrates and additives, wheat bran and de-oiled cake]	5%
S. No. 103B of Schedule- I of notification No. 1/2017-Central Tax (Rate), dated 28th June, 2017	Rice bran (other than de-oiled rice bran)	5%

8.4. The dispute in applicable GST rate revolves around the central argument as to whether the above-mentioned by-products are meant for direct consumption as cattle feed and therefore attract exemption under S. No. 102 of notification No. 2/2017-Central Tax (Rate) dated 28th June, 2017 or are otherwise not meant for direct consumption and thus

covered under S. No. 103A of notification No. 1/2017- Central Tax (Rate) dated 28th June, 2017 attracting a GST rate of 5%.

8.5. While milling of pulses/ dal, a wide range of by-products such as chilka, khanda, churi, among others, are obtained which are preferred as cattle feed by dairy industry for better palatability and higher nutritive value. The mentioned by-products are required to go through varying degrees of processing in order to customize the color, size, aroma, nutrition, purity, etc., of the cattle feed so produced, depending upon the dietary and nutritional requirement of the cattle and the budget availability of the customer(s). Further, as per the Indian Standards 2052:2009 -Compounded Feeds for Cattle - Specification, issued by the Bureau of Indian Standards, Ministry of Consumer Affairs, Food & Public Distribution, Government of India, grain by-products have been categorized as one of the ingredients of the compounded cattle feed.

8.6. The GST Council examined the issue and recommended that a clarification be issued in this regard. It also recommended that in view of the prevailing multiple interpretations and genuine doubts regarding the applicability of GST, the issue for past periods may be regularized on as is basis.

8.7. Accordingly, it is hereby **clarified** that the subject goods which inter alia is used as cattle feed ingredient are appropriately classifiable under heading 2302 and attract GST at the rate of 5% vide S. No. 103A of Schedule-I of notification no. 1/2017-Central Tax (Rate), dated the 28th June, 2017 and that for the past, the matter would be regularized on as is basis as mentioned in para 8.6.

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Guidelines for filing/revising TRAN-1/TRAN-2 in terms of order dated 22.07.2022 & 02.09.2022 of Hon'ble Supreme Court in the case of Union of India vs. Filco Trade Centre Pvt. Ltd. -reg.

Circular No.180/12/2022-GST

9th September, 2022

Attention is invited to the directions issued by Hon'ble Supreme Court vide order dated 22.07.2022 in the matter of Union of India vs. Filco Trade Centre Pvt. Ltd. , SLP(C) No. 32709-32710/2018. The operative portion of the order reads as follows:

- "1. *Goods and Service Tax Network (GSTN) is directed to open common portal for filing concerned forms for availing Transitional Credit through TRAN-1 and TRAN-2 for two months i.e. w.e.f. 01.09.2022 to 31.10.2022.*
2. *Considering the judgments of the High Courts on the then prevailing peculiar circumstances, any aggrieved registered assessee is directed to file the relevant form or revise the already filed form irrespective of whether the taxpayer has filed writ petition before the High Court or whether the case of the taxpayer has been decided by Information Technology Grievance Redressal Committee (ITGRC).*
3. *GSTN has to ensure that there are no technical glitch during the said time.*
4. *The concerned officers are given 90 days thereafter to verify the veracity of the claim/ transitional credit and pass appropriate orders thereon on merits after granting appropriate reasonable opportunity to the parties concerned.*