KEY UPDATES

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In the said notification, serial number 10D of the table and entries relating thereto, are omitted.

Definition of export of service has been modified and included payments received in INR wherever permitted by RBI. Accordingly, supply of services having place of supply in Nepal or Bhutan, against payment in Indian Rupees shall be considered as export.</td></tr>
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Sr. No.	Circular/ Order No.	Key Update
1.	88/2019-Central Tax, Dt- 01 -02-2019	**Changes in Circulars issued earlier under the CGST Act, 2017** ➢ **Circular 8/8/2017 Dt. 04.10.2017** (Clarification on Letter of Undertaking) has been revised to clarify that the **acceptance of LUT for supplies of goods or services to countries outside India or SEZ developer or SEZ unit will be permissible irrespective of whether the payments are made in Indian currency or convertible foreign exchange** as long as they are in accordance with the applicable RBI guidelines. Accordingly, **it is clarified that the acceptance of LUT for supplies of goods or services to countries outside India or SEZ developer or SEZ unit will be permissible irrespective of whether the payments are made in Indian currency or convertible foreign exchange as long as they are in accordance with the applicable RBI guidelines**. ➢ **Circular 38/12/2018 dt. 26.03.2018** • As per clause (68) of section 2 of the CGST Act, 2017, **"job work"** means any treatment or process undertaken by a person on goods belonging to another registered person and the expression "job worker" shall be construed accordingly. The registered person on whose goods (inputs or capital goods) job work is performed is called the "Principal" for the purposes of section 143 of the CGST Act. • The said section which encapsulates the provisions related to job work, provides that the registered principal may, without payment of tax, send inputs or capital goods to a job worker for job work and, if required, from there subsequently to another job worker and so on. Subsequently, on completion of the job work (by the last job worker), **the principal shall either bring back the goods to his place of business or supply (including export) the same directly from the**

		place of business/premises of the job worker within the time specified under section 143. • It may be noted that the **responsibility of keeping proper accounts** of the inputs and capital goods sent for job work **lies with the principal.** • Moreover, if the time frame specified under section 143 for bringing back or further supplying the inputs / capital goods is not adhered to, the **activity of sending the goods for job work shall be deemed to be a supply by the principal on the day when the said inputs / capital goods were sent out by him**. • Thus, essentially, sending goods for job work is not a supply as such, but it acquires the character of supply only when the inputs/capital goods sent for job work are neither received back by the principal nor supplied further by the principal from the place of business / premises of the job worker within the specified time period (under section 143) of being sent out. • It may be noted that the **responsibility for sending** the goods for job work **as well as bringing** them back or supplying them **has been cast on the principal.** • It is further clarified that a **job worker is required to obtain registration only in cases where his aggregate turnover, to be computed on all India basis, in a financial year exceeds the threshold limit regardless of whether the principal and the job worker are located in the same State or in different States.** This threshold limit will be as specified in **section 22(1) of the CGST Act, read with clause (iii) of the Explanation** to the said section. The provision where **GST was payable by the principal on reverse charge basis, if the job worker is not registered**, in terms of the provisions contained in section 9(4) of the CGST Act **has been removed. It was kept on abeyance earlier.** • The value of such moulds and dies, jigs and fixtures or tools may not be included in the value of job work services provided

		its value has been factored in the price for the supply of such services by the job worker. • The **inputs or capital goods are neither returned** nor supplied from the job worker's place of business / premises within the specified time period, **the principal would issue an invoice for the same and declare such supplies in his return for that particular month in which the time period of one year / three years has expired.** • The date of supply shall be the date on which such inputs or capital goods were initially sent to the job worker and interest for the intervening period shall also be payable on the tax. • If such goods are returned by the job worker after the stipulated time period, the same would be treated as a supply by the job worker to the principal and the job worker would be liable to pay GST if he is liable for registration in accordance with the provisions contained in the CGST Act read with the rules made thereunder. • Further, there is no requirement of either returning back or supplying the goods from the job worker's place of business/premises as far as moulds and dies, jigs and fixtures, or tools are concerned. ➢ **Circular No. 41/15/2018 Dt. 13.04.2018** The **owner of the goods which have been seized/intercepted / detained is now required to pay the proposed tax/penalty within 14 days instead of 7 days**. Circular No. 41/15/2018 regarding "procedure for interception of conveyances for inspection of goods in movement, and detention, release and confiscation of such goods and conveyances" dated 13.04.2018 has been revised accordingly. ➢ **Circular No. 58/32/2018 Dt. 04.09.2018** Method regarding "Recovery of arrears of wrongly availed CENVAT credit under the existing law and inadmissible transitional credit" have been amended. It may be noted that all such **liabilities may be discharged by the taxpayers, either voluntarily in FORM GST DRC-03**

		or may be recovered vide order uploaded in FORM GST DRC-07, and payment against the said order shall be made in FORM GST DRC-03. It is further clarified that the **alternative method of reversing the wrongly availed CENVAT credit under the existing law and inadmissible transitional credit through Table 4(B)(2) of FORM GSTR-3B would no longer be available to taxpayers**. The applicable interest and penalty shall apply in respect of all such amounts, which shall also be paid in FORM GST DRC-03. ➢ **Circular No. 69/43/2018 Dt. 26.10.2018** Section 29 of the CGST Act has been amended by the CGST (Amendment) Act, 2018 to provide for **"Suspension" of registration**. The intent of the said amendment is to **ensure that a taxpayer is freed from the routine compliances, including filing returns, under GST Act during the pendency of the proceedings related to cancellation**. Accordingly, the **field formations may not issue notices for non- filing of return for taxpayers who have already filed an application for cancellation of registration under section 29 of the CGST Act**. Further, the requirement of filing a final return, as under section 45 of the CGST Act, remains unchanged.
2.	**89/08/2019-Central Tax, Dt- 18 -02-2019**	➢ **Mentioning details of inter-State supplies made to unregistered persons, Composition taxable person and UIN holders in Form GSTR3B and GSTR1-** • Every **registered persons** making **inter-State supplies to unregistered persons, composition taxable persons and UIN holders** shall report the details of such supplies along with the **place of supply** in **Table 3.2 of FORM GSTR-3B and Table 7B of FORM GSTR–1** as mandated by the law. • **Contravention of any of the provisions** of the Act or the rules made there under **attracts penal action** under the provisions of **section 125 of the CGST Act which may extend to Rs. 25,000/-.**

3.	**90/2019-Central Tax, Dt- 18-02-2019**	➢ **Compliance of rule 46(n) of the CGST Rules, 2017 while issuing invoices in case of inter- State supply** • A registered person supplying taxable goods or services or both is required to issue a tax invoice as per the provisions contained in **section 31** of the CGST Act, 2017. **Rule 46 of the CGST Rules, 2017** specifies the particulars which are required to be mentioned in a tax invoice. • It is instructed that all registered persons making supply of goods or services or both in the course of **inter-State** trade or commerce shall **specify the place of supply along with the name of the State in the tax invoice.** • **The provisions of sections 10 and 12 of the Integrated Goods and Services Tax Act, 2017 may be referred to in order to determine the place of supply in case of supply of goods and services respectively.** • **Contravention of any of the provisions** of the Act or the rules made there under **attracts penal action** under the provisions of **sections 122 or 125 of the CGST Act which may extend to Rs. 25,000/-.**
4.	**91/2019-Central Tax, Dt- 18-02-2019**	➢ **Supply of warehoused goods while being deposited in a customs bonded warehouse for the period July, 2017 to March, 2018** • Supply of warehoused goods while deposited in custom bonded warehouses had the character of inter-State supply as per the provisions of Integrated Goods and Services Tax Act, 2017. But, **due to non-availability of the facility on the common portal, suppliers have reported such supplies as intra-State supplies and discharged central tax and state tax on such supplies instead of integrated tax**. • In view of revenue neutral position of such tax payment and that the facility to correctly report the nature of transaction in **FORM GSTR-1** furnished on the common portal was not available **during the period July, 2017 to March, 2018**, it has been decided that, as a one-time exception, suppliers who have paid central tax and state tax on such supplies, during the said period, **would be deemed to have complied with the provisions of law as far as payment of tax on such supplies is concerned**, as long as the amount of tax paid as central tax

		and state tax is equal to the due amount of integrated tax on such supplies.
5.	**4/2019-Integrated Tax, Dt- 01-02-2019**	➢ **<u>Rescinding of Circulars issued earlier under the IGST Act, 2017 to be effective from 01.02.2019</u>** **Schedule III of the CGST Act, 2017** has been amended vide section 32 of the CGST (Amendment) Act, 2018 so as to provide that the **"supply of warehoused goods to any person before clearance for home consumption" shall be neither a supply of goods nor a supply of services.** Accordingly, Circular No. 03/01/2018-IGST dated 25th May, 2018 related to **"Applicability of IGST on goods supplied while being deposited in a customs bonded warehouse" is hereby rescinded.**
6.	**1/2019-Central Act, Dt- 01-02-2019** **and** **1/2019-Union Territory Tax, Dt- 01-02-2019** **and** **1/2019-Maharashtra State Tax, Dt- 04-02-2019**	➢ **<u>Order regarding allowing registered persons opting for Composition Scheme to supply services up to a limit</u>** • As per section 10(1) of the CGST Act, 2017, **a registered person engaged in supply of services** (other than those referred to in paragraph 6 of Schedule II (b) to the said Act) **may opt for Composition Scheme** provided that the **value of services** provided **does not exceed 10% of turnover in a State or Union Territory** in the preceding financial year or **five lakh rupees, whichever is higher.** • It is hereby clarified that the **value of supply of exempt services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount**, shall not be taken into account— i. For determining the eligibility for composition scheme under second proviso of section 10(1); ii. In computing aggregate turnover in order to determine eligibility for composition scheme.

7.	**2/2019-Central Tax, Dt- 01 -02-2019 and 2/2019-Maharashtra State Tax, Dt- 04 -02-2019**	➢ **Due date of GSTR 8** (return for TCS) for the months of October 2018 to December 2018 **extended till 7th February, 2019**.
FOR DETAILED NOTIFICATIONS KINDLY FOLLOW BELOW LINK– **http://www.cbic.gov.in/htdocs-cbec/gst/central-tax-notfns-2017**		

HIGHLIGHTS OF 33RD GST COUNCIL MEETING

Press note on recommendations of the 33rd GST Council meeting held on 24th February, 2019.

Real estate sector is one of the largest contributors to the national GDP and provides employment opportunity to large numbers of people. "Housing for all by 2022" envisions that every citizen would have a house and the urban areas would be free of slums. There are reports of slowdown in the sector and low off-take of under-construction houses which needs to be addressed. To boost the residential segment of the real estate sector, following recommendations were made by the GST Council in its 33rd meeting.

1) **GST rate**:

   (i) GST shall be levied at effective GST rate of 5% without ITC on residential properties outside affordable segment;

   (ii) GST shall be levied at effective GST of 1% without ITC on affordable housing properties.

2) **Effective date**: The new rate shall become applicable from 1st of April, 2019.

3) **Definition of affordable housing shall be:**

   A residential house/flat of carpet area of up to 90 sqm in non-metropolitan cities/towns and 60 sqm in metropolitan cities having value up **to Rs. 45 lacs (both for metropolitan and non-metropolitan cities)**. Metropolitan Cities are Bengaluru, Chennai, Delhi (limited to Delhi, Noida, Greater Noida, Ghaziabad, Gurgaon, and Faridabad), Hyderabad, Kolkata and Mumbai (whole of MMR).

4) **GST exemption on TDR/ JDA, long term lease (premium), FSI:**

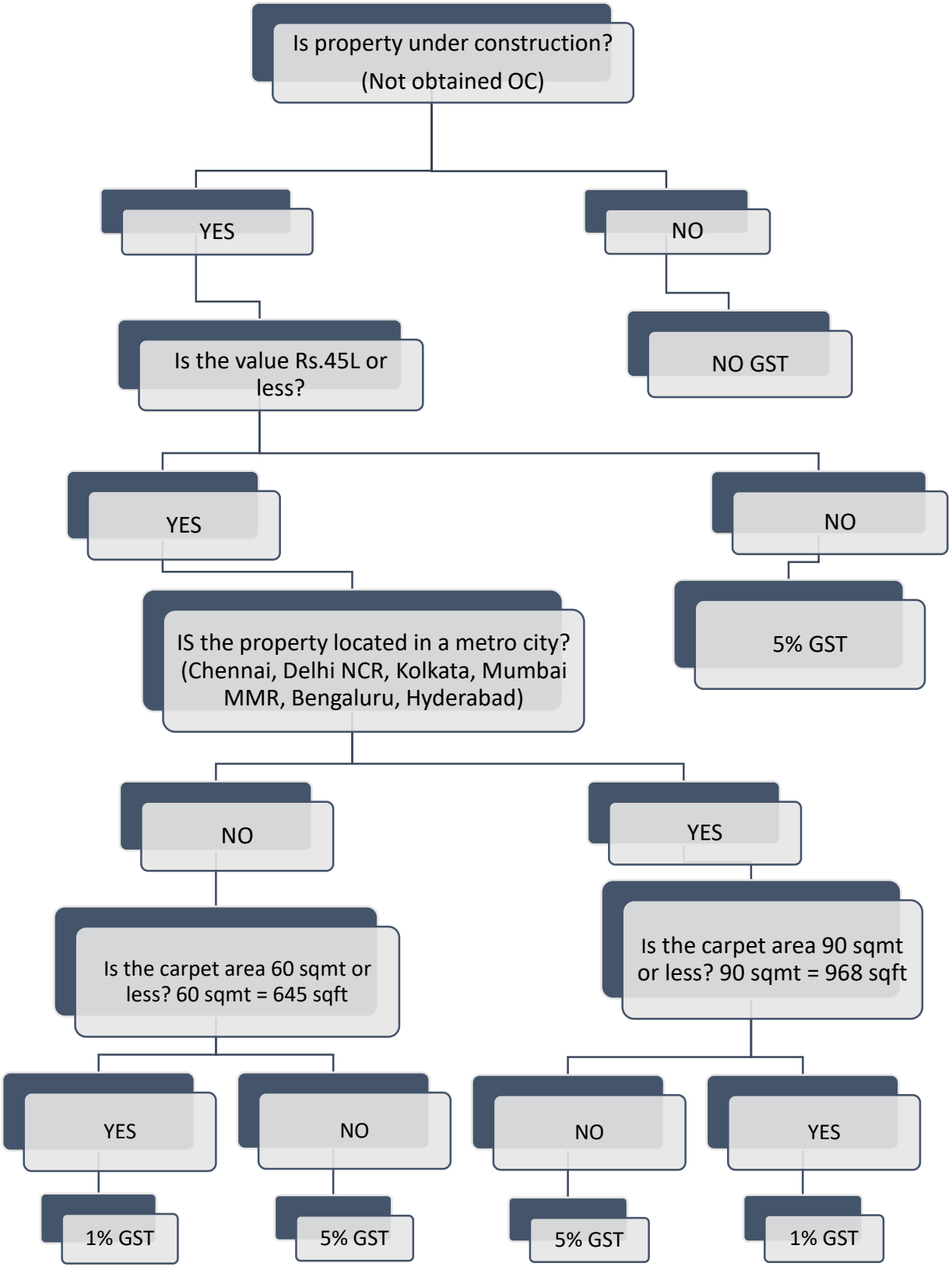
   Intermediate tax on development right, such as Transferable Development Rights (TDR), Joint Development Agreement (JDA), lease (premium), Floor Space Index(FSI) **shall be exempted only for such residential property on which GST is payable.**

5) Details of the scheme shall be worked out by an officers' committee and shall be approved by the GST Council in a meeting to be called specifically for this purpose.

6) GST Council decided that the issue of tax rate on lottery needs further discussion in the GoM constituted in this regard.

   The decisions of the GST Council have been presented in this note in simple language for easy understanding. The same would be given effect to through Gazette notifications/ circulars which alone shall have force of law.

PROPOSED GST RATES ON RESIDENTIAL REAL ESTATE



RECENT CASE LAWS

1. The Penal interest charges collected should be treated as a supply under the GST regime.

Applicant	**M/s Bajaj Finance Limited**
Journal of Publication	GST-ARA- 21/2018-19/B- 84
Date of Ruling	6th August, 2018
Ruling Authority	**AAR Maharashtra**

FACTS

- The assesse is a NBFC that provides various types of loans to customers. In delay in payment of EMI, the bank charges a 'penal interest' for the number of days of delay and is calculated at a fixed percentage at the rate of 2-4% per month, depending on the type of loan.

ISSUE

- Whether the Penal Interest is to be treated as interest for the purpose of exemption under Sr. No. 27 of Notification No. 12/2017 Central Tax (Rate) Dt. 28.06.2017?

HELD

- The following contentions were made by the Assesse:
  - Additional interest on overdue loan instalment is a part of interest.
  - Any amount paid over and above principal is interest only.
  - Such additional interest is in nature of liquidated damages. Internationally, damages of breach of contract not taxed.
  - As per Sec 15(2)(d) the value of supply shall include "any interest or late fee or penalty for delayed payment of consideration for any supply".
- The following contentions were made by the department:
  - As per schedule 2 para 5 clause (e) "agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act".
  - As per above provision bounce charges on Non-performance of a contract is an activity or transaction which is treated as a supply of service and the applicant is deemed to have received the consideration in the form of charges, liquidated damages and is accordingly, required to pay tax on such amount.
  - Thus, the consideration if any as received by the applicant would clearly qualify as 'supply' as per Sr. No. 5(e) of Schedule II of the CGST Act.
- Interest is generally fixed in nature whereas penal interest or bounce charges are not fixed in nature and hence it cannot be treated as an additional interest.

- Hence it was concluded that, the said activity squarely falls under clause 5(e) of the Schedule II of the CGST Act, 2017 and, therefore, such amounts received, would attract tax liability under GST laws.

2. The amount of issuance fee of reward points retained/forfeited by applicant would amount to consideration for actionable claims and will be subject to GST

Applicant	**M/s Loyalty Solutions and Research Private Limited**
Journal of Publication	HAAAR/2018-19/01
Date of Ruling	23rd October, 2018
Ruling Authority	**AAAR Haryana**

FACTS

- The applicant is managing the customer loyalty programme for its clients/Partner. On the management fee the applicant is discharging the tax liability.
- The loyalty programme is based on issuance of reward points called 'payback points' having a value of Rs. 0.25 each and a validity period of 36 months from the date of issuance.
- Whenever the customer purchase goods the applicant gives credit to concerned seller which in turn give to customer by way of reduction in price. If not redeemed, the reward points are forfeited by the applicant and the amount of Rs. 0.25 is retained.

ISSUE

- Whether the amount of issuance fee of reward points retained/forfeited by applicant would amount to consideration for actionable claims and not subject to GST?

HELD

- The Assesse contends that the reward points are Actionable claims which are defined under section 3 of Transfer of Property Act as "actionable claim means—
  - A claim to unsecured debt, or
  - A Claim to beneficial interest in movable property not in possession of the claimant."
- As per clause 6 of schedule III of CGST Act, 2017 transactions in relation to actionable claims are exempt from supply.
- The department contends that Points issued in exchange for issuance fee is in the nature of consideration and therefore GST should be levied on such consideration.
- No legal action can be taken after the expiry of the validity of reward points and such issuance fees would provide a source of revenue for the applicant after the expiry of 36 months of retaining/ forfeiting of reward points
- Due to above contention of validity of reward points, element of actionable claim would be lost and would not be exempt under schedule III of CGST Act, 2017and same should be treated as consideration.

- Therefore, it was held that amount retained/ forfeited which was prior treated as actionable claim would be treated as consideration after the expiry of validity of reward points and would be leviable to GST.

3. Hiring of buses/cars for transportation of employees covered under section 17(5)(b)(iii) of CGST Act, 2017.

Applicant	**M/s YKK India (P.) Ltd**
Journal of Publication	HAR/HAAR/R/2018-19/04
Date of Ruling:	11th July, 2018
Ruling Authority	**AAR Haryana**

FACTS

- YKK India (P.) Ltd is engaged in the business of Slide fasteners, chains, sliders, zippers. Factories of the applicant is located at remote location so company engages transportation service provider who uses buses as well as cars so that employees reach in time. A contract between applicant and transportation service provider prescribes terms and conditions such as approved routes, monthly fees payable for services rendered.
- Invoice raised on the applicant is on basis of usage and contains Central GST and Haryana GST attracting GST @ 18%.

ISSUE

- Whether GST charged on transportation service by buses & cars is eligible Input tax credit?
- Whether restriction of 'rent-a-cab' is u/s 17(5)(iii)(b) is applicable?

HELD

- As 'rent-a-cab' service is not defined under CGST/HGST Act hence it was decided that rigid interpretation should not be made for specific terms as held in case of Godrej consumer products limited Vs. CCT.
- It was decided that where any commercial vehicle is hired for transportation of passengers would be covered under phrase 'rent-a-cab'. In case of Vijay travels terms 'Hiring' and 'renting' are considered as synonyms.
- Accordingly, such services are covered under section 17(5)(iii)(b) and are not eligible Input Tax Credit.

4. Manpower Services to Hospital Cum General medical college and State University would not be eligible for Exemption under Sr. No 66 of Notification No. 12/2017 – CT(Rate) dated 28-6-2017.

Applicant	**M/s Oscar Security & Fire Service**
Journal of Publication	HAR/HAAR/R/2018-19/01
Date of Ruling	20th June, 2018
Ruling Authority	**AAR Haryana**

FACTS

- Oscar Security & Fire Service (applicant) is an outsourcing agency which provides manpower services to Hospitals cum General medical college and state university (Education institutions).

ISSUE

- Applicant has charged Service tax from 1-4-17 to 30-6-17 but from 1-7-17 onwards it has sought clarification on whether such services are exempted from GST under notification no. 12/2017 – CT (rate) or not.

HELD

- As per the notification 12/2017 – CT (rate) security services provided to an educational institution up to higher secondary school only would attract Nil rate of tax.
- Since party is supplying manpower services to the medical institutions and state university they are liable to pay GST on supply of such services.
- Hence services provided by applicant i.e. manpower services to Hospital cum general medical college and state university does not qualify for exemption under notification no. 12/2017 – CT (rate).

5. Merger of proprietorship firm as a going concern with a private limited company is not liable to pay tax as transfer of business as a 'going concern' is not treated as 'supply'.

Applicant	**M/s B.M. Industries**
Journal of Publication	HAR/HAAR/R/2018-19/02
Date of Ruling	29th June, 2018
Ruling Authority	**AAR Haryana**

FACTS

- A firm (going concern) is engaged in manufacture and sale of aluminum profiles, owing fixed assets, current assets, and also has long term as well as current liabilities. Applicant proposes to merge with Pvt. Ltd. Company and all present as well as future assets and liabilities shall be taken over by private limited company.

ISSUE

- Whether applicant is liable to pay tax under CGST/ SGST Act on merger of proprietorship firm with company on fixed assets and current assets including stocks of raw material, Semi-finished, finished goods.

- Whether ITC credit in Electronic credit ledger or electronic cash ledger shall be transferred to respective Electronic credit ledger or electronic cash ledger of Pvt. Ltd Company.

HELD

- Whole assets & liabilities would be transferred to private limited company.

- Transfer of business as a going concern is not in ordinary course of business or furtherance of business. Also selling of business is not the business of the applicant. Hence, it cannot be called as transaction in normal course of business and cannot be treated as supply & hence exempt from tax.

- In case of merger applicant can transfer un-utilized ITC under provisions of Section 18(3) of CGST/SGST and Rule 41 of CGST/SGST rules, 2017.

- As per the wordings of Section 18(3) - Where there is a change in the constitution of a registered person on account of sale, merger, demerger, amalgamation, lease or transfer of the business with the specific provisions for transfer of liabilities, the said registered person shall be allowed to transfer the ITC which remains unutilized in his electronic credit ledger to such sold, merged, demerged, amalgamated, leased or transferred business in such manner as may be prescribed.

6. The applicant is liable to pay IGST on the testing services provided to its overseas group entities.

Applicant	**M/s Behr Hella Thermocontrol India Pvt. Ltd.**
Journal of Publication	GST/ARA/12/2018-19/B-116
Date of Ruling	15th September, 2018
Ruling Authority	**AAR Maharashtra**

FACTS

- The applicant enters into service agreement with overseas group entities to provide testing services. The prototypes are sent from overseas to the applicant for testing and are not usually sent back. A report of the test is sent to the entities through email. Consideration is received in convertible foreign exchange.

ISSUE

- Whether the applicant is liable to pay IGST on the testing services provided to its overseas group entities?

HELD

- The supplier of service is in India and the receiver of the service is outside India and therefore, as per section 7(5) of the IGST Act, it is found that the supply of service in this case shall be treated as a supply of service in the course of Inter-State trade.
- As per section 13(2) generally, the place of supply of services shall be the location of the recipient of services except in case of the services specified in sub-sections (3) to (13) of section 13.
- In the instant case, the prototypes are made physically available by the recipient of services (the overseas clients) to the supplier of services (the applicant). The applicant is providing testing services on physical product samples i.e. prototypes, made available to them in India after due examination and testing of these prototypes.
- The facts clearly attract the provisions of section 13(3)(a) and, therefore, it can be inferred that the said services of testing of the prototypes, which are physically made available by the service receiver to the service provider, are provided in India and, therefore, liable to tax.
- The argument of the applicant is that the services provided by the applicant in this case, as per the agreement, are completed only when the test reports are sent to their overseas clients. Therefore, provision of testing service is over and it is clear as per detailed discussions above, that the service is completed and is clearly provided in India.
- Thus the event and provision of testing service is over and the service is clearly provided in India as per section 13(3).

- The applicant's main arguments are that the service is completed only when it is used by the applicant in manufacture of goods and their upgradation or removal of defects as we can clearly see that even if the findings of test report are not used in any way by the service recipient, it cannot be said that the service of testing is not provided by the applicant to the service recipient as the provision of testing services as per the agreement between them is clearly there whether or not the test report is used by the service recipient.
- Thus the applicant's argument does not hold any ground and in the present case it can safely be inferred from a reading of the provisions of section 13(3) that the services supply of which has been rendered by the applicant to their overseas client as per the agreement is taxable under IGST Act.

7. 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.

Applicant	**M/s CALTECH POLYMERS PVT LTD**
Journal of Publication	CT/7726/2018-C3
Date of Ruling	25th September, 2018
Ruling Authority	**AAAR Kerala**

FACTS

- The applicant company was engaged in the manufacture and sale of foot wear. They were providing canteen services exclusively for their employees. They incurred the canteen running expenses for a month and recover the same from their employees without any profit margin on the same.

- According to applicant the service provided to the employee was not being carried out as a business activity and it was according to the provisions in the Factories Act, 1948. As per section 46 of the said Act, any factory employing more than 250 workers is required to provide canteen facility to its employees.

ISSUE

- 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

- The applicant was of the opinion that said activity did not fall within the scope of 'supply', as the same was not in the course or furtherance of its business. The applicant was only facilitating the supply of food to the employees, which was a statutory requirement, and was recovering only the actual expenditure incurred in connection with the food supply, without making any profit.

- The company also referred to the erstwhile Service Tax Mega Exemption Notification No. 25/2012-ST, dated 20-6-2012 issued by the Government of India whereby services in relation to supply of food or beverages by a canteen maintained in a factory covered under the Factories Act, 1948 was exempted under the Service Tax Law.

- The crucial aspects to be considered in this case are the elements of 'supply' and 'consideration'. The appellant company has admitted that they are serving food to the employees for cash, though there is no profit involved in the transaction. In spite of the absence of any profit, the activity of supplying food and charging price for the same from the employees would surely come within the definition of 'supply' as provided in section 7(1)(a). Consequently, the appellant would definitely come under the definition of 'supplier' as provided in sub-section (105) of section 2.

- Thus, the supply of food items to the employees for consideration in the canteen run by the appellant company would come under the definition of 'supply' and would be taxable under GST. Therefore, the appeal fails and stands dismissed.

8. No Input Tax Credit on lease rental paid for the leasehold land when the same is being capitalized and treated as capital expenditure.

Applicant	**GGL Hotel & Resort Co Ltd**
Journal of Publication	30/WBAAR/2018-19
Date of Ruling	8th January, 2019
Ruling Authority	**AAR West Bengal**

FACTS

- The applicant is stated to be in the hospitality and real estate business.
- The applicant is contemplating a new project on a leasehold land on which the resort is being constructed to be used for the furtherance of business and the same is capitalized and treated as a capital expenditure.
- The applicant states that the renting services cannot be said to be received for the construction of immovable property as there is no nexus, direct or indirect, between the construction of the hotel and banquet and the rental services availed.

ISSUE

- Whether ITC is admissible on lease rent paid during pre-operative period for the leasehold land on which a resort is being constructed to be used for furtherance of business

HELD

- The applicant's argument about absence of any nexus- direct or indirect- between the lease rental and construction of the buildings for the hotel etc. is incorrect. Construction of hotel etc. is impossible unless the Applicant enjoys the right to use the land.
- It is clear that the applicant cannot enjoy that right if he fails to pay the lease rental.
- Input Tax Credit is not available to the applicant for lease rent paid during pre-operative period for the leasehold land on which the resort is being constructed on his own account to be used for furtherance of business, when the same is being capitalized and treated as capital expenditure.

9. Tax paid on intra-state inward supply in one state cannot be used to pay output tax liability in another state, if the applicant is not registered in the state where he receives the inward supply.

Applicant	**M/s Storm Communications Pvt Ltd**
Journal of Publication	39/WBAAR/2018-19
Date of Ruling	28th January, 2019
Ruling Authority	**AAR West Bengal**

FACTS

- The Application states that the Applicant is a supplier of Event Management Services who organizes events on behalf of clients and, for this purpose, books conference halls, banquet halls, outdoor caterers etc. The Applicant is registered as a GST assesse in West Bengal, Jharkhand, Odisha, Maharashtra and Delhi. In relation to this Event Management Service, the Applicant has to move to other states, where the Applicant is not registered, to serve clients in those states, and incur miscellaneous expenses for booking hotels, banquet halls and on food.

- On such inward supplies, the Applicant is charged CGST & SGST of that particular state and the invoices are issued as B2B with the Applicant's GSTIN. These invoices are also reflected in the Applicant's GSTR-2A.

ISSUE

- Whether tax paid on intra-state inward supply in one state can be used to pay output tax liability in another state, if the applicant is not registered in the state where he receives the inward supply?

HELD

- "Place of supply" has been defined in Chapter V of the IGST Act, 2017. Here, the Applicant, registered in West Bengal, is charged CGST & SGST in states where they are not registered, say, Tamil Nadu for booking hotels, banquet halls and on food by the supplier of that state. In terms of Section 12(3) & (4) of the IGST Act, 2017, the place of supply will be the location of the hotel, banquet hall or restaurant, where the services are actually performed; in this case, Tamil Nadu. Hence, in this case, the suppliers in Tamil Nadu have rightly charged CGST & SGST on the invoices, since all the transactions are intra-state.

- In this case, the location of the supplier, providing hotel, banquet hall or restaurant in Tamil Nadu and the location of the recipient i.e. the Applicant, receiving the service, is also Tamil Nadu. So, the Applicant can avail ITC on the said invoices in Tamil Nadu only, if registered in Tamil Nadu. In no case, the Applicant can claim/adjust/avail ITC outside Tamil Nadu on the said invoices, even if the invoices are issued as B2B mentioning the Applicant's GSTIN in West Bengal.

- Section 49(4) of the GST Act provides that the amount available in the electronic credit ledger, as defined under Section 2(46), may be used for making such payment toward outward tax liability. The electronic credit ledger contains the balance of input tax credit on inward supplies as per the return of a registered person.
- Under Section 2(62) of the GST Act 'Input tax' in relation to a registered person, inter alia, means, the CGST, SGST and IGST charged on any supply of goods or services to the registered person. CGST and SGST are two components of the GST charged on intra-state supplies and IGST is the GST charged on inter-state supplies.
- As the Applicant is not registered under section 25(1) in Tamil Nadu, the SGST and CGST paid on intra-state inward supply in Tamil Nadu are not 'input tax' to the said person. The GST Act does not contain any concept of 'input tax' to an unregistered person. No credit of it is, therefore, admissible under the GST Act.
- So, to answer in the Applicant's language:

a) A person, registered in WB, cannot claim ITC for CGST & SGST of other states.
b) He cannot adjust the ITC of one state's CGST for payment of another state's CGST.
c) He cannot adjust the ITC of Tamil Nadu GST for payment of IGST, whereas he is not registered in Tamil Nadu.

10. Services of storage of imported agricultural products in godown is classifiable as 'Rental or leasing services involving own or leased non-residential property' (Service Accounting Code – 9972) and is leviable to Goods and Services Tax @ 18%.

Applicant	**M/s Rishi Shipping**
Journal of Publication	GUJ/GAAR/RULING/2018/4
Date of Ruling	20th March, 2018
Ruling Authority	**AAR Gujarat**

FACTS

- The applicant M/s. Rishi Shipping is a Cargo Handling company operating at Kandla Port Trust under stevedoring license issued by Kandla Port and provide Cargo Handling Service which consists of loading/unloading; providing space for storage and its further forwarding as per direction of importer/exporter. The applicant has submitted that they do not have their own warehouse/godown space. They have occupied the same from Government/Private parties.

- As a part of their services, they provide service of warehouse/space on rent to their customers, where they store imported agricultural commodities.

ISSUE

- The applicant has requested for advance ruling on the applicability of GST for invoices raised to their clients for storage charges for storing their imported agricultural product in godowns at Gandhidham after custom clearance from port & shifted at Gandhidham for storage in their godown at distance of 10/12 kms. from Port.

HELD

- It has been opined by the Commissioner ate that the activity carried out by the warehouse owner appears to be in the nature of renting of immovable property and is taxable in GST and activity carried out by the applicant appears to be in the nature of trading of storage space and the same is taxable, as the same is outside of negative list. Moreover, even if it is considered as "sub-letting", then also it is classified as renting of immovable property (leasing and rental services - heading 9973).

- It is further informed that exporter of agricultural produce in this scenario can avail exemption only if they make direct agreement with warehouse owner for provision of storage and warehousing services and providing documentary evidence that only agricultural produce are being stored in this warehouse and exemption is claimed by the warehouse owner in their GST return. No such type of exemption is available under GST regime in respect of imported agricultural commodities.

- It is further opined that as per Section 7(1)(a) of the CGST Act, 2017, the activity carried out by the applicant appears to be in the nature of trading of storage space and even if it is considered as 'sub-letting', then also it is classified as renting of immovable property falling under the definition of supply of services and CGST shall be levied on all intra-state supplies as per Section 9 of CGST Act, 2017 and IGST shall be levied on all inter-state supplies as per

provisions of Section 5 of the IGST Act, 2017. The applicant can avail Input Tax Credit for tax paid by the warehouse owner. Sample copies of invoices issued by the applicant have also been submitted.

- In this regard, we observe that there is difference between 'storage or warehousing' service and 'renting of storage premises' service. The 'storage and warehousing service' provider normally make arrangement for space to keep the goods, loading, unloading and stacking of goods in the storage area, keeps inventory of goods, makes security arrangements and provide insurance cover etc. In a case where a person only rents the storage premises, he does not provide any service such as loading/unloading, stacking, security etc. Mere renting of space cannot be said to be in the nature of service provided for storage or warehousing of goods.

- From the nature of service provided by the applicant, as described in the application, it is clear that the applicant only rent the storage premises. Once the storage premises are rented by the applicant to its customers, what use the customer makes of such premises doesn't have any bearing on the nature of service provided by the applicant.

- On the basis of above, it was held that, the service provided by M/s. Rishi Shipping is classifiable as 'Rental or leasing services involving own or leased non-residential property' (Service Accounting Code - 9972) leviable to Goods and Services Tax @ 18%.