

## CENTRAL GST

CA. Rajiv Luthia, CA. Jinit Shah

**CBIC vide Notification No. 17/2022 -CT dated 1st August,2022** provide that registered person other than government department, a local authority, SEZ unit and those referred to in rules (2), (3), (4) and (4A) of Rule 54 whose aggregate turnover in any preceding financial year from 2017-18 onwards exceeds 10 Crore rupees shall issue E-Invoice & other prescribed documents in respect of supply of goods or services or both to a registered person or for exports w.e.f. 1st October, 2022. The current limit of Rs. 20 crore notified vide notification no. 1/2022-CT dated 24th Feb, 2022 stands modified to that extent.

**CBIC vide Order No. 1/2022-GST dated 21st July, 2022** has authorised Principal Director General/ Director General of Directorate General of Analytics and Risk Management (DGARM), CBIC, New Delhi to exercise the functions under 96(4)(c) [Verification of credentials of the exporter, including the availment of ITC by the exporter for withholding of refund claim] of the CGST Rules, throughout the territory of India.

**CBIC vide Circular No. 177/09/2022 dated 3rd August, 2022** has clarified as follows:

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

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.

- **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**

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.

- **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.**

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.

- **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**

It is clarified that exemption under Sr. No. 9B of Notification 12/2017- Central Tax (Rate) covers services associated with transit cargo both to and from Nepal and Bhutan.

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.

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

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.

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).

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

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%.

- **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.**

It is clarified that 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.

Accordingly, it has been 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%.

- **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;**

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.

- **Applicability of GST on payment of honorarium to the Guest Anchors**

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.

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

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 and thus exempted.

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

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 exemption notification.

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

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.

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.

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

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.

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.

- **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**

It is clarified that 'charter or hire' excluded from the 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.

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.

- **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.**

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.

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).

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

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.

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.

CBIC vide Circular No. 178/10/2022 dated 3rd August, 2022 has issued clarifications regarding 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.

CBIC vide Circular No. 179/11/2022 dated 3rd August, 2022 has issued following 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.

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

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)

- **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**

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.

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.

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

It is 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.

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].

- **Treated sewage water attracts Nil rate of GST**

It is 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.

- **Nicotine Polacrilex Gum attracts a GST rate of 18%**

It is 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% [SI. No. 26B in Schedule III of notification no. 1/2017-Central Tax (Rate), dated the 28th June, 2017].

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

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.

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

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.

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	Aquatic feed including shrimp feed and prawn feed, poultry feed & cattle feed, including	Nil

Tax (Rate), dated the 28th June, 2017	grass, hay & straw, supplement & husk of pulses, concentrates & additives, wheat bran & de-oiled cake[other than rice bran]	
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%

It is 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 of the said Circular.

**CBIC vide Instruction No. 02/2022-23 (GST-Investigation) dated 17th August, 2022 provides following guidelines for arrest and bail in relation to offence punishable under the CGST Act, 2017:**

- CBIC has examined Hon'ble Supreme Court's Judgment dated 16th August, 2021 in the criminal Appeal No. 838 of 2021 and issued instruction regarding power to arrest. The said instruction issued provides for detailed guidelines on conditions precedent to arrest, procedure for arrest, post arrest formalities and reporting requirements, the relevant paras of the guidelines are as under:

- **CONDITIONS PRECEDENT TO ARREST**

Before placing a person under arrest for the offence punishable u/s 132(1)(i)(ii)(iii) or (2), the legal requirements must be fulfilled. The reasons to believe to arrive at a decision to place an alleged offender under arrest must be unambiguous and amply clear. The reasons to believe must be based on credible material.

The arrest should not be made in routine and mechanical manner. Even if all the legal conditions precedent to arrest mentioned in Section 132 are fulfilled, that will not, ipso facto, mean that an arrest must be made. Once the legal ingredients of the offence are made out, the Commissioner or the competent authority must then determine if the answer to any or some of the following questions is in the affirmative:

- Whether the person was concerned in the non-bailable offence or credible information has been received, or a reasonable suspicion exists, of his having been so concerned?
- Whether arrest is necessary to ensure proper investigation of the offence?
- Whether the person, if not restricted, is likely to tamper the course of further investigation or is likely to tamper with evidence or intimidate or influence witnesses?
- Whether person is mastermind or key operator effecting proxy/ benami transaction in the name of dummy GSTIN or non-existent persons, etc. for passing fraudulent input tax credit etc.?
- As unless such person is arrested, his presence before investigating officer cannot be ensured.

Approval to arrest should be granted only where the intent to evade tax or commit acts leading to availment or utilization of wrongful ITC or fraudulent refund of tax or failure to pay amount collected as tax is evident and element of mens rea / guilty mind is palpable.

Thus, the relevant factors before deciding to arrest a person, apart from fulfillment of the legal requirements, must be that the need to ensure proper investigation and prevent the possibility of tampering with evidence or intimidating or influencing witnesses exists.

Arrest should, however, not be resorted to in cases of technical nature i.e. where the demand of tax is based on a difference of opinion regarding interpretation of Law.

- **PROCEDURE FOR ARREST**

Principal Commissioner/Commissioner has reason to believe that the person has committed an offence as mentioned in Section 132 and may authorize an officer of central tax to arrest the concerned person(s).

Arrest Memo must be in Format as per Circular No. 128/47/2019-GST dated 23rd December, 2019. The arrest memo should indicate relevant section (s) attracted to the case. In addition, following information must be prescribed:

- Grounds of the arrest must be explained.
- A nominated or authorized person of the arrested person should be informed immediately and this fact shall be mentioned in the arrest memo;
- The date and time of arrest shall be mentioned and should be given with proper acknowledgment.

A separate arrest memo has to be made to each individual/arrested person even if several arrests in single case.

Document Identification Number (DIN) is a mandatory on all communication issued by officers of CBIC to tax payers and other concerned persons for the purpose of investigation.

There are certain modalities which should be complied with at the time of arrest and pursuant to an arrest, which include the following:

- Women should be arrested by only women officer
- Medical examination should be conducted by a medical officer in the service and in case the medical officer is not available, by a registered medical practitioner. Examination of Female shall be made only by or under supervision of a female medical officer.
- It shall be the duty of the person having the custody of an arrested person to take reasonable care of the health and safety of the arrested person.
- Arrest should be made with minimal use of force and publicity, and without violence.

- **POST ARREST FORMALITIES**

The procedure is separately outlined for the different categories of offences, as listed in Section 132(4) and (5) as amended:

- In cases, where a person is arrested u/s 69(1) for an offence specified u/s 132(4), the Assistant Commissioner or Deputy Commissioner is bound to release a person on bail against a bail bond. The bail conditions should be informed in writing to the arrested person and also on telephone to the nominated person of the person arrested. The arrested person should also be allowed to talk to the nominated person.
- The amount to be indicated in the personal bail bond and surety will depend upon the facts and circumstances of each case.
- If the conditions of the bail are fulfilled he shall be released on bail. However, only in cases where the conditions for granting bail are not fulfilled, the arrested person shall be produced before the appropriate Magistrate within twenty-four hours of arrest. If necessary, the arrested person may be handed over to the nearest police station for his safe custody, during the night under a challan, before he is produced before the Court.

Formats of the relevant documentation i.e. Bail Bond in the Code of Criminal Procedure, 1973 and the Challan for handing over to the police should be followed.

If no bail is granted after the arrest the prosecution complaint u/s 132 must be filed before the competent court within 60 days.

Every Commissionerate/Directorate should maintain a Bail Register. The money/ instruments/documents received as surety should be kept in safe custody of a single nominated officer.

- **REPORTS TO BE SENT**

Pr. (DGGI)/ Pr. Chief Commissioner(s)/ Chief Commissioner(s) shall send a report on every arrest to Member (Compliance Management) as well as to the Zonal Member within 24 hours of the arrest. With effect from September, 2022 to maintain an all India record of arrests made in CGST, a monthly report of all persons arrested in the Zone shall be sent to the Directorate General of GST Intelligence, Headquarters, New Delhi in the format, prescribed in Annexure-II, by the 5th of the succeeding month. Then after DGGI will send complied Zone wise report to Commissioner (GST-Investigation), CBIC by 10th of every month.

All such reports shall be sent only by e-mail.

**CBIC vide Instruction No. 03/2022-23 (GST-Investigation) dated 17th August, 2022 provides Guidelines on Issuance of SUMMONS u/s 70**

Summons has been issued by the field formations to the top senior officials of the companies to call for material evidence/ documents.

Following guidelines must be followed in matters related to investigation under CGST

- Summons by Superintendents should be issued after obtaining prior written permission from an officer not below the rank of Deputy/ Assistant Commissioner with the reasons for issuance to be recorded in writing.
- When Prior written permission is not possible oral/telephonic permission from such officer must be obtained.
- Officer should record in file about appearance/ non-appearance of the summoned person and place a copy of statement recorded in file.
- Summons should normally indicate the name of the offender(s) against whom the case is being investigated unless revelation of the name of the offender is detrimental to the cause of investigation.
- Issuance of summons may be avoided to call upon statutory documents which are digitally/ online available in the GST portal.
- Senior management officials such as CMD/ MD/ CEO/ CFO/ similar officers of any company or a PSU should not generally be issued summons in the first instance. Except when there are clear indications in the investigation of their involvement in the decision making process which led to loss of revenue.
- DIN is mandatory on each and every communication issued by officers of CBIC to tax payers.



- The summoning officer must be present at the time and date for which summons is issued. In case of any exigency, the summoned person must be informed in advance in writing or orally.
- All persons summoned are bound to appear before the officers concerned, the only exception being women who do not by tradition appear in public or privileged persons.
- Issuance of repeated summons without ensuring service of the summons must be avoided. But if person does not join investigation even after repeated summoned then after giving 3 summons at reasonable intervals, a complaint should be filed before jurisdictional magistrate. As inquiry u/s 70 deemed to be consider as "judicial proceedings" as per section 193 and 128 of Indian Penal Code.