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The logo consists of a dark blue square with a diagonal cut from the top right corner. The letters 'RJA' are written in white, bold, sans-serif font within the square.

RJA

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A blue geometric shape, resembling a parallelogram or a tilted rectangle, positioned to the right of the 'About us' header.

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Index

1. Clarifications regarding applicable GST rates & exemptions on certain services	3
a. Supply of ice-cream by ice-cream parlour	3
b. GST on application fee charged by an educational institution.	3
c. Storage or warehousing of cotton in baled or ginned form.	4
d. Services associated with transit cargo both to and from Nepal and Bhutan.	5
e. Supply of sanitation and conservancy services to Army and other Central and State Government departments.	5
f. Concessional rate of tax on sale of advertisement space in souvenirs	6
g. Location charges/preferential location charges (PLC) collected in addition to the lease premium for a long-term lease of land	6
h. Applicability of GST on payment of honorarium to the Guest Anchors	7
i. GST applicability on the additional toll fee collected from the vehicles not having a functioning fastag.	7
j. Clarifications w.r.t passengers transport services	8
k. Rate of tax on supply of service of construction, supply, installation, and commissioning of dairy plant on a turn-key basis	9
l. GST on sale of developed plots	10
m. Services in form of Assisted Reproductive Technology (ART)/In vitro fertilization (IVF)	10
2. Clarification on GST applicability on liquidated damages, compensation and penalty arising out of breach of contract	10
a. Liquidated Damages	12
b. Compensation for cancellation of coal blocks	13
c. Cheque dishonour fine/penalty	13
d. Penalty imposed for violation of laws	13
e. Forfeiture of salary or payment of bond amount in the event of the employee leaving the employment before the minimum agreed period	13
f. Compensation for not collecting toll charges	13
g. Late payment surcharge or fee	14
h. Fixed Capacity charges for Power	14
i. Cancellation charges	14
3. Electric vehicles whether or not fitted with a battery pack	15
4. Non mirror polished stones attracts GST at 5%	16
5. Mangoes other than fresh, sliced, dried attracts GST at 12%	16
6. Treated sewage water is exempted GST	16
7. Nicotine Polacrilex Gum attracts a GST rate of 18%	17
8. Fly ash aggregate is required to contain 90% or more	17
9. GST on by-products of milling of Dal/ Pulses such as Chilka, Khanda and Churi.	17

1. Clarifications regarding applicable GST rates & exemptions on certain services

(Circular no. 177/09/2022-TRU dated 03.08.2022)

The Government by way of this circular has provided clarification on various untouched issues. Though some clarification has no relevance for the present transactions due to change in rate of tax but would be helpful to resolve the issues of previous financial years. The below are the list of issues on which clarification has been provided by the department in the said circular.

a. Supply of ice-cream by ice-cream parlour

An additional clarification has been bought similar to Circular 164/20/2021-GST dated 06.10.2021 wherein it was clarified that the ice cream sold by a parlour or any similar outlet not being in the nature of restaurant) attracts GST @ 18% with ITC w.e.f 6th October 2021.

Issue	Clarification	Comments
Clarification has been requested w.r.t non-availment of ITC and discharge of GST @ 5% in cash before issuance of the above said Circular. Since, such ice-cream parlors have thus foregone significant ITC benefit.	<p>It has now been clarified that, in the past cases where GST on supply of ice-cream by ice-cream parlors has been paid @ 5% without ITC, shall be treated as fully GST paid to avoid unnecessary litigation.</p> <p>Further, no refund of GST shall be allowed, if GST is already paid at 18%.</p>	<p>Such clarification has been bought only to regularize the past practice prior to 06.10.2022 and thereby no refund would be available for the tax already paid at the rate of 18%.</p>

b. GST on application fee charged by an educational institution.

Exemption under GST is available for the services provided by an educational institutions:

- To its students, faculty and staff;
- By way of conduct of entrance examination against consideration in the form of entrance fee;

Issue	Clarification	Comments
<p>A clarification has been requested on the applicability of exemption on the fees charged by an educational institution towards:</p> <ul style="list-style-type: none"> Entrance or admission Issuance of eligibility certificate in the process of entrance/admission Issuance of migration certificate to the leaving or ex- students 	<p>It has now been clarified that since, all services supplied by an 'educational institution' to its students are exempt from GST, the amount or fee charged from prospective students towards said services would also be covered under the exemption.</p>	<p>This welcome clarification would also indicate that the educational institutions may continue claiming exemption on additional courses provided to their students including prospective students (summer vacation courses, tuition courses for JEE/IIT, tuition for professional courses in colleges, etc.).</p>

c. Storage or warehousing of cotton in baled or ginned form.

Issue	Clarification	Comments
<p>A clarification has been requested for whether the term "cotton fibre" includes cotton in baled or ginned form and thereby, the services for storage or warehousing of such goods eligible for exemption?</p>	<p>It is clarified that such service is exempt under GST vide entry 24B of NN 12/2017-CT(R). A reference has been made to</p> <ul style="list-style-type: none"> Cotton Fiber glossary by barnhardt cotton.net - which defines 'cotton staple, virgin cotton or raw cotton' as cotton fibers that are removed from the cotton seed by the gin. Supported by <i>CESTAT Chandigarh in the case of R.K.& Sons vs CCE, Rohtak</i> dated 14th July 2016 	<p>Such clarification would not be useful for the services provided after 18.07.2022, since, the exemption has since been withdrawn.</p> <p>Further, no clarification has been sought w.r.t the refund of excess taxes paid prior to this circular</p>

d. Services associated with transit cargo both to and from Nepal and Bhutan.

Issue	Clarification	Comments
Whether the supply of services associated with transit cargo both to and from Nepal and Bhutan exempt under GST?	It has been clarified that the transit cargo going to Nepal and Bhutan and the return of empty containers from Nepal and Bhutan in transit cargo is exempt under GST under entry 9B of NN 12/2017-CT(R). Process of executing bond with ECTS has also been provided.	Through the ECTS process it is verifiable that the empty container is the same container which was used to deliver goods to Nepal/Bhutan and thus exemption would remain available.

e. Supply of sanitation and conservancy services to Army and other Central and State Government departments.

Issue	Clarification	Comments
Whether the sanitation and conservancy service supplied to Army and other CG or SG departments exempted under GST?	It is clarified that if sanitation and conservancy services are procured by Indian Army or any other Government Ministry/Department which does not perform any functions listed in the 11 th and 12 th Schedule of the Constitution (Articles 243W & 243G), it would be taxable unless it is provided in the manner as a local authority does for the general public.	The <u>services by</u> CG, SG, UT or any LA being function covered under article 243G/243W of the Constitution have been declared as 'neither a supply of goods nor a supply of service' vide NN. 14/2017- CT(R). Therefore inter-governmental services not under levy. Entry 3 & 3A of NN 12/2017-CT(R) had clarified that only those <u>services received by</u> CG, SG, UT or any LA being function covered under article 243G/243W of the Constitution are exempt under GST. Otherwise, such services would be taxable. Point 6. 12 th Schedule (Article 243W) - Public health, sanitation conservancy and solid waste management could be considered for exemption by others.

f. Concessional rate of tax on sale of advertisement space in souvenirs

Issue	Clarification	Comments
Clarification has been requested for the GST rate applicable on the selling of space for advertisement in souvenir books published.	<p>It is clarified that the term 'Print Media' means 'book' which has been defined in the Press and Registration of Books Act, 1867. The term Book has been defined in an inclusive manner with a wide ambit which would cover souvenir book also.</p> <p>Thereby, the sale of space for advertisement in souvenir book would come in advertisement in print media and eligible for the concessional rate of tax of 5% in terms of entry No. 21(i) of NN. 11/2017- CT(R).</p>	<p>Welcome clarification that concessional rate can be extended even to advertisement space in souvenir books, following the ideology of taxation of principal and ancillary activities.</p> <p>This also indicates reference to other laws and dictionaries is key to arriving at the right interpretation under GST law.</p>

g. Location charges/preferential location charges (PLC) collected in addition to the lease premium for a long-term lease of land

Issue	Clarification	Comments
Clarification has been requested for whether the location charges or preferential location charges collected in addition to the lease premium for a long-term lease of land constitute part of the lease premium or the upfront amount charged for a long-term lease of land and thereby exempted?	<p>It has been clarified that the location/preferential location charges 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 as for the lease premium/salami. Thus eligible for exemption under Sl. No. 41 of NN. 12/2017- CT(R)</p>	<p>This clarification will reduce the unnecessary litigations and hassles for taxpayers.</p>

h. Applicability of GST on payment of honorarium to the Guest Anchors

Issue	Clarification	Comments
Whether GST is applicable on honorarium paid to Guest Anchors?	<p>It has been clarified that the Services provided by the guest anchors in lieu of honorarium is liable under GST, since, the same is neither exempted under GST nor included in Schedule III.</p> <p>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.</p>	<p>Honorarium can be considered as consideration although it may not be equivalent to like kind of services.</p> <p>18% now is payable against honorarium paid against guest anchor can be classified under HSN 999631 - <i>Services of performing artists including actors, readers, musicians, singers, dancers, TV personalities, independent models etc.</i></p> <p>Although, one must verify if he is liable to be registered under GST vide section 22,23,24 of CGST Act.</p>

i. GST applicability on the additional toll fee collected from the vehicles not having a functioning fastag

Issue	Clarification	Comments
Whether the additional toll fee collected from the vehicles not having a functioning fastag is taxable under GST?	<p>Ministry Of Road Transport & Highways have directed on such additional collection.</p> <p>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</p>	<p>The department has relied on the clarification given for overloading charges in Circular No. 164/20/2021-GST and cleared any ambiguity that such additional toll charges would also be exempt. Use of the term 'may be' makes it recommendatory in nature rather than clarificatory.</p>

j. Clarifications w.r.t passengers transport services

Issue	Clarification	Comments
Clarification has been requested on the applicability of GST on private ferry tickets used as means of transport from one island to another in the Andaman and Nicobar Islands.	<p>It is clarified that such passenger transport service would be exempt under GST in terms of entry 17(d) of NN. 12/2017 CT(R) irrespective of whether the ferry is owned or operated by a private sector enterprise or by a PSU/government.</p> <p>Ferries predominantly used for tourism (which may combine sightseeing, food & beverages, music, accommodation) would remain taxable.</p>	It can be understood that under GST the expression 'public transport' only means that the transport should be open to public. It can be privately or publicly owned.
It has been requested to clarify whether RCM is applicable on service of transportation of passengers (Heading 9964) or on renting of motor vehicle designed to carry passengers (Heading 9966).	<p>Against HSN 9966 - the body corporate shall be liable to pay GST under RCM (explained in clarification below)</p> <p>Against HSN 9964 - the body corporate shall not be liable to pay GST on the same under RCM as it is taken for a specific journey dissimilar to HSN 9966.</p>	A thin line has been drawn by the department to differentiate the passenger transport service from the vehicle hired for the transportation of passengers to resolve the differences between the services.
A clarification has been requested for exemption where a non-air-conditioned contract carriage has been <u>hired by a firm</u> for transportation of their employees to and from work.	It is clarified that the exemption covered under HSN 9964 provided in entry 15(b) of NN 12/2017-CT(R) would not be available if the charter or hire of a motor vehicle covered under HSN 9966 is for a period of time, where the renter defines how and when the vehicles will be operated, determining schedules, routes, and other operational considerations.	Clarity is not provided where a body corporate reimburses employees for renting of motor vehicles, although, this would be taxable under RCM when taken for a period of time and renter defines operation, routes, etc.. i.e. HSN 9966 (Ex: vehicle hired where charges are on per km basis)

Issue	Clarification	Comments
Clarification has been requested on the applicability of GST on the transport of minerals within a mining area, say from mining pit head to railway siding, beneficiation plant, etc., by vehicles deployed with driver for a specific duration of time. vehicles such as tippers, dumpers, loaders, trucks, etc., are given and whether it is an exempt service under entry 18 of NN 12/2017-CT(R)?	It is clarified that such services is not a “transportation of goods by road” but is “rental services of transport vehicles with operator” where, the person who takes the vehicle on rent defines how and when the vehicles will be operated, determines schedules, routes and other operational considerations covered under HSN 9966 liable under GST.	Where services are procured by way of renting of motor vehicles (where cost of fuel is included in the consideration charged) rather than transportation managed by a GTA, the liability would arise. Prior to 18.07.2022, it attracted GST at the rate of 18%, from 18.07.2022 onwards it is 12%. It could be argued that the activity is a transport of goods as payment is per ton basis.

k. Rate of tax on supply of service of construction, supply, installation, and commissioning of dairy plant on a turn-key basis

Issue	Clarification	Comments
The clarification has been asked on the rate of tax applicable on the service of construction, supply, installation, and commissioning of a 2.00 LLPD dairy plant on a turn-key basis.	It is clarified that a contract for construction, installation, and commissioning of a dairy plant constitutes the supply of works contract as the dairy plant which comes into existence as a result of such contracts is an immovable property. (Contrary Bihar & Gujarat AARs incorrect). Reference given to 12% entry 3(v)(f) of NN 11/2017-CT(R) which describes works contract services provided to mechanized food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages.	This clarification settles the ambiguity in this area and supplies were eligible to 12% rate upto 18.07.2022. Therefore, refund could be applied for excess taxes discharged subject to unjust enrichment. Any contracts entered into w.e.f 18.07.2022 is liable at 18%.

1. GST on sale of developed plots

Issue	Clarification	Comments
It has been requested to clarify on whether GST is applicable on the sale of a developed plot? (i.e. sale of land after levelling laying down of draining lines etc.)	It is clarified that the sale of developed land (after leveling, laying down of drainage lines, water lines, electricity lines, etc.,) is also a sale of land and is covered by Sr. No. 5 of Schedule III of the CGST Act, 2017. Hence, does not attract GST. Services provided for the development of land as mentioned above would attract GST at the applicable rate for such services.	This would ensure a major relief to the real-estate industry amid the confusion led down by various AARs. However, it may be noted that any services provided for the development of land like leveling, laying down of drainage lines, water lines, electricity lines, etc., would attract GST.

m. Services in form of Assisted Reproductive Technology (ART)/In vitro fertilization (IVF)

Issue	Clarification	Comments
Clarification has been asked whether the services provided by way of Assisted Reproductive Technology (ART) procedures such as In vitro fertilization (IVF) is healthcare services and thereby eligible for exemption?	It is clarified that the definition of “Healthcare services” includes IVF/ART and thereby, exempted under GST. The abnormality/disease/ailment of infertility is treated using ART procedure such as IVF	A welcome clarification which would ensure cheaper healthcare costs in our country w.r.t IVF/ART.

2. Clarification on GST applicability on liquidated damages, compensation and penalty arising out of breach of contract

(Circular No. 178/11/2022-GST dated 03.08.2022)

“Agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act” as appearing in para 5 (e) of Schedule II of the CGST Act indicates that it is a service and if the same constitutes a “supply”. The three limbs of this para has been clarified in the circular as follows:

Para 5(e)	Examples provided in the circular
Agreeing to the obligation to refrain from an act	(a) non-compete agreements (b) a builder refraining from constructing more than a certain number of floors, even though permitted to do so by the municipal authorities.
Agreeing to the obligation to tolerate an act or a situation	(a) a shopkeeper allowing a hawker to operate from the common pavement in front of his shop against a monthly payment by the hawker. (b) RWA tolerating the use of loud speakers for early morning prayers by a school located in the colony subject to the school paying an agreed sum
Agreeing to the obligation to do an act	(a) an industrial unit agrees to install equipment for zero emission/discharge at the behest of the RWA of a neighbouring residential complex against a consideration paid by such RWA

Based on entry 5(e) of Schedule II, it has been clarified that there would be a supply if:

- (a) one of the parties to such agreement/contract (the first party) must be under a contractual obligation to either (a) refrain from an act, or (b) to tolerate an act or a situation or (c) to do an act.
- (b) some “consideration” must flow in return from the other party to this contract/agreement (the second party) to the first party for such (a) refraining or (b) tolerating or (c) doing.
- (c) Such contractual arrangement must be an independent arrangement in its own right.
- (d) Such arrangement or agreement can take the form of an independent stand- alone contract or may form part of another contract.

Further, it has been clarified that an agreement to do an act or abstain from doing an act or to tolerate an act or a situation cannot be imagined or presumed to exist just because there is a flow of money from one party to another. In the absence of any express/implied promise, it cannot be presumed that the payment is towards s for doing an act or for refraining from an act or for tolerating an act or situation.

Further clarified that payments such as liquidated damages for breach of contract, penalties under the mining act for excess stock found with the mining company, forfeiture of salary or payment of amount as per the employment bond for leaving the employment before the minimum agreed period, penalty for cheque dishonour etc. **are not a consideration for tolerating an act or situation.** These are mere events in a contract.

In light of various doubts that have persisted regarding various transactions being classified under the said description, clarification has been provided for various categories.

a. Liquidated Damages

The meaning of liquidated damages has been clarified in the circular. It has been clarified that

- Liquidated damages cannot be said to be a consideration received for tolerating the breach or non-performance of contract.
- Liquidated damages are a measure of loss and damage that the parties agree would arise due to breach of contract.
- They do not act as a remedy for the breach of contract.
- The liquidated damages or penalty are not the desired outcome of the contract.

Such payments do not constitute consideration for a supply and are not taxable.

Few examples provided in the circular are:

- damages resulting from damage to property, negligence, piracy, unauthorized use of trade name, copyright, etc.
- penalty for delayed construction of houses.
- forfeiture of earnest money in case of breach of 'an agreement to sell' an immovable property

However, if a payment constitutes a supply, then it is taxable irrespective of by what name it is called. Therefore, where payments, even though referred to as fine or penalty, are actually payments that amount to consideration for supply, they would be subject to GST, in cases where such supply is taxable.

b. Compensation for cancellation of coal blocks

It has been clarified the compensation paid to old allottees of mines in 2016 for cancellation of coal blocks allocation pursuant to the order of the Supreme Court of 2014 was not taxable. The allottees had no option but to accept the cancellation. The compensation was given to them for such cancellation, 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

c. Cheque dishonour fine/penalty

It has been clarified that cheque dishonor fine or penalty is not a consideration for any service and not taxable.

d. Penalty imposed for violation of laws

It has been clarified that penalty imposed for violation of laws such as traffic violations, or for violation of pollution norms or other laws are also not consideration for any supply received and are not taxable. It was also clarified vide Circular No. 192/02/2016-Service Tax, dated 13.04.2016 that fines and penalty chargeable by Government or a local authority imposed for violation of a statute, bye-laws, rules or regulations are not leviable to Service Tax. The same holds true for GST also.

e. Forfeiture of salary or payment of bond amount in the event of the employee leaving the employment before the minimum agreed period

It has been clarified that such amounts recovered by the employer are not taxable as consideration for the service of agreeing to tolerate an act or a situation. Further, the employee does not get anything in return from the employer against payment of such amounts.

f. Compensation for not collecting toll charges

During the period from 8.11.2016 to 1.12.2016, the service of access to a road or bridge continued to be provided without collection of toll from users. Consideration came from the project authority. The fact that for this period, for the same service, consideration came from a person other than the actual user of service does not mean that the service has changed. Hence, the amount received from NHAI was exempt as service by way of access to a road or a bridge on payment of toll charges is exempted.

g. Late payment surcharge or fee

The facility of accepting late payments with interest or late payment fee, fine or penalty is a facility granted by supplier naturally bundled with the main supply. It has been clarified that even if this service is described as a service of tolerating the act of late payment, it is an ancillary supply naturally bundled and supplied in conjunction with the principal supply, and therefore should be assessed as the principal supply. If principal supply is taxable, even this would be taxable.

h. Fixed Capacity charges for Power

It has been clarified that both the components of the price, the minimum fixed charges/capacity charges and the variable/energy charges are charged for sale of electricity and are thus not taxable as electricity is exempt from GST. The contract is essentially for supply of electricity.

i. Cancellation charges

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. It has been clarified that facilitation supply of allowing cancellation of an intended supply against payment of cancellation fee or retention or forfeiture of a part or whole of the consideration or security deposit in such cases should be assessed as the principal supply. For example, cancellation charges of railway tickets for a class would attract GST at the same rate as applicable to the class of travel i.e., 5% in case of A/C and exempt in case of non-ac.

Comments: -

- The government has tried to provide clarification on one of the major litigative area under GST i.e., liquidated damages and compensation. The clarification has also tried to deem para 5 (e) of Schedule II of CGST Act as a supply which is against the provision of the GST law.
- Further, though it substantially confirms our understanding, the clarification would open further grey areas.

- In para 7.1.5 the circular instead of giving a firm clarification, it is up to the officers to decide if the payment constitutes consideration for another independent contract. If yes, then it is a supply. Hence, revenue gets leverage/leeway to use this portion to overcome the intended clarification of the circular and continue the present practice.
- The discussion in paras 11.2, 7.1.6 in the circular tries to deviate from the gist by stating that when the cancellation fee/charges, and loan pre-closure charges are provided as a facility for allowing such activity, then it would be a natural part of the bundle of such service. Hence, the clients should be cautioned (though in principle we may not be aligned to this view) about the way in which terms of the contract are drafted regarding the breach of the contract and penalty for violation determines the taxability (Is it a facility or a damages/compensation). Cancellation charges could be said to be a breach of contract rather than being considered as a limb of the principal supply.
- The circular had failed to explain the reasons for difference in taxability of earnest money forfeiture in various scenarios.
- The circular at para 7.1.6 had considered the same as a facility and at para 11.5 as a compensation.
- Further, cancellation of hotel booking and forfeiture of earnest money by a seller in case of breach of 'an agreement to sell' an immovable property are treated separately in the circular even though the substance of both the transactions is the same.

3. Electric vehicles whether or not fitted with a battery pack

(Circular No. 179/11/2022-GST dated 03.08.2022)

The 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%.

Comments: -

This comes as a relief to taxpayers as there was an ambiguity regarding the applicable tax rate for a vehicle sold without a battery and sold with a battery and even several cases were noticed wherein the department has initiated proceeds on e-vehicle sold without battery.

4. Non mirror polished stones attracts GST at 5%

(Circular No. 179/11/2022-GST dated 03.08.2022)

The GST rate on building stones, in particular Napa Stones, which are ready to use and polished in ways other than mirror-polished which are not covered in S.No.123 of Schedule I of Notification No. 1/2017-CT(R) is taxable at 5% only. Minor polished stones are also taxable at 5% and they are not considered as mirror polished stones.

Comments: -

This is a beneficial clarification extending concessional rate to minor polished stones.

5. Mangoes other than fresh, sliced, dried attracts GST at 12%

(Circular No. 179/11/2022-GST dated 03.08.2022)

It has been clarified as follows:

Raw and fresh mangoes	Exempted
Mangoes sliced and dried	5%
All other forms of mangoes including mango pulp	12%

Comments: -

This clarification along with amendments made to the notification has provided clarity on the rate applicable for mango pulp to avoid unnecessary litigation.

6. Treated sewage water is exempted GST

(Circular No. 179/11/2022-GST dated 03.08.2022)

Treated sewage water falling under the heading 2201 is exempted under GST. Treated sewage water was not meant to be construed as falling under “purified” water for the purpose of levy of GST.

Comments:-

This would help resolve various department disputes wherein treated waster was covered within the meaning of purified water. Further, there have also been advance rulings which have considered treated water as purified water. However, this dispute would no longer continue in light of this clarification and changes made to the rate notification. Further, this clarification would be applicable from 01.07.2017.

7. Nicotine Polacrilex Gum attracts a GST rate of 18%

(Circular No. 179/11/2022-GST dated 03.08.2022)

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%.

8. Fly ash aggregate is required to contain 90% or more

(Circular No. 179/11/2022-GST dated 03.08.2022)

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.

Comments:

It has been clarified that the condition of 90% of fly ash content w.r.t fly ash bricks applies only to fly ash aggregate and not to fly ash bricks. As a simplification measure, the condition of 90% content is omitted.

9. GST on by-products of milling of Dal/ Pulses such as Chilka, Khanda and Churi.

(Circular No. 179/11/2022-GST dated 03.08.2022)

The rate of tax for by-products of milling of dal/pulses classifiable under heading 2302. The clarification is represented in the table below:

Entry no and Notification No.	Description of services	Rate of tax
S. No. 102 of N. No. 2/2017-Central Tax (Rate)	Aquatic feed including shrimp feed and prawn feed, poultry feed & cattle feed, including grass, hay & straw, supplement & husk of pulses, concentrates & additives, wheat bran & de-oiled cake[other than rice bran]	Nil
S. No. 103A of Schedule I of N. No. 1/2017-Central Tax	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	5%

Entry no and Notification No.	Description of services	Rate of tax
(Rate)	straw, supplement and husk of pulses, concentrates and additives, wheat bran and de-oiled cake]	
S. No. 103B of Schedule I of N. No. 1/2017-Central Tax (Rate)	Rice bran (other than de-oiled rice bran)	5%

Comments: -

This is a welcome clarification which clarified that on utilisation of by-products of pulses/ dal as a cattle feed ingredient is taxable under 5%. Where such by-products are used as raw materials for manufacture of cattle feed/poultry feed etc., it would result is an increase in cost as the finished goods remains exempt under GST. the issue for past periods may be regularized on as is basis.

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