GST

Central Circulars on Services

(Updated upto 1st January, 2019)

Compiled by:

GST Policy Planning Unit
Directorate of Commercial Taxes
Government of West Bengal.

GST

Central Circulars on Services

(Updated upto 1st January, 2019)

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1. Reference State and Central Circulars on Services

Sl. No.	Subject	CGST Circular No.& Date	WBGST Circular No.& Date
1	Clarifications regarding applicabilityof GST and availability of ITC in respect of certain services	16/16/2017-GST 15.11.2017	18/2018-17.09.2018
2	Clarification on taxability of custom milling of paddy	19/19/2017-GST 20.11.2017	20/2018-17.09.2018
3	Clarification on issues regarding treatment of supply by an artist in various States and supply of goods by artists from galleries	22/22/2017-GST 21.12.2017	15/2017-21.12.2017
4	Clarifications regarding levy of GST on accommodation services, betting and gambling in casinos, horse racing, admission to cinema, home-stays, printing, legal services etc.	27/01/2018-GST 04.01.2018	24/2018-17.09.2018
5	Clarifications regarding GST on College Hostel Mess Fees	28/02/2018-GST 08.01.2018	Nil
6	Corrigendum to Circular No. 28/02/2018-GST dated 08th January 2018	18.01.2018	Nil
7	Clarification on supplies made to the Indian Railways classifiable under any chapter, other than Chapter 86	30/04/2018-GST 25.01.2018	26/2018-17.09.2018
8	Clarifications regarding GST in respect of certain services	32/06/2018-GST 12.02.2018	27/2018-17.09.2018
9	Clarifications regarding GST in respect of certain services	34/08/2018-GST 01.03.2018	28/2018-17.09.2018
10	Clarifications regarding GST in respect of certain services Joint Venture- taxable services provided by the members of the Joint Venture (JV) to the JV and vice versa and inter se between the members of the JV	35/08/2018-GST 05.03.2018	29/2018-17.09.2018
11	Clarification on issues related to Job Work	38/12/2018-GST 26.03.2018	30/2018-17.09.2018
12	Withdrawal of Circular No. 28/02/2018-GST dated 08.01.2018 as amended vide Corrigendum dated 18.01.2018 and Order No 02/2018–Central Tax dated 31.03.2018	50/24/2018-GST 31.07.2018	Nil
13	Applicability of GST on ambulance services provided to Government by Private service providers under the National Health Mission (NHM)	51/25/2018-GST 31.07.2018	37/2018-17.09.2018
14	Applicability of service tax on ambulance services provided to government by private service providers under the National Health Mission (NHM)	210/2/2018-Service Tax 30.05.2018	.....
15	Taxability of services provided by Industrial Training Institutes (ITI)	55/29/2018-GST 10.08.2018	38/2018-17.09.2018

16	Applicability of GST on various programmes conducted by the Indian Institutes of Managements (IIMs)	82/01/2019-GST 01.01.2019	03/2019-08-01-2019
17	Applicability of GST on Asian Developer Bank (ADB) and International Finance Corporation (IFC)	83/02/2019-GST 01.01.2019	04/2019-08-01-2019
18	Clarification on issue of classification of service of printing of pictures covered under 998386	84/03/2019-GST 01.01.2019	05/2019-08-01-2019
19	Clarification on GST rate applicable on supply of food and beverage services by educational institution	85/04/2019-GST 01.01.2019	06/2019-08-01-2019
20	GST on Services of Business Facilitator (BF) or a Business Correspondent (BC) to Banking Company	86/05/2019-GST 01.01.2019	07/2019-08-01-2019

2. Clarifications regarding applicability of GST and availability of ITC in respect of certain services [Circular No 16/16/2017]

Circular No 16/16/2017
New Delhi, 15th November, 2017

Subject: Clarifications regarding applicability of GST and availability of ITC inrespect of certain services

I am directed to issue clarification with regard to certain issues brought to the notice of Board as under:

S. No.	Issue	Comment
1.	Is GST applicable on warehousingof agricultural produce such as tea (i.e. black tea, white tea etc.), processedcoffee beans or powder, pulses (de-husked or split),jaggery,processed spices, processed dry fruits, processed cashew nuts etc.?	1. As per GST notification No. 11/2017-Central Tax (Rate), S.No. 24 and notification No. 12/2017-Central Tax (Rate), S.No. 54, dated 28thJune 2017, the GST rate on loading, unloading packing, storage or warehousing of agricultural produce isNil. 2. Agricultural produce in the notification has been defined to mean "any produce out of cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products, on which either no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market" 3. Tea used for making the beverage, such as black tea, green tea, white tea is a processed product made in tea factories after carrying out several processes, such as drying, rolling, shaping, refining, oxidation, packing etc. on green leaf and is the processed output of thesame. Thus, green tea leaves and not tea isthe "agricultural produce" eligible for exemption available forloading, unloading, packing, storage or warehousing of agricultural produce. Same is the case with coffee obtained after processing of coffee beans. 4. Similarly, processing of sugarcane into jaggery changes its essential characteristics. Thus, jaggery is also not an agriculturalproduce. 5. Pulses commonly known as dal are obtained after dehusking or splitting or both. The process of de-husking or splitting is usually not carried out by farmers or at farm level but by the pulse millers. Therefore pulses (dehusked or split) are also not agricultural produce. However whole pulse grains such as whole gram, rajma etc. are covered in the definition of agriculturalproduce. 6. In view of the above, it is hereby clarified that processed products such as tea (i.e. black tea, white tea etc.), processed coffee beans or powder, pulses (de-husked or split), jaggery, processed spices, processed

		dry fruits, processed cashew nuts etc. fall outside the definition of agricultural produce given in notification No. 11/2017-CT(Rate) and 12/2017-CT(Rate) and corresponding notifications issued under IGST and UGST Acts and therefore the exemption from GST is not available to their loading, packing, warehousing etc. and that any clarification issued in the past to the contrary in the context of Service Tax or VAT/ Sales Tax is no more relevant.
2.	Is GST leviable on inter-state transfer of aircraft engines, parts and accessories foruse by their own airlines?	1. Under Schedule I of the CGST Act, supply of goods or services or both between related persons or between distinct persons as specified in Section 25, when made in the course or furtherance of business, even if, without consideration, attractsGST. 2. It is hereby clarified that credit of GST paid on aircraft engines, parts & accessories will be available for discharging GST on inter–state supply of such aircraft engines, parts & accessories by way of inter-state stock transfers between distinct persons as specified in section 25 of the CGST Act, notwithstanding that credit of input tax charged on consumption of such goods is not allowed for supply of service of transport of passengers by air in economy class at GST rate of5%.
3.	a) Is GST leviable on General Insurance policies provided byaState Government to employees of the State government/ Police personnel, employees ofElectricity Departmentor students of colleges/ private schoolsetc. b) where premium is paid by State Governmentandwhere premium is paid by employees, students etc.?	It is hereby clarified that services provided to the Central Government, State Government, Union territory under any insurance scheme for which total premium is paid by the Central Government, State Government, Union territory are exempt from GST under Sl. No. 40 of notification No. 12/2017-Central Tax (Rate). Further, services provided by State Government by way of general insurance (managed by government) to employees of the State government/ Police personnel, employees of Electricity Department or students are exempt vide entry 6 of notification No. 12/2017- CT(R) which exempts Services by Central Government, State Government, Union territory or local authority to individuals.

3. Clarification on taxability of custom milling of paddy [Circular No. 19/19/2017-GST]

Circular No. 19/19/2017-GST
New Delhi 20th November 2017

Subject: Clarification on taxability of custom milling of paddy

Representations have been received seeking clarification on whether custom milling of paddy by Rice millers for Civil Supplies Corporation is liable to GST or is exempted under S. No 55 of Notification 12/2017 - Central Tax (Rate) dated 28th June 2017.

2. The matter has been examined. S. No 55 of Notification 12/2017- Central Tax (Rate) exempts carrying out an intermediate production process as job work in relation to cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products or agricultural produce. Agricultural produce has been defined in the notification to mean, *any produce out of cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products, on which either no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market.* Job work has been defined under section 2 (68) of the CGST Act to mean *any treatment or process undertaken by a person on goods belonging to another registered person*. Further, under Schedule II (para 3) of the CGST Act, *any treatment or process which is applied to another person's goods is a supply of service.*

3. Milling of paddy is not an intermediate production process in relation to cultivation of plants. It is a process carried out after the process of cultivation is over and paddy has been harvested. Further, processing of paddy into rice is not usually carried out by cultivators but by rice millers. Milling of paddy into rice also changes its essential characteristics. Therefore, milling of paddy into rice cannot be considered as an intermediate production process in relation to cultivation of plants for food, fibre or other similar products or agricultural produce.

4. In view of the above, it is clarified that milling of paddy into rice is not eligible for exemption under S. No 55 of Notification 12/2017 - Central Tax (Rate) dated 28th June 2017 and corresponding notifications issued under IGST and UTGST Acts.

5. GST rate on services by way of job work in relation to all food and food products falling under Chapters 1 to 22 has been reduced from 18% to5% vide notification No. 31/2017-CT(R) [notification No. 11/2017-CT (Rate) dated 28.6.17, S.No. 26 *refers*]. Therefore, it is hereby clarified that milling of paddy into rice on job work basis, is liable to GST at the rate of 5%, on the processing charges (and not on the entire value of rice).

4. Clarification on issues regarding treatment of supply by an artist in various States and supply of goods by artists from galleries [Circular No 22/22/2017-GST]

Circular No 22/22/2017-GST
New Delhi, 21st December, 2017

Subject: Clarification on issues regarding treatment of supply by an artist in various States and supply of goods by artists from galleries

Various representations have been received regarding taxation of the supply of art works by artists in different States other than the State in which they are registered as a taxable person. In such cases, if the art work is selected by the buyer, then the supplier issues a tax invoice only at the time of supply. It has been represented that the artists give their work of art to galleries where it is exhibited for supply. There seems to be confusion regarding the treatment of this activity whether it is taxable in the hands of the artist when the same is given to the art gallery or at the time of actual supply by the gallery. Therefore, in exercise of the powers conferred under section 168 (1) of the Central Goods and Services Tax Act, 2017, for the purpose of uniformity in the implementation of the Act, it has been decided to clarify this matter.

2. It is seen that clause (c) of sub-rule (1) of rule 55 of the Central Goods and Services Tax Rules, 2017 (hereafter referred as "the said Rules") provides that the supplier shall issue a delivery challan for the initial transportation of goods where such transportation is for reasons other than by way of supply. Further, sub-rule (3) of the said rule provides that the said delivery challan shall be declared as specified in rule 138 of the said Rules. It is also seen that sub-rule (4) of rule 55 of the said Rules provides that where the goods being transported are for the purpose of supply to the recipient but the tax invoice could not be issued at the time of removal of goods for the purpose of supply, the supplier shall issue a tax invoice after delivery ofgoods.

3. A combined reading of the above provisions indicates that the art work for supply on approval basis can be moved from the place of business of the registered person (artist) to another place within the same State or to a place outside the State on a delivery challan along with the e way bill wherever applicable and the invoice may be issued at the time of actual supply of artwork.

4. It is also clarified that the supplies of the art workfrom one State to another State will be inter-State supplies and attract integrated tax in terms of section 5 of the Integrated Goods and Services Tax Act, 2017.

5. It is further clarified that in case of supply by artists through galleries, there is no consideration flowing from the gallery to the artist when the artworks are sent to the gallery for exhibition and therefore, the same is not a supply. It is only when the buyer selects a particular art work displayed at the gallery, that the actual supply takes place and applicable GST would be payable at the time of such supply.

6. It is requested that suitable trade notices may be issued to publicize the contents of this circular.

5. Clarifications regarding levy of GST on accommodation services, betting and gambling in casinos, horse racing, admission to cinema, home stays, printing, legal services etc. [Circular No. 27/01/2018-GST]

Circular No. 27/01/2018-GST
New Delhi, 4th January, 2018

Subject: Clarifications regarding levy of GST on accommodation services, betting andgambling in casinos, horse racing, admission to cinema, home-stays, printing, legal services etc.

Representations were received from trade and industry for clarification on certain issues regarding levy of GST on supply of services.

2. In this context, it is stated that the following clarifications, *inter-alia*, were published as FAQ at http://www.cbec.gov.in/resources//htdocs-cbec/gst/om-clarification.pdf.

S. No.	Questions/ Clarifications sought	Clarifications
1	1. Will GST be charged on actual tariff or declared tariff for accommodation services? 2. What will be GST rate if cost goes up (more than declared tariff) owing to additional bed? 3. Where will the declared tariff be published? 4. Same room may have different tariff at different times depending on season or flow of tourists as per dynamic pricing. Which rate to be used then? 5. If tariff changes between booking and actual usage, which rate will be used? 6. GST at what rate would be levied if an upgrade isprovided tothe customer at a lower rate?	1. Declared or published tariff is relevant only for determination of the tax rate slab. GST will be payable on the actual amount charged (transaction value). 2. GST rate would be determined according to declared tariff for the room, and GST at the rate so determined would be levied on the entire amount charged from the customer. For example, if the declared tariff is Rs. 7000 per unit per day but the amount charged from the customer on account of extra bed is Rs. 8000, GST shall be charged at 18% on Rs.8000. 3. Tariff declared anywhere, say on the websites through which business is being procured or printed on tariff card or displayed at the reception will be the declared tariff. In case different tariff is declared at different places, highest of such declared

		tariffs shall be the declared tariff for the purpose of levy of GST. 4. In case different tariff is declared for different seasons or periods of the year, the tariff declared for the season in which the service of accommodation is provided shall apply. 5. Declared tariff at the time of supply would apply. 6. If declared tariff of the accommodation provided by way of upgrade is Rs 10000, but amount charged is Rs 7000, then GST would be levied @28% on Rs 7000/-.
2	Vide notification No. 11/2017-Central Tax (Rate) dated the 28th June 2017 entry 34, GST on the service of admission into casino under Heading 9996 (Recreational, cultural and sporting services) has been levied @ 28%. Since the Value of supply rule has not specified the method of determining taxable amount in casino, Casino Operators have been informed to collect 28% GST on gross amount collected as admission charge or entry fee. The method of levy adopted needs to be clarified.	Relevant part of entry 34 of the said CGST notification reads as under: *"Heading 9996 (Recreational, cultural and sporting services) - ...* *(iii) Services by way of admission to entertainment events or access to amusement facilities including exhibition of cinematograph films, theme parks, water parks, joy rides, merry-go rounds, go-carting, **casinos**, race-course, ballet, any sporting event such as Indian Premier League and the like. -14%* *(iv) ...* *(v) Gambling. - 14%"* As is evident from the notification, "entry to casinos" and "gambling" are two different services, and GST is leviable at 28% on both these services (14% CGST and 14% SGST) on the value determined as per section 15 of the CGST Act. Thus, GST @ 28% would apply on entry to casinos as well as on betting/ gambling services being provided by casinos on the transaction value of betting,

		i.e. the total bet value, in addition to GST levy on any other services being provided by the casinos (such as services by way of supply of food/ drinks etc. at the casinos). Betting, in pre-GST regime, was subjected to betting tax on full bet value.
3	The provision in rate schedule notification No. 11/2017-Central Tax (Rate) dated the 28th June 2017 does not clearly state the tax base to levy GST on horse racing. This may be clarified.	GST would be leviable on the entire bet value i.e. total of face value of any or all bets paid into the totalisator or placed with licensed book makers, as the case maybe. Illustration: If entire bet value is Rs. 100, GST leviable will be Rs. 28/-.
4	1. Whether for the purpose of entries at Sl. Nos. 34(ii) [admission to cinema] and 7(ii)(vi)(viii) [Accommodation in hotels, inns, etc.], of notification 11/2017-CT (Rate) dated 28th June 2017, price/ declared tariff includes the tax component or not? 2. Whether rent on rooms provided to in-patients is exempted? If liable to tax, please mention the entry of CGST Notification 11/2017- CT(Rate) 3. What will be the rate of tax for bakery items supplied where eating place is attached – manufacturer for the purpose of composition levy?	1. Price/ declared tariff does not include taxes. 2. Room rent in hospitals is exempt. 3. Any service by way of serving of food or drinks including by a bakery qualifies under section 10 (1) (b) of CGST Act and hence GST rate of composition levy for the same would be 5%.
5	Whether home stays providing accommodation through an Electronic Commerce Operator, below threshold limit are exempt from taking registration?	Notification No. 17/2017-Central Tax (Rate), has been issued making ECOs liable for payment of GST in case of accommodation services provided in hotels, inns guest houses or other commercial places meant for residential or lodging purposes provided by a person having turnover below Rs. 20 lakhs (Rs. 10 lakhs in special category states) per annum and thus not required to take registration under section 22(1) of CGST Act. Such persons, even though they provide services

		through ECO, are not required to take registration in view of section 24(ix) of CGST Act, 2017.
6.	To clarify whether supply in the situations listed below shall be treated as a supply of goods or supply of service: - 1. The books are printed/ published/ sold on procuring copyright from the author or his legal heir. [e.g. White Tiger Procures copyright from Ruskin Bond] 2. The books are printed/ published/ sold against a specific brand name. [e.g. Manorama Year Book] 3. The books are printed/ published/ sold on paying copyright fees to a foreign publisher for publishing Indian edition (same language) of foreign books. [e.g. Penguin (India) Ltd. pays fees to Routledge (London)] The books are printed/ published/ sold on paying copyright fees to a foreign publisher for publishing Indian language edition (translated). [e.g. Ananda Publishers Ltd. pays fees to Penguin (NY)]	The supply of books shall be treated as supply of goods as long as the supplier owns the books and has the legal rights to sell those books on his own account.
7.	Whether legal services other than representational services provided by an individual advocate or a senior advocate to a business entity are liable for GST under reverse charge mechanism?	Yes. In case of legal services including representational services provided by an advocate including a senior advocate to a business entity, GST is required to be paid by the recipient of the service under reverse charge mechanism, i.e. the business entity.

6. Clarifications regarding GST on College Hostel Mess Fees[Circular No 28/02/2018-GST]

Circular No 28/02/2018-GST
New Delhi, 8th January, 2018

Subject: Clarifications regarding GST on College Hostel Mess Fees

Queries have been received seeking clarification regarding the taxability and rate of GST on services by a college hostel mess. The clarification is as given below:

2. The educational institutions have mess facility for providing food to their students and staff. Such facility is either run by the institution/ students themselves or is outsourced to a third person. Supply of food or drink provided by a mess or canteen is taxable at 5% without Input Tax Credit [Serial No. 7(i) of notification No. 11/2017-CT (Rate) as amended vide notification No. 46/2017-CT (Rate) dated 14.11.2017 refers]. It is immaterial whether the service is provided by the educational institution itself or the institution outsources the activity to an outside contractor.

7. Corrigendum to Circular No. 28/02/2018-GST dated 08th January 2018 issued vide F.No. 354/03/2018 on catering services provided in educational institute

New Delhi, 18th January 2018

Subject: Corrigendum to Circular No. 28/02/2018-GST dated 08th January 2018 issued vide F.No. 354/03/2018

In Para 2 of the said circular,

for

"It is immaterial whether the service is provided by the educational institution itself or the institution outsources the activity to an outside contractor."

read,

"2.1 If the catering services is one of the services provided by an educational institution to its students, faculty and staff and the said educational institution is covered by the definition given under para 2(y) of notification No. 12/2017-Central Tax (Rate), then the same is exempt. [Sl. No. 66(a) of notification No. 12/2017-Central Tax (Rate) *refers*]

2.2 If the catering services, i.e., supply of food or drink in a mess or canteen, is provided by anyone other than the educational institution, then it is a supply of service at entry 7(i) of notification No. 11/2017-CT (Rate) [as amended vide notification No. 46/2017-CT (Rate) dated 14.11.2017] to the concerned educational institution and attracts GST of 5% provided that credit of input tax charged on goods and services used in supplying the service has not been taken, effective from 15.11.2017."

8. Clarification on supplies made to the Indian Railways classifiable under any chapter, other than Chapter 86 [Circular No 30/04/2018-GST]

Circular No 30/04/2018-GST
New Delhi, Dated, 25 January, 2018

Subject: Clarification on supplies made to the Indian Railways classifiable under any chapter, other than Chapter 86

Representations have been received that certain suppliers are making supplies to the railways of items classifiable under any chapter other than chapter 86, charging the GST rate of 5%.

2. The matter has been examined. Vide notification No. 1/2017 –Central Tax (Rate) dated 28thJune, 2017, read with notification No. 5/2017-Central Tax (Rate) dated 28thJune, 2017, goods classifiable under Chapter 86 are subjected to 5% GST rate with no refund of unutilised input tax credit (ITC). Goods classifiable in any other chapter attract the applicable GST, as specified under notification No. 1/2017 –Central Tax (Rate) dated 28thJune, 2017 or notification No.2/2017-Central Tax (Rate) dated 28thJune,2017.

3. The GST Council during its 25th meeting held on 18thJanuary, 2018, discussed this issue and recorded that a clarification regarding applicable GST rates on various supplies made to the Indian Railways may be issued.

4. Accordingly, it is hereby clarified that

- only the goods classified under Chapter 86, supplied to the railways attract 5% GST rate with no refund of unutilised input tax credit and
- other goods [falling in any other chapter], would attract the general applicable GST rates to such goods, under the aforesaid notifications, even if supplied to therailways.

9. Clarifications regarding GST in respect of certain services [Circular No 34/08/2018-GST]

Circular No 34/08/2018-GST
New Delhi, 1st March, 2018

Subject: Clarifications regarding GST in respect of certain services

I am directed to issue clarification with regard to the following issues as approved by the Fitment Committee to the GST Council in its meeting held on 9th, 10th and 13th January 2018:-

Sl. No.	Issue	Clarification
1.	Whether activity of bus body building, is a supply of goods or services?	In the case of bus body building there is supply of goods and services. Thus, classification of this composite supply, as goods or service would depend on which supply is the principal supply which may be determined on the basis of facts and circumstances of each case.
2.	Whether retreading of tyres is a supply of goods or services?	In retreading of tyres, which is a composite supply, the pre-dominant element is the process of retreading which is a supply of service. Rubber used for retreading is an ancillary supply. Which part of a composite supply is the principal supply, must be determined keeping in view the nature of the supply involved. Value may be one of the guiding factors in this determination, but not the sole factor. The primary question that should be asked is what is the essential nature of the composite supply and which element of the supply imparts that essential nature to the composite supply. Supply of retreaded tyres, where the old tyres belong to the supplier of retreaded tyres, is a supply of goods (retreaded tyres under heading 4012 of the Customs Tariff attracting GST @ 28%)
3.	(1) Whether the Priority Sector Lending Certificate (PSLCs) are outside the purview of GST & therefore not taxable? (2) Whether the guarantee	In Reserve Bank of India FAQ on PSLC, it has been mentioned that PSLC may be construed to be in the nature of goods, dealing in which has been notified as a permissible activity under section 6(1) of the Banking Regulation Act, 1949 vide Government of India notification

	provided by State Government to state owned companies against guarantee commission, is taxable under GST?	dated 4th February, 2016. PSL Care not securities. PSLC are akin to freely tradeable duty scrips, Renewable Energy Certificates, REP license or replenishment license, which attracted VAT. In GST there is no exemption to trading in PSLCs. Thus, PSLCs are taxable as goods at standard rate of 18% under the residuary S. No. 453 of Schedule III of notification No 1/2017-Central Tax (Rate) GST
4.	(1) Whether the activities carried by DISCOMS against recovery of charges from consumers under State Electricity Act are exempt from GST? (2) Whether the guarantee provided by State Government to state owned companies against guarantee commission is taxable under GST?	(1) Service by way of transmission or distribution of electricity by an electricity transmission or distribution utility is exempt from GST under notification No. 12/2017- CT (R), Sl. No. 25. The other services such as,- i. Application fee for releasing connection of electricity; ii. Rental Charges against metering equipment; iii. Testing fee for meters/ transformers, capacitors etc.; iv. Labour charges from customers for shifting of meters or shifting of service lines; v. charges for duplicate bill; provided by DISCOMS to consumer are taxable. (2) The service provided by Central Government/State Government to any business entity including PSUs by way of guaranteeing the loans taken by them from financial institutions against consideration in any form including Guarantee Commission is taxable.

10. Clarifications regarding GST in respect of certain services Joint Venture- taxable services provided by the members of the Joint Venture (JV) to the JV and vice versa and inter se between the members of the JV [Circular No 35/08/2018-GST]

Circular No 35/08/2018-GST
New Delhi, 5th March, 2018

Subject: Joint Venture ---taxable services provided by the members of the Joint Venture (JV) to the JV and vice versa and inter se between the members of the JV

I am directed to say that in the Service Tax regime, CBEC vide Circular No. 179/5/2014 – ST issued from F. No. 179/5/2014-ST dated 24 September 2014 had clarified that if cash calls are merely transaction in money, then they are excluded from the definition of service provided in Section 65B (44) of the Finance Act, 1994. Whether a cash call is merely a transaction in money and hence not in the nature of consideration for taxable service, would depend on the terms of the Joint Venture Agreement, which may vary from case to case. The Circular clarified that cash calls, sometimes, could be in the nature of advance payments made by members towards taxable services received from joint venture(JV); and that payments made out of cash calls pooled by a JV towards taxable services received from a member or a third party is in the nature of consideration and hence attracts Service Tax. The Circular further stated that JV being an unincorporated temporary association constituted for the limited purpose of carrying out a specified project within a time frame, a comprehensive examination of the various JV agreements (at times, there could be number of inter se agreements between members of the JV) holds the key to understanding of the taxation of transactions involving taxable services between the JV and its members or inter-se between the members of a JV. Therefore, officers in the field formations were advised to carefully examine the leviability of service tax with reference to the specific terms/clauses of each JV agreement.

2. In the Service Tax Law, service was defined as an activity carried out by a person for another for consideration [Section 65B (44) of the Finance Act 1994]. Explanation 3 to the said definition stated than an unincorporated association or a body of persons as the case may be, and a member thereof shall be treated as distinct persons.

3. GST is levied on intra-State and inter-State supply of goods and services. According to section 7 of CGST Act, 2017, the expression “supply” includes all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business, and includes activities specified in Schedule II to the CGST Act,

2017. The definition of "business" in section 2(17) of CGST Act states that *"business" includes provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members*. The term person is defined in section 2(84) of the CGST Act, 2017 to include an association of persons or a body of individuals, whether incorporated or not, in India or outside India. Further, Schedule II of CGST Act, 2017 enumerates activities which are to be treated as supply of goods or as supply of services. It states in para 7 that *supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration* shall be treated as supply of goods. A conjoint reading of the above provisions of the law implies that supply of services by an unincorporated association or body of persons (AOP) to a member thereof for cash, deferred payment or other valuable consideration shall be treated as supply of services. The above entry in Schedule II is analogous to and draws strength from the provision in Article 366(29A)(e) of the Constitution according to which a tax on the sale or purchase of goods includes a tax on the supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.

4. Therefore, the law with regard to levy of GST on service supplied by member of an unincorporated joint venture (JV) to the JV or to other members of the JV, or by JV to the members, essentially remains the same as it was under service tax law. Thus, it is clarified that the clarification given vide Board Circular No. 179/5/2014 – ST dated 24.09.2014 ibid in the context of service tax is applicable for the purpose of levy of GST also. It is reiterated that the question whether cash calls are taxable or not will entirely depend on the facts and circumstances of each case. 'Cash calls' are raised by an operating member of the joint venture on other members in proportion to their participating interests in the joint venture(unincorporated) to meet the expenditure on the operations to be carried out as per the approved work programme and budget. Taxability of cash calls can be further explained by the following illustrations:

Illustration A: There are 4 members in the JV including the operating member and each one contributes Rs 100 as part of their share. A total amount of Rs 400 is collected. The operating member purchases machinery for Rs 400 for the JV to be used in oil production.

Illustration B: There are 4 members in the JV including the operating member and each one contributes Rs 100 as part of their share. A total amount of Rs 400 is collected. The operating member thereafter uses its own machine and performs exploration and production activities on behalf of the JV.

4.1 Illustration A will not be the subject matter of 'ST/GST' for the reason that the operating member is not carrying out an activity for another for consideration. In Illustration A, the money paid for purchase of machinery is merely in the nature of capital contribution and is therefore a transaction in money.

4.2 On the other hand, in Illustration B, the operating member uses its own machinery and is therefore providing 'service' within the scope of supply of CGST Act, 2017. This is because in this scenario, the operating member is recovering the cost appropriated towards machinery and services from the other JV members in their participating interest ratio.

11. Clarification on issues related to Job Work [Circular No. 38/12/2018]

CircularNo.38/12/2018

New Delhi, Dated the 26th March, 2018

Subject: Clarification on issues related to Job Work

Various representations have been received regarding the procedures to be followed for sending goods for job work and the related compliance requirements for the principal and the job worker. In view of the difficulties being faced by the taxpayers and to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under section 168 (1) of the Central Goods and Services Tax Act, 2017, (hereinafter referred to as the "CGST Act") hereby clarifies the various issues raised as below:

2. As per clause (68) of section 2 of the CGST Act, 2017, "job work" means any treatment or process undertaken by a person on goods belonging to another registered person and the expression "job worker" shall be construed accordingly. The registered person on whose goods (inputs or capital goods) job work is performed is called the "Principal" for the purposes of section 143 of the CGST Act. The said section which encapsulates the provisions related to job work, provides that the registered principal may, without payment of tax, send inputs or capital goods to a job worker for job work and, if required, from there subsequently to another job worker and so on. Subsequently, on completion of the job work (by the last job worker), the principal shall either bring back the goods to his place of business or supply (including export) the same directly from the place of business/premises of the job worker within one year in case of inputs or within three years in case of capital goods (except moulds and dies, jigs and fixtures or tools).

3. It may be noted that the responsibility of keeping proper accounts of the inputs and capital goods sent for job work lies with the principal. Moreover, if the time frame of one year / three years for bringing back or further supplying the inputs / capital goods is not adhered to, the activity of sending the goods for job work shall be deemed to be a supply by the principal on the day when the said inputs / capital goods were sent out by him. Thus, essentially, sending goods for job work is not a supply as such, but it acquires the character of supply only when the inputs/ capital goods sent for job work are neither received back by the principal nor supplied further by the principal from the place of business / premises of the job worker within one/three years of being sent out. It may be noted that the responsibility for sending the goods for job work aswell as bringing them back or supplying them has been cast on the principal.

4. With respect to the above legal requirements, various issues have been raised on the following aspects:
    a. Scope / ambit of jobwork;
    b. Requirement of registration for a principal /job worker;
    c. Supply of goods by the principal from the job worker's place of business / premises;
    d. Movement of goods from the principal to the job worker and the documents and intimation required there for;

e. Liability to issue invoice, determination of place of supply and payment of GST; and
f. Availability of input tax credit to the principal and the job worker.

5. Scope/ambit of job work: Doubts have been raised on the scope of job work and whether any inputs, other than the goods provided by the principal, can be used by the job worker for providing the services of job work. It may be noted that the definition of job work, as contained in clause(68) of section 2 of the CGST Act, entails that the job work is a treatment or process undertaken by a person on goods belonging to another registered person. Thus, the job worker is expected to work on the goods sent by the principal and whether the activity is covered within the scope of job work or not would have to be determined on the basis of facts and circumstances of each case. Further, it is clarified that the job worker, in addition to the goods received from the principal, can use his own goods for providing the services of jobwork.

6. Requirement of registration for the principal/ job worker: It is important to note that the provisions of section 143 of the CGST Act are applicable to a registered person. Thus, it is only a registered person who can send the goods for job work under the said provisions. It may also be noted that the registered person (principal) is not obligated to follow the said provisions. It is his choice whether or not to avail or not to avail of the benefit of these special provisions.

6.1 Doubts have been raised about the requirement of obtaining registration by job workers when they are located in the same State where the principal is located or when they are located in a State different from that of the principal. It may be noted that the job worker is required to obtain registration only if his aggregate turnover, to be computed on all India basis, in a financial year exceeds the specified threshold limit (i.e. Rs 20 lakhs or Rs. 10 lakhs in case of special category States except Jammu & Kashmir) in case both the principal and the job worker are located in the same State. Where the principal and the job worker are located in different States, the requirement for registration flows from clause (i) of section 24 of the CGST Act which provides for compulsory registration of suppliers making any inter-State supply of services. However, exemption from registration has been granted in case the aggregate turnover of the inter- State supply of taxable services does not exceed Rs 20 lakhs or Rs. 10 lakhs in case of special category States except Jammu & Kashmir in a financial year vide notification No. 10/2017 – Integrated Tax dated 13.10.2017. Therefore, it is clarified that a job worker is required to obtain registration only in cases where his aggregate turnover, to be computed on allIndiabasis, in a financial year exceeds the threshold limit regardless of whether the principal and the job worker are located in the same State or in different States.

7. Supply of goods by the principal from job worker's place of business/premises:

Doubts havebeen raised as to whether the principal can supply goods directly from the job worker's place of business/ premises to its end customer and if yes, whether the supply will be regarded as having been made by the principal or by the job worker. It is clarified that the supply ofgoods by the principal from the place of business / premises of the job worker will be regarded as supply by the principal and not by the job workeras specified in section 143(1)(a) of the CGSTAct.

8. Movement of goods from the principal to the job worker and the documents and intimation required therefor:

8.1 Issues: Doubts have been raised about the documents required to be issued for sending the goods (i) by the principal to the job worker, (ii) fromone job worker to another job worker; and (iii) from the job worker back totheprincipal.

8.2 Legal provisions: Section 143 of the CGST Act provides that the principal may send and/ or bring back inputs/ capital goods for job work without payment of tax, under intimation to the proper officer and subject to the prescribed conditions. Rule 45 of the CGST Rules provides that the inputs, semi-finished goods or capital goods being sent for job work (including that being sent from one job worker to another job worker for further job work or those being sent directly to a job worker) shall be sent under the cover of a challan issued by the principal, containing the details specified in rule 55 of the CGST Rules. This rule has been amended vide notification No. 14/2018- Central tax dated 23.03.2018 to provide that a job worker may endorse the challan issued by the principal. The principal is also required to file FORM GST ITC-04 every quarter stating the said details. Further, as per the provisions contained in rule 138 of the CGST Rules, an e-way bill is required to be generated by every registered person who causes movement of goods of consignment value exceeding fifty thousand rupees even in cases where such movement is for reasons other than for supply (e.g. in case of movement for job work). Further, the third proviso to rule138(1) of the CGST Rules provides that the e-waybill shall be generated either by the principal or by the registered job worker irrespective of the value of the consignment, where goods are sent by a principal located in one State/ Union territory to a job worker located in any other State/ Union territory.

8.3 As mentioned above, rule 45 of the CGST Rules provides that inputs, semi-finished goods or capital goods shall be sent to the job worker under the cover of a challan issued by the principal, including in cases where such goods are sent directly to a job worker. Further, rule 55 of the CGST Rules provides that the consignor may issue a delivery challan containing the prescribed particulars in case of transportation of goods for job work. It may be noted that rule 45 provides for the issuance of a challan by the principal whereas rule 55 provides that the consignor may issue the delivery challan. It is also important to note that as per the provisions contained in rule 138 of the CGST Rules, an e-way bill is required to be generated by every registered person who causes movement of goods of consignment value exceeding fifty thousand rupees even in cases where such movement is for reasons other than for supply (e.g. in case of movement for job work). The third proviso to rule 138(1) of the CGST Rules provides that the e-way bill shall be generated either by the principal or by the registered job worker irrespective of the value of the consignment, where goods are sent by a principal located in one State/ Union territory to a job worker located in any other State/ Union territory. It may also be noted that as per Explanation 1 to rule 138(3) of the CGST Rules, where the goods are supplied by an unregistered supplier to a registered recipient, the movement shall be said to be caused by such recipient if the recipient is known at the time of commencement of the movement of goods. In other words, the e-way bill shall be generated by the principal, wherever required, in case the job worker is unregistered.

8.4 Clarification: On conjoint reading of the relevant legal provisions, the following is clarified with respect to the issuance of challan, furnishing of intimation and other documentary requirements in this regard:

i) Where goods are sent by principal to only one job worker: The principal shall prepare in triplicate, the challan in terms of rules 45 and 55 of the CGST Rules, for sending the goods to a job worker. Two copies of the challan may be sent to the job worker along with the goods. The job worker should send one copy of the said challan along with the goods, while returning them to the principal. The FORM GST ITC-04 will serve as the intimation as envisaged under section 143 of the CGST Act, 2017.

ii) Where goods are sent from one job worker to another job worker: In such cases, the

goods may move under the cover of a challan issued either by the principal or the job worker. In the alternative, the challan issued by the principal may be endorsed by the job worker sending the goods to another job worker, indicating therein the quantity and description of goods being sent. The same process may be repeated for subsequent movement of the goods to other jobworkers.

iii) Where the goods are returned to the principal by the job worker: The job worker should send one copy of the challan received by him from the principal while returning the goods to the principal after carrying out the jobwork.

iv) Where the goods are sent directly by the supplier to the job worker: In this case, the goods may move from the place of business of the supplier to the place of business/ premises of the job worker with a copy of the invoice issued by the supplier in the name of the buyer (i.e. the principal) wherein the job worker's name and address should also be mentioned as the consignee, in terms of rule 46(o) of the CGST Rules. The buyer (i.e., the principal) shall issue the challan under rule 45 of the CGST Rules and send the same to the job worker directly in terms of para (i) above. In case of import of goods by the principal which are then supplied directly from the customs station of import, the goods may move from the customs station of import to the place of business/ premises of the job worker with a copy of the Bill of Entry and the principal shall issue thechallan under rule 45 of the CGST Rules and send the same to the job worker directly.

v) Where goods are returned in piecemeal by the job worker: In case the goods after carrying out the job work are sent in piece meal quantities by a job worker to another job worker or to the principal, the challan issued originally by the principal cannot be endorsed and a fresh challan is required to be issued by the jobworker.

vi) Submission of intimation: Rule 45(3) of the CGST Rules provides that the principal is required to furnish the details of challans in respect of goods sent to a job worker or received from a job worker or sent from one job worker to another job worker during a quarter in FORM GST ITC-04 by the 25thday of the month succeeding the quarter or within such period as may be extended by the Commissioner. It is clarified that it is the responsibility of the principal to include the details of all the challans relating to goods sent by him to one or more job worker or from one job worker to another and its return therefrom. The FORM GST ITC-04 will serve as the intimation as envisaged under section 143 of the CGSTAct.

9. Liability to issue invoice, determination of place of supply and payment of GST:

9.1 Issues: Doubts have been raised about the time, value and place of supply in the hands of principal or job worker as also about the issuance of invoices by the principal or job worker, as the case may be, with regard to the supply of goods from principal to the recipient from the jobworker's place of business / premises and the supply of services by the jobworker.

9.2 Legal provisions: As mentioned earlier, section 143 of the CGST Act provides that the inputs/ capital goods may be sent for job work without payment of tax and unless they are brought back by the principal, or supplied from the place of business / premises of the job worker within a period of one / three years, as the case may be, it would be deemed that such inputs or capital goods (other than moulds and dies, jigs and fixtures or tools) have been supplied by the principal to the job worker on the day when the said inputs or capital goods were sent out. Further, the job worker is liable to pay GST on the supply of job work services.

9.3 The provisions relating to time of supply are contained in sections 12 and 13 of the CGST Act and that for determining the value of supply are in section 15 of the CGST Act. The provisions relating to place of supply are contained in section 10 of the IGST Act, 2017. Further, the provisions relating to the issuance of an invoice are contained in section 31 of the CGST Act read with rule 46 of the CGSTRules.

9.4 On conjoint reading of all the provisions, the following is clarified withrespect to the issuance of an invoice, time of supply and valueof supply:

i) Supply of job work services: The job worker, as a supplier of services, is liable to pay GST if he is liable to be registered. He shall issue an invoice at the time of supply of the services as determined in terms of section 13 read with section 31 of the CGST Act. The value of services would be determined in terms of section 15 of the CGST Act and would include not only the service charges but also the value of any goods or services used by him for supplying the job work services, if recovered from the principal. Doubts have been raised whether the value of moulds and dies, jigs and fixtures or tools which have been provided by the principal to the job worker and have been used by the latter for providing job work services would be included in the value of job work services. In this regard, attention is invited to section 15 of the CGST Act which lays down the principles for determining the value of any supply under GST. Importantly, clause(b)of sub-section (2) of section 15 of the CGST Act provides that any amount that the supplier is liable to pay in relation to the supply but which has been incurred by the recipient will form part of the valuation for that particular supply, provided it has not been included in the price for such supply. Accordingly, it is clarified that the value of such moulds and dies, jigs and fixtures or tools may not be included in the value of job work services provided its value has been factored in the price for the supply of such services by the job worker. It may be noted that if the job worker is not registered, GST would be payable by the principal on reverse charge basis in terms of the provisions contained in section 9(4) of the CGST Act. However, the said provision has been kept in abeyance for the timebeing.

ii) Supply of goods by the principal from the place of business/ premises of jobworker: Section143 of the CGST Act provides that the principal may supply, from the place of business / premises of a jobworker, inputs after completion of job worker otherwise or capital goods (other than moulds and dies, jigs and fixtures or tools) within one year or three years respectively of their being sent out, on payment of tax within India, or with or without payment of tax for exports, as the case may be. This facility is available to the principal only if he declares the job worker's place of business/ premises as his additional place of business or if the job worker is registered.

Since the supply is being made by the principal, it is clarified that the time, value and place of supply would have to be determined in the hands of the principal irrespective of the location of the job worker's place of business/ premises. Further, the invoice would have to be issued by the principal. It is also clarified that in case of exports directly from the job worker's place of business/premises, the LUT or bond, as the case may be, shall be executed by the principal.

Illustration: The principal is located in State A, the job worker in State B and the recipient in State C. In case the supply is made from the jobworker's place of business/ premises, the invoice will be issued by the supplier (principal) located in State A to the recipient located in State C. The said transaction will be an inter-State supply. In case the recipient is also located in State A, it will be an intra-State

supply.

iii) Supply of waste and scrap generated during the job work: Sub - section (5) of Section 143 of the CGST Act provides that the waste and scrap generated during the job work may be supplied by the registered job worker directly from his place of business or by the principal in case the job worker is not registered. The principles enunciated in para (ii) above would apply mutatis mutandis in this case.

9.5 Violation of conditions laid down in section 143: As per the provisions contained in section 143 of the CGST Act, if the inputs or capital goods (other than moulds and dies, jigs and fixtures or tools) are neither received back by the principal nor supplied from the job worker's place of business within the specified time period, the inputs or capital goods (other than moulds and dies, jigs and fixtures or tools) would be deemed to have been supplied by the principal to the job worker on the day when such inputs or capital goods were sent out to the first job worker.

9.6 Thus, if the inputs or capital goods are neither returned nor supplied from the job worker's place of business/ premises within the specified time period, the principal would issue an invoice for the same and declare such supplies in his return for that particular month in which the time period of one year / three years has expired. The date of supply shall be the date on which such inputs or capital goods were initially sent to the job worker and interest for the intervening period shall also be payable on the tax. If such goods are returned by the job worker after the stipulated time period, the same would be treated as a supply by the job worker to the principal and the job worker would be liable to pay GST if he is liable for registration in accordance with the provisions contained in the CGSTAct read with the rules made there under. It may be noted that if the job worker is not registered, GST would be payable by the principal on reverse charge basis in terms of the provisions contained in section 9(4) of the CGST Act. However, the said provision has been kept in abeyance for the time being. Further, there is no requirement of either returning back or supplying the goods from the job worker's place of business/ premises as far as moulds and dies, jigs and fixtures, or tools are concerned.

10. Availability of input tax credit to the principal and job worker:

Doubts have been raised regarding the availability of input tax credit (ITC) to the principal in respect of inputs / capital goods that are directly received by the job worker. Doubts have also been raised whether the job worker is eligible for ITC in respect of inputs, etc. used by him in supplying job work services. It is clarified that, in view of the provisions contained in clause (b) of sub-section (2) of section 16 of the CGST Act, the input tax credit would be available to the principal, irrespective of the fact whether the inputs or capital goods are received by the principal and then sent to the job worker for processing, etc. or whether they are directly received at the job worker's place of business/ premises, without being brought to the premises of the principal. It is also clarified that the job worker is also eligible to avail ITC on inputs, etc. used by him in supplying the job work services if he is registered.

12. Withdrawal of Circular No. 28/02/2018-GST dated 08.01.2018 as amended vide Corrigendum dated 18.01.2018 and Order No 02/2018–Central Tax dated 31.03.2018(catering services provided in educational institute)[Circular No. 50/24/2018-GST]

Circular No. 50/24/2018-GST

New Delhi, 31st July 2018

Subject: Withdrawal of Circular No. 28/02/2018-GST dated 08.01.2018 as amended vide Corrigendum dated 18.01.2018 and Order No 02/2018–Central Tax dated31.03.2018

The Circular No. 28/02/2018-GST, dated 08.01.2018 as amended vide Corrigendum dated 18.01.2018 was issued to clarify GST rate applicable on catering services, i.e., supply of food or drink in a mess or canteen in an educational institute. Also, Order No 02/2018- Central Tax dated 31.03.2018, was issued to clarify GST rate on supply of food and/or drinks by the Indian Railways or Indian Railways Catering and Tourism Corporation Ltd. or their licensees, in trains or at platforms (staticunits).

2. Consequent to the decisions of 28th GST Council Meeting held on 21.07.2018, the contents of the Circular No. 28/02/2018-GST dated 08.01.2018 as amended vide Corrigendum dated 18.01.2018 have been incorporated in Sl. No. 7 (i) of the Notification No. 13/2018-Central Tax(Rate), dated 26.07.2018 amending the Notification No. 11/2017- Central Tax (Rate) dated 28th June2017.

3. Also, the contents of the Order No 02/2018-Central Tax dated 31.03.2018 have been incorporated in Sl. No. 7(ia) of the Notification No. 13/2018-Central Tax(Rate), dated 26.07.2018 amending the Notification No. 11/2017-Central Tax (Rate) dated 28th June 2017.

4. Hence, Circular No. 28/02/2018-GST, dated 08.01.2018 as amended vide Corrigendum dated 18.01.2018 and Order No 02/2018-Central Tax dated 31.03.2018 is withdrawn w.e.f 27.07.2018.

13. Applicability of GST on ambulance services provided to Government by private service providers under the National Health Mission (NHM)[CircularNo.51/25/2018-GST]

CircularNo.51/25/2018-GST
New Delhi, 31st July,2018

Subject: Applicability of GST on ambulance services provided to Government by Private service providers under the National Health Mission (NHM)

I am directed to invite your attention to the Circular No. 210/2/2018- Service Tax, dated 30th May, 2018. The said Circular has been issued in the context of service tax exemption contained in notification No. 25/2012- Service Tax dated 20.06.2012 at S1. No.2 and 25(a). The Circular states, inter alia, that the service of transportation in ambulance provided by State Governments and private service providers (PSPs) to patients are exempt under notification No. 25/2012- Service Tax dated 20.06.2012 and that ambulance service provided by PSPs to State Governments under National Health Mission is a service provided to Government by way of public health and hence exempted under notification No. 25/2012- Service Tax dated 20.06.2012.

2. The service tax exemption at S1. No.2 of notification No. 25/2012 dated 20.06.2012 has been carried forward under GST in the identical form vide S1. No. 74 of notification No. 12/2017- CT (R) dated 28.06.2017. The service tax exemption at serial No. 25(a) of notification No. 25/2012 dated 20.06.2012 has also been substantially, although not in the same form, continued under GST vide S1. No.3 and 3A of the notification No. 12/2017- CT (R) dated 28.06.2017. The said exemption entries under Service Tax and GST notification read as under

Service Tax	GST
Sl. No.2: (i) Health care services by a clinical establishment, an authorized medical practitioner or para-medics; (ii) Services provided by way of transportation of a patient in an ambulance, other than those specified in (i) above	**Sl. No. 74**: Services by way of - (a) health care services by a clinical establishment, an authorized medical practitioner or para-medics; (b) services provided by way of transportation of a patient in an ambulance, other than those specified in (a) above.
Sl. No. 25(a): Services provided to Government, a local authority or a governmental authority by way of water supply, public health, sanitation conservancy, solid waste management or slum improvement and upgradation.	**Sl. No.3**: Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union territory or local authority or a Governmental authority or a Government Entity by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.

	Sl. No. 3A: Composite supply of goods and services in which the value of supply of goods constitutes not more than 25 per cent. of the value of the said composite supply provided to the Central Government, State Government or Union territory or local authority or a Governmental authority or a Government Entity by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.

3. Functions of 'Health and sanitation' is entrusted to Panchayats under Article 243G of the Constitution of India read with Eleventh Schedule. Function of' Public health' is entrusted to Municipalities under Article 243W of the Constitution read with Twelfth schedule to the Constitution. Thus ambulance services are an activity in relation to the functions entrusted to Panchayats and Municipalities under Articles 243G and 243 W of the Constitution.

4. In view of the above, it is clarified that the clarification contained in the Circular No. 210/2/2018- Service Tax dated 30th May, 2018 with regard to the services provided by Government and PSPs by way of transportation of patients in an ambulance is applicable for the purpose of GST also, as the said services are specifically exempt under notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 vide S1. No. 74.

5. As regards the service provided by PSPs to the State Governments by way of transportation of patients on behalf of the State Governments against consideration in the form of fee or otherwise charged from the State Government, it is clarified that the same would be exempt under-

    a. Sl. No.3 of notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 if it is a pure service and not a composite supply involving supply of any goods, and

    b. Sl. No. 3A of notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 if it is a composite supply of goods and services in which the value of supply of goods constitutes not more than 25 per cent of the value of the said composite supply.

Enclosure:
Circular no. 210/2/2018- Service Tax (F. No. 137/51/2016- Service Tax., dated 30th May, 2018)

14. Applicability of service tax on ambulance services provided to government by private service providers under the National Health Mission (NHM) [Circular No 210/2/2018-Service Tax]

Circular No 210/2/2018-Service Tax
New Delhi, the 30th May, 2018

Subject: Applicability of service tax on ambulance services provided to government by private service providers under the National Health Mission (NHM)

I am directed to draw your attention to a reference of the Ministry of Health & Family Welfare, Government of India on the above subject and analyse the manner in which the taxability has to be determined in such cases.

2. It has been stated that under the National Health Mission (NHM), a flagship programme of the Government of India, the Central Government provides technical and financial support to states to strengthen healthcare systems including for free ambulance services (Dial 102/108 services). Dial 108 is the emergency response system primarily designed to attend to patients of critical care, trauma and accident victims etc., while Dial 102 services essentially are for basic patient transport aimed to cater the needs of pregnant women and children, though other categories are also taking benefit and are not excluded. Many states are operating the ambulance service on an outsourced model and these services are funded under the NHM and provided free of cost to all patients. In this connection the Ministry of Health &Family Welfare, has requested for a clarification whether the private service provider (PSP) is liable for payment of service tax.

3.1 The matter has been examined. It is observed that this entire project involves three legs of activities, one by the Government for the public, second by the PSP for the public and third, by the PSP for the Government. In respect of the first and the second legs of activity i.e. the ambulance services being provided by the Government and PSP to the patients, neither the State government nor the PSP charges any fee from the patients who avail of these ambulance services. The PSP however charges a fee from the State government for carrying out the third activity.

3.2 Any activity carried out by one person for another without any consideration will not be covered by the definition of service' in section 65(44) B of the Finance Act, 1994. Even if a consideration was charged, by virtue of entry 2(ii) of notification no 25/2012- Service Tax dated 20th June, 2012, services provided by way of transportation of a patient in an ambulance, other than health care services by a clinical establishment, an authorized medical practitioner or para-medics, are exempted from the whole of the service tax leviable thereon. Thus the activities provided by the State government and the PSP to patients are not leviable to service tax.

3.3 As regards the activity undertaken by the PSP for the State government for which consideration is charged, attention is invitee: to s1.no 25(a) of the notification no 25/2012 - Service Tax, dated 20th June. 2012. The scope of the relevant exemption, in different time periods, was as follows:-

In the period from 01.07.2012 to 10.07.2014

"Services provided to Government, a local authority or a governmental authority by way of" (a) carrying out any activity in relation to any function ordinarily entrusted to a municipality in relation to water supply, public health, sanitation conservancy, solid waste management or slum improvement and upgradation; or ……"

In the period from 11.07.2014 to 30.06.2017

"Services provided to Government, a local authority or a governmental authority by way of (a) water supply, public health, sanitation conservancy, solid waste management or slum improvement and upgradation……….."

3.4 Thus it follows that, exemption is available, inter alia, to services provided to Government, a local authority or a governmental authority, by way of public health.

3.5 The phrase "public health" is a general term and will cover a number of activities which ensure the health of the public. In the Ministry of Health & Family Welfare's reference it has been stated that this activity of providing free ambulance services by the states is funded under the National Health Mission (NHM). One of the core values of the NHM enlisted by the Framework for implementation of National Health Mission (2012-2017) is to strengthen public health systems as a basis for universal access and social protection against the rising costs of health care. As a part of its goals outcomes and strategies the framework has categorically stated that NHM will essentially focus on strengthening primary health care across the country. The Framework further states that assured free transport in the form of Emergency Response System (ERS) and Patient Transport Systems (PTS) is an essential requirement of the public hospital and one which would reduce the cost barriers to institutional care.

3.6 Thus the provision of ambulance services to State governments under the NHM is a service provided to government by way of public health and hence exempted under notification no 25/2012-Service Tax dated 20.06.2012.

15. Taxability of services provided by Industrial Training Institutes (ITI) [Circular No. 55/29/2018·GST]

Circular No. 55/29/2018·GST
New Delhi, the 10th August, 2018

Subject: Taxability of services provided by Industrial Training Institutes (ITI)

Representations have been received requesting to clarify the following:

a) Whether GST is payable on vocational training provided by private ITIs in designated trades and in other than designated trades.

b) Whether GST is payable on the service provided by a private Industrial Training Institute for conduct of examination against consideration in the form of entrance fee and also on the services relating to admission to or conduct of examination.

2. With regard to the first issue, [Para (a) above), it is clarified that Private ITIs qualify as an educational institution as defined under para 2(y) of notification No. 12/2017-CT(Rate) if the education provided by these I ls is approved as vocational educational course. The approved vocational educational course has been defined in para 2(h) of notification ibid to mean a course run by an ITI or an Industrial Training Centre affiliated to NCVT (National Council for Vocational Training) or SCVT (State Council for Vocational Training) offering courses in designated trade notified under the Apprenticeship Act, 1961; or a Modular employable skill course, approved by NCVT, run by a person registered with DG Training in Ministry of Skill Development. Therefore, services provided by a private ITI in respect of designated trades notified under Apprenticeship Act, 1961 are exempt from GST under Sr. No.66 of notification No.12/2017-CT(Rate).As corollary, services provided by a private ITI in respect of other than designated trades would be liable to pay GST and are not exempt.

3. With regard to the second issue, [Para (b) above), it is clarified that in case of designated trades, services provided by a private ITI by way of conduct of entrance examination against consideration in the form of entrance fee will also be exempt from GST [Entry (aa) under Sl. No. 66 of notification No. 12/2017-CT(Rate) refers]. Further, in respect of such designated trades, services provided to an educational institution, by way of, services relating to admission to or conduct of examination by a private IITI will also be exempt [Entry (b(iv)) under Sr. No. 66 of notification No. 12/2017-CT(Rate) refers]. It is further clarified that in case of other than designated trades in private ITIs, GST shall be payable on the service of conduct of examination against consideration in the form of entrance fee and also on the services relating to admission to or conduct of examination by such institutions, as these services are not covered by the exemption ibid.

4. As far as Government ITI are concerned, services provided by a Government ITI to individual trainees/students, is exempt under SI.No.6 of 12/2017-CT(R) dated 28.06.2017 as these are in the nature of services provided by the Central or State Government to individuals. Such exemption in relation to services provided by Government ITI would cover both - vocational training and examinations conducted by these Government IT

16. Applicability of GST on various programmes conducted by the Indian Institutes of Managements (IIMs) [Circular No. 82/01/2019-GST]

Circular No. 82/01/2019-GST

New Delhi, Dated: 01.01.2019

Subject: Applicability of GST on various programmes conducted by the Indian Institutes of Managements (IIMs)

I am directed to invite your attention to the Indian Institutes of Management Act, 2018 which came into force on 31st January, 2018. According to provisions of the IIM Act, all the IIMs listed in the schedule to the IIM Act are "institutions of national importance". They are empowered to (i) grant degrees, diplomas, and other academic distinctions or titles, (ii) specify the criteria and process for admission to courses or programmes of study, and (iii) specify the academic content of programmes. Therefore, with effect from 31st January, 2018, all the IIMs are "educational institutions" as defined under notification No. 1136-F.T. dated 28.06.2017 as they provide education as a part of a curriculum for obtaining a qualification recognised by law for the time being in force.

2. At present, Indian Institutes of Managements are providing various long duration programs (one year or more) for which they award diploma/ degree certificate duly recommended by Board of Governors as per the power vested in them under the IIM Act, 2017. Therefore, it is clarified that services provided by Indian Institutes of Managements to their students in all such long duration programs (one year or more) are exempt from levy of GST. As per information received from IIM Ahmedabad, annexure 1 to this circular provides a sample list of programmes which are of long duration (one year or more), recognized by law and are exempt from GST.

3. For the period from 1st July, 2017 to 30th January, 2018, IIMs were not covered by the definition of educational institutions as given in notification No. 1136-F.T. dated 28.06.2017. Thus, they were not entitled to exemption under Sl. No. 66 of the said notification. However, there was specific exemption to following three programs of IIMs under Sl. No. 67 of notification No. 1136-F.T.:–

(i) two-year full time Post Graduate Programmes in Management for the Post Graduate Diploma in Management, to which admissions are made on the basis of Common Admission Test (CAT) conducted by the Indian Institute of Management,

(ii) fellow programme in Management,

(iii) five years integrated programme in Management.

Therefore, for the period from 1st July, 2017 to 30th January, 2018, GST exemption would be available only to three long duration programs specified above.

4. It is further, clarified that with effect from 31st January, 2018, all IIMs have become eligible for exemption benefit under Sl. No. 66 of notification No. 1136-F.T. dated 28.06.2017. As such, specific exemption granted to IIMs vide Sl. No. 67 has become redundant. The same has been deleted vide notification No. 28/2018- Central Tax (Rate) dated, 31st December, 2018 w. e. f. 1st January 2019.

5. For the period from 31st January, 2018 to 31st December, 2018, two exemptions, i.e. under Sl. No. 66 and under Sl. No. 67 of notification No. 12/ 2017- Central Tax (Rate), dated 28.06.2017 are available to the IIMs. The legal position in such situation has been clarified by Hon'ble Supreme Court in many cases that if there are two or more exemption notifications available to an assessee, the assessee can claim the one that is more beneficial to him. Therefore, from 31stJanuary, 2018 to 31st December, 2018, IIMs can avail exemption either under Sl. No 66 or Sl. No. 67 of the said notification for the eligible programmes. In this regard following case laws may be referred-

i. H.C.L. Limited vs Collector of Customs [2001 (130) ELT 405 (SC)]

ii. Collector of Central Excise, Baroda vs Indian Petro Chemicals [1997 (92) ELT 13 (SC)]

iii. Share Medical Care vs Union of India reported at 2007 (209) ELT 321 (SC)

iv. CCE vs Maruthi Foam (P) Ltd. [1996 (85) RLT 157 (Tri.) as affirmed by Hon'ble Supreme Court vide 2004 (164) ELT 394 (SC)

6. Indian Institutes of Managements also provide various short duration/ short term programs for which they award participation certificate to the executives/ professionals as they are considered as "participants" of the said programmes. These participation certificates are not any qualification recognized by law. Such participants are also not considered as students of Indian Institutes of Management. Services provided by IIMs as an educational institution to such participants is not exempt from GST. Such short duration executive programs attract standard rate of GST @ 18% (CGST 9% + SGST 9%). As per information received from IIM Ahmedabad, annexure 2 to this circular provides a sample list of programmes which are short duration executive development programs, available for participants other than students and are not exempt from GST.

7. Following summary table may be referred to while determining eligibility of various programs

conducted by Indian Institutes of Managements for exemption from GST.

Sl. No.	Periods	Programmes offered by Indian Institutes of Management	Whether exempt from GST
(1)	(2)	(3)	(4)
1	1st July, 2017 to 30th January, 2018	i. two-year full time Post Graduate Programmes in Management for the Post Graduate Diploma in Management, to which admissions are made on the basis of Common Admission Test (CAT) conducted by the Indian Institute of Management, ii. fellow programme in Management, iii. five years integrated programme in Management.	Exempt from GST
		i. One- year Post Graduate Programs for Executives, ii. Any programs other than those mentioned at Sl. No. 67 of notification No. 12/2017- Central Tax (Rate), dated 28.06.2017. iii. All short duration executive development programs or need based specially designed programs (less than one year).	Not exempt from GST
2	31st January, 2018 onwards	All long duration programs (one year or more) conferring degree/ diploma as recommended by Board of Governors as per the power vested in them under the IIM Act, 2017 including one- year Post Graduate Programs for Executives.	Exempt from GST
		All short duration executive development programs or need based specially designed programs (less than one year) which are not a qualification recognized by law.	Not exempt from GST

8. This clarification applies, *mutatis mutandis*, to corresponding entries of respective IGST, UTGST, SGST exemption notifications.

17. Applicability of GST on Asian Development Bank (ADB) and International Finance Corporation (IFC) [Circular No. 83/02/2019-GST]

Circular No. 83/02/2019-GST

New Delhi, Dated: 01.01.2019

Subject: Applicability of GST on Asian Development Bank (ADB) and International Finance Corporation (IFC)

Representations have been received seeking clarification regarding applicability of GST on Asian Development Bank (ADB) and International Finance Corporation (IFC). The matter has been examined.

2. The ADB Act, 1966 provides that notwithstanding anything to the contrary contained in any other law, the Bank, its assets, properties, income and its operations and transactions shall be exempt from all the taxation and from all customs duties. The Bank shall also be exempt from any obligation for payment, withholding or collection of any tax or duty [Section 5 (1) of the ADB Act, 1966 read with Article 56 (1) of the schedule thereto refers]. DEA has already conveyed vide letter No. 1/28/2002-ADB dated 22-01-2004 addressed to ADB that taxable services provided by ADB are exempted from service tax.

2.1 Similarly, IFC Act, 1958 also provides that notwithstanding anything to the contrary contained in any other law, the Corporation, its assets, properties, income and its operations and transactions authorised by the Agreement, shall be immune from all taxation and from all customs duties. The Corporation shall also be immune from liability for the collection or payment of any tax or duty [Section 3 (1) of IFC Act, 1958 read with Article VI, Section 9 (a) of the Schedule thereto refers].

3. CESTAT Mumbai vide final order dated 17-10-2016 in the case of M/s Coastal Gujarat Power Ltd. has held that when the enactments that honour international agreements specifically immunize the operations of the service provider from taxability, a law contrary to that in the form of Section 66A of Finance Act, 1994 will not prevail. With the provider being not only immune from taxation but also absolved of any obligation to collect and deposit any tax, there is no scope for subjecting the recipient to tax. There is no need for a separate exemption and existing laws enacted by the sovereign legislature of the Union suffice for the purpose of giving effect to Agreements.

4. Accordingly, it is clarified that the services provided by IFC and ADB are exempt from GST in terms of provisions of IFC Act, 1958 and ADB Act. The exemption will be available only to the services provided by ADB and IFC and not to any entity appointed by or working on behalf of ADB or IFC.

18. Applicability of GST on Asian Development Bank (ADB) and International Finance Corporation (IFC) [Circular No. 84/03/2019-GST]

Circular No. 84/03/2019-GST

New Delhi, Dated: 01.01.2019

Subject: Clarification on issue of classification of service of printing of pictures covered under 998386

It has been brought to the notice of the Board that the service of "printing of pictures" correctly covered under service code 998386 - "Photographic and videographic processing services" is being classified by trade under service code 998912 - "Printing and reproduction services of recorded media, on a fee or contract basis". The two service codes attract different GST rate of 18% and 12% respectively and therefore wrong classification may lead to short payment of GST.

2. The matter has been examined. According to Explanatory Notes to the scheme of classification of services, the service code "**998386 Photographic and videographic processing services,** *includes,* -

developing of negatives and the printing of pictures for others according to customer specifications such as enlargement of negatives or slides, black and white processing; colour printing of images from film or digital media; slide and negative duplicates, reprints, etc.; developing of film for both amateur photographers and commercial clients; preparing of photographic slides; copying of films; converting of photographs and films to other media"

3. Further, according to explanatory notes, the service code *998912 "Printing and reproduction services of recorded media, on a fee or contract basis*" clearly excludes, -

-colour printing of images from film or digital media, cf. 998386,

-audio and video production services, cf. 999613"

4. In view of the above, it is clarified that service of "printing of pictures" falls under service code "*998386: Photographic and videographic processing services"* and not under "*998912: Printing and reproduction services of recorded media, on a fee or contract basis"of* the scheme of classification of service annexed to notification No. 11/2017-Central Tax(Rate) dated 28.06.2018.The service of printing of pictures attracts GST @ 18% falling under item (ii), against serial number 21 of the Table in notification No. 11/2017-Central Tax(Rate) dated 28.06.2018.

19. Clarification on GST rate applicable on supply of food and beverage services by educational institution [Circular No. 85/04/2019-GST]

Circular No. 85/04/2019-GST

New Delhi, Dated: 01.01.2019

Subject: Clarification on GST rate applicable on supply of food and beverage services by educational institution

Representations have been received seeking clarification as to the rate of GST applicable on supply of food and beverages services by educational institution to its students. It has been stated that the words "school, college" appearing in Explanation 1 to Entry 7 (i) of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 give rise to doubt whether supply of food and drinks by an educational institution to its students is eligible for exemption under Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 Sl. No 66, which exempts services provided by an educational institution to its students, faculty and staff.

2. The matter has been examined. Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, Sl. No. 7(i) prescribes GST rate of 5% on supply of food and beverages services. Explanation 1 to the said entry states that such supply can take place at canteen, mess, cafeteria of an institution such as school, college, hospitals etc. On the other hand, Notification No. 12/2017-Central Tax (Rate), Sl. No. 66 (a) exempts services provided by an educational institution to its students, faculty and staff. There is no conflict between the two entries. Entries in Notification No. 11/2017-Central Tax (Rate) prescribing GST rates on service have to be read together with entries in exemption Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017. A supply which is specifically covered by any entry of Notification No. 12/2017-Central Tax (Rate) dated 28-06-2017 is exempt from GST notwithstanding the fact that GST rate has been prescribed for the same under Notification No. 11/2017-Central Tax (Rate)dated 28.06.2017.

2.1 Supply of all services by an educational institution to its students, faculty and staff is exempt under Notification No. 12/2017-Central Tax (Rate)dated 28.06.2017, Sl. No. 66. Such services include supply of food and beverages by an educational institution to its students, faculty and staff. As stated in explanation 3 (ii) to Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 Chapter, Section, Heading, Group or Service Codes mentioned in column (2) of the table in Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 are only indicative. A supply is eligible for exemption under an entry of the said notification where the description given in column (3) of the table leaves no room for any doubt. Accordingly, it is clarified that supply of

food and beverages by an educational institution to its students, faculty and staff, where such supply is made by the educational institution itself, is exempt under Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017,vide Sl. No. 66 w.e.f. 01-07-2017 itself. However, such supply of food and beverages by any person other than the educational institutions based on a contractual arrangement with such institution is leviable to GST@ 5%.

3. In order to remove any doubts on the issue, Explanation 1 to Entry 7(i) of Notification No. 11/2017-Central Tax(Rate) dated 28.06.2017 has been amended vide Notification No. 27/2018-Central Tax(Rate) dated 31.12.2018 to omit from it the words “school, college”. Further, heading 9963 has been added in Column (2) against entry at Sl. No. 66 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, vide Notification No. 28/2018-Central Tax (Rate) dated 31.12.2018.

20. GST on Services of Business Facilitator (BF) or a Business Correspondent (BC) to Banking Company [Circular No. 86/05/2019-GST]

Circular No. 86/05/2019-GST

New Delhi, Dated: 01.01.2019

Subject: GST on Services of Business Facilitator (BF) or a Business Correspondent (BC) to Banking Company

Representations have been received seeking clarification on following two issues:

(i) What is the value to be adopted for the purpose of computing GST on services provided by BF/BC to a banking company?

(ii) What is the scope of services provided by BF/BC to a banking company with respect to accounts in its rural area branch that are eligible for existing GST exemption?

2. The matter has been examined. The issues involved are clarified as follows:

2.1 Issue 1: Clarification on value of services by BF/BC to a banking company: As per RBI's Circular No. DBOD.No.BL.BC. 58/22.01.001/2005-2006 dated 25.01.2006 and subsequent instructions on the issue (referred to as 'guidelines' here in after), banks may pay reasonable commission/fee to the BC, the rate and quantum of which may be reviewed periodically. The agreement of banks with the BC specifically prohibits them from directly charging any fee to the customers for services rendered by them on behalf of the bank. On the other hand, banks (and not BCs) are permitted to collect reasonable service charges from the customers for such service in a transparent manner. The arrangements of banks with the Business Correspondents specify the requirement that the transactions are accounted for and reflected in the bank's books by end of the day or the next working day, and all agreements/ contracts with the customer shall clearly specify that the bank is responsible to the customer for acts of omission and commission of the Business Facilitator/Correspondent.

2.3 Hence, banking company is the service provider in the business facilitator model or the business correspondent model operated by a banking company as per RBI guidelines. The banking company is liable to pay GST on the entire value of service charge or fee charged to customers whether or not received via business facilitator or the business correspondent.

3. Issue 2: Clarification on the scope of services by BF/BC to a banking company with

respect to accounts in rural areas: It has also been requested that the scope of exemption to services provided in relation to "accounts in its rural area branch" vide Sl. No. 39 of Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 be clarified. This clarification has been requested as the exemption from tax on services provided by BF/BC is dependent on the meaning of the expression "accounts in its rural area branch".

3.1 It is clarified that for the purpose of availing exemption from GST under Sl. No. 39 of said notification, the conditions flowing from the language of the notification should be satisfied. These conditions are that the services provided by a BF/BC to a banking company in their respective individual capacities should fall under the Heading 9971 and that such services should be with respect to accounts in a branch located in the rural area of the banking company. The procedure for classification of branch of a bank as located in rural area and the services which can be provided by BF/BC, is governed by the RBI guidelines. Therefore, classification adopted by the bank in terms of RBI guidelines in this regard should be accepted.