



Newsflash:
Summary of GST Circulars clarifying GST applicability on Liquidated damages, Notice pay recovery etc. and Clarifications on several rate related aspects



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1.0 Background

The Central Board of Indirect Taxes and Customs has issued circulars dated 3 August 2022 clarifying applicability of GST on payments in the nature of liquidated damages, notice pay recovery from employees, cancellation charges, etc and several taxability and rate related aspects as well.

The gist of the said circulars is summarized as under:

2.0 Circular No. 178/10/2022-GST

GST applicability on liquidated damages, compensation and penalty arising out of breach of contract or other provisions of law

The transactions covered under the entry at para 5(e) of Schedule II of CGST Act 2017 are to be treated as a supply of services; which reads as below:

“Agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act”

For an activity to be treated as a ‘service’, it is pertinent to check for the presence of below elements:

- Contractual relationship – express or implied, oral or written
- An activity to be done in exchange for a consideration
- Nexus between the supply and the consideration
- No presumption as to existence of an agreement

Taxability of several transactions being litigated since the erstwhile service tax regime, have been clarified as below:

Sr. No.	Particulars	Clarification as per the Circular
1	Liquidated Damages	<ul style="list-style-type: none"> ▪ The compensation specified in a written contract for breach of non-performance of the contract or parties of the contract is referred to as liquidated damages. ▪ By accepting the liquidated damages, the party aggrieved by breach of contract cannot be said to have permitted or tolerated the deviation or non-fulfilment of the promise by the other party. ▪ In absence of any express or implied agreement by the aggrieved party to refrain from or to tolerate an act or to do an act, liquidated damages are merely flow of money from the party who causes breach of the contract to the suffering party. Such payments do not constitute consideration for a supply and are not taxable. ▪ E.g. - damages resulting from damage to property, negligence, piracy, unauthorized use of trade name, copyright, penalty stipulated in a contract for delayed construction of houses, etc.

2	Compensation for cancellation of coal blocks	<ul style="list-style-type: none"> ▪ In accordance with the Coal Mines (Special Provisions) Act, 2015, prior allottee of mines were given compensation in the year 2016 towards the transfer of their rights / titles in the land, mine infrastructure etc, to the new entity as per the directions of Hon'ble Supreme Court ▪ The compensation was given not under a contract between the allottees and the Government, but under the provisions of the statute and in pursuance of the Supreme Court Order. ▪ Hence, the prior allottees of the coal block cannot be said to have supplied a service of tolerating an act to the Government, also the compensation paid by the Government for cancellation of coal blocks cannot be treated to be a consideration for such service.
3	Cheque Dishonor fine/penalty	<ul style="list-style-type: none"> ▪ The fine or penalty that the supplier or a banker imposes, for dishonour of a cheque, is imposed for not tolerating, penalizing and thereby deterring and discouraging such an act or situation. ▪ Therefore, cheque dishonor fine or penalty is not a consideration for any service and not taxable
4	Penalty imposed for violation of laws	<ul style="list-style-type: none"> ▪ Laws stipulate penalty not for tolerating violation but for not tolerating, penalising and deterring such violations. ▪ Fines and penalties imposed for violation of laws is not chargeable to GST.
5	Forfeiture of salary or payment of bond amount in the event of the employee leaving the employment before the minimum agreed period	<ul style="list-style-type: none"> ▪ The provisions for forfeiture of salary or recovery of bond amount on premature quitting of employment by the employee are incorporated in the employment contract to discourage and deter such situations. ▪ Such amounts recovered by the employer are not taxable as consideration for the service of agreeing to tolerate an act or a situation.
6	Compensation for not collecting toll charges	<ul style="list-style-type: none"> ▪ The compensation paid to the concessionaire by project authorities (NHAI) in lieu of suspension of toll collection during the demonetization period is in the nature of consideration for the services provided by toll operators i.e. access to a road or bridge. ▪ During the demonetisation period, the said services continued to be provided without collection of toll from the users, instead consideration was received from the project authority. ▪ There being no change in the service, and the principal service being exempt in nature, there would be no change in tax treatment if the consideration flows from a person other than the actual user of service
7	Late payment surcharge or fee	<ul style="list-style-type: none"> ▪ It is a general practice by the service providers of electricity, water, telecommunication services etc. to accept late payments with interest/fine/penalty. ▪ The said services of tolerating the act of late payment are naturally bundled and supplied in conjunction with the principal supply (i.e. electricity, water, etc.) ▪ Hence, it should be charged to GST at the same rate as that applicable to the principal supply
8	Fixed Capacity charges for Power	<ul style="list-style-type: none"> ▪ Electricity or power charges comprise of a minimum fixed charge (capacity charge) and variable per unit charge.

		<ul style="list-style-type: none"> Both the components of the price are charged for sale of electricity and electricity is exempt from GST. The minimum fixed charge or a part of it cannot be treated as a charge for tolerating the act of not consuming the contracted threshold.
9	Cancellation Charges	<ul style="list-style-type: none"> It is a common business practice for suppliers of services such as hotel accommodation, tour and travel, transportation etc. to provide the facility of cancellation of the intended supplies within a certain time period on payment of cancellation fee. Facilitation supply permitting cancellation of intended supplies against payment of cancellation fee or forfeiture of a part or whole of the consideration or security deposit in such cases should be charged at the rate of GST applicable to the principal supply.

3.0 [Circular No. 177/09/2022-TRU](#)

Clarification regarding applicable GST Rates & Exemptions on certain services

Sr. No.	Particulars	Clarification as per the Circular
1	Applicable rate of GST on supply of ice-cream by ice-cream parlours during the period 01 July 2017 to 05 October 2021	<ul style="list-style-type: none"> CBIC Circular 164/20/2021-GST dated 06 October 2021 clarified that ice cream sold by an ice-cream parlour or any similar outlets attracts GST at 18% with ITC. To avoid unnecessary litigation on the matter, it is clarified that past cases of payment of GST at 5% without ITC shall be treated as GST fully paid. No refund of GST shall be allowed, if already paid at 18%. W.e.f. 06 October 2021 ice-cream parlours are required to pay GST on supply of ice-cream at GST Rate of 18% with ITC.
2	Applicability of GST on application fee charged for entrance / fee charged for issuance of eligibility certificate / migration certificate by educational institutions	<ul style="list-style-type: none"> It is clarified that the exemption in relation to education services (vide entry 66 of the notification No. 12/2017 Central Tax (Rate) dated 28 June 2017) covers 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
3	Whether storage or warehousing of cotton in baled or ginned form is covered under exemption notification	<ul style="list-style-type: none"> It is clarified that service by way of storage or warehousing of cotton in ginned and or baled form was covered under exemption entry 24B of notification No. 12/2017- Central Tax (Rate) dated 28 June 2017 in the category of raw vegetable fibres such as cotton. However, the said exemption has been withdrawn w.e.f. 18 July 2022 and the services become taxable effective from this date.
4	Whether services associated with transit	<ul style="list-style-type: none"> It is clarified that exemption under Sl.No. 9B of Notification 12/2017- Central Tax (Rate) covers services associated with

	cargo both to and from Nepal and Bhutan is covered under exemption notification	<p>transit cargo both to and from Nepal and Bhutan.</p> <ul style="list-style-type: none"> It is further clarified that movement of empty containers from Nepal and Bhutan, after delivery of goods there is also covered by the exemption.
5	Applicability of GST on sanitation and conservancy services to Army and Central/State Government departments	<ul style="list-style-type: none"> It is clarified that if such services are procured by Indian Army or any other Government Ministry/Department for performing functions listed in 11th and 12th Schedule of the Constitution, it would be exempt from GST (Entry 3& 3A of notification 12/2017-Central Tax (Rate) dated 28 June 2017) However, where the functions listed in the 11th and 12th Schedule are not being performed, in the manner as a local authority does for the general public, the same are not eligible for exemption.
6	Whether concessional GST rate of 5% is applicable to selling of space for advertisement in souvenirs	<ul style="list-style-type: none"> It is clarified that 'book' has been defined in the Press and Registration of Books Act, 1867 in an inclusive manner with a wide ambit which would covers souvenir book Thus, space for advertisement in souvenir book is covered under serial number (i) of entry 21 of Notification No.11/2017-Central Tax (Rate) and chargeable to GST at 5%.
7	Taxability and GST Rate on transport of minerals from mining pit head to railway siding, beneficiation plant etc. by vehicles deployed with driver for a specified duration of time	<ul style="list-style-type: none"> It is clarified that 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. Hence, it is not eligible for exemption as transportation of goods by road except GTA. 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 July 2022. Prior to 18 July 2022, GST at the rate of 18% was applicable on these services.
8	Whether preferential location charges collected in addition to lease premium for long term lease of land constitute part of the lease premium, and exempt from GST	<ul style="list-style-type: none"> 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 thus, eligible for exemption under Sl. No. 41 of Notification no. 12/2017- Central Tax (Rate) dated 28 June 2017.
9	Applicability of GST on payment of honorarium to guest anchors	<ul style="list-style-type: none"> It is clarified that the 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) may not get registered in view of not crossing the prescribed threshold.
10	Whether the additional toll fees collected in the form of higher toll charges from vehicles not having fastag is exempt from GST	<ul style="list-style-type: none"> Entry 23 of notification No.12/2017- Central Tax (Rate) dated 28 June 2017 exempts service by way of access to a road or a bridge on payment of toll charges. 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 also be considered to be exempt from GST

11	Applicability of GST on services in the form of Assisted Reproductive Technology (ART)/ In vitro fertilization (IVF)	<ul style="list-style-type: none"> ▪ It is clarified that services by way of ART / IVF are covered under the definition of health care services for the purpose of exemption from GST (Sl. No. 74 of notification No. 12/2017- Central Tax (Rate) dated 28 June 2017.)
12	Taxability of sale of land after levelling, laying down of drainage lines etc	<ul style="list-style-type: none"> ▪ As per Schedule III of CGST Act 2017, 'sale of land' is neither a supply of goods nor a supply of services, hence does not attract levy of GST ▪ It is clarified that sale of land after some development such as levelling, laying down drainage lines, water / electricity lines etc. is also sale of land and thus, out of purview of GST ▪ Noteworthy is 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 rates for such services.
13	Situations in which corporate recipients are liable to pay GST on renting of motor vehicles designed to carry passengers	<ul style="list-style-type: none"> ▪ It is clarified that where the body corporate hires the motor vehicle (for transport of employees etc.) for a period during which the motor vehicle shall be at the disposal of the body corporate, the body corporate shall be liable to pay GST on the same under RCM (renting of motor vehicles classifiable under HSN 9966). ▪ 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, the body corporate shall not be liable to pay GST under RCM (passenger transportation services classifiable under HSN 9964)
14	Whether hiring of vehicles by firms for transportation of their employees to and from work is covered under exempt notification (i.e. transport of passengers by non-air-conditioned contract carriage)	<ul style="list-style-type: none"> ▪ It is clarified that the exemption would apply to passenger transportation services by non-air conditioned contract carriages where 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 free to decide the manner of usage (route and schedule) subject to conditions of agreement entered into with the service provider.
15	Whether supply of service of construction, supply, installation and commissioning of dairy plant on turn-key basis constitutes a works contract service and eligible for concessional rate of GST prior to 18 July 2022	<ul style="list-style-type: none"> ▪ It is clarified that a contract of construction, installation and commissioning of a dairy plant constitutes supply of works contract. ▪ 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 June 2017. However, w.e.f. 18 July 2022, such works contract services would attract 18% GST in view of amendment in the rate notification.
16	Applicability of GST on tickets of private ferry used for passenger transportation	<ul style="list-style-type: none"> ▪ It is clarified that the exemption would apply to ferry 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. ▪ 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

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