

multiple Commissionerates, the show cause notice shall be adjudicated by the competent central tax officer in whose jurisdiction, the principal place of business of the noticee from whom the highest demand of central tax and/or integrated tax (including cess) has been made falls.

7. Notwithstanding anything contained in para 6 above, a show cause notice issued by DGGSTI in which the principal places of business of the noticees fall in multiple Commissionerates and where the central tax and/or integrated tax (including cess) involved is more than Rs. 5 crores shall be adjudicated by an officer of the rank of Additional Director/Additional Commissioner (as assigned by the Board), who shall not be on the strength of DGGSTI and working there at the time of adjudication. Cases of similar nature may also be assigned to such an officer.
8. In case show cause notices have been issued on similar issues to a noticee(s) and made answerable to different levels of adjudicating authorities within a Commissionerate, such show cause notices should be adjudicated by the adjudicating authority competent to decide the case involving the highest amount of central tax and/or integrated tax (including cess).

## **32**

### **Clarifications regarding GST in respect of certain services**

**Circular No. 32/06/2018-GST**

**12th February, 2018**

I am directed to issue clarification with regard to the following issues approved by the GST Council in its 25<sup>th</sup> meeting held on 18<sup>th</sup> January 2018:-

S. No.	Issue	Clarification
1.	Is hostel accommodation provided by Trusts to students covered within the definition of Charitable Activities and thus, exempt under Sl. No. 1 of notification No. 12/2017-CT (Rate).	Hostel accommodation services do not fall within the ambit of charitable activities as defined in para 2(r) of notification No. 12/2017-CT(Rate). However, services by a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes, having declared tariff of a unit of accommodation below one thousand rupees per day or equivalent are exempt. Thus, accommodation service in hostels including by Trusts having declared tariff below one thousand rupees per day is exempt. [Sl. No. 14 of notification No. 12/2017-CT(Rate) refers]



S. No.	Issue	Clarification
2.	<p>Is GST leviable on the fee/amount charged in the following situations/cases: –</p> <p>(1) A customer pays fees while registering complaints to Consumer Disputes Redressal Commission office and its subordinate offices. These fees are credited into State Customer Welfare Fund's bank account.</p> <p>(2) Consumer Disputes Redressal Commission office and its subordinate offices charge penalty in cash when it is required.</p> <p>(3) When a person files an appeal to Consumers Disputes Redressal Commission against order of District Forum, amount equal to 50% of total amount imposed by the District Forum or Rs 25000/- whichever is less, is required to be paid.</p>	<p>Services by any court or Tribunal established under any law for the time being in force is neither a supply of goods nor services. Consumer Disputes Redressal Commissions (National/ State/ District) may not be tribunals literally as they may not have been set up directly under Article 323B of the Constitution. However, they are clothed with the characteristics of a tribunal on account of the following: –</p> <p>(1) Statement of objects and reasons as mentioned in the Consumer Protection Bill state that one of its objects is to provide speedy and simple redressal to consumer disputes, for which a quasi-judicial machinery is sought to be set up at District, State and Central levels.</p> <p>(2) The President of the District/ State/National Disputes Redressal Commissions is a person who has been or is qualified to be a District Judge, High Court Judge and Supreme Court Judge respectively.</p> <p>(3) These Commissions have been vested with the powers of a civil court under CPC for issuing summons, enforcing attendance of defendants/ witnesses, reception of evidence, discovery/ production of documents, examination of witnesses, etc.</p> <p>(4) Every proceeding in these Commissions is deemed to be judicial proceedings as per sections 193/228 of IPC.</p> <p>(5) The Commissions have been deemed to be a civil court under CrPC.</p> <p>(6) Appeals against District Commissions lie to State Commission while appeals against the State Commissions lie to the National Commission. Appeals against National Commission lie to the Supreme Court.</p> <p>In view of the aforesaid, it is hereby <b>clarified</b> that fee paid by litigants in the Consumer Disputes Redressal Commissions are not leviable to GST. Any penalty imposed by or amount paid to these Commissions will also not attract GST.</p>



S. No.	Issue	Clarification
3.	Whether the services of elephant or camel ride, rickshaw ride and boat ride should be classified under heading 9964 (as passenger transport service) in which case, the rate of tax on such services will be 18% or under the heading 9996 (recreational, cultural and sporting services) treating them as joy rides, leviable to GST@ 28%?	Elephant/ camel joy rides cannot be classified as transportation services. These services will attract GST @ 18% with threshold exemption being available to small service providers. [Sl. No 34(iii) of notification No. 11/2017-CT(Rate) dated 28.06.2017 as amended by notification No. 1/2018-CT(Rate) dated 25.01.2018 refers]
4.	What is the GST rate applicable on rental services of self-propelled access equipment (Boom Scissors/ Telehandlers)? The equipment is imported at GST rate of 28% and leased further in India where operator is supplied by the leasing company, diesel for working of machine is supplied by customer and transportation cost including loading and unloading is also paid by the customer.	Leasing or rental services, with or without operator, for any purpose are taxed at the same rate of GST as applicable on supply of like goods involving transfer of title in goods. Thus, the GST rate for the rental services in the given case shall be 28%, provided the said goods attract GST of 28%. IGST paid at the time of import of these goods would be available for discharging IGST on rental services. Thus, only the value added gets taxed. [Sl. No 17(vii) of notification No. 11/2017-CT(Rate) dated 28.6.17 as amended refers].
5.	Is GST leviable in following cases: (1) Hospitals hire senior doctors/ consultants/ technicians independently, without any contract of such persons with the patient; and pay them consultancy charges, without there being any employer-employee relationship. Will such consultancy charges be exempt from GST? Will revenue take a stand that they are providing services to hospitals and not to patients and hence must pay GST? (2) Retention money: Hospitals charge the patients, say, Rs.10000/- and pay to the consultants/ technicians only Rs. 7500/- and keep the balance for providing ancillary services which include	Health care services provided by a clinical establishment, an authorised medical practitioner or para-medics are exempt. [Sl. No. 74 of notification No. 12/2017-CT(Rate) dated 28.06.2017 as amended refers]. (1) Services provided by senior doctors/ consultants/ technicians hired by the hospitals, whether employees or not, are healthcare services which are exempt. (2) Healthcare services have been defined to mean 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[para 2(zg) of notification No. 12/2017-CT(Rate)]. Therefore, hospitals also provide healthcare services. The entire amount charged by them from the patients including the retention money and the fee/payments made to the doctors etc., is to



S. No.	Issue	Clarification
	<p>nursing care, infrastructure facilities, paramedic care, emergency services, checking of temperature, weight, blood pressure etc. Will GST be applicable on such money retained by the hospitals?</p> <p>(3) Food supplied to the patients: Health care services provided by the clinical establishments will include food supplied to the patients; but such food may be prepared by the canteens run by the hospitals or may be outsourced by the Hospitals from outdoor caterers. When outsourced, there should be no ambiguity that the suppliers shall charge tax as applicable and hospital will get no ITC. If hospitals have their own canteens and prepare their own food; then no ITC will be available on inputs including capital goods and in turn if they supply food to the doctors and their staff; such supplies, even when not charged, may be subjected to GST.</p>	<p>wards the healthcare services provided by the hospitals to the patients and is exempt.</p> <p>(3) Food supplied to the in-patients as advised by the doctor/nutritionists is a part of composite supply of healthcare and not separately taxable. Other supplies of food by a hospital to patients (not admitted) or their attendants or visitors are taxable.</p>
6.	<p>Appropriate clarification may be issued regarding taxability of Cost Petroleum.</p>	<p>As per the Production Sharing Contract(PSC) between the Government and the oil exploration &amp; production contractors, in case of a commercial discovery of petroleum, the contractors are entitled to recover from the sale proceeds all expenses incurred in exploration, development, production and payment of royalty. Portion of the value of petroleum which the contractor is entitled to take in a year for recovery of these contract costs is called "Cost Petroleum".</p>



S. No.	Issue	Clarification
		<p>The relationship of the oil exploration and production contractors with the Government is not that of partners but that of licensor/lessor and licensee/lessee in terms of the Petroleum and Natural Gas Rules, 1959. Having acquired the right to explore, exploit and sell petroleum in lieu of royalty and a share in profit petroleum, contractors carry out the exploration and production of petroleum for themselves and not as a service to the Government. Para 8.1 of the Model Production Sharing Contract (MPSC) states that subject to the provisions of the PSC, the Contractor shall have exclusive right to carry out Petroleum Operations to recover costs and expenses as provided in this Contract. The oil exploration and production contractors conduct all petroleum operations at their sole risk, cost and expense. Hence, cost petroleum is not a consideration for service to GOI and thus not taxable per se. However, cost petroleum may be an indication of the value of mining or exploration services provided by operating member to the joint venture, in a situation where the operating member is found to be supplying service to the oil exploration and production joint venture.</p>

### 33

#### Directions under Section 168 of the CGST Act regarding non-transition of CENVAT credit under section 140 of CGST Act or non-utilization thereof in certain cases

**Circular No. 33/07/2018-GST**

**23rd February, 2018**

1. In exercise of the powers conferred under section 168 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "Act"), for the purposes of uniformity in implementation of the Act, the Central Board of Excise and Customs hereby directs the following.
2. **Non-utilization of Disputed Credit carried forward**
  - 2.1 Where in relation to a certain CENVAT credit pertaining to which a show cause notice was issued under rule 14 of the CENVAT Credit Rules, 2004, which has been adjudicated and where in the last adjudication order or the last order-