

Tax Alert 19.

26th June 2021

A Circular Weekend



PAKSH LEGAL
INNOVATE - DISCOVER - THRIVE



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Update on Circulars

The Central Government has issued various circulars, on recommendation of GST Council in its 43rd meeting, ranging from 149/2021 to 155/2021 dated 17.06.2021. A discussion on each circular issued is done in this update for the sake of complete understanding and for understanding the impact thereof.

HSN 8424. Laterals/Part of Sprinklers or Drip Irrigation System

Circular No. 155/11/2021-GST

- Laterals/parts to be used solely or principally with sprinklers or drip irrigation system, which are classifiable under heading 8424, would attract a GST of 12%, even if supplied separately.
- However, any part of general use, which gets classified in a heading other than 8424, in terms of Section Note and Chapter Notes to HSN, shall attract GST as applicable to the respective heading.

HSN 9954. Construction Service

Applicability of GST on the activity of construction of road where considerations are received in deferred payment (annuity)

Circular No. 150/06/2021-GST

Existing Law

- GST is exempt on service falling under heading 9967.
- Entry 23 of NN 12/2017 – CT (Rate) exempts “service by way of access to a road or a bridge on payment of toll. Further, entry 23A of the said notification exempts “service by way of access to a road or a bridge on payment of annuity”.

Representation was received for seeking clarification regarding applicability of GST on annuities paid for construction of road where certain portion of consideration is received upfront while remaining payment is made through deferred payment (annuity) spread over years.

Clarification

- Construction of road falls under heading 9954.
- This heading inter alia covers general construction services of highways, streets, roads railways, airfield runways, bridges and tunnels.
- Consideration for construction of road service may be paid partially upfront and partially in deferred annual payments (and may be called annuities).
- Therefore, construction service of road is not exempt from levy of GST.

Services provided for construction of ropeway

Circular No. 152/08/2021-GST

Existing Law

- Construction services which are meant predominantly for use other than commerce, industry, or any other business or profession is taxable at 12%.
- Activity or transaction undertaken by Central Government, State Government or any local authority in which they are engaged as public authorities is not covered under the term business.

Clarification

- Activity or transaction undertaken by Governmental authority or Government entity, in which they are engaged as public authorities is covered under the term business.
- Ropeway is not a structure meant predominantly for use other than commerce, industry, or any other business or profession.
- Therefore, rate of 18% is applicable thereon.

HSN 9971. Financial and Related Service

Services provided by State Government to their PSUs by way of guaranteeing loans

Circular No. 154/10/2021-GST

- This service is exempted under entry 34A of NN 12/2017 CT (Rate).

HSN 9988. Manufacturing service on physical inputs (goods) owned by others

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

Circular No. 153/09/2021-GST

- Public Distribution System specifically figures at entry 28 of 11th Schedule to the Constitution, which lists activities that may be entrusted to a Panchayat under Article 243G of the Constitution.
- Therefore, the exemption notification is applicable – S.No. 3A refers.
- If the value of goods in such composite supply is up to 25%, the service is exempt. Else, it is taxable at 5%.

Update on Circulars

- A person registered only for the purpose of deduction of tax under section 51 of the CGST Act is also a registered person for the purposes of this taxability.

HSN 9992. Education Service

Exemption is available to Mid-Day Meal programme and Anganwadi programme funded by Government Grants or Corporate Donations

Circular No. 149/05/2021-GST

Existing Law

- Entry 66 clause (b)(ii) of the Notification No. 12/2017-Central Tax (Rate) dated 28th June, 2017, exempts services provided to an educational institution, by way of catering, including any mid-day meals scheme sponsored by the Central Government, State Government or Union territory.
- Educational institution has been defined to mean an institution providing services by way of pre-school education and education up to higher secondary school or equivalent.
- Authority for Advance Ruling in the State of Rajasthan held that **Anganwadi programme** is not covered within the benefit of this exemption programme. [Re: M/s The Akshya Patra Foundation – 2019 (2) TMI 832]
- Also, a clarification was sought on the issue whether exemption would be available if such programmes are funded by Government Grants and/or Corporate Donations.

Clarification

- As Anganwadi *inter alia* provides pre-school non-formal education, and definition of educational institution covers the institutions providing pre-school education, it would be covered by the definition of educational institution. Hence, these programmes are exempt from GST.
- The exemption is available irrespective of its funding from government grants or corporate donations.

Paksh Remarks

- The programme should be sponsored by the Central Government, State Government or Union Territory. It can be funded as clarified.

Supply of various services by Central and State Board (such as National Board of Examination)

Circular No. 151/07/2021-GST

Existing Law

- Entry 66 of the notification No. 12/ 2017- Central Tax (Rate) dated 28.06.2017 exempt the services provided **by** an educational institution:
 - a) to its students, faculty and staff
 - b) by way of conduct of entrance examination against consideration in the form of entrance fee
- Similarly, services provided **to** an educational institution relating to admission to, or conduct of examination is exempt from GST.
- Educational institution is defined under explanation 2(y) of said notification.
- Further, explanation 3(iv) covers Central and State Educational Board for limited purposes in the meaning of educational institution as under:
 - (iv) For removal of doubts, that the Central and State Educational Boards shall be treated as Educational Institution for the limited purpose of providing services by way of conduct of examination to the students.

Clarification

- GST is exempt on services provided by Central or State Boards (including the boards such as NBE) by way of conduct of examination for the students, including conduct of entrance examination for admission to educational institution.
- Input Services are also exempt such as online testing service, result publication, printing of notification for examination, admit cards, question papers etc.
- GST shall be applicable at the rate of 18% on other services provided by such Boards, namely of providing accreditation to an institution or to a professional (accreditation fee or registration fee such as fee for FMGE screening test).

Paksh Remarks

- Various rulings have been pronounced wherein service of printing of question paper has been held as exempt service being a service provided to an educational institution relating to conduct of examination.



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