

GST Implication on Healthcare, Education Sector, Charitable Institutions & CSR Related Activities

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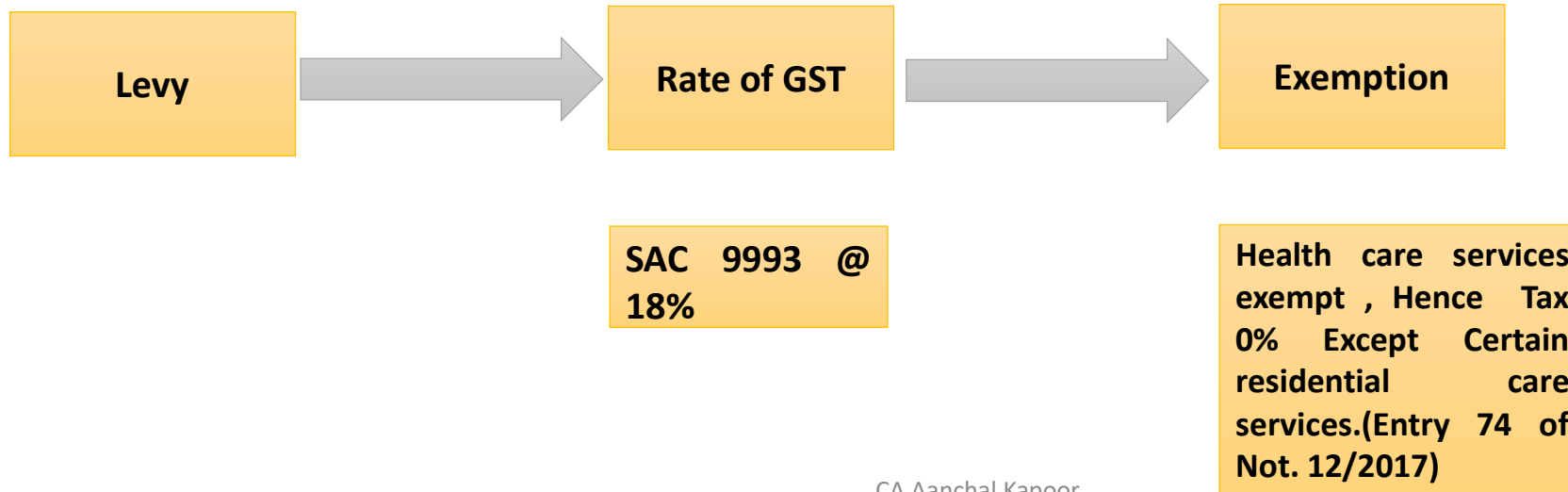
Levy & Rate of tax HEALTHCARE SECTOR



**Section 9(CGST):- Levy & collection
Section 5 (IGST Act)**

(1) Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent, as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person,

Thus from above section it is clear that section 9 covers within its ambit all the supplies of goods or services or both. Law makers had exempted certain supply of services by mentioning those supplies in GST Exemption notification 12/2017 CT Rate.



S.No	Activities	Exempt/ Taxable
1	Medicines, Consumables & implants to in-patients	Exempt
2	Food Supplied to patients	Exempt
3	Room rent	Exempt
4	Diagnostic & pre or post consulting	Exempt
5	Diagnosis Centers	Exempt
6	Retention Money Hospital	Exempt
7	Sale of medicines	Taxable
8	Food supply to attendents & visitors	Taxable
9	Hospital having Rental Income of premises	Taxable
10	Hospital having Income of ROOMS provided to Attendants	Taxable

Rate of GST

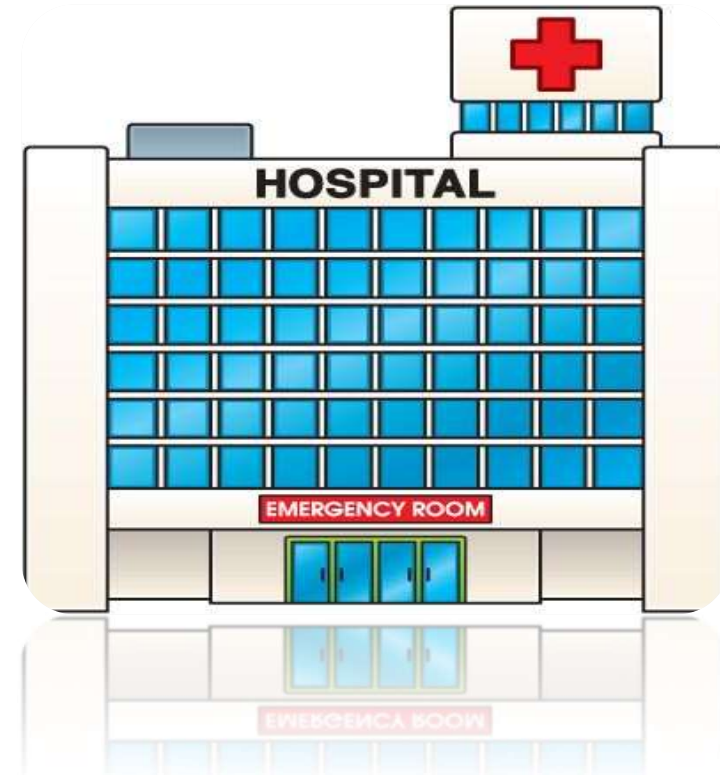


Rate of GST on health care services

SAC Code		Description	Rate
99931	999311	Inpatient services	18% but exempted via notification 12/2017
	999312	Medical and dental services	
	999313	Childbirth and related services	
	999314	Nursing and Physiotherapeutic services	
	999315	Ambulance services	
	999316	Medical Laboratory and Diagnostic-imaging services	
	999317	Blood, sperm and organ bank services	
	999319	Other human health services including homeopathy, unani, ayurveda, naturopathy, acupuncture and the like	
99932	999321	Residential health-care services other than by hospitals.	18%
	999322	Residential care services for the elderly and person with disabilities.	
99933	999331	Residential care services for children suffering from mental retardation, mental health illnesses or substance abuse	Nil
	999332	Other social services with accommodation for children	Nil
	999333	Residential care services for adults suffering from mental retardation, mental health illnesses or substance abuse	Nil
	999334	Other social services with accommodation for adults	18%
99934	999341	Vocational rehabilitation services	Nil
	999349	Other social services without accommodation for the elderly and disabled n.e.c	Nil

Exemption
Notification

**Entry No. 74 of Notification No.
12/2017**

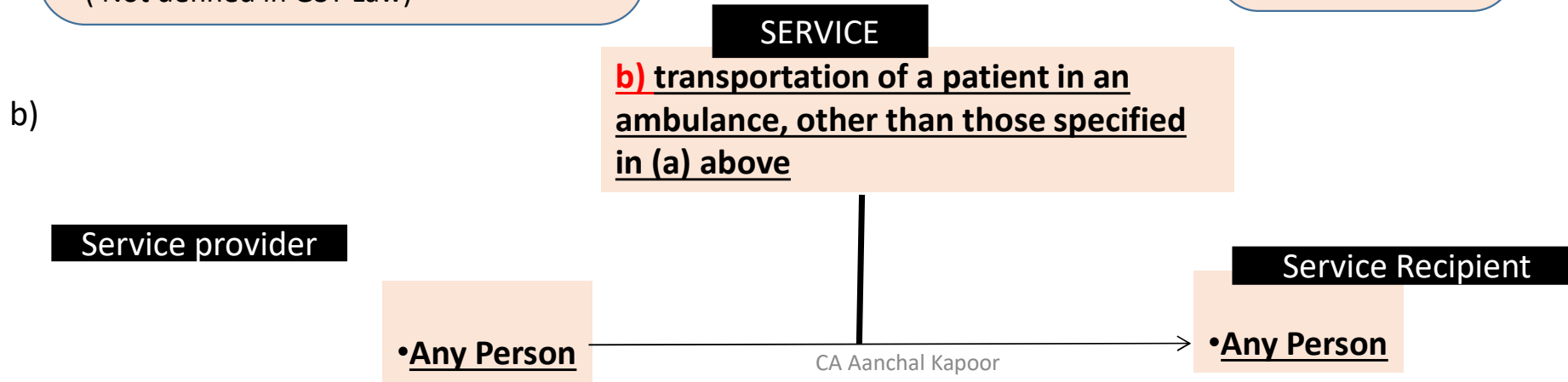
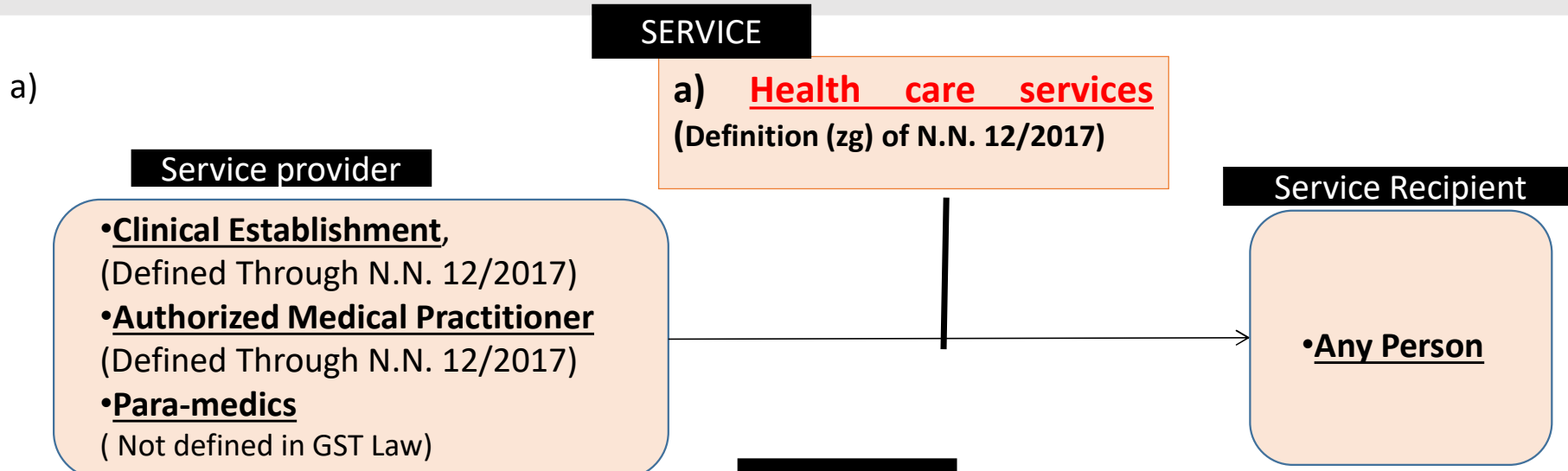


Entry No. 74 of notification No. 12/2017 Ct- Rate
Entry No. 77 of Notification No. 9/2017- IT Rate

Eg. Nurses,
Physiotherapist

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.

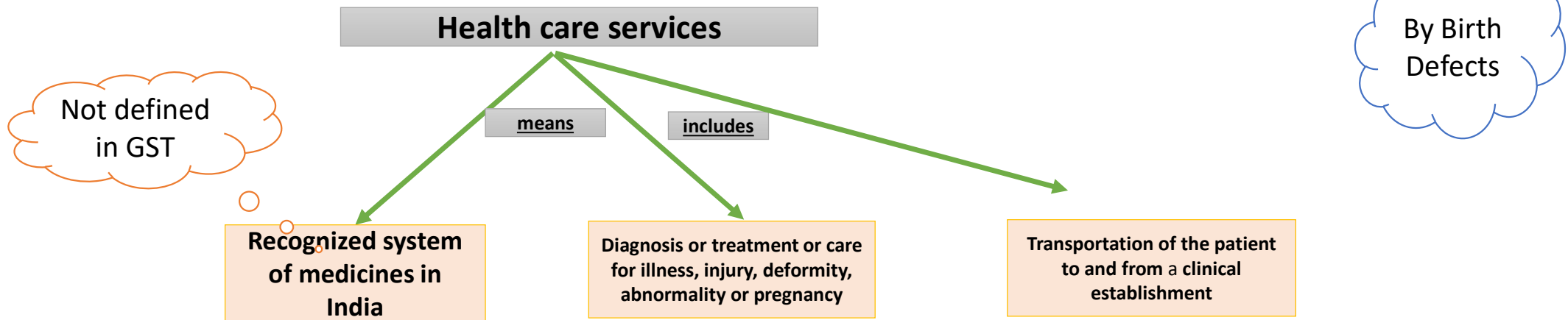


Meaning of Healthcare services

As per definition (zg) of Notification No. 12/2017- CT Rate

“Health Care Services” means

- any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy
- in any recognised system of medicines in India and
- includes services by way of transportation of the patient to and from a clinical establishment,
- but **does not include** hair transplant or cosmetic or plastic surgery,
- **except** when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma;



Recognized System of Medicines in India

Allopathy

A name for conventional medicine used by some followers

Siddha

Traditional system of medicine originating in ancient times in South India

Yoga

A set of Physical and mental exercises, originally from India, intended to give control over mind and body

Unani

Body comprises of four basic elements and disturbance in this equilibrium result in disease.

Naturopathy

A system of treatment of disease that avoids drugs and surgery and emphasizes the use of natural agents (such as air, water) and physical means.

Homeopathy

A system of treating disease in which sick people are given very small amount of natural substances

Ayurveda

Traditional system of medicines that seeks to treat mind, body and spirit by diet, herbal remedies, exercise and meditation.

Clinical Establishment

As per definition 2(s) of notification No. 12/2017- Ct Rate

"clinical establishment" means

- a **hospital, nursing home, clinic, sanatorium or any other institution by**, whatever name called,
- that offers services or facilities requiring diagnosis **Or** treatment **Or** care for illness, injury, deformity, abnormality **Or** pregnancy in **any recognized system of medicines in India**,
- or a **place established as an independent entity or a part of an establishment to carry out diagnostic or investigative services of diseases;**

Covers diagnostic centers

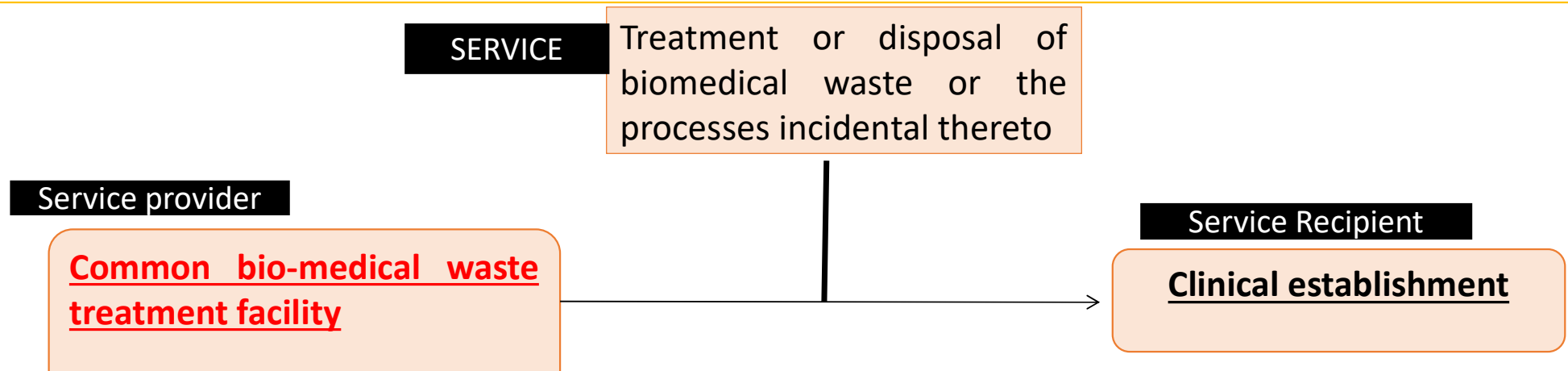
2(k) "Authorised medical practitioner" means

- a medical practitioner registered with **any of the councils of the recognized system of medicines established or recognised by law** in India **and**
- includes a medical professional having the requisite qualification to practice in **any recognised system of medicines in India as per any law for the time being in force;**

Para medics is not defined in GST Law. But as per general meaning para medics are **trained health care professionals**. Eg. Nursing staff, physiotherapists, technicians, lab assistants etc.

Entry No. 75 of notification No. 12/2017- Ct Rate
Entry No. 78 of N.N. 9/2017-It Rate

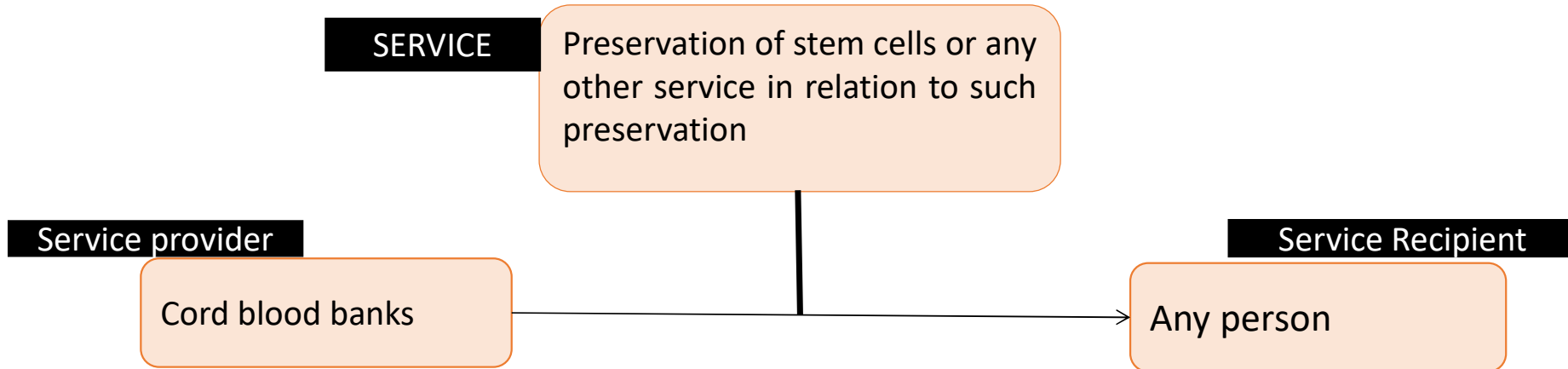
Services provided by operators of the **common bio-medical waste treatment facility** to a **clinical establishment** by way of **treatment or disposal of biomedical waste or the processes incidental thereto.**



Bio- Medical Waste is any kind of waste containing infectious material.
Eg. Infusion kits, discarded blood, unwanted microbiological culture, identifiable body parts, used bandages, dressings etc.

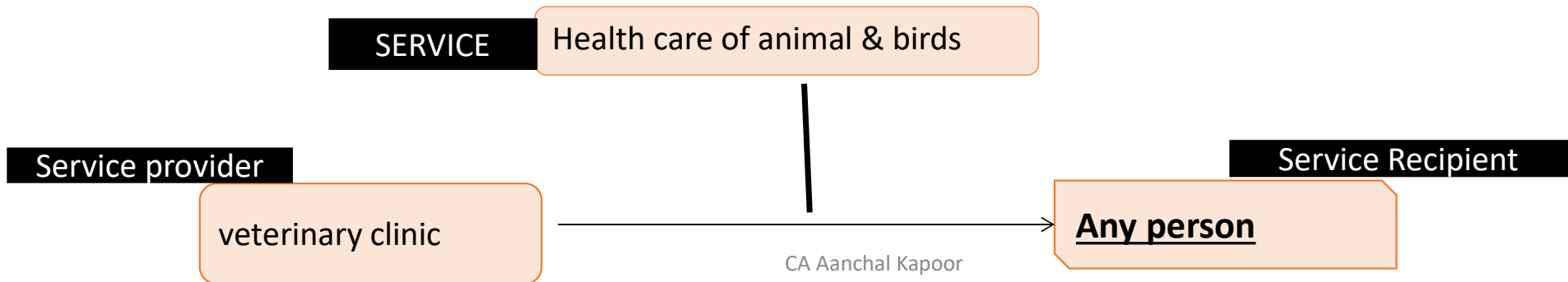
Entry No. 73 of Notification No. 12/2017- Ct Rate
Entry No. 76 of N.N. 9/2017-IT rate

Services provided by the cord blood banks by way of preservation of stem cells or any other service in relation to such preservation



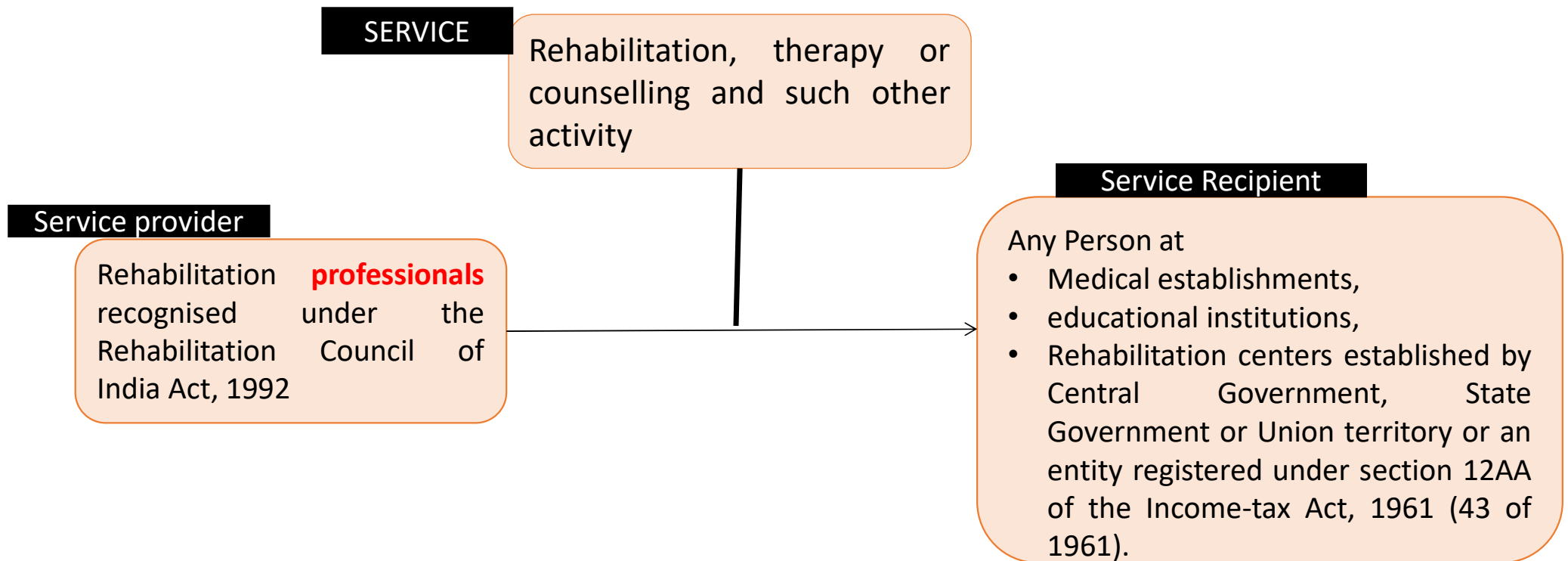
Entry No. 46 of Notification no. 12/2017- CT Rate

Services by a veterinary clinic in relation to health care of animals or birds



Entry No. 74A of Notification no. 12/2017- CT Rate

Services provided by rehabilitation **professionals** recognised under the Rehabilitation Council of India Act, 1992 (34 of 1992) by way of rehabilitation, therapy or counselling and such other activity as covered by the said Act at medical establishments, educational institutions, rehabilitation centers established by Central Government, State Government or Union territory or an entity registered under section 12AA of the Income-tax Act, 1961 (43 of 1961).



Place of supply

Place of Supply of Healthcare Services where the location of supplier of services and the location of the recipient of services is in India

The place of supply of services, except the services specified in sub-sections (3) to (14),—

➤ **Section 12(4) of IGST Act, 2017**

Location where the services are actually performed.

For Online Consultancy ,
the general rule
12(2)/13(2) will apply.

Place of Supply of Healthcare Services when either supplier or recipient are located outside India

➤ As per **Section 13(3)** of Integrated Goods and Services Tax Act, 2017(IGST): Location where the services are actually performed. Refer Note-1 of Rule 7 of IGST Rules, 2017.

As per **Section 13(6)**

- Where services are supplied at more than one location, including a location in the taxable territory its place of supply shall be the location in the taxable territory.

As per **Section 13(7)**

- Where the services are supplied in more than one State or UT, the place of supply of such services shall be taken as being in each of the respective State or UT and the value for services separately collected or determined in terms of the contract or agreement entered into this regard.
- Value of services where services are provided in more than one State/ UT, In the absence of contract or agreement. As per Rule 7 of the IGST Rules, 2017, has been notified vide **Notification No.04/2018-IT dated.31st December, 2018** as per table:

Nature of Service	Manner of Allocation
Services supplied to individuals.	By applying the generally accepted accounting principles.

CA Anchal Kapoor

LATEST GST
CIRCULAR



Relevant Notifications & Circular



Circular No. 32/06/2018

Sr. No.	Issue	Clarification
1	Hospitals hire senior doctors/ consultants/ technicians independently, without any contract of such persons with the patient; and pay them consultancy charges, without there being any employer- employee relationship. Will such consultancy charges be exempt from GST? Will revenue take a stand that they are providing services to hospitals and not to patients and hence must pay GST?	Services provided by senior doctors/ consultants/ technicians hired by the hospitals, whether employees or not, are healthcare services which are exempt.
2	Retention money: Hospitals charge the patients, say, Rs.10000/- and pay to the consultants/ technicians only Rs. 7500/- and keep the balance for providing ancillary services which include nursing care, infrastructure facilities, paramedic care, emergency services, checking of temperature, weight, blood pressure etc. Will GST be applicable on such money retained by the hospitals?	Healthcare services have been defined to mean any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India[para 2(zg) of Notification No. 12/2017- CT(Rate)]. Therefore, hospitals also provide healthcare services. The entire amount charged by them from the patients including the retention money and the fee/payments made to the doctors etc., is towards the healthcare services provided by the hospitals to the patients and is exempt.
3	Food supplied to the patients: Health care services provided by the clinical establishments will include food supplied to the patients; but such food may be prepared by the canteens run by the hospitals or may be outsourced by the Hospitals from outdoor caterers. When outsourced, there should be no ambiguity that the suppliers shall charge tax as applicable and hospital will get no ITC. If hospitals have their own canteens and prepare their own food; then no ITC will be available on inputs including capital goods and in turn if they supply food to the doctors and their staff; such supplies, even when not charged, may be subjected to GST. CA Aanchal Kapoor	Food supplied to the in-patients as advised by the doctor/nutritionists is a part of composite supply of healthcare and not separately taxable. Other supplies of food by a hospital to patients (not admitted) or their attendants or visitors are taxable.

Circular No. 51/25/2018

APPLICABILITY OF GST ON AMBULANCE SERVICES PROVIDED TO GOVERNMENT BY PRIVATE SERVICE PROVIDERS UNDER NATIONAL HEALTH MISSION

The service tax exemption at Sl. No.2 of Notification No. 25/2012 dated 20.06.2012 has been carried forward under GST in the identical form vide Sl. 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* Sl. Nos. 3 and 3 A 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.

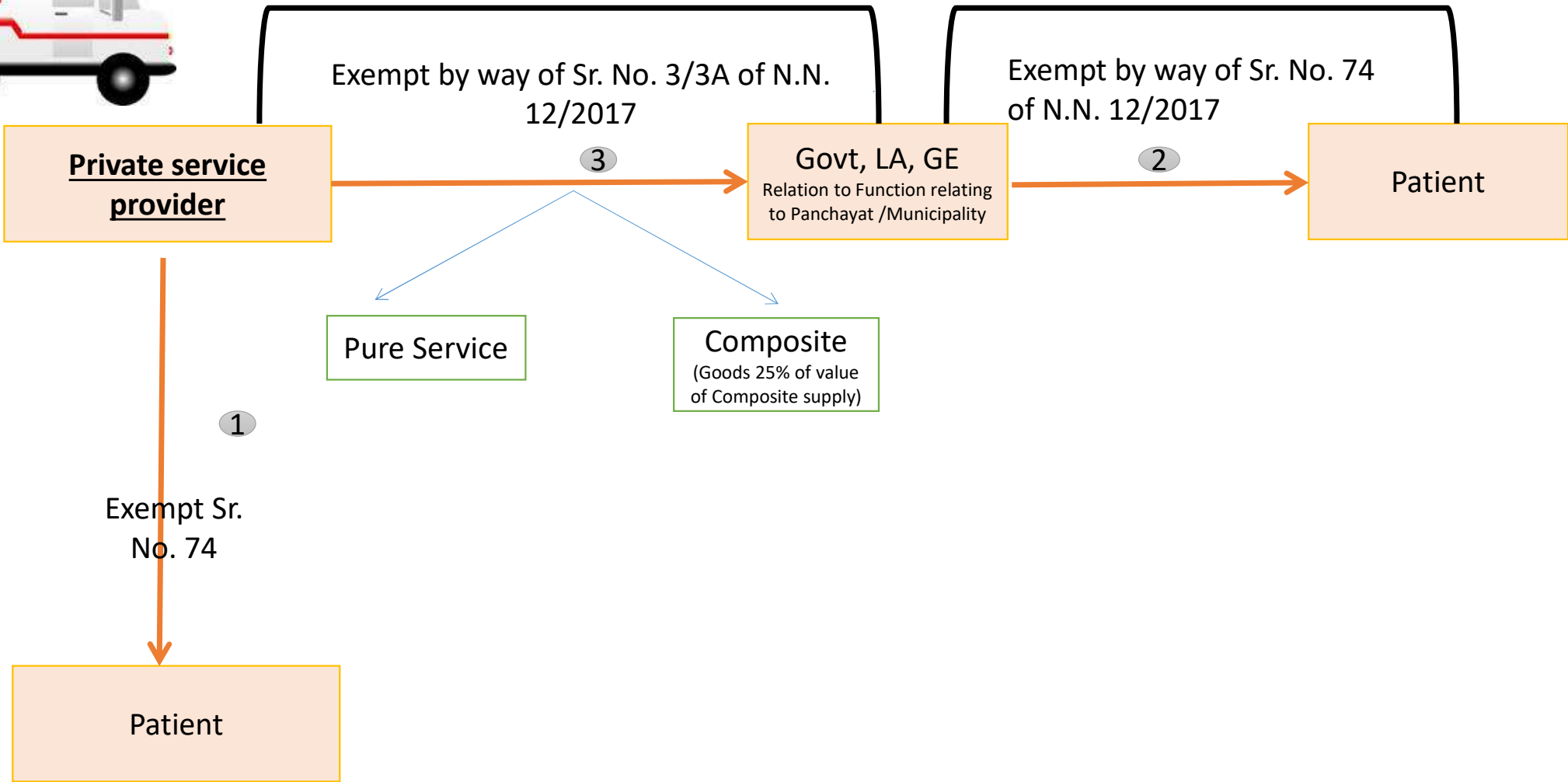
Service Tax	GST
<p>Sl. No. 2: (i) Health care services by a clinical establishment, an authorized medical practitioner or para-medics; (ii) Services provided by way of transportation of a patient in an ambulance, other than those specified in (i) above.</p>	<p>Sl. No. 74: Services by way of- (a) health 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.</p>
<p>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</p>	<p>Sl. No. 3: <u>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</u> 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.</p>

Service Tax	GST
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	SI. 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 243 W 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 243 W 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 243W 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 SI. No. 74.
5. As regards the services 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—
- SI. 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
 - SI. 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.



Summary Circular No. 51/25/2018



Circular No. 92/11/2019-GST

Free samples and gifts:

- i. It is a common practice among certain sections of trade and industry, such as, pharmaceutical companies which often provide drug samples to their stockists, dealers, medical practitioners, etc. without charging any consideration. As per sub-clause (a) of sub-section (1) of section 7 of the said Act, the expression "supply" includes all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business. Therefore, the goods or services or both which are supplied free of cost (without any consideration) shall not be treated as 'supply' under GST (except in case of activities mentioned in Schedule I of the said Act). Accordingly, it is clarified that samples which are supplied free of cost, without any consideration, do not qualify as 'supply' under GST, except where the activity falls within the ambit of Schedule I of the said Act.
- ii. Further, clause (h) of sub-section (5) of section 17 of the said Act provides that ITC shall not be available in respect of goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples. Thus, it is clarified that input tax credit shall not be available to the supplier on the inputs, input services and capital goods to the extent they are used in relation to the gifts or free samples distributed without any consideration. However, where the activity of distribution of gifts or free samples falls within the scope of 'supply' on account of the provisions contained in Schedule I of the said Act, the supplier would be eligible to avail of the ITC.
- iii. Buy one get one free: Consideration of additional item already included in the gross amount charged, no separate supply and no ITC reversal required. Composite or mixed supply needs to be checked.
- iv. Reimbursement to distributor etc. for expenses incurred by it – Reimbursement not as a pure agent hence, leviable to GST.
- v. Family trips – If given to sole distributor, schedule I transaction. Tax liable and ITC eligible. If given to unrelated party, no GST, ITC can be claimed as it is in the course or furtherance of business and not blocked otherwise.

Concept of Credit on Free Samples

Case 1

Pay GST on samples supplied and avail ITC (Schedule 1)



Valuation as per Rule 27 (FMV) leading to Rule 30: Cost of Production + 10% of cost of Production

Case 2

Reverse the credit involved in free samples supplied

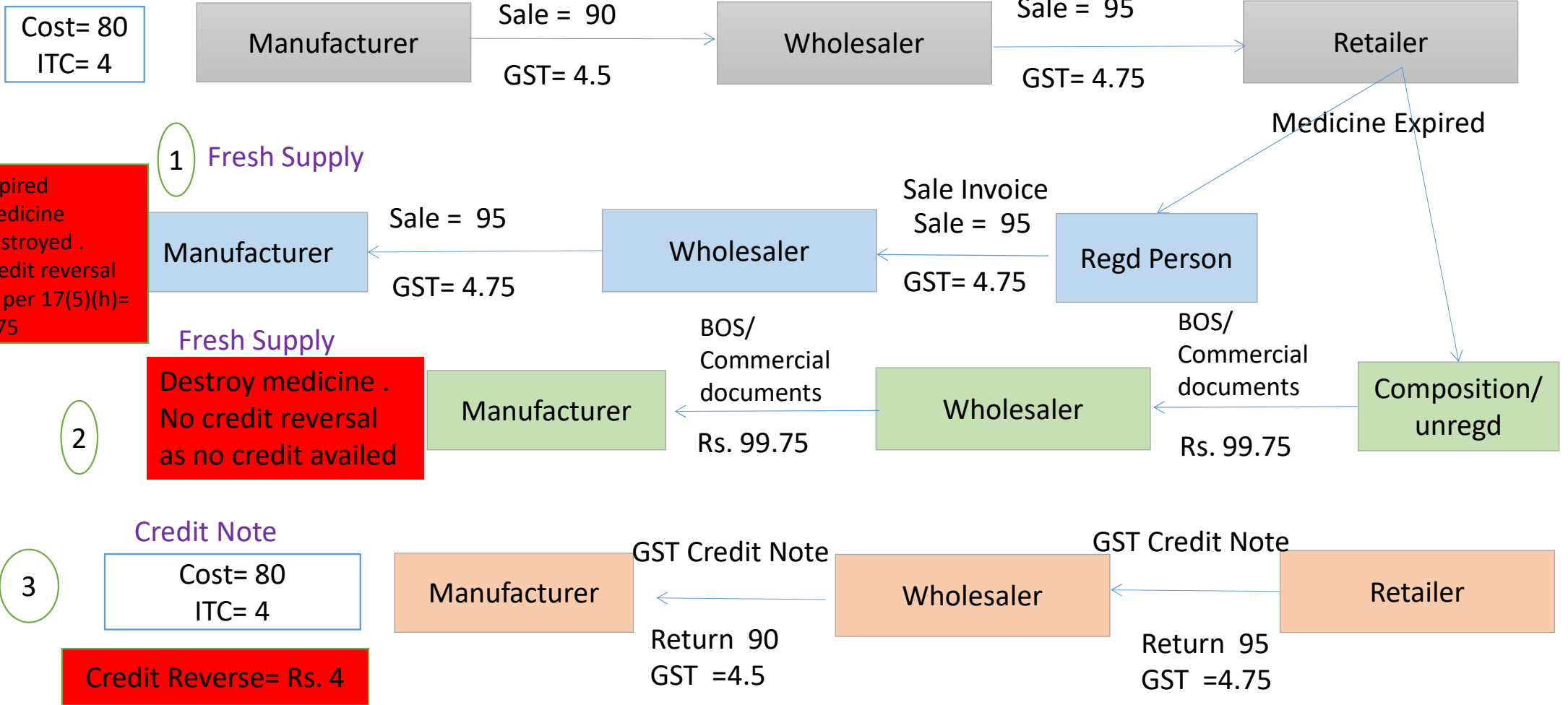


The same gets reversed in the hands of supplier.



Credit is blocked as per section 17(5)(h)

Circular No. 72/46/2018:- Circular to clarify procedure in respect of time expired drugs or medicines



Note:- Sec. 34(2) Time period when commercial credit note to be issued.

ILLUSTRATIONS

- (1). A doctor is providing healthcare services for Rs.40Lakhs and he has rental income from residential house of Rs.5 Lakhs, he is not liable for registration since both the receipts are exempt.
- (2). The same property is used by the tenant for commercial purposes (i.e. renting medical shop) then the doctor would be liable to take registration under GST since his aggregate turnover exceeds Rs.20 Lakhs. Aggregate turnover for the purpose of registration in GST, includes taxable as well as exempt services. Nevertheless, he would pay GST only in respect of rent from commercial property.
- (3). Further, his medical income is less than Rs.15 Lakhs but he receives rent of Rs.3 Lakhs from a commercial property located in other State, in such case he would not be liable for registration since aggregate turnover does not exceed threshold limit. As per [Notification No.10/2017-IT dated.13.10.2017](#), if the aggregate turnover of any person on all India Basis is less than Rs.20 /10 Lakhs, he is not liable to take registration even if he is making inter-State supply of Taxable Services.



Case Laws



Sri Ganga Ram Hospital v. Commissioner of Central Excise, Delhi-1* [2018] 94 taxmann.com 226 (New Delhi - CESTAT)

Classification of services (OR) - Section [65\(104C\)](#) of the Finance Act, 1994 - Support services of business or commerce - Assessee, a hospital, was engaged in health care services to patients - To provide such services, it had engaged professionals and doctors on contractual basis - These doctors were provided space in hospital with required facilities to attend to patients coming to hospital - These doctors were paid professional fee in terms of contracts - Fee paid to doctors was computed based on a pre-determined ratio on amount received by assessee from patients - Adjudicating Authority held that part of amount retained by assessee out of total charges collected from patients was liable to service tax under category of 'support services of business or commerce' - Whether Adjudicating Authority was justified in his view - Held, no [Para 13] [In favour of assessee]

GST/Service Tax : Where assessee, a hospital, was engaged in health care services to patients and to provide such services it had engaged doctors on contractual basis and it retained certain amount out of total charges collected from patients, assessee was not liable to pay service tax on retained amount under category of 'support services of business or commerce'

AUTHORITY FOR ADVANCE RULINGS, MADHYA PRADESH J C Genetic India (P.) Ltd., In re[[2019] 104 taxmann.com 88]

Classification of services - Madhya Pradesh Goods and Services Tax Act, 2017 - Healthcare services - Heading 9993 (Healthcare services by clinical establishment) –

- **Whether mere involvement in sophisticated testing and providing consultancy would not be a sufficient criterion, though necessary, for qualifying as a Clinical Establishment per se** - Held, yes –
- **Applicant is a Healthcare company, engaged in diagnosis, pre and post-counselling therapy and prevention of diseases by providing necessary sophisticated tests - Applicant has a collaboration with diagnostic companies accredited by NABL and DS1R –**
- Whether since **applicant do not have their own authority for giving clear report/opinion on their own for tests**, and they have to get all **tests conducted and certified by NABL accredited laboratory**, **applicant are functioning as sub-contractors to accredited companies and not as an independent Clinical Establishment** - Held, yes –
- Whether since **applicants have failed to prove their own authority and recognition for testing and giving clear report/opinion on their own, which can only be done by a NABL accredited laboratory, applicants are not qualified to avail benefit as envisaged under exemption Notification of 12/2017-Central Tax (Rate), dated 28-6-2017 [S.No.74 and Para 2(s)] and corresponding notification issued under MPGST Act, for 'healthcare services' and 'clinical establishment' is not applicable to them** - Held, yes –
- Whether thus, though services provided by applicant maybe healthcare services but they do not qualify to be a clinical establishment - Held, yes [Paras 7.3, 7.4, 7.6 and 7.8] [In favour of revenue]

GST: Healthcare services provided by a company which is not an independent clinical establishment are not exempt from GST. The Applicant has neither come forward with the names of such companies with which the Applicant claims to have collaboration, nor have the Applicant produced any document evidencing their own status of accreditation by NABL, which obviously is the sole accreditation body for testing and calibration laboratories. In absence of anything brought on record by the Applicant, we are compelled to believe that the Applicant is making a vain attempt to circumvent the essential condition for qualification of Clinical Establishment.

Ernakulam Medical Centre (P.) Ltd., In re vs.([2019] 103 taxmann.com 182 (AAAR-KERALA)/[2019] 74 GST 49 (AAAR-KERALA)(MAG)/[2019] 23 GSTL 418 (AAAR-KERALA))

Supply of Medicines to In Patients & Out Patients

Classification of services - Kerala State Goods and Services Tax Act, 2017 - Healthcare services -

• **Heading No. 9993 [Healthcare services by clinical establishment]** - Section 2(30) of the Central Goods and Services Tax Act, 2017/Section 2(30) of the Kerala State Goods and Services Tax Act, 2017 - Supply - Composite supply

QUESTION:

• Whether **since invoice/bill raised for treatment as an in patient is a single bill charging for all facilities/services utilized for treatment** in hospital including room rent, nursing care charges, laboratory, consumables, medicines, equipment charges, doctor's fee, etc., in case of an inpatient, **hospital has provided a bundle of supplies which is classifiable under health care services and is exempt from tax?**

Answer

• Held, yes – **Exemption available**. Composite Supply for In patients.

QUESTION:

• Whether however, **in case of out patients health care service provided by hospital is restricted to consultation of doctor and medicines bought by outpatients from pharmacy owned by hospital is billed separately** and cannot be considered as composite supply to extend exemption and, hence, **supply of medicines and allied items to outpatients is liable to GST being a taxable supply**

Answer

• Held, yes [Para's 10, 14 and 15] [In favour of revenue]

• GST: **Supply of medicines and allied items to out patients by Hospital is not bundled with doctor's consultation and is liable to GST being a taxable supply.**

In re M/s. Medivision Scan and Diagnostic Research Centre P. Ltd. (GST AAR Kerala)

M/s. Medivision Scan and Diagnostic Research Centre Pvt. Ltd. is a clinical establishment engaged purely in **diagnostic sentinels** such as clinical biochemistry, micro biology, chemotology, clinical pathology, radiology, ECG, radiometry, pulmonary function test etc. They are coming under the purview of Clinical Establishment Act and are rendering services through qualified laboratory technicians, paramedical technicians, doctors and radiologist. Moreover, as per Sec23(1)(a) of the CGST Act, any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or exempt from tax are not liable to get registration. In the circumstances they sought advance ruling on the following:

Question

(i) Whether diagnostic service provider has to take registration under GST.

(ii) Whether the applicant is exempt from GST considering the exemption provided in the Notification No.12/2017-CT (Rate) dtd.28-06-2017.

Answer

(i)By virtue of section 23 of State Goods and Services Tax Act, any person engaged exclusively in the business of supplying goods or services or both, that are not liable to tax or wholly exempt from tax under GST Act, are not liable to take registration. However, such persons are liable to obtain registration if they are receiving any goods or services liable to tax under reverse charge as per notifications issued under Section 9(3) of the State Goods and Service Tax Act.

(ii)As per SL. No.74 (Notification No.12/2017-CT Rate Dt: 28/06/2017, services by way of diagnosis come under the category of health care services covered under SAC 9993 in connection with health care services provided by a clinical establishment and are, therefore exempted.

Sayre Therapeutics (P.) Ltd., In re vs. ([2018] 93 taxmann.com 418 (AAR - KARNATAKA)/[2018] 54 GSTR 309 (AAR - KARNATAKA)/[2018] 13 GSTL 224 (AAR - KARNATAKA)/[2018] 69 GST 87 (AAR - KARNATAKA))

• Classification of services - Health care services (NR) - Applicant is involved in **diagnosis, pre and post counselling**, therapy and prevention of diseases by providing tests that are sophisticated and relevant

Question:

• **Whether medical team of applicant is involved in complete cycle and, hence they facilitate diagnosis process and, therefore, services provided by applicant qualify to be health care services?**

• Since applicant qualifies to be a clinical establishment and services offered/provided by applicant qualify to be health care services, intra-state supply of said services **attract NIL rate of central tax**

• **Answer:Held, yes [Paras 11 and 12] [In favour of applicant]CGST : Where applicant is involved in providing services of diagnosis, pre and post counselling, therapy and prevention of diseases by providing tests that are sophisticated and relevant, medical team of applicant facilitate diagnosis process, applicant qualifies to be a clinical establishment and services provided by it qualify to be healthcare services which attract nil rate of central tax.**

Saifee Hospital Trust vs Comm Service Tax- Iii Mumbai on 29 May, 2019

In the erstwhile **VAT era**, the issue of taxability of medicine drugs, stents, and implants during the course of medical treatment under MVAT was argued before the Hon'ble Maharashtra Sales Tax Tribunal.

The tribunal after discussing all the facets of sales, deemed sales, works contract, intention behind sale of drugs etc. held the following:

1. **Supply of medicine, drugs, stents & implants during the course of medical treatment doesn't amount to sale** (deemed sale) under MVAT Act
2. There is no machinery provision to levy VAT on **supply of food as a composite charge** is levied under the umbrella of health service.
3. Charges for **special bed & mattresses are not exigible to tax**

Columbia Asia Hospitals (P.) Ltd., In re ([2018] 100 taxmann.com 212 (AAR - KARNATAKA)

AUTHORITY FOR ADVANCE RULINGS, KARNATAKA)

•Applicant is engaged in providing health care services categorizing them as in-patients and out-patients services - It is also engaged in supply of medicines to in-patients and out-patients - It also operates restaurant/canteen in its premises, which are used for supplying food and other eatable items to its patients and their attendants.

• Whether two or more supplies of goods or services or both which are naturally bundled in which principal supply is exempt and others are taxable can be treated as a composite supply of principal supply and if such principal supply is not a non-taxable supply and such composite supply with principal supply being exempt supply would be treated as an exempt composite supply?

•HELS YES : It can be treated as a composite supply of principal supply and if such principal supply is not a non-taxable supply and such composite supply with principal supply being exempt supply would be treated as an exempt composite supply

•Whether applicant is eligible to claim credit of input tax paid on inputs, input services and capital goods which are attributable to supplies of goods or services which are taxable under provisions of CGST Act and not attributable to exempt supplies of goods or services under CGST Act ?

•Where applicant is engaged in providing health care services and also supplies medicines to patients and also operates restaurant/canteen in its premises, **it is eligible to claim credit of input tax paid on inputs, input services and capital goods which are attributable to supplies of goods or services which are taxable under provisions** of CGST Act and **not attributable to exempt supplies of goods or services under CGST Act.**

•Cross Charge *Whether supply of goods from corporate office to separately registered units would amount to supply of goods and services - Held, yes - Whether however since employees of corporate office have no relationship of employee-employer with other units, hence, corporate office and units are distinct persons under CGST Act - Held, yes - Whether thus, activities performed by employees at corporate office in course of or in relation to employment such as accounting, other administrative and IT system maintenance for units located in other States as well, i.e., distinct persons, as per section 25(4) of CGST Act shall be treated as supply as per Entry 2 of schedule I of CGST Act - Held, yes [Para 9]''*

Dabur India Ltd. vs. Commissioner of CGST ([2020] 113 taxmann.com 423 (Allahabad)/[2020] 34 GSTL 9 (Allahabad)/[2020] 78 GST 219)

- Classification of goods - HSN 38089191 - Mosquito repellent
- Assessee was engaged in manufacturing a product named 'odomos' - Assessee claimed that said product had to be classified as medicine under Heading No. 3004 @12% - Authority for Advance Ruling, however, classified odomos, under HSN 38089191-18% Appellate Authority upheld said ruling –
- It was noted that **assessee's product was not normally prescribed as a medicine** by Medical Practitioner as a drug
- Moreover, **product was being sold on demand at counters in shops and establishments and sales were not restricted to chemists/druggists alone**
- Whether in view of aforesaid, impugned order passed by authorities below did not require any interference
- Held, yes [Paras 31 and 38] [In favour of revenue]
- GST :**Where applicant was engaged in manufacturing a product named 'odomos' since said product was being sold as mosquito repellent on demand at counters in shops and establishments and sales were not restricted to chemists/druggists alone, same had to be classified under HSN 38089191.**

CMC Vellore Association, In re vs. ([2020] 113 taxmann.com 55 (AAR-TAMILNADU)/[2020] 32 GSTL 601 (AAR - TAMILNADU)/[2020] 78 GST 66 (AAR - TAMILNADU)

- Classification of service - Tamil Nadu Goods and Services Tax Act, 2017 - Supply of in-patient healthcare services - Heading No. 9993 [Human health and social care services]
- Section 2(30) of the Central Goods and Services Tax Act, 2017/Section 2(30) of the Tamil Nadu Goods and Services Tax Act, 2017 - Supply - Composite supply –
- Applicant is engaged in provision of health care services to both in-patients and out-patients –
- **Whether medicines, drugs, stents, consumables and implants used in course of providing health care services to in-patients admitted to hospital for diagnosis, or medical treatment or procedures is a composite supply of in-patient healthcare service ?**
- Held, yes - Whether **supply of in-patient healthcare services by applicant** as defined in para 2(zg) of Notification No. 12/2017-CT (Rate), dated **28-6-2017 is exempt from CGST and SGST as per Sl. No. 74**
- Held, yes [Para 7(1)]**GST: Medicines, drugs, stents, consumables and implants used in course of providing health care services to in-patients admitted to hospital for diagnosis, or medical treatment or procedures is a composite supply of in-patient healthcare service.**

Tathagat Health Care Centre LLP, In re ([2018] 93 taxmann.com 419 (AAR – KARNATAKA)AAR, KARNATAKA)

- Classification of services (NR) - Heading (SAC) 997212 - Rental or leasing services Whether rental or leasing services involving own or leased non-residential property is classified under heading (SAC) 997212 and is taxable under GST;
- **There is no provision available in Act which allows exemption on an input service if output service provided by taxable person is exempt** **Held, yes**
- **GST is leviable on rent paid/payable for premises taken on lease by applicant a cardiology specialised hospital - Held, yes [**

MIOT Hospitals Ltd. vs. State of Tamil Nadu ([2020] 117 taxmann.com 46 (Madras)) (VAT Regime)

Whether 'works contract' includes any agreement for 'fitting out' of any movable property and it is not confined to any genre of contract.

- Held, yes Whether, therefore, fitting out or implanting of prosthetics into physiology or body of patient for alleviation of pain or for improvement of life of patient in course of medical/surgical procedure can be construed as 'works contract'
- Held, yes - Whether during such fitting out or implanting , there is not only transfer of possession of prosthetics into physiology of patient but also ownership of such prosthetics to patient for consideration in course of provision of medical/health service
- Held, yes - Whether similarly, in course of taking x-ray, scan, MRI/CT Scan for such in-patient, cost of which get included into package can be termed as processing of moveable property
- Held, yes - Whether **value of prosthetics and charges incurred towards X-ray, C.T. Scan, PET Scan, etc., are liable to tax; value of medicine and other consultation charges are to be excluded while determining taxable value**
- Held, yes - Whether, however, such activity/transaction of hospital/medical services rendered appears to have been exempted under GST Regime from July 2017
- Held, yes [Paras 187 and 200] [Partly in favour of assessee] **GST/EXCISE/ST/VAT: Fitting out or implanting prosthetics such as stents, valves, etc. into body of patients and taking x-ray, scan, MRI/CT Scan while treating in house patients, being 'works contract', private hospitals are liable tax; however, no tax can be demanded on value of medicines dispensed.**

In re Oswal Industries ltd.(M/s. Nimba Nature Cure Village) (GST AAR Gujarat)

No GST Exemption on Naturopathy Centers offering Physical, Psychological & Spiritual Health overhaul with the help of Power of Nature: AAR

Royal CareSpeciality Hospital Ltd., In re [2019] 110 taxmann.com 481 (AAR - TAMILNADU)

- Whether medicines, consumables and implants used in course of providing health care services to inpatients is a composite supply of inpatient services classifiable under SAC 999311
 - **Held, yes**
- Whether supply of health care services or inpatient services by applicant are exempted from GST as per Sl. No. 74 of Notification No. 12/2017 - Central Tax (Rate), dated 28-6-2017
 - **Held, yes [Para 8] [In favour of assessee]**
- Whether applicant is eligible for credit of tax paid on input services used exclusively for providing exempt services of health services to inpatients such as laundry services used for inpatients
 - **Held, no [Para 8] [In favour of revenue]**
- Whether for input services such as housekeeping, leasing of equipment used for both exempt supply of health services to inpatients and taxable supply of medicines, etc. to outpatients, appropriate input tax credit eligible is to be determined under section 17(2) read with rule 42
 - **Held, yes [Para 8] [In favour of assessee]**

**Ray Constructions Ltd., In re
[2020] 119 taxmann.com 146 (AAR - KERALA)**

- Applicant is engaged in providing services of construction including materials and labour as per tender requirements
- They have received a work order from Vikram Sarabhai Space Centre for construction of a building for space transportation system
- It is a composite contract which includes supply of materials as well as service –
- They have also received another work order from Infrastructure Kerala Ltd., a Public Private Partnership Company promoted by Government of Kerala, for development of Medical College which includes construction of road, bridges and other infrastructure
- **Applicant has requested for advance ruling on rate of tax applicable for above works contracts awarded by Government authorities -**

Whether since services provided by applicant under both contracts fall under definition of works contract under section 2(119) and services are being provided to Central Government and State Government, applicant is eligible for concessional rate of GST of 12 per cent prescribed in Sl. No. 3(vi)(a) of [Notification No. 11/2017 - Central Tax \(Rate\) dated 28-6-2017](#) as amended

- **Held, yes [Para 9]**

In re Dr. H.B. Govardhan (GST AAR Karnataka) AAR No. KAR/ADRG/04/21

- Applicant is providing two types of services. There is **no liability of tax on diagnostic and treatment services rendered to Hospitals/ Laboratories/ biobanks registered in United States of America and other countries.** However, for the second service of **business promotion services rendered, as per the contract submitted, are liable to tax under the GST Acts**
- **The diagnostic and treatment services are covered under Health Care Services and the medical services and part time practising in Clinic are exempted from the payment of GST**
- **Section 13(8) of the IGST Act, 2017** specifies that the place of supply of the **“Intermediary Services”** be the location of the supplier of services. **Thus the place of supply in this case is location of the applicant i.e. India. Hence the impugned services are taxable under GST Law.**
- Also the payment for applicant’s service to foreign companies, is **received in foreign currency** and the applicant and the **foreign company are not related persons.** The place of supply is India, in terms of Section 13(8) of the IGST Act 2017 and hence the impugned services are **not covered under export of services, as all the required conditions are not fulfilled**



The applicant living in **India** providing two types of service :

- (1) **rendering Consulting Services** to Hospitals/ Laboratories / Biobanks registered in United States of America (USA) and other countries through **phone calls, Video Conference, Mails and other Electronic devices getting remuneration in dollars**
- (2) Business Promotion Services between the foreign company and the clinical centres located in India



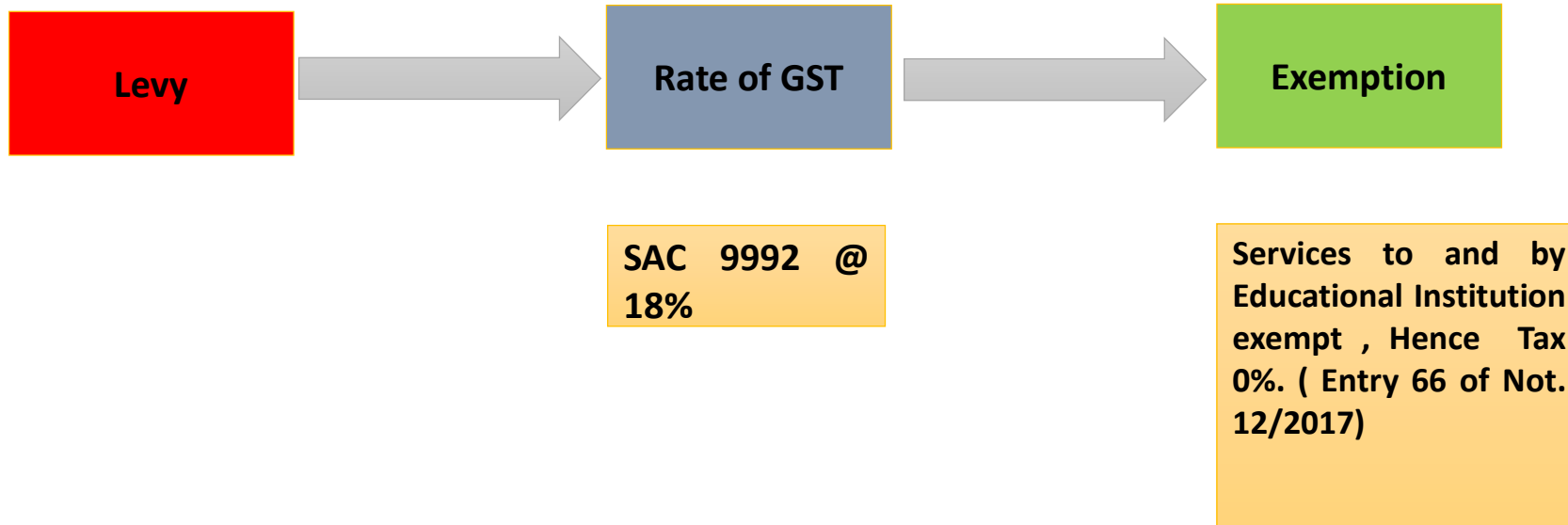


Section 9:- Levy and Rate of Tax

Section 9:- Levy & collection

(1) Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent, as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person,

Thus from above section it is clear that section 9 covers within its ambit all the supplies of goods or services or both. Law makers had exempted certain supply of services by mentioning those supplies in GST Exemption notification 12/2017 CT Rate.



Reduction in rate of 'DEC' Tablets Not. No. 1/2021-CT(R)

DEC tablets is used in treatment of Lymphatic Filarisis (an endemic)

GST Rate reduced from 12% to 5%

Recommendations made in 43rd GST Council meeting

Exemption from GST wrt. Covid-19 related Medical items

S.No	Specified Covid-19 Goods which are used for free distribution/donation to the government or on recommendation of state authority to any relief agency	Type of import	Present taxability	Proposed taxability as per 43 rd GST Council Meeting	Date till when exemption is available
1	Medical oxygen, oxygen concentrators and other oxygen storage and transportation equipment, certain diagnostic markers test kits and COVID-19 vaccines, etc.	Goods are imported free of cost	Exempted	NA	31-Aug-21
2	Same as above	Goods are imported on payment to the supplier	Taxable - Import IGST needs to be paid	Exempted (Conditional)	31-Aug-21

- ✓ These goods are already exempted from Basic Customs duty
- ✓ Similar to above, exemption has been extended to Black Fungus drug **Amphotericin B**
- ✓ For various other individual items related to Covid-19, it has been decided to constitute a Group of Ministers (GoM). **The GoM shall evaluate the need for further relief in the GST rates for Covid-19 related items and shall submit its report latest by 08th June 2021.**

Ad hoc Exemption from IGST on imports of specified COVID-19 relief material donated from abroad

As customs duty is already exempt , these imports will not attract any customs duty or IGST

In view of the COVID-19 pandemic, the Central Government has issued notifications exempting Basic Customs Duty and/or Health cess on imports of a number of COVID-19 related relief materials, for a limited period. These include-

S. No.	Notification	Purpose
1.	27/2021-Customs dated 20.04.21 (as amended by notification No.29/2021-Customs dated 30.4.21)	Remdesivir injection/ API and Beta Cyclodextrin (SBEB CD), Inflammatory diagnostic (markers) kits, till 31 st October,2021
2.	28/2021-Customs dated 24.04.21	Medical grade Oxygen, oxygen therapy related equipment such as oxygen concentrators, cryogenic transport tanks, etc, and COVID-19 vaccines till 31 st July, 2021

Notification No. 30/2021 – Customs dated 1st May, 2021

Applicable
upto 30th
June, 2021

Import of Oxygen
Concentrator

For Personal Use

By Business Entity

~~IGST @28%~~

IGST @12%

IGST @12%

Ad hoc Exemption from IGST on imports of specified COVID-19 relief material donated from abroad

Ad hoc Exemption **Order No. 4/2021-Custom** dated 3rd May, 2021 read with **Instruction No. 09/2021-Customs** dated 3rd May, 2021

Major Coverage of goods are-

- Remdesivir and related items
- Oxygen and related items
- Ventilators
- Masks
- Covid 19 Vaccine etc.

Apply to all the such consignments pending clearance from Customs as on date of issue of order, i.e., the 3rd May, 2021

It shall remain in force upto and inclusive of the **30th day of June, 2021**

The Central Government had received a number of representations from charitable organizations, corporate entities, and other Associations/ entities outside India seeking exemption from IGST on the import of Covid-19 relief material (already exempted from customs duty), donated/received free of cost from outside India for free distribution.

Accordingly, the Central Government has vide Ad hoc exemption Order number 4/2021 dated 3rd May, 2021 has granted exemption from IGST on import of such goods received free of cost for free distribution for covid relief.

This exemption shall apply till 30th June, 2021. It would also covers goods already imported but lying uncleared on the date of its issuance of exemption i.e. today.

The exemption shall be subject to the following conditions:

- 1.State Government shall appoint a nodal authority in the State for the purpose of this exemption. As per section 2 (103) of the Central Goods and Services Tax Act, 2017, state include a Union territory with Legislature.
- 2.The Nodal authority so appointed shall authorise any entity, relief agency or statutory body, for free distribution of such Covid-relief material.
- 3.The said goods can be imported free of cost by a State Government or, any entity/ relief agency/ statutory body, authorized in this regard for free distribution anywhere in India.
- 4.The importer shall before clearance of goods from Customs produce a certificate from the said nodal authorities that goods are meant for free distribution for Covid relief.
- 5.After imports, the importer shall produce, to the Deputy or Assistant Commissioner of Customs at the port within a period of six months from the date of importation or within such extended period not exceeding nine months, a simple statement containing details of goods imported and distributed free of cost. This statement shall be certified by the said nodal authority of the State Government.

Conditions



1 Appoint



Nodal Officer

2 Authorise
Any entity for free distribution

RELIEF AGENCY

3 Import Goods free of Cost for distribution anywhere in India



Customs

4 Produce a certificate before clearance from customs from the said nodal authorities



Deputy/Asstt. Comm. of Customs

5 After Import, produce Statement (certified by nodal officer) containing - Goods Imported, distributed free of cost

Exemption on import of Covid relief items

BCD

- **Unconditional exemption** of BCD has been granted on import of COVID -19 relief materials
- For Few materials (eg. Beta Cyclodextrin etc.) procedure laid down under Custom Rules 2017 are required to be followed.
- Exemption would be available in all the cases.
- Details of Covid relief items and time period upto which exemption is available is mentioned in annexure 2

Health Cess

- Health Cess has also been exempted similar to BCD

IGST

- IGST exemption is available to State Govt. or, any entity, or relief agency or statutory body authorized by the State Govt. for import of donated items when distributed on free of cost basis in India for Covid Relief.

Imposition of IGST on import of oxygen concentrators as gift for personal use unconstitutional: [Gurcharan Singh vs UOI]

Held

STAYED

Delhi High Court on Friday held that the **imposition of Integrated Goods and Services Tax (IGST) on the import of oxygen concentrators as gift for personal use is unconstitutional**. The High Court has accordingly quashed the May 1 Notification levying 12% IGST on Oxygen Generators imported as gifts for personal use.

- As per the Court's direction, such importers would now have to furnish a letter of undertaking to the authority concerned, stating that the oxygen concentrator is for personal use and not for commercial usage.
- The petitioner before Court was an 85-year-old COVID-19 patient whose nephew sent an oxygen generator as gift from the United States of America.
- The petitioner, through Senior Advocate Sudhir Nandrajog, had argued that the imposition of IGST by the Centre on the import of oxygen/oxygen generators as gift for personal use not only violated Article 14, but also abridged the right to have oxygen, which was part of the right to life under Article 21 of the Constitution of India.
- It was also highlighted that certain imports had already been exempted from IGST levy till July 31.
- Senior Advocate Arvind Datar, who was appointed as Amicus Curiae by the Court, had argued that singling out oxygen concentrators imported as gifts for personal use with respect to non-grant of IGST exemption was arbitrary and not correct.
- Unless the government showed that there would be an enormous loss of revenue which is detrimental to the public interest, oxygen concentrators should also be included in list of exempted articles, he stated.
- In response, counsel for the respondent contended that there was no "omnibus direction" to exempt life saving medicines and drugs.
- He argued that imposition of taxes could not be subject to judicial review, and that the IGST at the rate of 12% was imposed in the present case to maintain parity with a commercial user and to avoid black marketing and profiteering.
- Pending a final decision in the petition, the Court had directed that the oxygen concentrator being imported by the petitioner be released by the custom authorities, subject to his depositing with the Court an amount equivalent to the IGST payable.

Notification No. 27/2021–Customs

Exempts goods when imported into India, from whole of Duty of custom leviable thereon

S.No.	Chapter or heading or sub-heading or tariff item	Description of goods
1	29	Remdesivir Active Pharmaceutical Ingredients.
2	29	Beta Cyclodextrin (SBEB CD) used in manufacture of Remdesivir, subject to the condition that the importer follows the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017.
3	30	Injection Remdesivir.

SEQUENCE OF EVENTS FOR IGST EXEMPTION TO THE IMPORT OF OXYGEN CONCENTRATORS

April 24, 2021,

Central Government issued a notification no.28/2021-Cus. granting full exemption from payment of customs duty and Health Cess to the oxygen concentrators imported into India. This notification shall remain in force till July 31, 2021

However, at the same time, the imports of oxygen concentrators for personal use attracted IGST @ 28% as against its imports for commercial use that attracted the IGST @ 12%. Needless to say, this illogical and unjustified differential tax treatment led to wide scale resentment and protests. Obviously, it was a sheer absurdity that a person who is desperately in the need of oxygen concentrator and who somehow manages to arrange for one from abroad for his personal use, would still end up coughing up 28% IGST on its import! Finally, sensing the growing discontentment amongst the people, the Central Government issued a notification no.30/2021-Cus on May 01, 2021 providing for a concessional rate of IGST at 12% on the oxygen concentrators imported for personal use. This was done ostensibly to bring a parity between the import of this equipment for commercial use and personal use.

May 3, 2021,

The Central Government issued an Exemption Order no.04/2021-Customs dated May 3, 2021, inter alia, granting full exemption from payment of IGST to the oxygen concentrators, when imported into India, by the specified agencies, subject to the conditions specified in the Order.

Here, it is necessary to point that the aforesaid customs notifications and exemption Order have been issued by the Central Government under S.25(1) or S.25(2), as the case may be of the Customs Act,1962 and the same are not based on any recommendations of the GST Council.

- However, there was a furore against this irrational and controversial policy of granting total exemption from IGST when the oxygen concentrator is imported by the canalising agencies and levying 12% IGST thereon when imported by a person (read „patient“) who is fighting for his survival and has somehow managed to arrange for one by way of gift!
- Peeved at this discriminatory tax treatment, a Delhi based octogenarian Mr. Gurcharan Singh, who has been fighting Covid-19 battle having been affected by it, knocked the doors of the Delhi High Court and challenged the constitutionality of the levy of IGST @ 12% on the import of the subject equipment and received as gift from his nephew for his treatment.
- On May 21, 2021, the High Court delivered its judgement and with piercing observations and concise but critical and profound analysis, declared the aforesaid customs notification no.30/2021Cus.ibid as unconstitutional. However, as was expected, the judgement was immediately challenged by the Government and the Supreme Court has, on June 1, 2021, stayed the said judgement of the High Court.
- It may be noted here that that the power to grant exemption from IGST in respect of the import of the oxygen concentrator or any imported goods is vested in the Central Government under S. 25 of the Customs Act, 1962. The Central Government is neither dependent upon nor does it require the recommendation of the GST Council for exercising this power vested in it. As a matter of fact, if one were to closely and critically examine the relevant Constitutional provisions and the provisions of the IGST Act, 2017, the Customs Tariff Act, 1975 and the Customs Act,1962, then it would become clear that in the matter of the grant of exemption from any customs duty including IGST on the import of any goods, the GST Council has no role to play whatsoever nor any such role is envisaged by the lawmakers.
- One therefore fails to comprehend as to on what basis the GST Council is „deliberating“ the issue of grant of the IGST exemption to the Oxygen Concentrator, amongst other goods, and „constituting“ the „Group of Ministers“ to look into this issue and make its recommendations?



Meaning of Educational Institution



Play Schools ?

Institutes giving Foreign Degrees ?



Schools up to 5th Std.
without affiliation ?

IIM's, IIT's, ICAI, ICSI ?

Coaching Institutes ?

School Canteens?

Hostel ?

Sale of Books?

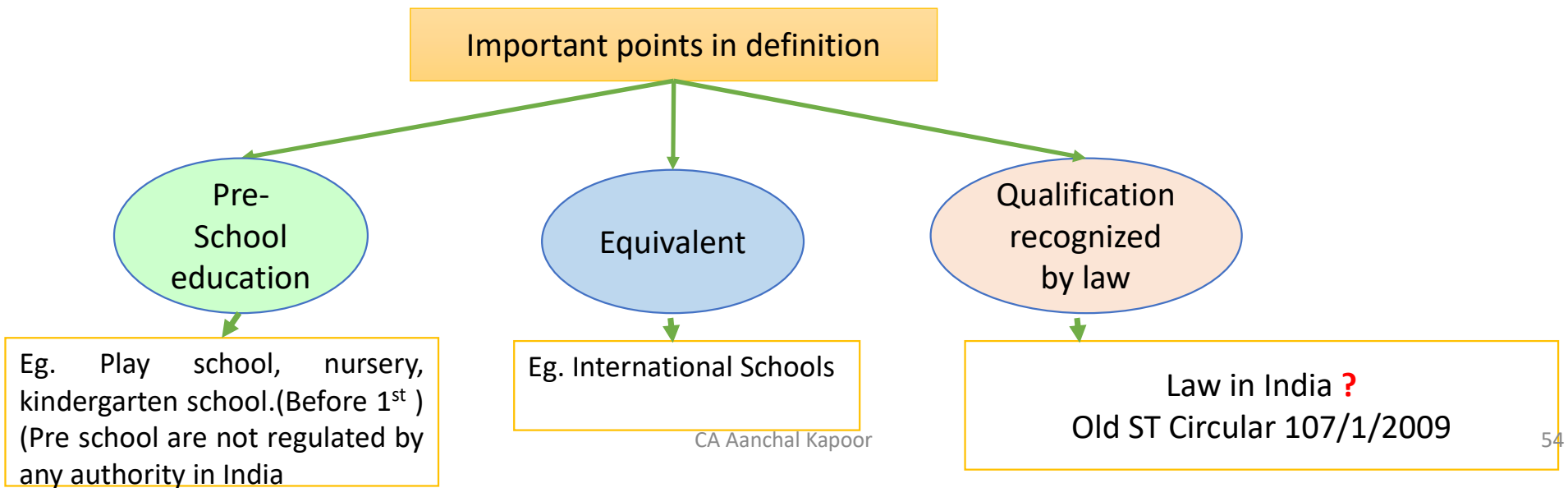
lets Centres?

Educational Institution

As per [Definition 2\(y\) mentioned in notification 12/2017-CT Rate](#)

“Educational institution” means an institution providing services by way of,-

- i. pre-school education and education upto higher secondary school or equivalent; Schools Colleges, Institutes like ICAI, IIT's
 - ii. education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force,
 - iii. education as a part of an approved vocational education course ; Industrial Training Institutes
- Defined in law



Circular 107/1/2009 ST

Institute recognized by UGC(University Grant Commission), AICTE(All India Council for Technical Education), Institutions through Union Acts

i. **Indian Institute of Aircraft Engineering v. Union of India*** [\[\[2013\] 34 taxmann.com 191 \(Delhi\)\]](#)

The expression "**recognized by law**" is a very wide one. The legislature **has not used** the expression "**conferred by law**" or "**conferred by statute**". Thus, even if the **certificate/degree/diploma/qualification is not the product of a statute but has approval of some kind in 'law', would be exempt.**

- **Training given by private coaching institutes although imparting Coaching related to Degree Courses would not be covered as such training does not lead to grant of a recognized qualification/degree themselves.**
- **I LETS Institutes---Not covered by Exemption.**
- **Only Pre-schools are also covered by Exemption("and" word in 2(y)(i) is wrongly used and to meet intent should be read as "OR").**
- **Day Care is covered under SAC 999351 @ 18%. Hence, Taxable. But if provided by Educational Institute to its students then Exempt.**

Approved vocational education course

As per [Definition 2\(h\) mentioned in notification 12/2017-CT Rate](#)

“Approved vocational education course” means, -

- i. a **course run by an industrial training institute** or an **industrial training centre** affiliated to the **National Council for Vocational Training or State Council for Vocational Training** offering courses in **designated trades** notified under the Apprentices Act, 1961 (52 of 1961); or
- ii. **a Modular Employable Skill Course**, approved by the **National Council of Vocational Training**, run by a person registered with the **Directorate General of Training, Ministry of Skill Development and Entrepreneurship**;

Meaning of Education

The word “ Education” has not been defined in GST Law. However Apex Court in case of **OLE TRUSTEE, LOKA SHIKSHANA TRUST VERSUS COMMISSIONER OF INCOME-TAX, MYSORE (1975 (8) TMI 1 – SC)** held that

- Education connotes in that clause is the process of training and developing the knowledge, skill, mind and character of students by normal schooling.



Relevant entries of notification
12/2017-CT(Rate)

Entry No. 66 of Notification No. 12/2017 CT Rate

Services provided –

Any Service

a) **by** an educational institution to its students, faculty and staff;

aa) **by** an educational institution by way of conduct of entrance examination against consideration in the form of entrance fee.

b) **to** an educational institution, by way of,-

- i. transportation of students, faculty and staff;
- ii. catering, including any mid-day meals scheme sponsored by the Central Government, State Government or Union territory;
- iii. security or cleaning or house-keeping services performed in such educational institution;
- iv. services relating to admission to, or conduct of examination by, such institution;
- v. supply of online educational journals or periodicals;

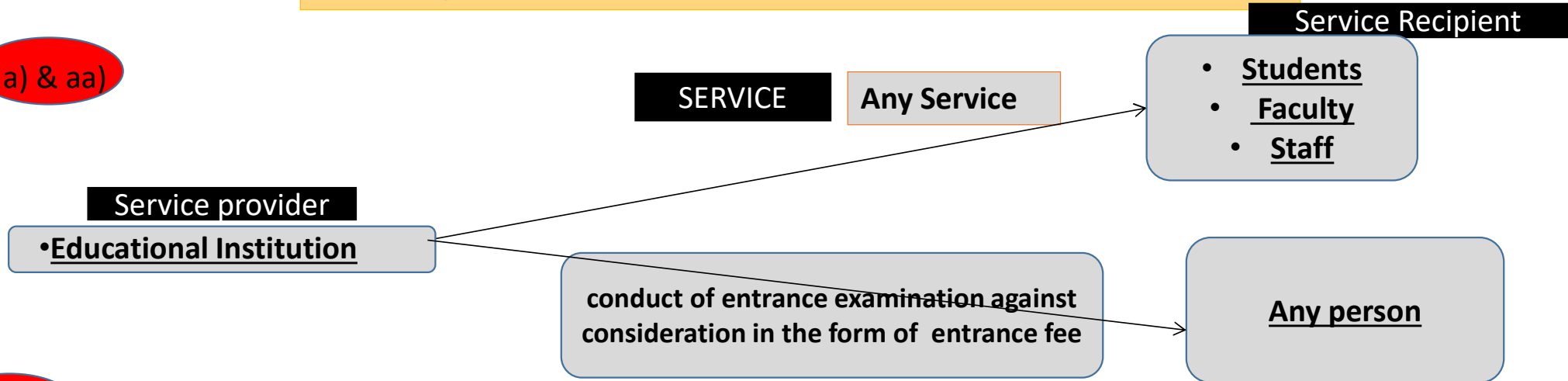
Provided that nothing contained in ⁴[sub-items (i), (ii) and (iii) of item (b)] shall apply to an educational institution other than an institution providing services by way of pre-school education and education up to higher secondary school or equivalent:

[**Provided further** that nothing contained in sub-item (v) of item (b) shall apply to an institution providing services by way of,—

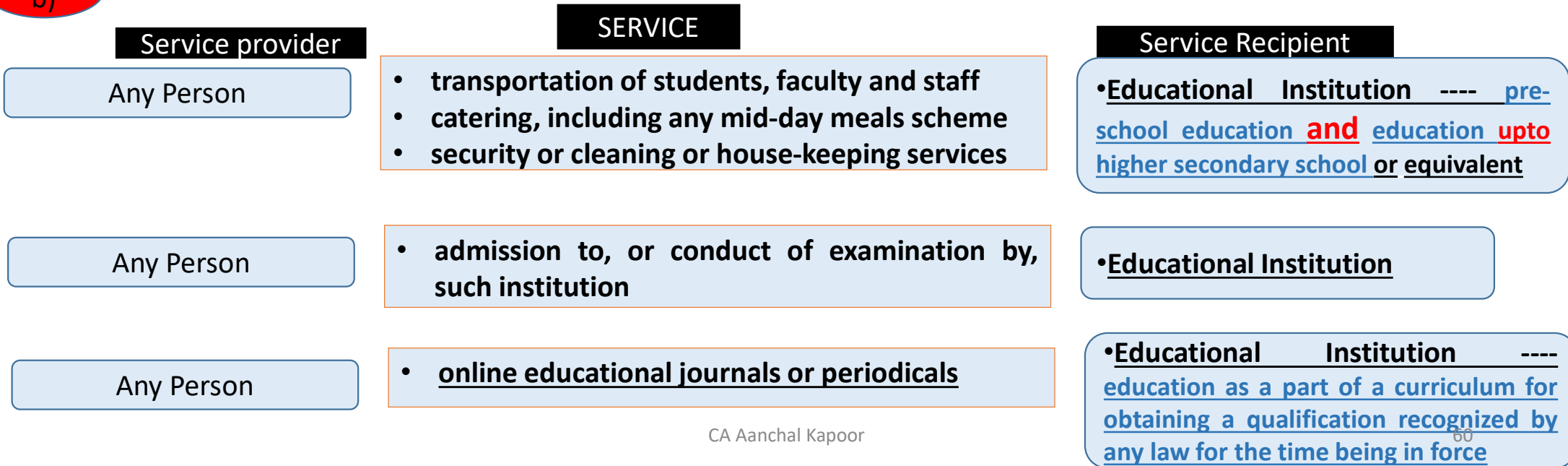
- i. pre-school education and education up to higher secondary school or equivalent; or
- ii. education as a part of an approved vocational education course.]

Entry No. 66 of Notification No. 12/2017 CT Rate

a) & aa)



b)



Clarification No. 55/29/2018-GST

TAXABILITY OF SERVICES PROVIDED BY INDUSTRIAL TRAINING INSTITUTES:-

1. 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 1(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 ITIs is approved as vocational educational course.

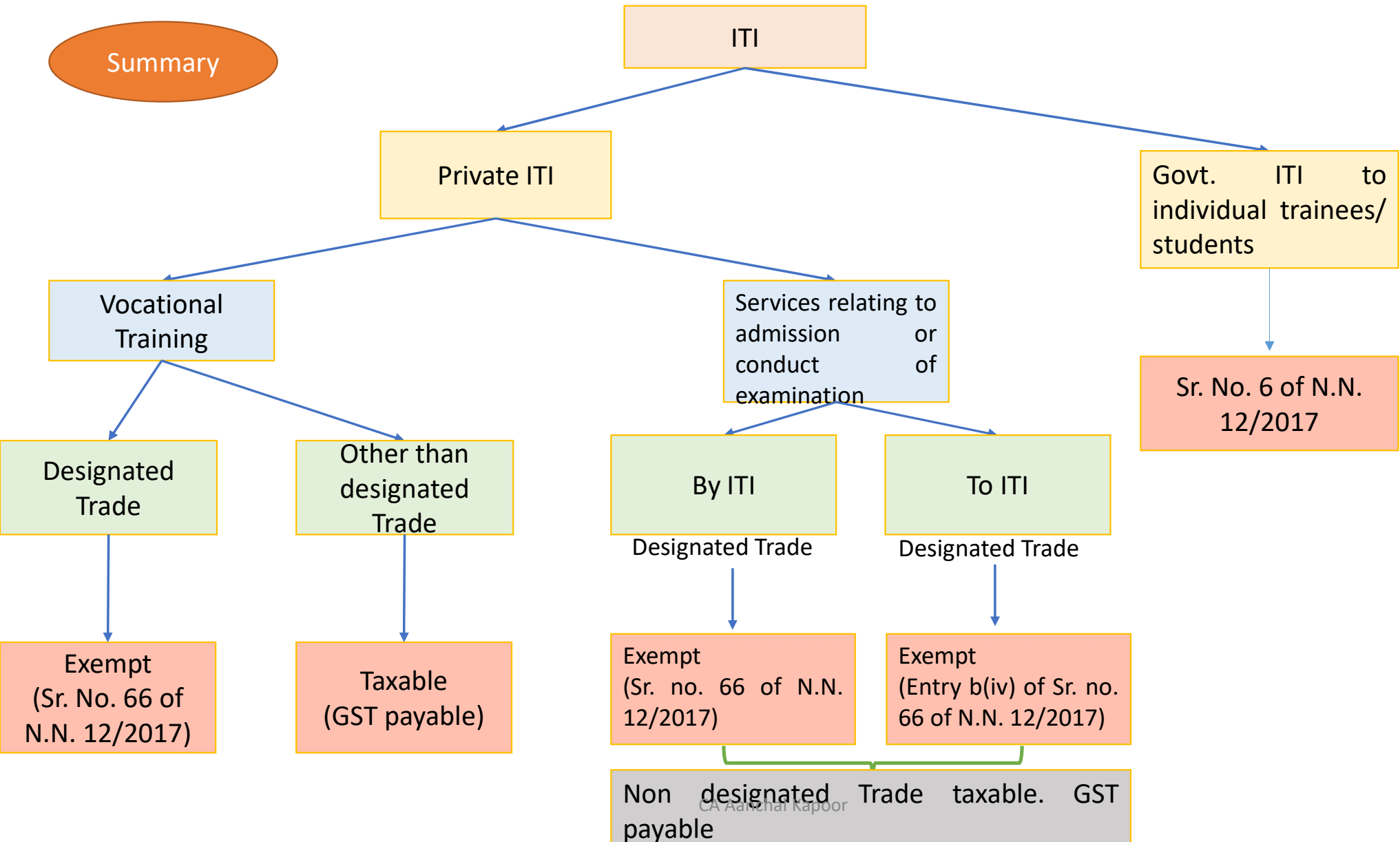
- The approved vocational educational course has been defined in para 2(h) of notification *ibid* to mean a course run by an ITI or an Industrial Training Centre affiliated to NCVT (National Council for Vocational Training) or SCVT (State Council for Vocational Training) offering courses in designated 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 1(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 Sr. 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 ITI 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 ITIs are concerned, services provided by a Government ITI to individual trainees/students, is exempt under Sl. 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 ITIs.

Summary



CA Anil Chai Kapoor

Entry No. 67- CGST (Deleted vide notification No. 28/2018- Central Tax (Rate) dated, 31st December, 2019 w.e.f. 1st January 2019)

~~Services provided by the Indian Institutes of Management, as per the guidelines of the Central Government, to their students, by way of the following educational programmes, except Executive Development Programme:-~~

- ~~a) 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;~~
- ~~b) fellow programme in Management;~~
- ~~c) five year integrated programme in Management~~

CIRCULAR NO. 82/01/2019-GST - CENTRAL TAX

CLARIFICATION REGARDING APPLICABILITY OF GST ON VARIOUS PROGRAMMES CONDUCTED BY INDIAN INSTITUTE 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. 12/2017- Central Tax \(Rate\) 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. 12/2017 Central Tax \(Rate\) 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. 12/2017- Central Tax (Rate). (Given above)

CIRCULAR NO. 82/01/2019-GST - CENTRAL TAX

4. 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 31st January, 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 v. Collector of Customs* [2001 (130) ELT 405 (SC)]
- ii. *Collector of Central Excise, Baroda v. Indian Petro Chemicals* [1997 (92) ELT 13 (SC)]
- iii. *Share Medical Care v. Union of India* reported at 2007 (209) ELT 321 (SC)
- iv. *CCE v. Maruthi Foam (P) Ltd.* [1996 (85) RLT 157 (Tri.) as affirmed by Hon'ble Supreme Court vide 2004 (164) ELT 394 (SC)

5 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.

CIRCULAR NO. 82/01/2019-GST - CENTRAL TAX

7. Following summary table may be referred to while determining eligibility of various programs conducted by Indian Institutes of Managements for exemption from GST.

Sr. No.	Periods	Programmes offered by Indian Institutes of Management	Whether exempt from GST
1	1st July, 2017 to 30th January, 2018	<ul style="list-style-type: none"> 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
		<ul style="list-style-type: none"> 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	<p>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.</p> <p>All short duration executive development programs or need based specially designed programs (less than one year) which are not a qualification recognized by law.</p>	<p>Exempt from GST</p> <p>Not exempt from GST</p>

Entry No. 69 of Notification No. 12/2017 CT- Rate

Any services provided by,

- a) the National Skill Development Corporation set up by the Government of India;
- b) a Sector Skill Council approved by the National Skill Development Corporation;
- c) an assessment agency approved by the Sector Skill Council or the National Skill Development Corporation;
- d) a training partner approved by the National Skill Development Corporation or the Sector Skill Council, in relation to-
 - i. the National Skill Development Programme implemented by the National Skill Development Corporation; or
 - ii. a vocational skill development course under the National Skill Certification and Monetary Reward Scheme; or
 - iii. any other Scheme implemented by the National Skill Development Corporation

Skill
Development/Enhancing
Programmes

Entry No. 70 of Notification No. 12/2017 CT- Rate

Services of assessing bodies empanelled centrally by the Directorate General of Training, Ministry of Skill Development and Entrepreneurship by way of assessments under the Skill Development Initiative Scheme

Entry No. 71 of Notification No. 12/2017 CT- Rate

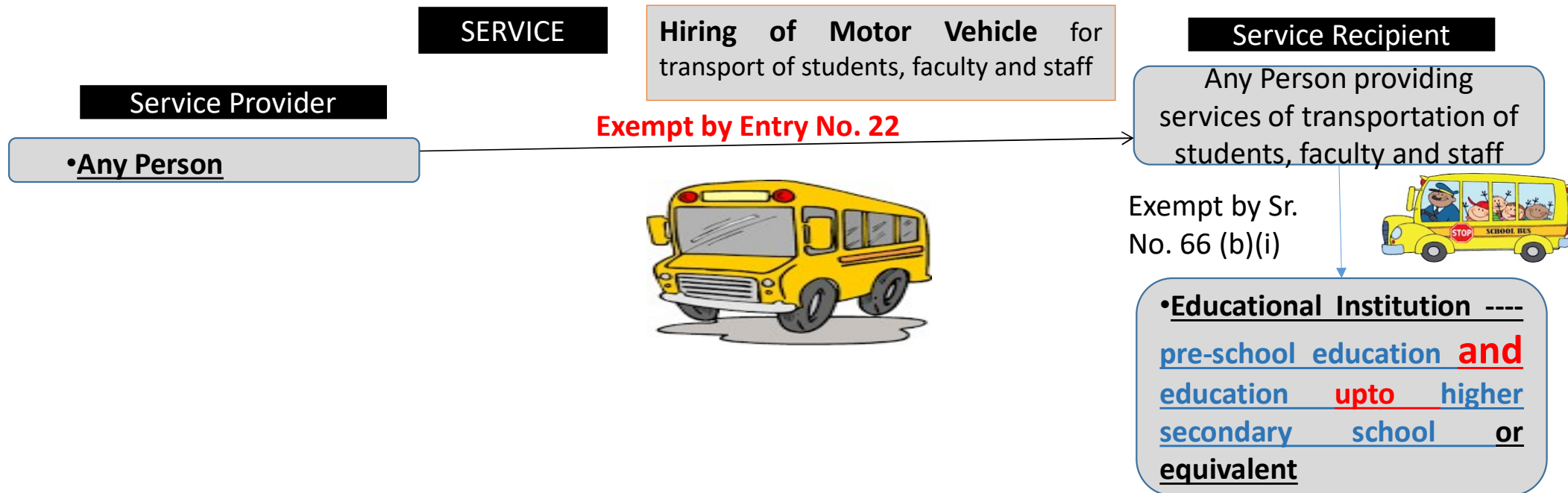
Services provided by training providers (Project implementation agencies) under Deen Dayal Upadhyaya Grameen Kaushalya Yojana implemented by the Ministry of Rural Development, Government of India by way of offering skill or vocational training courses certified by the National Council for Vocational Training.

Entry No. 22 of Notification No. 12/2017 Ct- Rate

Services by way of giving on hire—

c) motor vehicle for transport of students, faculty and staff,

- to a person providing services of transportation of students, faculty and staff
- to an educational institution providing services by way of pre-school education and education upto higher secondary school or equivalent.]



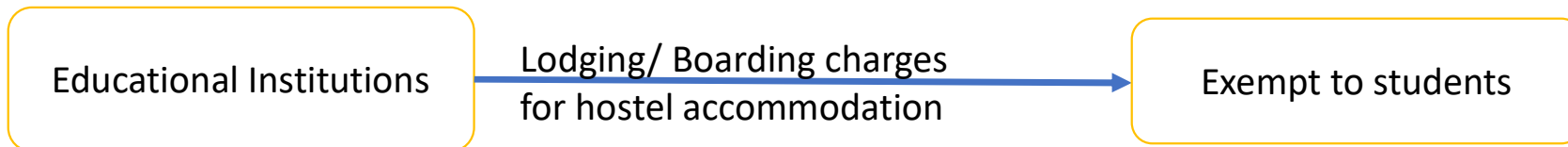
Press release dated 13.07.2017

GST - CLARIFICATION AS TO APPLICABILITY OF GST ON ANNUAL SUBSCRIPTION/FEE CHARGED AS LODGING/BOARDING CHARGES BY EDUCATIONAL INSTITUTIONS FROM ITS STUDENTS FOR HOSTEL ACCOMMODATION

There are some reports that GST@18% will be levied on annual subscription/fees charged for lodging in hostels. This is not true. There is no change in tax liability relating to education and related services in the GST era, except reduction in tax rate on certain items of education.

It may be mentioned that **services provided by an educational institution to students, faculty and staff are fully exempt.** Educational institution has been defined as an institution imparting

- **Annual subscription/fees charged as lodging/boarding charges by such educational institutions from its students for hostel accommodation shall not attract GST.**



CIRCULAR NO. 117/36/2019-GST

CLASSIFICATION OF SERVICES - CLARIFICATION ON APPLICABILITY OF GST EXEMPTION TO THE DG SHIPPING APPROVED MARITIME COURSES CONDUCTED BY MARITIME TRAINING INSTITUTES OF INDIA

A representation has been received regarding applicability of GST exemption to the Directorate General of Shipping approved maritime courses conducted by the Maritime Training Institutes of India. The same has been examined and following is clarified.

Therefore, the Maritime Institutes are educational institutions under GST Law and the courses conducted by them **are exempt from levy of GST. The exemption is subject to meeting the conditions specified at Sl. No. 66 of the notification No. 12/ 2017- Central Tax (Rate), dated 28-6-2017.**

Case study

ABC Ltd. an educational institute has following receipts.:-

Particulars	Amount	Exempt/ taxable
Receipts from boarding School (including Rs. 1400000 from residential dwelling service)	3000000	Exempt
Receipts from 'Gyan Udhay' an Industrial Training Institute affiliated to National Council of vocational training	200000	Exempt
Receipts of 'Lakshya' an institute registered with DGET	100000	Exempt
Receipts from 'Wizard' a commercial coaching institute	80000	Taxable
Fees from employer for campus interview	400000	Taxable
Receipts from ' Concepts' a coaching institute providing coaching in field of commerce(certificate was awarded to each trainee after completion)	140000	Taxable
Receipts of Gurukul School providing education upto higher Secondary	500000	Exempt

Rate of GST on education services

GST Rate on education Services

SAC /HSN Code	Description of Service	Rate
9992	Education services(Except services in Entry No. 66 of N.N. 12/2017 CT Rate)	18% (Notification 11/2017)
90 or any other chapter	Technical aids for education, rehabilitation, vocational training and employment of the blind such as Braille typewriters, braille watches, teaching and learning aids, games and other instruments and vocational aids specifically adapted for use of the blind	5% (Sr. Serial No. 257 of Schedule I of the Notification No.1/2017-Central Tax (Rate) dated 28th June, 2017)
9023	Instruments, apparatus and models, designed for demonstrational purposes (for example, in education or exhibitions), unsuitable for other uses	28 %/ Serial No. 191 of Schedule IV of the Notification No.1/2017-Central Tax (Rate) dated 28th June, 2017
999259	Specialized educational service	18%
999291	Cultural educational service	18%
999293	Commercial training and coaching services	18%
999294	Other education & education services	18%

Registration

Registration

- If an education Institution is providing only education as a service then fees received from students is chargeable at NIL rate of GST and educational institution is not required to register in GST.
- But if educational institution is also giving ground on rent for functions or sponsorship services, then they will be required to get themselves registered in terms of sec. 22 or 24 of the CGST Act,2017. Aggregate Turnover(Sec. 2(6)) to be taken adding all Incomes whether Exempt or Taxable.

Place of supply

Place of Supply of Educational Services where the location of supplier of services and the location of the recipient of services is in India

- **12 (2)** The place of supply of services, except the services specified in sub-sections (3) to (14),—
- a) made to a registered person shall be the location of such person; **Location of Recipient** **Online Coaching Training**
 - b) made to any person other than a registered person shall be,—
 - i. the location of the recipient where the address on record exists; and
 - ii. the location of the supplier of services in other cases.
- **Section 12(6) of IGST Act, 2017** “The place of supply of services provided by way of admission to a cultural, artistic, sporting, scientific, *educational*, entertainment event or amusement park or any other place and services ancillary thereto, shall be the place **where the event is actually held or where the park or such other place is located.**” **Location of Educational Institution**
- **Section 12(7) of IGST Act 2017** “The place of supply of services provided by way of,—
- a. organisation of a cultural, artistic, sporting, scientific, educational or entertainment **event** including supply of services in relation to a conference, fair, exhibition, celebration or similar events; or
 - b. services ancillary to organisation of any of the events or services referred to in clause (a), or assigning of sponsorship to such events,—
 - i. to a **registered person**, shall be the location of such person; **Location of Recipient**
 - ii. to a **person other than a registered person**, shall be the place where the event is actually held and if the event is held outside India. the place of supply shall be the location of the recipient **Location of Event**

Place of supply of Educational Services where the location of the supplier of services or the location of the recipient of services is outside India

- **13(2)** The place of supply of services except the services specified in sub-sections (3) to (13) shall be the location of the recipient of services: Location of Recipient Online Coaching Training

Provided that where the location of the recipient of services is not available in the ordinary course of business, the place of supply shall be the location of the supplier of services.

- **Section 13(5)** of IGST Act 2017,

“The place of supply of services supplied by way of

- admission to, or organisation of a cultural, artistic, sporting, scientific, educational or entertainment event, or a
- celebration, conference, fair, exhibition or similar events, and of services ancillary
- to such admission or organisation, shall be the place where the event is actually held.”

- **Section 13(3)(b)** of IGST Act 2017

- The place of supply of services supplied by way of requiring Physical Presence
- Where services are actually performed.

Case Laws

APPELLATE AUTHORITY FOR ADVANCE RULINGS, WEST BENGAL Global Reach Education Services (P.) Ltd., In re [[2018] 96 taxmann.com 107 (AAAR-WEST BENGAL)]

Section 2(13) of the Integrated Goods and Services Tax Act, 2017 - Intermediary - Appellant promotes courses of foreign Universities, finds suitable prospective students to **undertake courses, and, in accordance with University procedures and requirements, recruits and assists in recruitment of suitable students** –

Question :- Whether appellant is to be considered as an 'intermediary', in terms of section 2(13) and, therefore, services of appellant are not 'Export of Services' under GST Act, and are eligible to tax –

Answer:- Held, yes [Paras 23 & 24]

IGST : Where appellant promotes courses of foreign university in India, finds suitable prospective students to undertake courses, and assists in recruitment of suitable students, appellant is to be considered as an intermediary in terms of section 2(13) and, therefore, services of appellant are not 'Export of Services' under GST Act, and are eligible to tax.



Foreign University

Promotes the courses offered by university in India



Finds suitable prospective students



This is **not Export of service.** This is considered as intermediary services u/s 2(13) and therefore liable to tax & Place of Supply is as per 13(8).

Emerald Heights International School, In re vs. [[2019] 109 taxmann.com 377 (AAR - MADHYA PRADESH)]

Classification of service - Madhya Pradesh Goods and Services Tax Act, 2017 - Educational conference – Heading No. 9992 [Education services] - Applicant-school is a member of an **association which is a charitable organization** - Applicant and said association **intend to enter into an agreement for hosting and managing conference/gathering for students and staff of other member (participant) schools of said association** –

- **Many of member school are based outside India** as per agreement, applicant is responsible to hold an educative conference engaging skilled personnel and sufficient financial and material resources for planning conference, inviting participants, arranging accommodation, food etc. –
- Consideration for performing above mentioned functions would flow from **participant schools in form of fee along with list of individual student and staff** –
- **Whether consideration received by applicant from participant schools would not be exempted under Entry No. 66 or Entry No. 1 or Entry No. 80 of Notification No. 12/2017 - Central Tax (Rate) - Held, yes** –
- **Whether various services provided for organizing said conference shall be liable to tax at rate applicable to respective services - Held, yes [Para 8.1]**
- GST : Where applicant-school and an association (a charitable organization), of which applicant is a member, intend to enter into an agreement for hosting and managing an educative conference/gathering for students and staff of other member schools **(many of which are based outside India)** of said association, **consideration received by applicant from said schools in form of fee for participation of their students and staff would not be exempted under Entry No. 66 or Entry No. 1 or Entry No. 80 of Notification No. 12/2017 - Central Tax (Rate).**



Applicant school is hosting conference also for schools outside India



This service is **not covered by Entry No. 66 or 80** of N.N. 12/2017. Hence the **same is not covered by exemption**

Attest Testing Services Ltd., In re vs. [[2019] 109 taxmann.com 366 (AAR - MAHARASHTRA)/[2019] 29 GSTL 528 (AAR MAHARASHTRA)/[2019] 76 GST 512 (AAR - MAHARASHTRA)

Classification of services - Maharashtra Goods and Services Tax Act, 2017 - Educational Services - Heading No. 9992 [Education Services] - Section 2(30) of the Central Goods And Services Tax Act, 2017/Section 2(30) of the Maharashtra Goods and Services Tax Act, 2017 - **Supply - Composite supply** –

- Applicant is providing **services, viz., conducting online examinations along with pre-exam management processes, post exam management processes across different cities and examination centers** –
- Whether **services provided by applicant satisfy definition of 'composite services' in as much as it provides services to completely manage conduct of examinations electronically like facilitation of online booking of examination slots by candidates, setting up questions based on question bank management, conduction of online examinations in their authorized examination centers, invigilation and exam evaluation services, etc. - Held, yes** –
- Whether **services provided by applicant are naturally bundled with principal supply being conduct of examination and therefore, services supplied by applicant are in nature of naturally bundled services - Held, yes** –
- Whether thus, **services provided by applicant are composite supply in which conduct of examination can be considered as principal supply and exemption under Entry 66 of Notification 12/2017-Central Tax (Rate), dated 28-6-2017 will be available to applicant only when provisions mentioned therein are satisfied by them - Held, yes [Paras 5 6] [In favour of assessee]**
- GST: Where applicant is providing services, viz., conducting online examinations along with pre-exam management processes, post exam management processes across different cities and examination centers, services provided by applicant satisfy definition of 'Composite Services' under section 2(30) **in which conduct of examination is principal supply and exemption under Entry 66 of Notification No. 12/2017-Central Tax (Rate) dated 28-6-2017 will be available.**



Applicant

Providing service of **online conduct of Exams (Principal Supply)**

Providing service of **Post Examination process**



Principal supply exempt. So **Composite** also exempt.

Arivu Educational Consultants (P.) Ltd., In re vs. [[2019] 110 taxmann.com 426 (AAR - KARNATAKA) / [2020] 77 GST 25 (AAR - KARNATAKA) / [2020] 32 GSTL 353 (AAR - KARNATAKA)]

- Section 15 of the Central Goods and Services Tax Act, 2017 read with rule 33 of the Central Goods and Services Tax Rules, 2017 / Section 15 of the Karnataka Goods and Services Tax Act, 2017 read with rule 33 of the Karnataka Goods and Services Tax Rules, 2017 - Supply - Taxable supply, value of - Applicant provides coaching, learning and training services in relation to under-graduate, graduate and post-graduate degree, diploma and professional courses on a standalone bases to students –
- In this process, applicant collects certain amount as examination fee from students and remits same in bulk to respective institute or college or university without any additional charges or profit element –
- Whether activity of collecting examination fee (charged by any university or institution) from students and remitting same to that particular university or institution without any value addition to it is a service as a pure agent and hence value is excluded from taxable value of applicant as per rule 33 - Held, yes [Para 9] [In favour of assessee]
- GST : Where applicant provides coaching, learning and training services and collects certain amount as examination fee from students and remits same to respective college or university without any profit element, activity of collecting examination fee is a service as a pure agent.



As the exam fees is remitted to institute without charging any profit element, so it is considered as **service as pure agent**

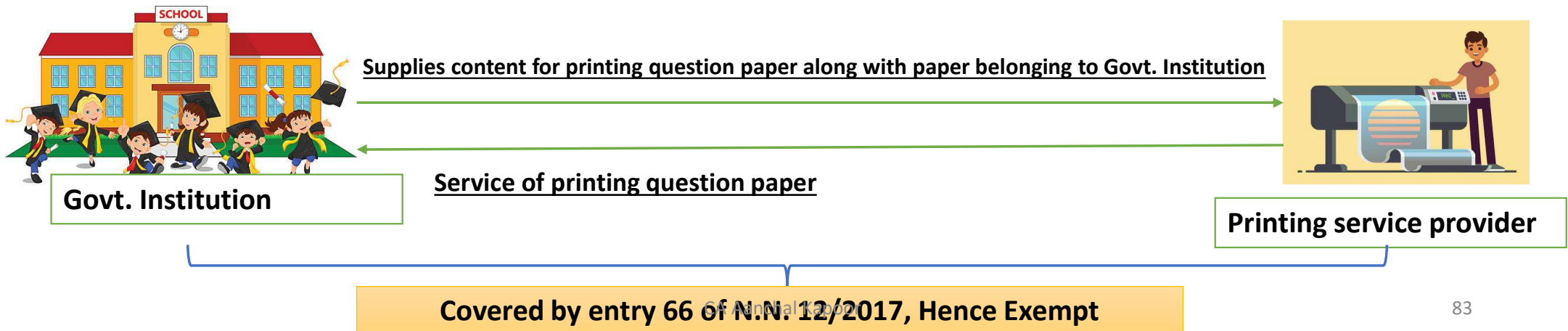
AUTHORITY FOR ADVANCE RULINGS, KARNATAKA Bangalore Printing & Publishing Co. Ltd., In re*[[2019] 110 taxmann.com 239 (AAR - KARNATAKA)]

Classification of services - Karnataka Goods and Services Tax Act, 2017 - Printing of question papers - Heading No. 9989 [Other manufacturing services; publishing, printing and reproduction services; material recovery services] –

- Applicant is **engaged in activity of printing of books, journals, question papers, calendars, etc.** - It has received **an order from State Government Institution for printing of question papers for State Level Higher Secondary Examinations** - Said Institution would supply to applicant only content for printing and printing inputs including paper belong to applicant - Whether supply made by applicant would constitute supply of service falling under Heading No. 9989 - Held, yes [Para 7][In favour of assessee]
- Classification of services - Karnataka Goods and Services Tax Act, 2017 - Printing of question papers - Heading No. 9992 [Education services] - Applicant is engaged in activity of printing of books, journals, question papers, calendars, etc. - **It has received order from State Government Institution for printing of question papers for State Level Higher Secondary Examinations** - Said Institution would supply to applicant only content for printing and printing inputs including paper belong to applicant –
- **Whether services supplied by applicant would be covered under Sl. No. 66 of Notification No. 12/2017-Central Tax (Rate), dated 28-6-2017 - Held, yes [Para 7][In favour of assessee]**

GST : Where applicant has received order from State Government Institution for printing of question papers for State Level Higher Secondary Examinations and said Institution would supply to applicant only content for printing and printing inputs including paper belong to applicant, supply made by applicant would constitute supply of services falling under Heading No. 9989

GST : Where applicant has received order from State Government Institution for printing of question papers for State Level Higher Secondary Examinations and said Institution would supply to applicant only content for printing and printing inputs including paper belong to applicant, services supplied by applicant would be covered under Sl. No. 66 of Notification No. 12/2017-Central Tax (Rate), dated 28-6-2017



[2019] 110 taxmann.com 361 (AAR - KARNATAKA) AUTHORITY FOR ADVANCE RULINGS, KARNATAKA Informatics Publishing Ltd.,/In re*

Classification of services - Karnataka Goods and Services Tax Act, 2017 - Providing of access to online content to users - Heading No. 998431 [Online text based information such as online books, newspapers, periodicals, directories and like] –

- Applicant is in business of only **providing access to articles published in various journals and papers to its subscribers** - It has a portal called J-Gate, which is a platform for searching various educational journals - It itself is not publishing any online journal, but only **maintaining a database of links to all journals** –
- Links to articles are maintained in a metadata form and subscriber when accesses to platform can access to individual article published in any of journal available in platform after reading catalogue of articles –
- Whether **activity of providing of access to online content by applicant to its users is covered under Service Code No. 998431 and liable to tax at 9 per cent CGST + 9 per cent SGST** - Held, yes [Para 6] [In favour of revenue]

GST: Where applicant is in business of only providing access to articles published in various journals and papers to its subscribers and it has a portal called J-Gate, which is a platform for searching various educational journals, and it itself is not publishing any online journals, but only maintaining a database of links to all journals, **activity of providing of access to online content by applicant to its users is covered under Services Code No. 998431 and liable to tax at 9 per cent CGST and 9 per cent SGST**



Providing access to articles published in various journals and papers to its subscribers



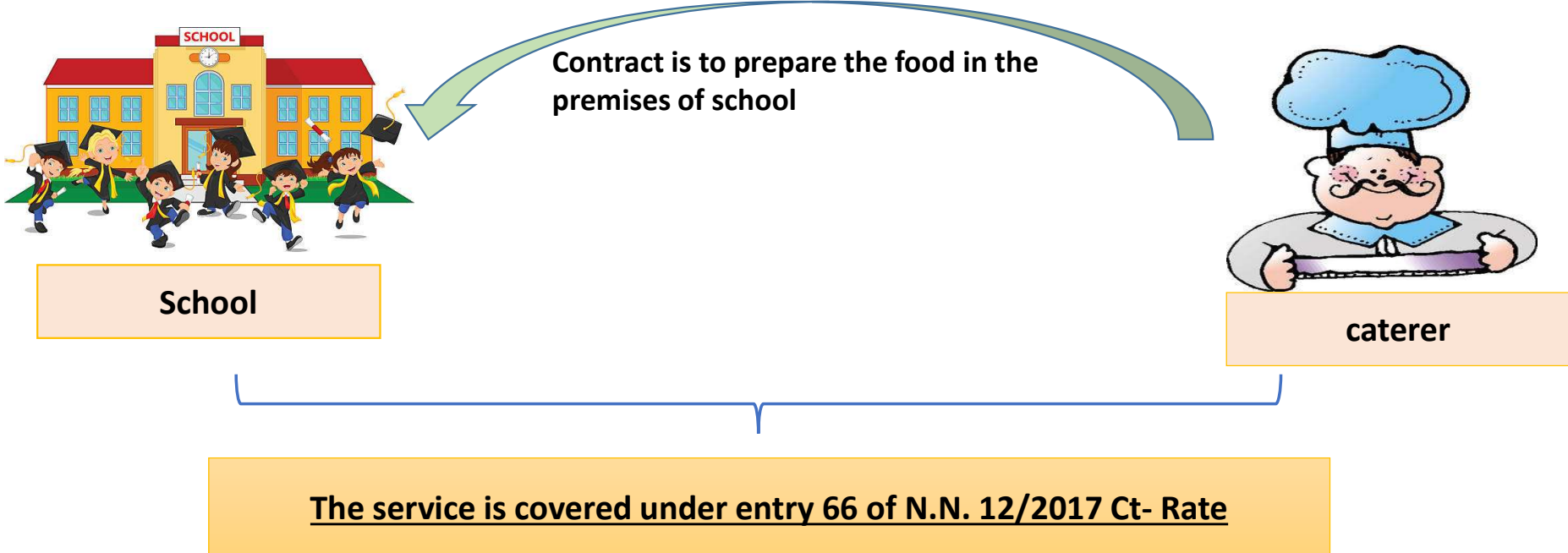
Covered under SAC Code 998431 and liable to tax @ 18%

➤ **2020 (5) TMI 602 - AUTHORITY FOR ADVANCE RULINGS, KARNATAKA IN RE: M/S. MAHALAKSHMI MAHILA SANGHA,**

Applicability of TDS under GST - catering services to educational institutions sponsored by State/ Central / Union territory - Sl. No. 66 of the Notification No.12/2017-Central Tax (Rate) dated 28.06.2017 - Circular 65/ 39/ 2018 –

- HELD THAT:- The agreements for the supply of services are entered **between the Heads of the Residential Schools and the applicant and the recipient of service is hence, the Residential Schools.**
- The **nature of the contract is verified and found that the successful bidders have to prepare the food** in the respective schools only and there is no provision of providing **food cooked outside the premises or from one school to another.** Hence the applicant has to prepare the food in the school premises and supply it to the students of the school for a monthly consideration. Further, it is seen that the students to whom the service is provided are from the Primary School category. **Hence the service is a catering service provided to an educational institution which is a primary school and hence is covered under the Entry No.66 of Notification No.12/2017- Central Tax (Rate) dated 28.06.2017 as amended from time to time and is exempted from the payment of GST.**

The provision of tax deduction at source is applicable on the payment made to a supplier of taxable services and since the applicant is supplying exempt services, the said provisions are not applicable to the payments made to him by the educational institutions.



2018 (5) TMI 648 - AUTHORITY FOR ADVANCE RULING – MAHARASHTRA IN RE : SIMPLE RAJENDRA SHUKLA

Levy of GST - activity of preparing students for entrance exams - whether the services related to providing the coaching for entrance examination will come in the ambit of Goods and Service Tax? - applicant has argued that the word "Education" and "institution" has not been defined in GST Act - N/N. 12/2017- Central Tax (Rate) dated 28/06/2017.

Held that: - The applicant runs private institute, Simple Shukla's Tutorials and is engaged in providing the service of teaching to the students of Class XIth and XIIth science. This activity prepares the students for entrance examinations related to MBBS, Engineering and other science related examinations. However the institution "Simple Shukla's Tutorials" is in no way covered in the definition of Educational institution as given in the above notification.

The private institute does not have any specific curriculum and does not conduct any examination or award any qualification recognized by any law which would be covered in the above notification, The activity of applicant is not covered by the specific definition provided for interpretation of exemption notification.

The education service provided in the case is taxable at the rate of 9 percent under CGST ACT and 9 percent SGST Act - question answered in affirmative.



Prepares the students for entrance examinations related to MBBS, Engineering and other science related examinations.



Private institute does not have any specific curriculum and does not conduct any examination or award any qualification recognized by any law. Thus not covered N.N. 12/2017

Commissioner of Service Tax, Delhi v. Indian Institute of Planning & Management[[2018] 92 taxmann.com 221 (New Delhi - CESTAT)]

Classification of services - Section [65\(27\)](#) of the Finance Act, 1994 - Commercial training or coaching centre - Assessee 'IIPM' was engaged in **conducting management courses leading to award of Certificate of Associate Fellow in Indian Institute of Planning and Management (AFIIPM)**, Fellow Indian Institute of Planning and Management of IIPM and also MBA, BBA Degrees of International Management Institute (IMI), Europe –

Question :- Whether assessee would fall under category of **'commercial training or coaching centre' as defined under section 65(27)** and was liable to service tax - Held, yes [Para 12] [In favour of revenue] GST/Service Tax : Where assessee 'IIPM' was engaged in conducting management courses leading to award of Certificate of Associate Fellow in Indian Institute of Planning and Management (AFIIPM), Fellow Indian Institute of Planning and Management of IIPM and also MBA, BBA Degrees of International Management Institute (IMI), Europe, it would fall under category of 'commercial training or coaching centre']



IIPM

Conducting management courses leading to award of Certificate of Associate Fellow in Indian Institute of Planning and Management (AFIIPM),



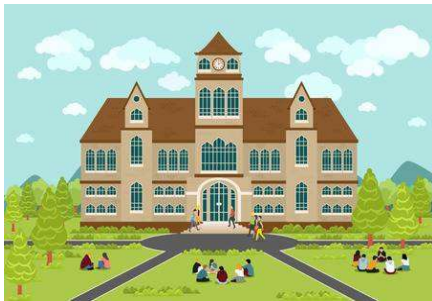
Assessee IIPM falls under the category of **commercial coaching center. Hence liable for service tax**

CA Aanchal Kapoor

➤ **AUTHORITY FOR ADVANCE RULINGS, KARNATAKA Emerge Vocational Skills (P.) Ltd., *In re** [[2018] 97 taxmann.com 320 (AAR - KARNATAKA)]**

Section 9 of the Central Goods and Services Tax Act, 2017 - Levy and collection of tax - General (NR) - Whether services provided by an educational institution to its students, faculty and staff is exempt from tax vide entry no. 66 of Notification No. 12/2017-Central Tax (Rate) dated 28-6-2017 - Held, yes - Whether thus, where assessee qualified as an educational institution in so far as those courses for which affiliation had been obtained from University in State of Karnataka and for which University curriculum was prescribed and qualifications recognized by law for time being in force was given after conduct of examinations by such university, assessee was exempt from GST - Held, yes [Para 4] [In favour of assessee]

CGST: Services provided by educational institution providing degree courses to students under related curriculums is exempt from GST



Curriculum was prescribed and qualifications recognized by law for time being in force was given after conduct of examinations by such university,



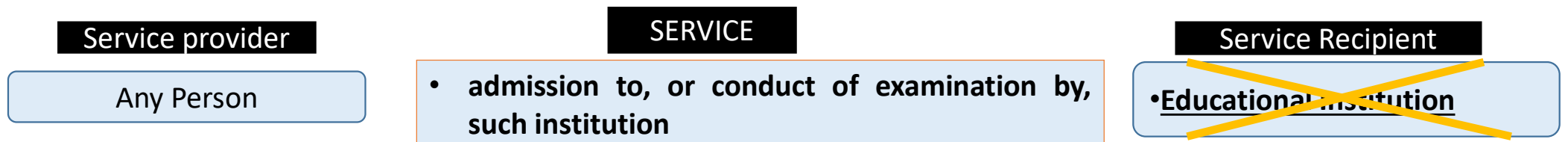
Assessee was exempt from GST

CA Aanchal Kapoor

2020 (4) TMI 597 - AUTHORITY FOR ADVANCE RULING GUJARAT IN RE: M/S. STATE EXAMINATION BOARD

Requirement of registration - examination to get admission for study at Rashtriya Military College, Dehradun etc. held by the State Examination Board - activities of conducting various types of examinations - N/N. 12/2017-Central Tax (Rate) dated 28.06.2017, as amended - HELD THAT:- Notification no. 12/2017-Central Tax (Rate) dated 28.06.17 (Sr.No.1), as amended, clearly provides exemption to Services by an entity registered under section 12AA of the Income-tax Act, 1961(43 of 1961) by way of charitable activities. However, the applicant do not fall in the category of Charitable activities - The benefit of exemption is not available to the State Examination Board under entry no. 66 (b)(iv) to the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 read with Notification No. 02/2018-Central Tax (Rate) dated 25.01.2018 as the exams conducted by the applicant are planned and conducted by the State Examination Board on its own accord and its not the services provided to an educational institute - State Examination Board is liable for registration as it does not falls under Section 23(a) of Central Goods and Services Tax Act, 2017 - State Examination Board is liable for registration as provided under Section 22 of Central Goods and Services Tax Act, 2017.

Whether the applicant is required to be registered under the Act. - HELD THAT:- Yes, the applicant is required to be registered under the Act.
Whether any tax liability arises from the work done by it? - HELD THAT:- Yes, the amount will be taxable.



Benefit of exemption is **not available** to the State Examination Board **under entry no. 66 (b)(iv) to the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 read with Notification No. 02/2018-Central Tax (Rate) dated 25.01.2018** **as the exams conducted by the applicant are planned and conducted by the State Examination Board on its own accord and its not the services provided to an Educational Institute.**

Sr. No.	Question	Answer
1	The activities of conducting various types of examinations : <u>for getting job of teacher for pre primary, primary and secondary school, for getting job as a teacher in Government/Grant-in-Aid School in standard 9 to 12, for getting a job as a Principal in Grant-in-Aid School, for being confirmed in service, for getting higher Scale, for getting promotion, for getting self employment as a painter, for getting self-employment, for getting jobs in various other fields, for scholarships, examination to get admission for study at Rashtriya Military College, Dehradun etc.</u> by the State Examination Board, Gandhi nagar are not exempt under Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, as amended.	State Examination Board is liable for registration as provided under Section 22 of Central Goods and Services Tax Act, 2017.
2	Whether the applicant is required to be registered under the Act.	Answered in Affirmative.
3	Whether any tax liability arises from the work done by it?	Answered in Affirmative.

2020 (7) TMI 142 - AUTHORITY FOR ADVANCE RULING, WEST BENGAL IN RE: M/S. THE LEPROSY MISSION TRUST INDIA

BILL EDGAR MEMORIAL VOCATIONAL TRAINING CENTRE(BEMVT)

Exemption from GST - service of providing vocational training courses at Vocational Training Centre, Bankura - applicability of entry no 64 or 66 of Notification 12/2017 - Central Tax (Rate) dated 28/06/2017 (State Notification No. 1136-FT dated 28/06/2017), as amended time to time - HELD THAT:-

- The applicant is not the Government or local authority. Entry No. 64 of the Exemption Notification is not, therefore, applicable. A reference is made to the services provided by the applicant as a project implementation agency under the Deendayal Upadhyaya Grameen Kausalya Yojana. It is exempt under Entry 71 of the Exemption Notification. However, the applicant provides no evidence that BEMVT is acting as a project implementation agency under the above scheme.
- Clause h(ii) of the Exemption Notification defines an “approved vocational course” as a modular employable skill course, approved by NCVT and run by a person registered with the Directorate General of Training, Ministry of Skill Development and Entrepreneurship. BEMVT is registered with DGET and its courses on formal trade skills of diesel mechanic, welder and sewing technology, as mentioned in the Table in para 2.2 above, are approved by NCVT. It is, therefore, imparting education as a part approved vocational education courses.

The applicant is, therefore, an educational institution in terms of clause 2(y)(iii) of the Exemption Notification, and its supplies to the students, faculty and staff relating to the courses imparting skills of diesel mechanic, welder and sewing technology are exempt in terms of Entry 66 (a) of the Exemption Notification.

➤ **2019 (6) TMI 1172 - AUTHORITY FOR ADVANCE RULING, MAHARASHTRA IN RE: M/S. ORIENT PRESS LTD.**

- Classification of supply of services - rate of tax - Printing of Pre-examination items - Printing of Post-examination items - **Scanning and processing of results of examinations - exempt supply or not - business of providing the services of printing of security documents to various clients like Government Authorities and agencies, Banks, Educational Boards / Institutions and Private Companies.**
- Supply of service of Printing of examination items like **question papers OMR sheets (Optical Mark Reading), Answer booklets for conducting of an examination by the educational boards or institutions - exempt services or not - N/N. 12/2017 - CT (Rate), dated 28th June, 2017 as amended - Circular No. 11/11/2017-GST dated 20.10.2017** - HELD THAT:- As per under Entry No. 66 of the Notification No. 122017 - C T (Rate), dated 28th June, 2017 as amended, **services provided to an educational institution, by way of Services relating to admission to, or conduct of examination by, such institution falls under Heading 9992 (Education Services and exempted from payment of GST. Such services are exempted only if they are, in the subject case, related to conduct of examination by such institution.**
- The question papers, OMR sheets (Optical Mark Reading), answer booklets are very essential and necessary requirements to conduct any examination. **To print question papers the content i.e. the questions will be provided by the institution conducting the examination.** The contents of the **OMR sheets and answer sheets will also be provided accordingly by the institution** - in the subject case **there is a supply of services and since the same are provided to educational institutions, the same shall be classified under Heading 9992 and will be exempted from payment of GST vide Entry No. 66 of the Notification No. 12/2017 - Central Tax (Rate), dated 28th June, 2017 as amended.**
- Whether **supply of service of Printing of Post examination items like marks card, grade card, certificates to educational boards (up to Higher Secondary) after scanning of OMR Sheets and processing of data are also exempted under the said Notification?** –
- HELD THAT:- **Conduct of any examination by an educational Institute includes both pre examination works, actual conduct of the exams and post-examination works.** Hence for reasons mentioned in para no. 5.4 above we hold that such supply is also a supply of services and classifiable under Heading 9992 and will be **exempted from payment of GST** vide Entry No. 66 of the Notification No. 122017 - Central Tax (Rate), dated 28th June, 2017 as amended. We do not agree with the **jurisdictional officer who has opined that the said supply is a supply of goods and not services.**

➤ **2019 (7) TMI 1332 - AUTHORITY FOR ADVANCE RULING, MAHARASHTRA IN RE: M/S. SECURITY AND INTELLIGENCE SERVICES (INDIA) LTD.**

Security Services

Educational Institution - services provided to Visvesvaraya National Institute of Technology, Nagpur - exemption under Serial No. 66 of Notification No. 12/2017 - Central Tax (Rate) dated 28th June 2017 - Rate of tax.

Whether the services provided to Visvesvarayya National Institute of Technology, Nagpur will qualify for exemption under Serial No. 66 of Notification No. 12/2017 - Central Tax (Rate) dated 28th June 2017, considering it to be an educational Institution? - HELD THAT:- The applicant is of the opinion that the said Sr.No. 66 is not applicable in their case but VNIT has informed them that GST is not applicable on security services provided by the applicant to them. As per Sr.No.66 (b) (iii) **security services or cleaning services or housekeeping services supplied to an educational institution attracts NIL rate of GST.** **Hence to avail of the benefit of Sr. No.66 mentioned above in the subject case, since the security' services are provided by the applicant to VNIT, the latter must fall under the definition of an 'educational institution'.**

VNIT as per the submissions made by the applicant is not engaged in providing preschool education and education up to higher secondary school or equivalent.

Since VNIT as a **technical institute is engaged in imparting under-graduate courses, post-graduate courses and Ph. D programs** in the field of engineering, architecture and science thereby being engaged in imparting education as a part of a curriculum for obtaining a qualification recognised by law for the time being in force, it would get covered under the definition of "educational institution" vide clause (ii) mentioned above and therefore it is seen that the security services as in the subject case are provided to an educational institution i.e. VNIT.

The applicant has been given the status of a Deemed University by the University Grants Commission. The UGC was formally established 1956 as a statutory body of the Government of India through an Act of Parliament for the coordination, determination and maintenance of standards of university education in India.

The proviso to Sr. No. 66 mentioned above very clearly states that only services provided to an educational institution which provides services by way of **pre-school education and education up to higher secondary school or equivalent, will be exempt.** In the subject case the applicant is not providing services, **as an educational institution, by way of pre-school education and education up to higher secondary school or equivalent.** **Hence Security services provided in the instant case will not be exempt from payment of GST.**

2020 (7) TMI 348 - AUTHORITY FOR ADVANCE RULINGS, ANDHRA PRADESH IN RE: M/S. MASTER MINDS

Ques:- Whether the services of supply of service of education as per the curriculum prescribed by the statutory authorities/ government to the students of the applicant tor obtaining qualifications/ certificates of CA-Foundation, CA-Inter, CA-Final, CMA (ICWA)-Foundation, CMA-Inter, CMA-Final and Intermediate duly recognized by the respective statutory authorities/ government are exempted under Notification NO.12/2017-CT (Rate) dt.28.06.2017 (entry No.66(a)), as amended or Not?

Ans:- In the instant case, the coaching or training service provided in respect of the courses pertaining to CA (Inter & Final) and ICWA (Inter & Final) does Not fall under clause (i) of the above said definition, as the same is Not related to pre-school education and education up to higher secondary school or equivalent. Similarly, the service provided by the applicant also does Not fall under clause (iii), as the same is Not related to imparting of education as a part of an approved vocational education course (which is generally a Non-academic course and a specific trade / vocation oriented course) - In the instant case, the coaching or training provided by the applicant is for preparing the students for wTiting/appearing CA(Inter & Final) and ICWA (Inter & Final) Exams conducted by ICAI/ ICWAI. The said coaching or training per se does Not lead to grant of a certificate or diploma or degree or qualification which is recognized by any law. It only aims at giving a better preparation to the students and improves their chances in the examination. It is similar to any other coaching or training given in respect of competitive / entrance examinations such as IIT, EAMCET etc.

It is pertinent to mention that the coaching or training as imparted by the applicant is neither mandatory Nor sine qua Non to the students appearing for CA / ICWA examination. Students, who prepare on their own, can also appear for these examinations and qualify basing on their performance. Hence, as stated supra, the coaching or training imparted by the applicant is only a facilitation / improvisation of the preparation for the said exams and can not be considered as a coaching/training leading to grant of certificate, qualification etc. recognized by law - the coaching or training service provided by the applicant to the aspirants of CA-Foundation, CA-Inter, CA-Final, CMA (ICWA)-Foundation, CMA-Inter, CMA-Final and Intermediate is Not the service provided by means of 'education as a part of curriculum that has been prescribed for obtaining a qualification prescribed by law'. Hence it cannot be said that the coaching / training given by the applicant to CA aspiring students (for appearing and qualifying in the examinations) would lead to grant of certificate/qualification recognized by law. Therefore, the service rendered by the applicant is Not a service by way of 'education as a part of curriculum for obtaining a qualification recognized by any law for the time being in force'.

The rates of GST to be collected towards various activities of the University are as follows

The rates of GST to be collected towards various activities of the University are as follows:

Paid by Colleges	Rate of Tax	HSN Code
Application Form Fees	12%	4911
Inspection Fees	18%	9992
Initial, Permanent and Continuation Affiliation Fees	18%	9992
Fees for Increase in intake for courses	18%	9992
Brochures, leaflets and similar Printed Materials	5%	4901
Printed Books including Brailee books	Exempted	
Newspapers, Journals and periodicals	Exempted	
Paid by Students		
Education services provided by an Educational Institution to its students, faculty and staff	Exempted	
Application Form Fees	12%	4911
Online Application Fees	18%	9992
Late Fee, Processing Fee, Placement Fee	18%	9992
Panel fee for Late submission of Dissertation, Synopsis, and Thesis	18%	9992
Migration Application Fees	18%	9992
Matriculation Fee paid by students after admission	Exempted	
Internship fee as part of Curriculum	Exempted	
Registration Fee and Tuition Fees	Exempted	
Library Fee	Exempted	
Special Equipment Fee, Lab Fee and Computer Lab Fee	Exempted	
Infrastructural facilities fund	Exempted	
Eligibility Fee, ID Smart Card Fee	Exempted	
Exam Fees for Theory, Practical, Dissertation, Project & Viva-voce	Exempted	
Hostel Room Rent	Exempted	
Examination Application Fee, Convocation	Exempted	

Application Fee		
Duplicate Application Fee, Fee for Certificate and Marks Statement	Exempted	
Ph.D. Registration Fee, Extension Fee, Thesis submission Fee	Exempted	
Research Grant		
Academic Research Purpose	Exempted	
Consultancy Projects	18%	9992
Rent		
Auditorium	18%	9972
Open Shelters	18%	9972
Other Services	18%	9972
Commercial Rent	18%	9972

Rent	Rate of Tax	HSN Code
Guest House		
Rate per day below Rs.1000/-	Exempted	
Rate per day above Rs.1000/- to Rs.2500/-	12%	9963
Rate per day above Rs.2500/- to Rs.7500/-	18%	9963
Rate per day above Rs.7500/-	28%	9963
Other Services		
Sale of Metal Scrap	18%	7204
Sale of Waste paper, Plastics, Rubber and Glass	5%	4707
Sale of Tender Documents for cost	12%	4911
Sale of Books by the Publication Division	Exempted	
All other Receipts through any other Services	18%	9997

TDS Provisions can also come into picture depending on facts.

FAQ

FAQ

FAQ – What will be the treatment in case of Bundled Supply or Mixed Supply of Service by an Education Institution e.g. Boarding & Lodging Service by Boarding Schools?

Reply – Boarding schools provide service of education coupled with other services like providing dwelling units for residence and food. This may be a case of bundled services if the charges for education and lodging and boarding are inseparable. Their taxability will be determined in terms of the principles laid down in section 2(30) read with section 8 of the CGST Act, 2017. Such services in the case of boarding schools are naturally bundled and supplied in the ordinary course of business. Therefore, the bundle of services will be treated as consisting entirely of the principal supply, which means the service which forms the predominant element of such a bundle. In this case since the predominant nature is determined by the service of education, the other service of providing residential dwelling will not be considered for the purpose of determining the tax liability and in this case the entire consideration for the supply will be exempt.

Let's take another example where a course in a college leads to dual qualification only one of which is recognized by law. Would service provided by the college by way of such education be covered by the exemption notification? Provision of dual qualifications is in the nature of two separate services as the curriculum and fees for each of such qualifications are prescribed separately. Service in respect of each qualification would, therefore, be assessed separately.

If an artificial bundle of service is created by clubbing two courses together, only one of which leads to a qualification recognized by law, then by application of the rule of determination of taxability of a supply which is not bundled in the ordinary course of business, it shall be treated as a mixed supply as per provisions contained in section 2(74) read with section 8 of the CGST Act, 2017. The taxability will be determined by the supply which attracts highest rate of GST. However incidental auxiliary courses provided by way of hobby classes or extra-curricular activities in furtherance of overall well-being will be an example of naturally bundled course, and therefore treated as composite supply.

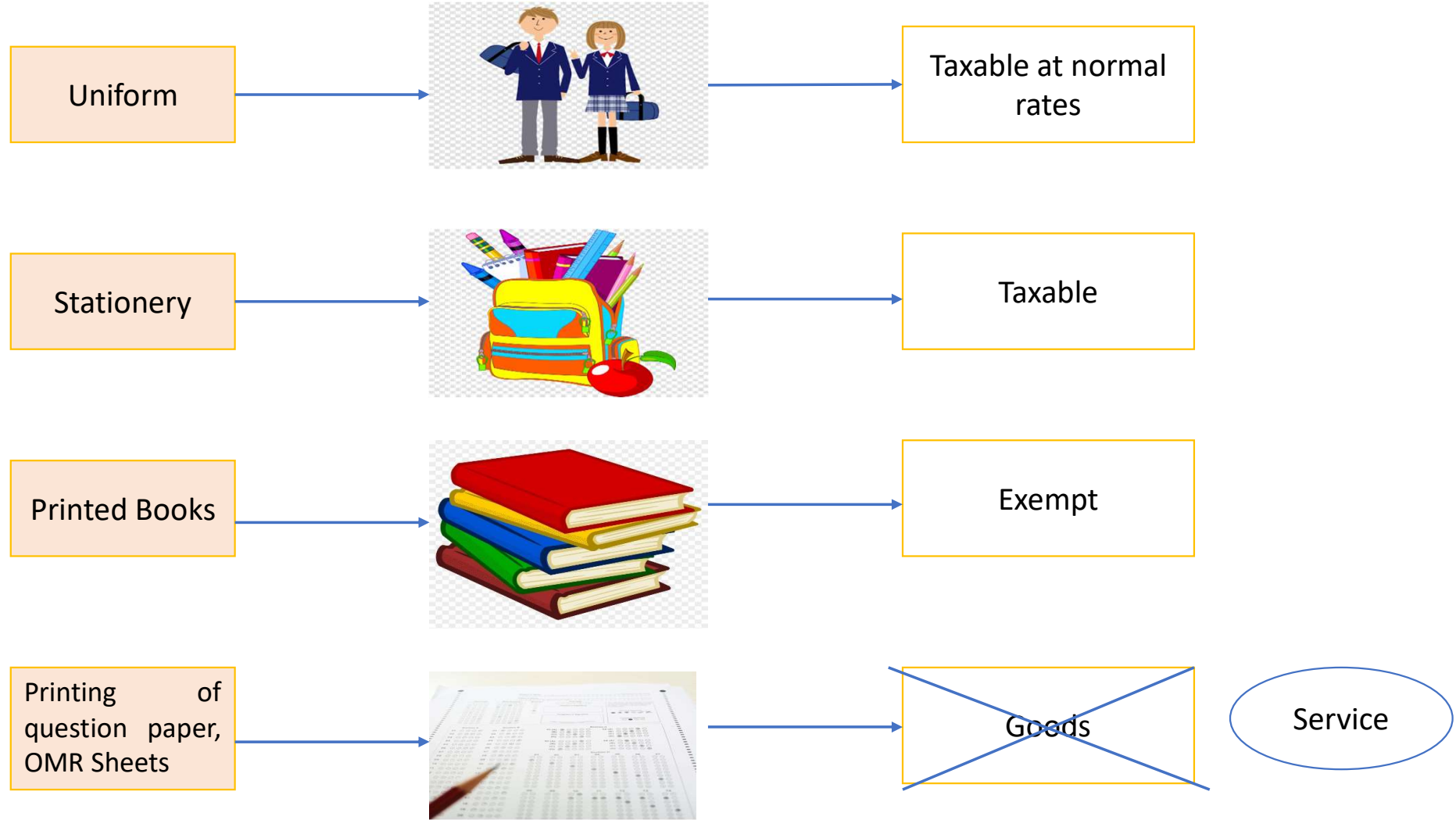
One relevant consideration in such cases will be the amount of extra billing being done for the unrecognized component viz-a-viz the recognized course. If extra billing is being done, it may be a case of artificial bundling of two different supplies, not supplied together in the ordinary course of business, and therefore will be treated as a mixed supply, attracting the rate of the higher taxed component for the entire consideration.

FAQ – Whether Institutions providing Degree under Foreign Laws but eligible for Equivalence Degree by AIU will be eligible for exemption?

Reply – Involves question of Law.

Taxability of sale of goods or services

Taxability of goods



Taxability of services

Annual function/ sports function



Fees charged from students

Exempt

Amount charged from others

Taxable

Services received by education institution of printing question paper, OMR sheets



Exempt

Security/ Housekeeping/ cleaning services Edu. Inst. under 2(y)(i)



Exempt

Manpower supply to Edu. Inst. under 2(y)(i)



Taxable

Day Care Services by Educational Institution



Exempt only if to Students

Hostel



Exempt

Canteen Income to School



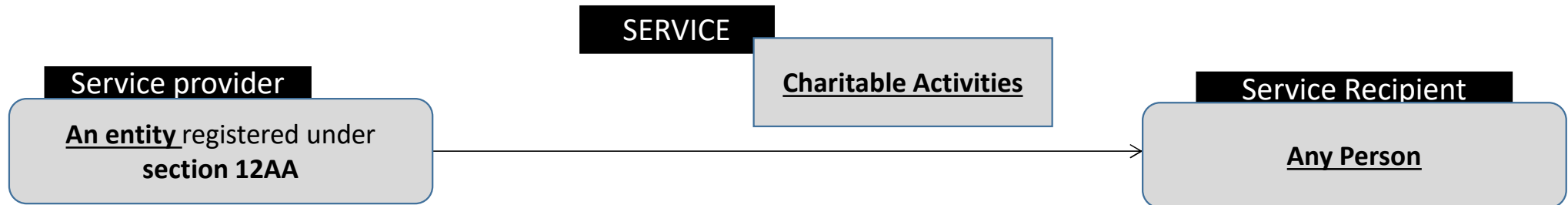
Exempt
(For Students)¹⁰¹



CHARITABLE INSTITUTIONS

Entry no. 1 of Notification No. 12/2017- Ct Rate

Services **by an entity** registered under **section 12AA** of the Income-tax Act, 1961 (43 of 1961) by way of **charitable activities**



“Charitable activities” means activities relating to—

- i. public health by way of,—
 - A. care or **counselling** of
 - I. terminally ill persons or persons with severe physical or mental disability;
 - II. persons afflicted with HIV or AIDS;
 - III. persons addicted to a dependence-forming substance such as narcotics drugs or alcohol; or
 - B. **public awareness** of preventive health, family planning or prevention of HIV infection;
- ii. advancement of **religion, spirituality or yoga**;
- iii. **advancement of educational programmes or skill development relating to,—**
 - A. **abandoned, orphaned or homeless children**
 - B. **physically or mentally abused and traumatized persons;**
 - C. **prisoners; or**
 - D. **persons over the age of 65 years residing in a rural area;**
- iv. preservation of environment including watershed, forests and wildlife;

CHARITABLE PURPOSE U/S 2(15) of Income Tax Act

Charitable Purpose **includes**

Relief of the poor

Education

Yoga(as per amendment made by finance act 2015

Medical Relief

Preservation of environment(including watersheds, forests and wildlife)

Preservation of monuments or places of objects of artistic or historic interest

The **advancement of any other object of general public utility.**

Provided that the **advancement of any other object of general public utility** shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity, unless—

(i) such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility;

and

(ii) the aggregate receipts from such activity or activities during the previous year, **do not exceed twenty per cent of the total receipts,** of the trust or institution undertaking such activity or activities, of that previous year;

Note: Any institution for being recognized as public charitable institution should have **its objects falling within the meaning of "CHARITABLE PURPOSE"** as defined u/s 2(15) of Income Tax Act 1961.

Circular No. 66/40/2018-GST

CLASSIFICATION OF SERVICES - GST ON RESIDENTIAL PROGRAMMES OR CAMPS MEANT FOR ADVANCEMENT OF RELIGION, SPIRITUALITY OR YOGA BY RELIGIOUS AND CHARITABLE TRUSTS

*"The services provided by entity registered under Section 12AA of the Income Tax Act, 1961 by way of advancement of religion, spirituality or yoga are **exempt**.*

- **Fee or consideration charged** in any other form from the participants for participating in a religious, Yoga or meditation programme or camp meant for advancement of religion, spirituality or yoga shall be **exempt**.
- Residential programmes or camps where the fee charged includes **cost of lodging and boarding** shall **also be exempt** as long as the primary and predominant activity, objective and purpose of such residential programmes or camps is advancement of religion, spirituality or yoga.
- However, if charitable or religious trusts **merely or primarily provide accommodation or serve food and drinks against consideration in any form including donation, such activities will be taxable.**
- **Similarly, activities such as holding of fitness camps or classes such as those in aerobics, dance, music etc. will be taxable**".

It is accordingly clarified that taxability of the services of religious and charitable trusts by way of residential programmes or camps meant for advancement of religion, spirituality or yoga may be decided accordingly.



[2019] 101 taxmann.com 2 (AAAR-MAHARASHTRA) Shrimad Rajchandra Adhyatmik Satsang Sadhana Kendra, In re Section 2(17), read with section 7, of the Central Goods and Services Tax Act, 2017/Section 2(17), read with section 7, of the Maharashtra Goods and Services Tax Act, 2017 - Business - **Appellant a public charitable and religious trust engaged in spreading knowledge of Jain Religion submitted that its main objective is advancement of religious and spiritual teachings, hence it cannot be said to be carrying any 'business' as contemplated under section 2(17) of CGST Act –**

- On perusal of activities of trust it is found that **though charitable trust is formed with fundamental objectives of carrying out spiritual activity and salvation, but trust also sells various goods and services like books, CDs and DVDs for advancement of religious teachings to people desiring to buy them and such an activity of trade and commerce by itself forms a part of objective of trust –**

Ques :- Whether intention of legislature is to tax all activities of **supply of goods and services by charitable trust except those specifically exempted –**

Ans:-yes –

Ques:- Whether very fact that certain services have been carved out and given out a special treatment makes it clear that all trade and commerce transaction of selling books, statues, CDs and DVDs etc. done commercially for consideration fall within scope of 'supply' and come within broad ambit of 'business' under CGST Act –

Ans:-yes

Ques:- Whether therefore, AAR was right in holding that appellant, a public charitable and religious trust engaged in advancement of religious and spiritual teachings also engaged in sale of spiritual goods, can be said to be in 'business' and therefore attract provisions of CGST Act, 2017 –

Ans:- yes[Paras 5 and 6]

Exemption to Charitable organisations

Pursuant to Notification No. 12/2017 CT dated 28th June 2017, the Govt. has exempted services by way of **charitable activities**, provided by charitable organisations from levy of GST. Thus charitable organisations engaged exclusively in charitable activities are exempted from obtaining registration.

However, charitable organisations are compelled to register where they have receipts on account of ancillary activities like providing shop on rent to outsider(so that the visitors get tea and food), charitable hospitals running pharmacy and providing medicines at concessional rate etc.(Donations Excluded & Advertisement, Sponsorship, Consultancy, Sales included)

Acharya Shree Mahashraman Chaturmas Pravas Vyavastha Samiti Trust, In re vs. (AAR)(2019] 110 taxmann.com 282 (AAR - KARNATAKA)/[2019] 31 GSTL 138

Rajiv Gandhi Centre For Aquaculture, In re vs. AAR([2019] 108 taxmann.com 465 (AAAR - TAMILNADU)/[2019] 76 GST 71

Circular No. 116/35/2019- GST

SECTION 7 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - SUPPLY - SCOPE OF - LEVY OF GST ON THE SERVICES OF DISPLAY OF NAME OR PLACING OF NAME PLATES OF THE DONOR IN THE PREMISES OF CHARITABLE ORGANISATIONS RECEIVING DONATION OR GIFTS FROM INDIVIDUAL DONORS

Individual donors provide financial help or any other support in the form of donation or gift to institutions such as religious institutions, charitable organisations, schools, hospitals, orphanages, old age homes etc. The recipient institutions place a name plate or similar such acknowledgement in their premises to express the gratitude. When the name of the donor is displayed in recipient institution premises, in such a manner, which can be said to be an expression of gratitude and public recognition of donor's act of philanthropy and is **not aimed at giving publicity** to the donor in such manner that it would be an advertising or promotion of his business, then it can be said that there is no supply of service for a consideration (in the form of donation). There is no obligation (quid pro quo) on part of recipient of the donation or gift to do anything (supply a service). Therefore, there is **no GST liability** on such consideration.



Some examples of cases where there would be no taxable supply are as follows:—

- "Good wishes from Mr. Rajesh" printed underneath a digital blackboard donated by Mr. Rajesh to a charitable Yoga institution
- "Donated by Smt. Malati Devi in the memory of her father" written on the door or floor of a room or any part of a temple complex which was constructed from such donation.

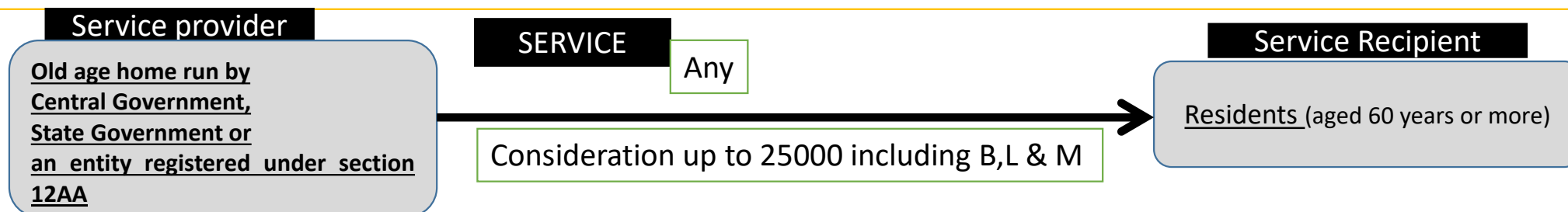
In each of these examples, it may be noticed that there is no reference or mention of any business activity of the donor which otherwise would have got advertised. Thus where all the three conditions are satisfied namely the gift or donation is made to a charitable organization, the payment has the character of gift or donation and the purpose is **philanthropic (i.e. it leads to no commercial gain) and not advertisement, GST is not leviable.**

If instructed to put Board of particular Dimensions with Firm Name in Return , then it will be taken as Supply.

Entry no. 9D of Notification No. 12/2017- Ct Rate

Services by an **old age home** run by Central Government, State Government or by an entity registered under **section 12AA** of the Income-tax Act, 1961 (43 of 1961)

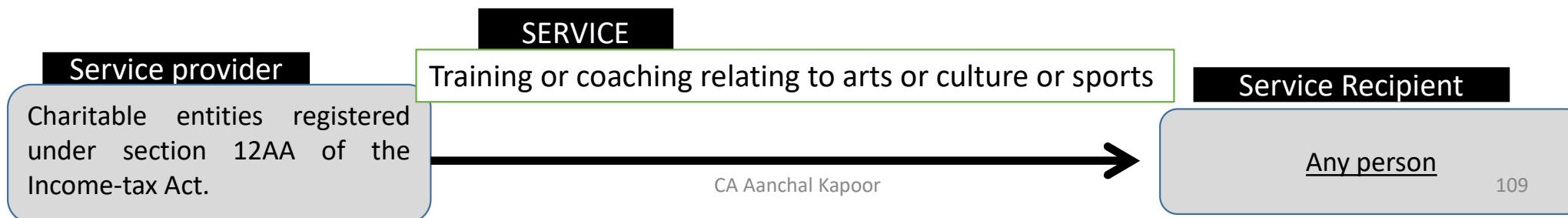
- to its residents (aged 60 years or more) against consideration
- **Up to twenty-five thousand rupees per month per member,**
- **provided that** the consideration charged is **inclusive of charges for boarding, lodging and maintenance.**



Entry no. 80 of Notification No. 12/2017- Ct Rate

Services by way of **training or coaching in recreational activities** relating to—

- arts or culture, or
- sports by charitable entities registered under **section 12AA** of the Income-tax Act.



Entry no. 13 of Notification No. 12/2017- Ct Rate

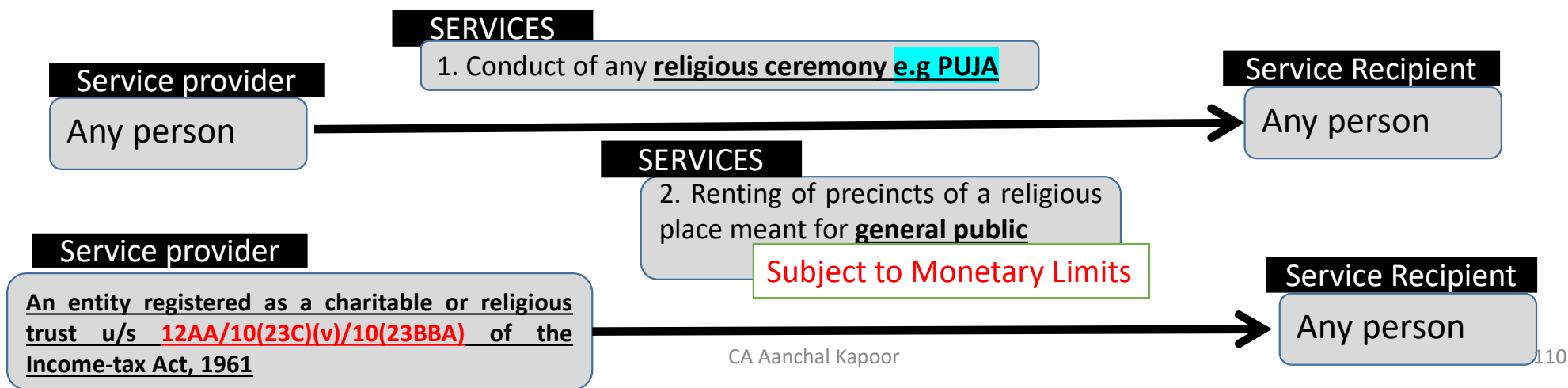
Services by a person by way of—

- a) conduct of any **religious ceremony**;
- b) renting of precincts of a **religious place** meant for **general public**, owned or managed by **an entity registered as a charitable or religious trust under section 12AA of the Income-tax Act, 1961** (hereinafter referred to as the Income-tax Act) or a trust or an institution registered under sub-clause (v) of clause (23C) of section 10 of the Income-tax Act or a body or an authority covered under clause (23BBA) of section 10 of the said Income-tax Act:

Defined in (zc) point of N.N. 12/2017 means, "the body of people at large sufficiently defined by some common quality of public or impersonal nature."

Provided that nothing contained in **entry (b)** of this exemption shall apply to,-

- i. **renting of rooms** where **charges are one thousand rupees or more per day**;
- ii. **renting of premises, community halls, kalyanmandapam or open area, and the like** where charges are **ten thousand rupees or more per day**;
- iii. **renting of shops or other spaces for business or commerce** where **charges are ten thousand rupees or more per month**.



Other points related to charitable institutions

Sale of Goods by charitable institution



Taxable
~~Exempt~~

Public libraries



Exempt
(Entry No. 50 of N.N. 12/2017)

Goods or services to Charitable Institution



Eg. Rental, CA services

Taxable

Renting of space for Advertisement Hoardings



Taxable

Import of service by charitable institution for charitable purpose



No RCM
(Exempt-Entry No.10 of Not. 9/2017-IT(Rate))

Online pooja

[2018] 100 taxmann.com 291 (AAR - MAHARASHTRA) Sadashiv Anajee Shete, *In re*

Classification of services - Heading No. 9963 - Religious ceremony - **Facilitator between pundit and website users**/Maharashtra Goods and Services Tax Act, 2017 - Applicant is engaged in business of **assisting believers, followers and devotees to book Pundits/Brahmins** online for their religious ceremonies **like pujas, abhisheks, etc.** - Said service is being provided through **applicant's own website by charging money** - He is facilitator **between pundits and customers** - Applicant is taking **booking of services online on his own website from customers and intimates names of Pundits/Brahmins who would perform job to customers also online** - Whether applicant is not covered under Entry No. 13 of exemption Notification No. 12/2017-Central Tax (Rate), dated 28-6-2017 and, **therefore, his services are not exempt from GST - Held, yes [Para 4.3]**

Classification of services - Religious ceremony - Heading No. 9963 - Maharashtra Goods and Services Tax Act, 2017 - Whether, on facts, stated under heading 'Classification of services/Maharashtra Goods and Services Tax Act, 2017 - **Facilitator between pundit and website users (Intermediary)**', **Pundits are persons who are actually performing services like puja, abhishek to customers and, therefore, they are eligible for exemption from GST - Held, yes [Para 6]**

Section 24, read with section 2(44) and 2(45), of the Central Goods and Services Tax Act, 2017/Section 24 of the Maharashtra Goods and Services Tax Act, 2017 - Registration - Compulsory registration in certain cases –

Question :- Whether where applicant is providing services and doing activities through electronic network of own website and facilitated recipient of services on electronic basis through their internet website, applicant is squarely covered as 'Electronic commerce operator' and considering section 24 he shall be required to be registered under Act

Answer- **Yes –**

Question:- Whether further since he is liable to receive commission for supply of services he would be liable to pay GST on value of commission received from website users and not for amount received –

Answer:- Yes



[2019] 110 taxmann.com 282 (AAR - KARNATAKA) Acharya Shree Mahashraman Chaturmas Pravas Vyavastha Samiti Trust, In re
Section 7 of the Central Goods and Services Tax Act, 2017/Section 7 of the Karnataka Goods and Services Tax Act, 2017 - Supply - Scope of –

Ques. I. Whether where **applicant, a charitable trust**, was **constructing buildings and giving it on rent, etc.** which **was not directly related to advancement of religion, spirituality or yoga**, it could be said that these **services were in course or furtherance of business** and it was to be held that **these were covered within meaning of 'supplies' under section 7(1)**

Ans:- yes

Ques. II. Whether where **a person (supplier) makes a taxable supply**, he shall be **liable to get himself registered, if his aggregate turnover exceeds threshold –**

Ans:-yes

Ques. III. - Whether entry No. 7(ii) of Notification No. 11/2017 - Central tax (Rate), dated 28-6-2017, reveals that **accommodation provided in commercial places meant for residential or lodging purposes having a declared tariff of a unit of accommodation of Rs. 1000 per day per unit** or equivalent would be taxable at 6 per cent under CGST Act –

Ans:- yes –

Ques IV:- Whether thus, where applicant, a charitable trust, is a supplier of service within scope of section 7(1) and they are providing **accommodation services to pilgrims and charging persons on a monthly basis or daily basis for residential purposes, activity of applicant is squarely covered under entry No. 7(ii), if declared tariff of a unit of accommodation is Rs. 1000 or more per day or equivalent –**

Ans:- yes [Para 12.2]

Ques V. Whether entry No. 14 of Notification No. 12/2017 - Central Tax (Rate), dated 28-6-2017, states **that 'Services by a hotel, inn, guest house, club or campsite by whatever name called, for residential or lodging purposes**, having a declared tariff of a unit of accommodation below one thousand rupees or equivalent is exempt from tax' and these services must be of heading 9963 –

Ans:- Held, yes [Para 12.3]

Ques V. Whether conditions which need to be satisfied for a contract to be covered under entry No. 12 of Notification No. 12/2017 - Central Tax (Rate), dated 28-6-2017, are that **(i) it must be a service of renting of residential dwelling and (ii) it must be for use as residence –**

Ans.yes

Ques. VI:- Whether where applicant charitable trust was providing accommodation services to pilgrims and charging persons on a monthly basis or daily basis **for residential purposes, since, accommodations provided were for temporary stay and not for a permanent residence, accommodation services provided would not be covered under said entry.**

Ans :- yes

Ques VII. Whether as per entry 7 of Notification No. 11/2017 - Central Tax (Rate), dated 28-6-2017, supply of **goods being food or any article for human consumption or drink by way of or part of any service or in any manner whatsoever is taxable –**

Ans:-yes

Ques VIII :- Whether thus, supply of food and beverages by applicant, a charitable trust, at subsidized rates to devotees is taxable under GST Act

Ans:- yes

Ques. IX:- Applicant charitable trust is providing space for registered person without consideration for supply of food and beverages to devotees, and, consideration for food and beverages supplied by such registered person is received by him directly from devotees - Whether this would amount to a supply of usage rights of space without consideration and devotees are consumers –

Ans:- yes

Ques. X:- Whether Schedule I to CGST Act, which is related to 'activities to be treated as supply even if made without consideration' does not cover this item as long as registered person and applicant arc not related persons –

Ans:- yes

Ques. XI:- Whether in case two are related persons as per definition of 'related persons' as defined in Explanation to section 15, then, providing of space for registered person without consideration would be a supply liable to tax as per provisions of CGST Act, 2017 –

Ans:- yes

Ques XII:- Section [2\(13\)](#), of the Integrated Goods and Services Tax Act, 2017 - Intermediary - Applicant charitable trust intends to book hotel rooms for pilgrims from outside and supply of service is by hotel to pilgrims and applicant is facilitating supply of accommodation service to pilgrims by hotel - Whether since applicant arranges supply of services and facilitates supply, it would be squarely covered under definition of 'intermediary' –

Ans:- yes



ITC Eligibility on Covid Related Expenses & CSR Activities



Whether the expenses related to preventive measures eligible for ITC?

Preventive Measures

➤ Mask, sanitizer ,Medical insurance of workers, Disinfection of Offices etc.

Relevant provision of CGST Act, 2017 relating to eligibility of ITC is as follows:-

Section 16 Eligibility and condition for taking input tax credit.:-

1. **Every registered person shall, subject to such conditions and restrictions** as may be prescribed **Rule 36** in the manner specified in section 49,

- be entitled to take credit of input tax charged on **any** supply of goods or services or both to him
- which **are used or intended to be used in the course or furtherance of his business** and
- the said amount shall be credited to the electronic credit ledger of such person.

Section 17:- Apportionment of credit and blocked credits.

17(5):- Notwithstanding anything contained in sub-section (1) of section 16 and sub- section (1) of section 18, input tax credit shall not be available in respect of the following, namely:—

(i) **food and beverages**, outdoor catering, beauty treatment, **health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles**, vessels or aircraft referred to in clause (a) or clause (aa) except when used for the purposes specified therein, **life insurance and health insurance**;

Provided that the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;

(ii)...

(iii)...

Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.]

Course or furtherance of business

Means
advancement

Advance Ruling:- [2018] 98 taxmann.com 355 (AAAR-KERALA)(APPELLATE AUTHORITY FOR ADVANCE RULING, KERALA

Caltech Polymers (P.) Ltd., In re, where it is held that:-

“Section 7, read with section 2(83), of the Central Goods and Services Tax Act, 2017/Section 7, read with section 2(83), of the Kerala State Goods and Services Tax Act, 2017 - Supply - Scope of (NR) - Whether supply of food items to employees for consideration in canteen run by company would come under definition of 'outward supply' as defined in section 2(83) and hence taxable as supply of service under GST - Held, yes [Para 17]

Bombay High Court in Coca Co la India Pvt. Ltd. held that

- The expression business is not confined or restricted to mere manufacture of products and it has wide importation that would include those activities that might have direct as well indirect significance and it can cover all the activities that are related to functioning of business.

Activities related to Employees are Course or Furtherance
of Business

- The guidelines issued by the Ministry of Home Affairs (MHA) Government of India vide [order no. 40-3/2020-DM-I\(A\) dated 15.04.2020](#) under Sec. amongst other things specifies that **all industrial and commercial establishments, work places, offices, etc.** shall be required to obtain **medical insurance for the workers** mandatorily before starting their operations after the lockdown (refer para 21 read with sr. no. 5 of Annexure-II to the given order).
- Medical insurance would be part of the health insurance and **hence ITC would be permitted only if obtaining such medical insurance is mandatory.**
- However, as per MHA order dated **17.5.2020** all earlier MHA orders ceases to have effect from 18.05.2020 and there is no guideline for mandatory health insurance of workers from 18.05.2020
- Hence, the medical insurance was obligatory only from **15.4.2020 to 17.5.2020**. **Premium paid otherwise than in this period would not be eligible. Therefore, the ITC shall be available on the expense incurred due to mandatory obligation**

NOTE: ITC to the extent of any **recovery made** from the employees towards such medical insurance coverage cost **would not be admissible** as the shared cost will be considered as a pass-through not paid and borne by the registered person. Employment contracts must however be amended to reflect the said understanding. **Also ITC for the individual policy taken for the family members of the employees would not be available as obtaining such coverage of family members is not mandatory under law.**

Thus in view of above provisions, post Covid, following Expenses ITC is allowed:

Nature of Expense	ITC Eligible or not
Mask, sanitizer, Thermometers, Temperature Screening Facilities, Gloves	Eligible
Medical insurance of workers	Not eligible (Eligible if done during mandatory period whether yearly or half yearly)
Disinfection of Offices	Eligible
Arrangement for Transportation of Employees (Hiring)	Eligible
Life Insurance of employees	Not eligible
Food & Beverages	Not Eligible
Group Medical /Health Policy	Eligible(Mandatory as per Sec 38 of ESI Act)

Donation or supply of free goods due to Covid-19

In this era of pandemic various organizations are coming forward to help the society and undertake various welfare measures. The question which arises whether such expenditure may be eligible for ITC. In this regard, it is important to note in light of section 17(5). **The Tribunal in the case of Northern Coalfields Limited has held that amounts spent under Corporate Social Responsibility is a statutory obligations as per Section 135 of Companies Act, 2013 and hence is entitled to Credit.**

We give below the following scenarios for donations made by corporates and their treatment under GST

S.No.	Description of Donation	Eligibility Test as per Sec 16(1) of CGST	17(5) of CGST	ITC may be Claimed or Not?
1	Provision of Food to poor / Migrant labourers/ Shelters for underprivileged etc	Part of CSR as per Companies Act, 2013	Part of CSR , 17(5) will not apply	ITC may be claimed
2	Donation to PM CARES Fund	Part of CSR as per Companies Act, 2013 as per FAQs, on (CSR) – dated 10.04.2020. by MCA	N.A. being monetary transaction	N.A
3	Sanitization of Colonies of Employees	Business Expenditure as undertaken for Employees	Sec 17(5)(h) refers to goods and this being services thus not Applicable	ITC may be claimed
4	Donation to any NGO etc	Part of CSR as per Schedule VII to Companies Act, 2013	N.A. being monetary transaction	N.A
5	Chief Minister's Relief Fund or State Relief Fund for COVID-19	NOT included in Schedule VII of the Companies Act, 2013	N.A.	N.A
6	State Disaster Management Authority to combat COVID-19 Management Authority	Part of CSR as per Schedule VII to Companies Act, 2013 as per FAQs, on (CSR) – dated 10.04.2020. by MCA	N.A. being monetary transaction	N.A

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Donation or supply of free goods due to Covid-19

S.No.	Description of Donation	Eligibility Test as per Sec 16(1) of CGST	17(5) of CGST	ITC may be Claimed or Not?
7	Spending CSR funds for COVID-19 related activities shall qualify as CSR expenditure and also various activities related to COVID-19 under <u>items nos. (i) and (xii) of Schedule VII relating to promotion of health care including preventive health care and sanitation, and disaster management. (Eradicating Hunger, Environmental Sustainability, Disaster Management including Relief rehabilitation & reconstruction activities)</u>	Qualify as CSR as per FAQs, on (CSR) – dated 10.04.2020. by MCA	Not applicable	ALLOWED
8	Payment of salary/wages to employees and workers during the lockdown period	Not part of CSR	N.A.	N.A
9	Payment of wages to temporary or casual or daily wage workers during the lockdown period is purely contractual obligations	Not part of CSR	N.A.	N.A
10	Any ex-gratia payment is made to temporary/casual workers/daily wage workers over and above the disbursement of wages, specifically for the purpose of fighting COVID 19	CSR expenditure as a onetime	N.A.	N.A

Covid-19 related expenses that qualify as CSR spend

- Contribution to PM CARES FUND
- Contribution to State Disaster Management Authority to combat COVID 19
- Creation of health infrastructure for Covid care
- Establishment of medical oxygen generation and storage plants
- Manufacturing and supply of oxygen concentrators, ventilators, cylinders, and other medical equipment for countering Covid-19
- Setting up of a makeshift hospital or temporary Covid care facility
- Eradicating hunger, poverty and malnutrition, promoting healthcare including preventive healthcare and sanitation via also contribution to the Swach Bharat Kosh set-up by the Central Government for the promotion of sanitation and for making available safe drinking water
- Disaster management, including relief, rehabilitation, and reconstruction activities

General Circular No. 05/2021

E-file no. CSR-10/9/2020-CSR-MCA

Government of India

Ministry of Corporate Affairs

5th Floor, 'A' Wing, Shastri Bhawan,

Dr. R. P. Marg, New Delhi - 110 001

Date: 22nd April 2021

To,

All Stakeholders.

Subject: - Clarification on spending of CSR funds for setting up makeshift hospitals and temporary COVID Care facilities - reg.

Ma'am/Sir(s),

In continuation to this Ministry's General Circular No. 10/2020 dated 23.03.2020 wherein it was clarified that spending of CSR funds for COVID-19 is an eligible CSR activity, it is further clarified that spending of CSR funds for 'setting up makeshift hospitals and temporary COVID Care facilities ' is an eligible CSR activity under item nos. (i) and (xii) of Schedule VII of the Companies Act, 2013 relating to promotion of health care, including preventive health care, and, disaster management respectively.

2. The companies may undertake the aforesaid activities in consultation with State Governments subject to fulfillment of Companies (CSR Policy) Rules, 2014 and the circulars related to CSR issued by this Ministry from time to time.
3. This issues with the approval of competent authority.

Yours faithfully,



(Shobhit Srivastava)

Deputy Director (CSR Cell)

Tel: 011-23070216

Rate of GST on health care services

HSN Code	Description	Rate
3006	Pharmaceutical goods specified in Note 4 to this Chapter [<i>i.e.</i> Sterile surgical catgut, similar sterile suture materials (including sterile absorbable surgical or dental yarns) and sterile tissue adhesives for surgical wound closure; sterile laminaria and sterile laminaria tents; sterile absorbable surgical or dental haemostatics; sterile surgical or dental adhesion barriers, whether or not absorbable; Waste pharmaceuticals] [other than contraceptives]	12%
30	Drugs or medicines including their salts and esters and diagnostic test kits, specified in List 1 appended to this Schedule	5%
9804	Drugs or medicines including their salts and esters and diagnostic test kits specified at S. No.180 above and Formulations specified at S. No.181 above , intended for personal use.	5%
9804	Other Drugs and medicines intended for personal use	12%
30	Medicaments (including those used in Ayurvedic, Unani, Siddha, Homeopathic or Bio-chemic systems), manufactured exclusively in accordance with the formulae described in the authoritative books specified in the First Schedule to the Drugs and Cosmetics Act, 1940 (23 of 1940) or Homeopathic Pharmacopoeia of India or the United States of America or the United Kingdom or the German Homeopathic Pharmacopoeia, as the case may be, and sold under the name as specified in such books or pharmacopoeia]	5%
3808	Insecticides, rodenticides, fungicides, herbicides, anti-sprouting products and plant-growth regulators, disinfectants and similar products 1[[other than bio-pesticides mentioned against S. No. 78A of Schedule II]] including Hand sanitizer and Other disinfectant preparations.	18%
Sr. 83 of list 1 to schedule 1	Blower/mister kit for beating heart surgery;	5%
999722	Cosmetic Plastic Surgery	18%

Rate of GST on health care services

HSN Code	Description	Rate
3822	All <u>diagnostic kits</u> and reagents including <u>COVID-19 Test kits</u> (Diagnostic reagents based on polymerase chain reaction (PCR) nucleic acid test.)	12%
3002	<u>Animal blood prepared for therapeutic, prophylactic or diagnostic uses</u> ; antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes; toxins, cultures of micro-organisms (excluding yeasts) and similar products <u>COVID-19 Test kits</u> (Diagnostic reagents based on immunological reactions)	12%
9027	<u>Instruments and apparatus for physical or chemical analysis</u> (for example, polarimeters, refractometers, spectrometers, gas or smoke analysis apparatus); instruments and apparatus for measuring or checking viscosity, porosity, expansion, surface tension or the like; instruments and apparatus for measuring or checking quantities of heat, sound or light (including exposure meters); microtomes including COVID-19 Diagnostic Test instruments and apparatus	18%
3821	<u>Prepared culture media for the development or maintenance of micro-organisms</u> (including viruses and the like) or of plant, human or animal cells	18%
9020	Other <u>breathing appliances and gas masks</u> , excluding protective masks having neither mechanical parts nor replaceable filters masks incorporating <u>eye protection or facial shields</u> .	12%
9004	<u>Spectacles</u> [other than corrective]; <u>goggles</u> (including those for correcting vision) including Protective spectacles and goggles	18%
3926	<u>PVC Belt Conveyor, Plastic Tarpaulin, Medical grade sterile disposable gloves, Plastic raincoats</u> including Plastic face shields, Plastic gloves, Protective garments made from plastic sheeting	18%
4015	<u>Surgical rubber gloves</u> or <u>medical examination rubber gloves</u>	12%
6307	<u>Protective Masks coverig N-95</u>	
6210	<u>PPE kits(Protective Garments for Surgical & Medical Use)(5% if below Rs. 1000, 12% if above Rs. 1000)</u>	5%/12%
4818	<u>Paper Bed Sheet</u>	12% 18%

Rate of GST on health care services

HSN Code	Description	Rate
4818	Toilet paper and similar paper , cellulose wadding or webs of cellulose fibres, of a kind used for household or sanitary purposes, in rolls of a width not exceeding 36 cm, or cut to size or shape; handkerchiefs, cleansing tissues, towels, table cloths, serviettes, napkins for babies, tampons, bed sheets and similar household, sanitary or hospital articles, articles of apparel and clothing accessories, or paper pulp, paper, cellulose wadding or webs of cellulose fibres	18%
2207	Ethyl alcohol and other spirits, denatured, of any strength [other than ethyl alcohol supplied to Oil Marketing Companies for blending with motor spirit (petrol) inserted on 27/07/2018]	18%
2847	Medicinal grade hydrogen peroxide	12%
3004	Medicaments consisting of mixed or unmixed products for therapeutic or prophylactic uses , put up in measured dosesr in forms or packings for retail sale, including Ayurvedic, Unani, homoeopathic siddha or Bio-chemic systems medicaments, put up for retail sale	12%
2905	Following goods namely:- a. Menthol and menthol crystals , b. Peppermint (Mentha Oil), c. Fractionated / de-terpenated mentha oil (DTMO), d. De-mentholised oil (DMO), e. Spearmint oil , f. Mentha piperita oil	12%
8543	Electrical machines and apparatus , having individual functions, not specified or included elsewhere in this Chapter	18%
9019	Mechano-therapy appliances; massage apparatus ; psychological aptitude testing apparatus; ozone therapy, oxygen therapy, aerosol therapy, artificial respiration or other therapeutic respiration apparatus including Medical ventilators, Other oxygen therapy apparatus including oxygen tents	12%
9026	Instruments and apparatus for measuring or checking the flow, level, pressure or other variables of liquids or gases (for example, flow meters, level gauges, manometers, heat meters), excluding instruments and apparatus of heading 9014, 9015, 9028 or 9032	18%

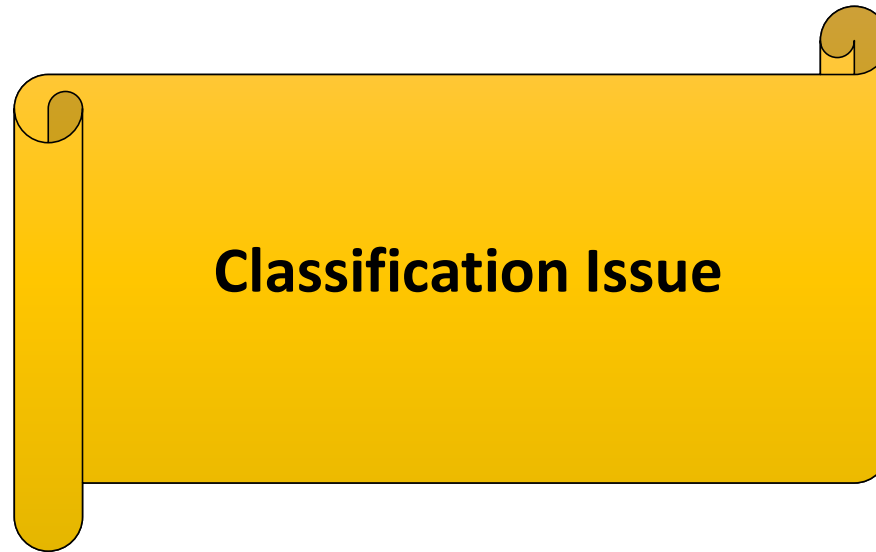
Production Linked Incentive (PLI) Scheme for Pharmaceuticals

- The Department of Pharmaceuticals under Ministry of Chemicals and Fertilizers issued Operational Guidelines vide **File No. 31026/60/2020-Policy dated June 01, 2021** w.r.t. Production Linked Incentive (PLI) Scheme for Pharmaceuticals. The objective of the scheme is to enhance India's manufacturing capabilities by increasing investment and production in the sector and contributing to product diversification to high value goods in the pharmaceutical sector. One of the further objectives of the scheme is to create global champions out of India who have the potential to grow in size and scale using cutting edge technology and thereby penetrate the global value chains. The Scheme was notified vide [Gazette Notification No.31026/60/2020-Policy-DoP](#) dated March 03, 2021

Recommendations made in 43rd GST Council meeting

EDUCATIONAL INSTITUTIONS

Supplier of services	Recipient of services	Nature of service	Existing	Recommendation
Outdoor caterer	Educational institution including anganwadi(which provide pre-school education also)	Serving of food including mid-day meals under any midday meals scheme	Exemption: when sponsored by Central Govt., State Govt., Union territory	Exemption would be available irrespective of funding of such supplies from Government grants or corporate donations
Educational institution	Students	Service by way of conduct of entrance examination against consideration in the form of entrance fee	Exempt	1.Exemption would be available when such services are provided by National board of examination, or similar Central or State Educational Boards 2. Related Input service would also be exempt



Classification Issue

Principles of classification as a medicine

3003/3004 – Medicaments for therapeutic or prophylactic uses[12%]

Determinant factors in classification in above entry

- Curative effect (therapeutic use) or Preventive effect (prophylactic use) :
- Period of usage i.e., to be used for a limited period or regularly
- Prescription by a medical practitioner
- License to manufacture, store and sell by FDA
- Reference to Pharmacopoeia or authoritative books
- Trade parlance, i.e., how it is known in the market
- Certificate by the technical experts or authorities.
- Whether put up in measured doses or not?

Medicament vs Cosmetic – Judicial Interpretation

- 3003 90 – Medicine [12%] Vs Entry 3305 - Preparations for hair [18%]
- **Khandelwal Drug Agencies (Raj HC) (STR Case No. 358 of 1999 [2007] RD-RJ 3199 (6 July 2007))**: Swad having therapeutic value is medicine though it is sold in tea stall or betel shop.
- **Global Tele Mall–MP HC-Hair (CEA No.102/2017)** wash/shampoo made from ayurvedic ingredients having therapeutic quality classifiable as Ayurvedic Medicine.
- **Marico Industries Ltd. -SC – Mediker (W. P. No.21702/2017 & others)** used for anti-lice treatment is a drug because of its medicinal effect. Once it is a drug, it cannot be shampoo
- **Ciens Laboratories SC (CIVIL APPEAL NO. 6988 OF 2003)** : The product having therapeutic value sold without prescription is medicine. If a product's primary function is "care" and not "cure", it is not a medicament.
- **Plethico Pharmaceutical Ltd (Excise Appeal No. E/766/2010- Ex (DB))**: Percentage of active ingredient is not material. Plethico byte' tablet contains 'mulethi' which acts as a therapeutic agent, it is medicament irrespective of small value of ingredient.

Medicament vs Cosmetic – Judicial Interpretation

- **Davo Laboratories (Excise Appeal No. 298 of 2008 with E/C.O./150 of 2008)** – Delhi Tribunal: Mere manufacture under licence from Drug authorities has no relevance for classification. It is the common/popular description of product, length of usage of the product, primary object of curing or caring which determine classification.
- **B P L Pharmaceutical Ltd SC (CASE NO.: Appeal (civil) 2516-2517 of 1994)**: Selsun', is an anti-dandruff preparation containing 2.5% selenium sulfide which is full therapeutic limit permissible as per pharmacopoeia. It is manufactured under Drugs Licence, certified by Food and Drugs Administration as a medicine.
- Common parlance: Wherever tariff is not clear, classification based on how the said product is known in the market. To be preferred over scientific meaning, unless specifically provided.
- **Sharma Chemical Works SC (CASE NO.: Appeal (civil) 7610 of 1999)**: Use by customers is the main criteria for classification:
 - Prescription is not mandatory to classify as medicine:
 - All medicines must have curative or preventive values but all articles having some elements of curative or preventive values need not be medicines. Consumer perception is very important

Hand Sanitizer – Classification

- Trade parlance only when heading not technical.
- Chapter 30/38 (disinfectant) - technical hence, trade parlance cannot be applied.
- Alcohol based sanitizers with 70% alcohol is medicament as;
 - Has therapeutic or prophylactic values
 - APIs are solutions used to prevent disease/antiseptic agents.
 - FDA license/Quality control testing procedure prescribed in D&C Act/FDA certifying goods as pharmaceutical/Legal Metrology Act applicable
 - **ICPA Health Products P. Ltd SC (CASE NO.: Appeal (civil) 4766-4768 of 1998)** – cleaning wounds solutions is medicament
 - Circular No. 7/92-CX 3 – disinfectant manufactured as drug – classification in Chapter 38 only if Chapter 30 not applicable.

Adverse Advance Rulings by department

ITC on CSR and R & D Activities

- Medicines given under CSR – not gift – ITC not liable to be reversed – Positive judicial rulings under earlier regime – Positive AAR by Uttar Pradesh AAR – **M/s Dwarikesh Sugar Industries Ltd. (GST AAR Uttar Pradesh) (Order No. 52)**
- GST applicable on goods removed for CSR activities as permanent transfer of business asset ??
- Expense incurred on R & D activities abandoned later – **Kerala Minerals and Metals Ltd. CESTAT (Final Order No.s 506-512/2007 in Appeal No. E1274)**- CENVAT once rightly indefeasible. Subsequent abandoning of plant will not make appellant liable to reverse CENVAT.
- ITC on goods and services that qualify as Plant and Machinery allowed
- P&M means apparatus, equipment, and machinery fixed to earth by foundation or structural support used for making outward supply and includes such foundation and structural supports but excludes (land, building or any other civil structures, telecommunication towers and pipelines laid outside the factory premises)

Query

If someone is providing online dance classes to overseas student. What is the tax implication under GST Service provider registered under GST?

Online Dance Classes provided to an overseas student are a performance-based service. As per Rule 12(5) Place of Provision Rules, the place of supply of services is actually performed. But now the question is where is actually performed. The location of supplier i.e. dance teacher or location of recipient i.e. student. "Actually performed" is where it is consumed i.e. location of student or the place it is performed by supplier i.e. permanent establishment of teacher. This has not been answered yet.

There is another school of thought which says that online classes does not require physical presence and hence general rule should be applied and it is recipient location. It seems to be more logical. If this rule is applied then it will be fall under export of service. Service provider is in India, service recipient is outside India, payment is in foreign currency and place of supply is outside India. Service provider can issue invoices without charge of GST but he has to execute undertaking.

THANK YOU

Disclaimer

The views expressed are solely of the author and the content of this document is solely for information purpose and not to be construed as a professional advice. In cases where the reader has any legal issues, he/she must in all cases seek independent legal advice.



For GST updates
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