

## Indirect Taxes



### Detailed clarifications on the issues examined in the 43<sup>rd</sup> GST Council meeting

#### Clarification regarding applicability of GST on supply of food in Anganwadis and Schools

Entry 66 clause (b)(ii) of notification No. 12/2017-Central Tax (Rate) dated 28th June, 2017, exempts *Services provided to an educational institution, by way of catering, including any mid-day meals scheme sponsored by the Central Government, State Government or Union territory.* This entry applies to pre-school and schools.

Accordingly, it is clarified that services provided to an educational institution by way of serving of food (catering including mid-day meals) is exempt from levy of GST irrespective of its funding from government grants or corporate donations [under said entry 66 (b)(ii)]. Educational institutions as defined in the notification include aganwadi. Hence, serving of food to anganwadi shall also be covered by said exemption, whether sponsored by government or through donation from corporates.

**Source: Circular No. 149/05/2021-GST dated 17-06-2021**

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#### Clarification regarding applicability of GST on the activity of construction of road where considerations are received in deferred payment (annuity)

GST is exempt on service, *falling under heading 9967 (service code), by way of access to a road or a bridge on payment of annuity* [entry 23A of notification No.

12/2017-Central Tax]. Heading 9967 covers *“supporting services in transport”* under which code 996742 covers *“operation services of National Highways, State Highways, Expressways, Roads & streets; bridges and tunnel operation services”*. Entry 23 of said notification exempts *“service by way of access to a road or a bridge on payment of toll”*. Together the entries 23 and 23A exempt access to road or bridge, whether the consideration are in the form of toll or annuity [heading 9967].

Services by way of construction of road fall under heading 9954. This heading *inter alia* covers general construction services of highways, streets, roads railways, airfield runways, bridges and tunnels. Consideration for construction of road service may be paid partially upfront and partially in deferred annual payments (and may be called annuities). Said entry 23A does not apply to services falling under heading 9954 (it specifically covers heading 9967 only). Therefore, plain reading of entry 23A makes it clear that it does not cover construction of road services (falling under heading 9954), even if deferred payment is made by way of instalments (annuities).

Accordingly, as recommended by the GST Council, it is hereby clarified that *Entry 23A of notification No. 12/2017-CT(R)* does not exempt GST on the annuity (deferred payments) paid for construction of roads.

**Source: Circular No. 150/06/2021-GST dated 17-06-2021**

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**Clarification regarding GST on supply of various services by Central and State Board (such as National Board of Examination).**

According to explanation 3(iv) of the notification No. 12/ 2017 CTR, “Central and State Educational Boards” are treated as Educational Institution for the limited purpose of providing services by way of conduct of examination to the students. Therefore, NBE is an ‘Educational Institution’ in so far as it provides services by way of conduct of examination, including any entrance examination, to the students. Thus, it is clarified that;

GST is exempt on services provided by Central or State Boards (including the boards such as NBE) by way of conduct of examination for the students, including conduct of entrance examination for admission to educational institution [under S. No. 66 (aa) of NN. 12/2017-CT(R) dated 28-06-2017].

GST is also exempt on input services relating to admission to, or conduct of examination, such as online testing service, result publication, printing of notification for examination, admit card and questions papers etc, when provided to such Boards [under S. No. 66 (b) (iv) of NN. 12/2017-CT(R) dated 28-06-2017].

However, GST at the rate of 18% applies to other services provided by such Boards, namely of providing accreditation to an institution or to a professional (accreditation fee or registration fee such as fee for FMGE screening test ) so as to authorise them to provide their respective services.

**Source: Circular No. 151/07/2021-GST dated 17-06-2021**

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**Clarification regarding rate of tax applicable on construction services provided to a Government Entity, in relation to construction such as of a Ropeway on turnkey basis**

According to entry No. 3(vi) of notification No. 11/2017-CT (R) dated 28.06.2017, GST rate of 12% is applicable, inter alia, on-

*“(vi) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, (other than that covered by items (i), (ia), (ib), (ic), (id), (ie) and (if) above) provided to the Central Government, State Government, Union Territory, a local authority a Governmental Authority or a Government Entity, by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of –  
(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession; “*

....

Thus, said entry No 3 (vi) does not apply to any works contract that is meant for the purposes of commerce, industry, business of profession, even if such service is provided to the Central Government, State Government, Union Territory, a local authority a Governmental Authority or a Government Entity. The doubt seems to have arisen in the instant cases as Explanation to the said entry states, the term ‘business’ shall not include any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities. However, this explanation does not apply to Governmental Authority or Government Entity, as defined in clause (ix) and (x) of the explanation to said notification. Further, civil constructions, such as rope way for tourism development shall not be covered by said entry 3(vi) not being a structure that is meant predominantly for purposes other than business. While road, bridge, terminal, or railways are covered

by entry No. 3(iv) and 3(v) of said notification, structures like ropeway are not covered by these entries too. Therefore, works contract service provided by way of construction such as of rope way shall fall under entry at sl. No. 3(xii) of notification 11/2017-(CTR) and attract GST at the rate of 18%.

**Source: Circular No. 152/08/2021-GST dated 17-06-2021**

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### **GST on milling of wheat into flour or paddy into rice for distribution by State Governments under PDS**

Clarification is sought that Whether composite supply of service by way of milling of wheat into wheat flour, alongwith fortification, by any person to a State Government for distribution of such wheat flour under Public Distribution System is eligible for exemption under entry No. 3A of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017.

It is clarified that Public Distribution specifically figures at entry 28 of the 11th Schedule to the constitution, which lists the activities that may be entrusted to a Panchayat under Article 243G of the Constitution. Hence, said entry No. 3A would apply to composite supply of milling of wheat and fortification thereof by miller, or of paddy into rice.

In case the supply of service by way of milling of wheat into flour or of paddy into rice, is not eligible for exemption under Sl. No. 3 A of Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 for the reason that value of goods supply in such a composite supply exceeds 25%, then the applicable GST rate would be 5% if such composite supply is provided to a registered person, being a job work service (entry No. 26 of notification No. 11/2017- Central Tax (Rate) dated 28.06.2017). Combined reading of the definition of job-work [section 2(68), 2(94), 22, 24, 25 and section 51] makes it clear that a person registered only for the purpose of deduction of tax under section 51 of the CGST Act is also a registered person for the

purposes of the said entry No. 26, and thus said supply to such person is also entitled for 5% rate.

**Source: Circular No. 153/09/2021-GST dated 17-06-2021**

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### **GST on service supplied by State Govt. to their undertakings or PSUs by way of guaranteeing loans taken by them**

Entry No. 34A of Notification no. 12/2017-Central Tax (Rate) dated 28.06.2017 exempts “Services supplied by Central Government, State Government, Union territory to their undertakings or Public Sector Undertakings (PSUs) by way of guaranteeing the loans taken by such undertakings or PSUs from the banking companies and financial institutions.”

Accordingly, as recommended by the Council, it is reiterated that guaranteeing of loans by Central or State Government for their undertaking or PSU is specifically exempt under said entry No. 34A.

**Source: Circular No. 154/10/2021-GST dated 17-06-2021**

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### **Clarification regarding GST rate on laterals/parts of Sprinklers or Drip Irrigation System**

The GST rate on Sprinklers or Drip Irrigation System along with their laterals/parts are governed by S.No. ‘195B’ under Schedule II of notification No. 1/2017-Central Tax (Rate), dated 28th June, 2017 which has been inserted vide notification No. 6/2018- Central Tax (Rate), dated 25th January, 2018 and reads as below:

S. No.	Chapter Heading/Sub-heading/Tariff Item	Description of Goods	CGST Rate
195B	8424	Sprinklers; drip irrigation systems including laterals; mechanical sprayer	6%

The matter is examined. The intention of this entry has been to cover laterals (pipes to be used solely with with sprinklers/drip irrigation system) and such parts that are suitable for use solely or principally with 'sprinklers or drip irrigation system', as classifiable under heading 8424 as per Note 2 (b) to Section XVI to the HSN. Hence, laterals/parts to be used solely or principally with sprinklers or drip irrigation system, which are classifiable under heading 8424, would attract a GST of 12%, even if supplied separately. However, any part of general use, which gets classified in a heading other than 8424, in terms of Section Note and Chapter Notes to HSN, shall attract GST as applicable to the respective heading.

**Source: Circular No. 154/11/2021-GST dated 17-06-2021**

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