

Government of Bihar
Commercial Taxes Department

File No.- Bikri-kar/Vividh-28/2018-(khand-II) 2187

dated-... 26/10/21.....

From:

Dr. Pratima,
Commissioner State Tax-cum-Secretary,
Bihar, Patna.

To,

All Additional Commissioner,
All Circle Incharge,
Bihar.

Madam/Sir,

Sub: Clarifications regarding applicable GST rates & exemptions on certain services-reg.

Ref: CBIC Circular No. 164/20/2021-GST, dated the 06th October, 2021

Queries have been raised seeking clarification in respect of applicable GST rates on the following activities:

1. Services by cloud kitchens/central kitchens,
2. Supply of ice cream by ice cream parlors,
3. Coaching services to students provided by coaching institutions and NGOs under the central sector scheme of 'Scholarships for students with Disabilities',
4. Satellite launch services provided by NSIL.
5. Overloading charges at toll plaza,
6. Renting of vehicles by State Transport Undertakings and Local Authorities,
7. Services by way of grant of mineral exploration and mining rights attracted GST,
8. Admission to amusement parks having rides etc. ,
9. Services supplied by contract manufacture to brand owners or others for manufacture of alcoholic liquor for human consumption.

2. The issues have been examined by GST Council in the 45rd meeting of the Council held on 17th September, 2021. The issue-wise clarifications are given below:

3. Services by cloud kitchens/central kitchens:

3.1 Queries have been raised requesting for clarification regarding the classification and rate of GST on services rendered by Cloud kitchen or Central Kitchen.

3.2 The word 'restaurant service' is defined in Notification No. 11/2017 – STR as below: -
'Restaurant service' means supply, by way of or as part of any service, of goods, being food or any other article for human consumption or any drink, provided by a restaurant, eating joint including mess, canteen, whether for consumption on or away from the premises where such food or any other article for human consumption or drink is supplied.'

3.3 The explanatory notes to the classification of service state that 'restaurant service' includes services provided by Restaurants, Cafes and similar eating facilities including takeaway services, room services and door delivery of food. Therefore, it is clear that takeaway services and door delivery services for consumption of food are also considered as restaurant service and, accordingly, service by an entity, by way of cooking and supply of food, even if it is exclusively by way of takeaway or door delivery or through or from any restaurant would be covered by restaurant service. This would thus cover services provided by cloud kitchens/central kitchens.

3.4 Accordingly, as recommended by the Council, it is clarified that service provided by way of cooking and supply of food, by cloud kitchens/central kitchens are covered under 'restaurant service', as defined in notification No. 11/2017- State Tax (Rate) and attract 5% GST [without ITC].

4. Supply of ice cream by ice cream parlors

4.1 Queries have been raised requesting for clarification regarding the supplies provided in an ice cream outlet.

4.2 Ice cream parlors sell already manufactured ice- cream and they do not have a character of a restaurant. Ice-cream parlors do not engage in any form of cooking at any stage, whereas, restaurant service involves the aspect of cooking/preparing during the course of providing service. Thus, supply of ice-cream parlor stands on a different footing than restaurant service. Their activity entails supply of ice cream as goods (a manufactured item) and not as a service, even if certain ingredients of service are present.

4.3 Accordingly, as recommended by the Council, it is clarified that where ice cream parlors sell already manufactured ice- cream and do not cook/prepare ice-cream for consumption like a restaurant, it is supply of ice cream as goods and not as a service, even if the supply has certain ingredients of service. Accordingly, it is clarified that ice cream sold by a parlor or any similar outlet would attract GST at the rate of 18%.

5. Coaching services supplied by coaching institutions and NGOs under the central sector scheme of 'Scholarships for students with Disabilities'

5.1 Queries have been raised seeking clarification regarding applicability of GST on free coaching services provided by coaching institutions and NGOs under the central scheme of "Scholarships for students with Disabilities" where entire expenditure is provided by Government to coaching institutions by way of grant in aid.

5.2 In this regard, it is to mention that entry 72 of notification No. 12/2017-State Tax (Rate) dated 29th June, 2017, exempts services provided to the Central Government, State Government, Union territory administration under any training programme for which total expenditure is borne by the Central Government, State Government, Union territory administration.

5.3 The scope of this entry is wide enough to cover coaching services provided by coaching institutions and NGOs under the central scheme of 'Scholarships for students with Disabilities' where total expenditure is borne by the Government by way of funding to institute providing such coaching.

5.4 Accordingly, as recommended by the GST Council, it is clarified that services provided by any institutions/ NGOs under the central scheme of 'Scholarships for students with Disabilities' where total expenditure is borne by the Government is covered under entry 72 of notification No. 12/2017-State Tax (Rate) dated 29th June, 2017 and hence exempt from GST.

6. Satellite launch services provided by NSIL.

6.1 Query has been raised for issuance of a clarification recognizing Satellite Launch Services supplied by M/s New Space India Limited (NSIL), a wholly-owned Government of India Company under the administrative control of Department of Space (DoS), to international customers as 'Export of Service'.

6.2 It has been clarified vide Circular No. 2/1/2017-IGST dated 27.09.2017 that Place of Supply (PoS) of satellite launch services supplied by ANTRIX Corporation Ltd to customers located outside India is outside India and such supply which meets the requirements of section 2(6) of IGST Act, constitutes export of service and shall be zero rated. If the service recipient is located in India, the satellite launch services would be taxable.

6.3 As recommended by the Council, it is clarified that as the satellite launch services supplied by NSIL are similar to those supplied by ANTRIX Corporation Ltd, the said circular No. 2/1/2017-IGST dated 27.09.2017, is applicable to them.

7. GST on overloading charges at toll plaza.

7.1 Queries have been raised seeking clarification regarding applicability of GST on Overloading charges collected at Toll Plazas.

7.2 Entry 23 of notification No. 12/2017-State Tax (Rate) dated 29th June, 2017, exempts Service by way of access to a road or a bridge on payment of toll charges.

7.3 *Vide* notification dated 25th Sep. 2018, issued by Ministry of Road Transport And Highways, overloaded vehicles were allowed to ply on the national highways after payment of fees with multiplying factor of 2/4/6/8/10 times the base rate of toll. Therefore, its essence overloading fees are effectively higher toll charges.

7.4 As recommended by the GST Council, it is clarified that overloading charges at toll plazas would get the same treatment as given to toll charges.

8. Renting of vehicles to State Transport Undertakings and Local Authorities

8.1 Queries have been raised seeking clarification regarding eligibility of the service of renting of vehicles to State Transport Undertakings (STUs) and Local Authorities for exemption from GST under notification No. 12/2017-State Tax (Rate) dated 29.06.2017. Sl. No. 22 of this notification exempts "*services by way of giving on hire (a) to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers; or (aa) to a local authority, an Electrically Operate vehicle meant to carry more than twelve passengers*".

8.2 This issue has arisen in the wake of ruling issued by an Authority for Advance Ruling that the entry at Sl. No. 22 of notification No. 12/2017-State Tax (Rate) exempts services by way of giving on hire vehicles to a State Transport Undertaking or a local authority and not renting of

vehicles to them. The ruling referred to certain case laws pertaining to erstwhile positive list based service tax regime.

8.3 It is relevant to note in this context that Schedule II of BGST Act, 2017 declares supply of any goods without transfer of title as supply of service even if right to use is transferred. Transfer of right to use has been declared as a supply of service [Schedule II, Entry 5(f) *refers*]

8.4 The issue was placed before the 45th GST Council Meeting held on 17.09.2021. As recommended by the GST Council, it is clarified that the expression “*giving on hire*” in Sl. No. 22 of the Notification No. 12/2017-ST (Rate) includes renting of vehicles. Accordingly, services where the said vehicles are rented or given on hire to State Transport Undertakings or Local Authorities are eligible for the said exemption irrespective of whether such vehicles are run on routes, timings as decided by the State Transport Undertakings or Local Authorities and under effective control of State Transport Undertakings or Local Authorities which determines the rules of operation or plying of vehicles .

9. Services by way of grant of mineral exploration and mining rights

9.1 Queries have been raised requesting for clarification as to the rate of GST applicable on supply of services by way of granting mineral exploration and mining rights during the period from 1.07.2017 to 31.12.2018. With effect from 1.1.2019, the rate schedule has been specifically amended and it is undisputed since then that such service attracts GST at the rate of 18%.

9.2 For the disputed period [1.7.2017 to 31.12.2018], divergent rulings have been issued by Authorities for Advance Ruling (AAR) and Appellate Authorities for Advance Ruling (AAAR) of various States on the GST rate applicable on the same. AAR, Haryana in case of M/s Pioneer Partners and AAR, Chhattisgarh in case of M/s NMDC have ruled that the service of grant of mining leases is classifiable under Service Code 997337 (*licensing services for the right to use minerals including its exploration and evaluation*) and attracted, prior to 01.01.2019, the same rate of GST as applicable to minerals, that is, 5% as prescribed against Sl. No. 17, item (viii) of Notification No. 11/2017-State Tax (Rate). The rate prescribed against this entry prior to 01.01.2019 was “*the same rate as applicable on supply of like goods involving transfer of title in goods*”. In certain other advance rulings, a view has been taken that grant of rights for mineral exploration and mining would be covered under heading 9991 and would attract GST at the rate of 18%.

9.2.1 AAAR, Odisha, on the other hand has ruled vide Order dated 5.11.2019 in the case of M/s Penguin Trading and Agencies Limited that grant of mining lease was taxable @ 18% prior to 01.01.2019. The Appellate Authority in this case observed that GST rate applicable against Sl. No. 17 item (viii) of Notification No. 11/2017-Central Tax (Rate) prior to 01.01.2019 was not implementable. Unlike leasing or renting of goods, there are no underlying goods in case of leasing of mining area. The rate prescribed for goods cannot be made applicable to leasing of mining area, which confers the right to extract and appropriate minerals. The mining lease by Government, not being a lease of any goods, cannot attract the rate applicable to sale of like goods. Appellate Authority for Advance Ruling, Odisha has further held that the amendment carried out vide Notification No. 27/2018-Central Tax (Rate), dated 31.12.2018, which restricted the “*same rate as applicable to supply of goods involving transfer of title in goods*” only to leasing or renting of goods was to clarify the legislative intent as well as to resolve the unintended interpretation. It is a settled law that interpretation which defeats the intention of legislature cannot be adopted. It accordingly upheld that “*licensing services for the right to use minerals including its exploration and evaluation*” falling under service code 997337 were taxable @ 18% during 01.07.2017 to 31.12.2018.

9.2.2 It may be noted that the expression “same rate of tax as applicable on supply of like goods involving transfer of title in goods” applies in case of leasing or renting of goods. In case of grant of mining rights, there is no leasing or renting of goods. Hence, the said entry does not extend to grant of mining rights which is an entirely different activity.

9.3 The issue was placed before the GST Council in its 45th meeting held on 17.9.2021.

9.3.1 As regards classification of service, it was recommended by the Council that service by way of grant of mineral exploration and mining rights most appropriately fall under service code 997337, i.e. *“licensing services for the right to use minerals including its exploration and evaluation”*.

9.3.2 As regards the applicable rate for the period from 1.7.2017 to 31.12.2018, the council took note of the following facts, namely,-

(i) GST Council in its 4th meeting held on 3rd & 4th November, 2016 had decided that supply of services shall be generally taxed at the rate of 18%.

(ii) More importantly, the GST Council in its 14th meeting held on 18th & 19th May, 2019, while recommending the rate schedules of services (5%, 12%, 18% and 28%), specifically recommended that all the residuary services would attract GST at the rate of 18%.

(iii) The rate applicable on the service of grant of mineral exploration license and mining lease under Service Tax was also the standard rate of 15.5%. Services under this category have been standard rated in GST at 18%

(iv) Therefore, the intention has always been to tax this activity / supply at standard rate of 18%

9.3.3 Accordingly, as recommended by the Council, it is clarified that even if the rate schedule did not specifically mention the service by way of grant of mining rights, during the period 1.7.2017 to 31.12.2018, it was taxable at 18% in view of principle laid down in the 14th meeting of the Council for residuary GST rate. Post, 1st January, 2019 no dispute remains as stated above.

10. Admission to indoor amusement parks having rides etc.

10.1 Queries have been raised requesting for clarification regarding applicable rate of GST on services provided by Indoor Amusement Parks/Family Entertainment Centers, and scope of the word ‘amusement park’ under entry 34(iii) of Notification No. 11/2017-STR.

10.2 Entry 34(iii) notification No.11/2017-STR, prior to 01.10.2021, prescribed 18% GST on the services by way of admission to amusement parks including theme parks, water parks, joy rides, merry-go rounds, go-carting and ballet. On the other hand, Entry No. 34(iia) in Notification No. 11/2017- ST(R) dated 29.06.2017 prescribed GST rate of 28% on the services by way of admission to entertainment events or access to amusement facilities including casinos, race club, any sporting event such as Indian Premier League and the like.

10.3 On the recommendations of the Council, it is clarified that 28% rate [entry 34 (iia)] applies on admission to a place having casino or race club [even if it provides certain other activities] or admission to a sporting event like IPL. On the other hand, Entry 34 (iii), having a rate of 18%, covers all other cases of admission to amusement parks, or theme park etc or any place having joy rides, merry- go rounds, go- carting etc, whether indoor or outdoor, so long as

no access is provided to a casino or race club. This clarification will also apply to Entries 34(iii) and 34(iia) as they existed prior to their amendment w.e.f 01.10.2021.

10.4 The entries in question have been suitably amended vide notification No. 6/2021-State Tax (Rate) dated 30.09.2021 to make them clearer.

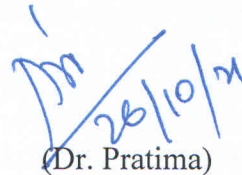
11. Services supplied by contract manufacturers to brand owners for manufacture of alcoholic liquor for human consumption

11.1 Queries have been raised requesting for issuing a clarification that the job work services supplied by contract manufacturers to brand owners for manufacture of alcoholic liquor for human consumption attract GST @ 5% prescribed for job work services in relation to food and food products, in terms of Sl. No. 26 [Item 1(i)f] of notification No. 11/2017-State Tax (R) dated 29-6-2017. This entry prescribes GST rate of 5% on services by way of job work in relation to food and food products falling under chapters 1 to 22 in the first Schedule to the Customs Tariff Act, 1975.

11.2 The issue was placed before the GST Council in its 45th meeting held on 17th September, 2021. The Council had also deliberated upon this issue in its 39th and 40th meeting.

11.3 As recommended by GST Council, it is clarified that the expression "food and food products" in the said entry excludes alcoholic beverages for human consumption. As such, in common parlance also alcoholic liquor is not considered as food. Accordingly, services by way of job work in relation to manufacture of alcoholic liquor for human consumption are not eligible for the GST rate of 5% prescribed under the said entry. GST Council recommended that such job work would attract GST at the rate of 18%.

12. Difficulties, if any, in implementation of this circular may be brought to the notice.


(Dr. Pratima)

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