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## KEY UPDATES

JULY, 2019

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## SIGNIFICANT NOTIFICATIONS

Sr. No	Notification No.	Key Update
1.	<p><b>35/2019 – Central Tax, Dt-18.07.2019</b></p> <p style="text-align: center;"><b>and</b></p> <p><b>35/2019- State Tax, dated 30.07. 2019</b></p>	<p>➤ <b><u>Extension of due date for furnishing FORM GST CMP -08</u></b></p> <p>The class of registered person paying tax under the provisions of section 10 shall furnish a statement, every quarter or, as the case may be, part thereof containing the details of payment of self-assessed tax in <b>FORM GST CMP-08</b> of the CGST Rules, 2017, till the <b>18th day of the month succeeding such quarter.</b></p> <p>The <b>due date</b> for furnishing the statement containing the details of payment of self-assessed tax in said <b>FORM GST CMP-08</b>, for the <b>quarter April, 2019 to June, 2019</b>, or part thereof, <b>shall be the 31st day of August, 2019.</b></p>
2.	<p><b>12/2019-Central Tax (Rate), Dt - 31.07.2019;</b></p> <p><b>12/2019- Integrated Tax (Rate), Dt-31.07.2019;</b></p> <p><b>12/2019- Union Territory Tax (Rate), Dt- 31.07.2019</b></p> <p style="text-align: center;"><b>and</b></p> <p><b>12/2019-State Tax (Rate), Dt-31.07.2019</b></p>	<p>➤ <b><u>GST rate on Electric Vehicles, and charger or charging stations for Electric vehicles</u></b></p> <p>GST rate on all <b>Electric Vehicles reduced from 12% to 5%</b> and of charger or <b>charging stations for Electronic vehicles from 18% to 5%</b></p> <p><b><u>Explanation</u></b>- For the purposes of this entry, “<b>Electrically operated vehicles</b>” means vehicles which are run solely on electrical energy derived from an external source or from one or more electrical batteries fitted to such road vehicles and shall include E- bicycles.”</p> <ul style="list-style-type: none"> <li>• Electrical transformers, static converters (for example, rectifiers) and inductors other than charger or charging station for Electrically operated vehicles shall be charged @18% as per Schedule III of No.1/2017-Central Tax (Rate), dated the 28th June.</li> <li>• This notification shall come into force on the <b>1st August, 2019.</b></li> </ul>
3.	<p><b>13/2019- Central Tax (Rate), Dt- 31.07.2019;</b></p> <p><b>13/2019- Integrated Tax (Rate), Dt-31.07.2019;</b></p>	<p>➤ <b><u>Hiring of Electric buses by local authorities is exempted from GST</u></b></p> <ul style="list-style-type: none"> <li>• Services by way of giving on hire- <ul style="list-style-type: none"> <li>a) To a state transport undertaking, a motor vehicle meant to carry more than 12 passengers; or</li> <li>b) <b>To a local authority, an electrically operated vehicle meant to carry more than twelve passengers.</b></li> </ul> </li> </ul>

<p><b>13/2019- Union Territory Tax (Rate), Dt-31.07.2019</b></p> <p><b>and</b></p> <p><b>13/2019-State Tax (Rate), Dt-31.07.2019</b></p>	<p><b><u>Explanation-</u></b> For the purposes of this entry, “Electrically operated vehicle” means vehicle falling under Chapter 87 in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) which is run solely on electrical energy derived from an external source or from one or more electrical batteries fitted to such road vehicle.</p>
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## SUMMARY OF CGST (AMENDMENT) RULES, 2019

As per Notification No. 33/2019 – Central Tax dt. 18<sup>th</sup> July, 2019, the CGST (Amendments) Rules, 2019 shall come into force on the date of their publication in the Official Gazette

Rule No.	Description	CGST Rules, 2017	CGST (Amendment) Rules, 2019
<b>12(1A)</b>	<b>Grant of registration to persons required to deduct tax at source or to collect tax at source.</b>	A person applying for registration to collect tax in accordance with the provisions of Section 52, in a State or Union territory where he does not have a physical presence, shall mention the name of the State or Union territory in PART A of the application in <b>FORM GST REG-07</b> and mention the name of the State or Union territory in PART B thereof in which the principal place of business is located which may be different from the State or Union territory mentioned in PART A.	A person applying for registration to <b>deduct or</b> collect tax in accordance with the provisions of <b>section 51, or, as the case may be,</b> section 52, in a State or Union territory where he does not have a physical presence, shall mention the name of the State or Union territory in PART A of the application in <b>FORM GST REG-07</b> and mention the name of the State or Union territory in PART B thereof in which the principal place of business is located which may be different from the State or Union territory mentioned in PART A.
<b>54(4)</b>	<b>Tax invoice in special cases.</b>	-	<p>After the said sub rule, the following sub rule shall be inserted which is as follows-</p> <p>A registered person supplying services by way of admission to exhibition of cinematograph films in multiplex screens shall be required to issue an electronic ticket and the said electronic ticket shall be deemed to be a tax invoice for all purposes of the Act, even if such ticket does not contain the details of the recipient of service but contains the other Information as mentioned under rule 46.</p> <p>Provided that the supplier of such service in a screen other</p>

			than multiplex screens may, at his option, follow the mentioned procedure.
<b>83B</b>	<b>Surrender of enrolment of goods and services tax practitioner</b>	-	<p>After the said rule, following sub rule shall be inserted is as follows-</p> <p>1) A goods and services tax practitioner seeking to surrender his enrolment shall electronically submit an application in FORM GST PCT-06, at the common portal, either directly or through a facilitation center notified by the Commissioner.</p> <p>2) The Commissioner, or an officer authorized by him, may after causing such enquiry as deemed fit and by order in FORM GST PCT-07, cancel the enrolment of such practitioner</p>
<b>137</b>	<b>Tenure of Authority.</b>	The Authority shall cease to exist <b>after the expiry of two years</b> from the date on which the Chairman enters upon his office unless the Council recommends otherwise.	The Authority shall cease to exist <b>after the expiry of four years</b> from the date on which the Chairman enters upon his office unless the Council recommends otherwise.
<b>138E</b>	<b>Restriction on furnishing of information in PART A of FORM GST EWB01.</b>	<p>Notwithstanding anything contained in rule 138(1), no person (including a consignor, consignee, transporter, an e-commerce operator or a courier agency) shall be allowed to furnish the information in PART A of FORM GST EWB01 in respect of a registered person, whether as a supplier or a recipient, who,—</p> <p>a) Being a person paying tax under section 10 or availing the benefit of</p>	<p>Notwithstanding anything contained in rule 138(1), no person (including a consignor, consignee, transporter, an e-commerce operator or a courier agency) shall be allowed to furnish the information in PART A of FORM GST EWB01 in respect of a registered person, whether as a supplier or a recipient, who,—</p> <p>c) Being a person paying tax under section 10 or availing the benefit of notification No. 02/2019- Central Tax</p>

		<p>notification No. 02/2019-Central Tax(Rate), dated the 7th March, 2019 has not furnished the statement in FORM GST CMP-08 for 2 consecutive quarters or</p> <p>b) Being a person other than a person specified in clause (a), has not furnished the returns for a consecutive period of two months-</p> <p>Provided that the Commissioner may, on sufficient cause being shown and for reasons to be recorded in writing, by order, allow furnishing of the said information in PART A of <b>FORM GST EWB 01</b>, subject to such conditions and restrictions as may be specified by him.</p>	<p>(Rate), dated the 7th March, 2019 has not furnished the statement in FORM GST CMP-08 for 2 consecutive quarters or</p> <p>d) Being a person other than a person specified in clause (a), has not furnished the returns for a consecutive period of two months-</p> <p>Provided that the Commissioner may, <b>on receipt of an application from a registered person in FORM GST EWB-05</b>, on sufficient cause being shown and for reasons to be recorded in writing, by order, in <b>FORM GST EWB-06</b> allow furnishing of the said information in PART A of <b>FORM GST EWB 01</b>, subject to such conditions and restrictions as may be specified by him.</p>																					
	<ul style="list-style-type: none"> <li>The following forms are Inserted / amended-</li> </ul> <table border="1" data-bbox="358 1157 1490 1654"> <thead> <tr> <th>Sr.No.</th> <th>Name of the Form</th> <th>Purpose of the Form</th> </tr> </thead> <tbody> <tr> <td>1.</td> <td>FORM GST PCT-06</td> <td>Application for cancellation of enrolment as goods and Services tax practitioner</td> </tr> <tr> <td>2.</td> <td>FORM GST PCT-07</td> <td>Order Of Cancellation Of Enrolment As Goods And Services Tax Practitioner</td> </tr> <tr> <td>3.</td> <td>FORM GST RFD-01</td> <td>Application for Refund</td> </tr> <tr> <td>4.</td> <td>FORM GST RFD-01A</td> <td>Application for Refund (Manual)</td> </tr> <tr> <td>5.</td> <td>FORM GST EWB-05</td> <td>Application for unblocking of the facility for generation of E-Way Bill</td> </tr> <tr> <td>6.</td> <td>FORM GST EWB – 06</td> <td>Order for permitting / rejecting application for unblocking of the facility for generation of E-Way Bill</td> </tr> </tbody> </table>			Sr.No.	Name of the Form	Purpose of the Form	1.	FORM GST PCT-06	Application for cancellation of enrolment as goods and Services tax practitioner	2.	FORM GST PCT-07	Order Of Cancellation Of Enrolment As Goods And Services Tax Practitioner	3.	FORM GST RFD-01	Application for Refund	4.	FORM GST RFD-01A	Application for Refund (Manual)	5.	FORM GST EWB-05	Application for unblocking of the facility for generation of E-Way Bill	6.	FORM GST EWB – 06	Order for permitting / rejecting application for unblocking of the facility for generation of E-Way Bill
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## SIGNIFICANT CIRCULARS AND ORDERS

Sr. No.	Circular/ Order No.	Key Update
1.	107/26/2019- Central Tax, Dt-18.07.2019	<p><b><u>Clarification on doubts related to supply of Information Technology enabled Services (ITeS services)</u></b></p> <ul style="list-style-type: none"> <li>➤ The definition of intermediary as per Section 2(13) of IGST Act, 2017 inter alia provides specific exclusion of a person i.e. that of a person who supplies such goods or services or both or securities on his own account. Therefore, the supplier of services would not be treated as 'intermediary' even where the supplier of services qualifies to be 'an agent/ broker or any other person' if he is involved in the supply of services on his own account.</li> <li>➤ There may be various possible scenarios when a supplier of ITeS services located in India supplies services for and on behalf of a client located abroad. <ul style="list-style-type: none"> <li>• The supplier of ITeS services supplies back end services. In such a scenario, the supplier will not fall under the ambit of intermediary under section 2(13) of the IGST Act where these services are provided on his own account by such supplier. Even where a supplier supplies ITeS services to customers of his clients on clients" behalf, but actually supplies these services on his own account, the supplier will not be categorized as intermediary.</li> <li>• The supplier of backend services located in India arranges or facilitates the supply of goods or services or both by the client located abroad to the customers of client. Such backend services may include support services, during pre-delivery, delivery and post-delivery of supply. The supplier of such services will fall under the ambit of intermediary under section 2(13) of the IGST Act as these services are merely for arranging or facilitating the supply of goods or services or both between two or more persons.</li> </ul> </li> </ul> <p>The supplier of ITeS services supplies back end services, on his own account along with arranging or facilitating the supply of various support services during pre-delivery, delivery and post-delivery of supply for and on behalf of the client located abroad. In this case, the supplier is supplying two set of services, namely ITeS services and various support services to his client or to the customer of the client. Whether the supplier of such services would fall under the ambit of intermediary under section 2 (13) of the IGST Act will depend on the facts and circumstances of each case.</p>



2.	108/27/2019- Central Tax, Dt- 18-07-2019	<p><b><u>Clarification in respect of goods sent/taken out of India for exhibition or on consignment basis for export promotion.</u></b></p> <ul style="list-style-type: none"> <li>Section 16 of the IGST Act provides that only such ‘supplies’ which are either ‘export’ or are ‘supply to SEZ unit / developer’ would qualify as zero-rated supply.</li> <li>It is clarified that the <b>activity of sending / taking the goods out of India for exhibition or on consignment basis for export promotion</b>, except when such activity satisfy the tests laid down in Schedule I of the CGST Act, <b>do not constitute supply as the said activity does not fall within the scope of section 7 of the CGST Act as there is no consideration at that point in time. Since such activity is not a supply, the same cannot be considered as ‘Zero rated supply’</b> as per the provisions contained in section 16 of the IGST Act.</li> </ul>									
<table border="1"> <thead> <tr> <th data-bbox="542 758 646 835">Sr No</th> <th data-bbox="646 758 1094 835">Issue</th> <th data-bbox="1094 758 1511 835">Clarification</th> </tr> </thead> <tbody> <tr> <td data-bbox="542 835 646 1058">1.</td> <td data-bbox="646 835 1094 1058"><b>Whether any records are required to be maintained by registered person for sending / taking specified goods out of India?</b></td> <td data-bbox="1094 835 1511 1058">The registered person dealing in specified goods shall maintain a record of such goods as per the <b>format at Annexure to this Circular.</b></td> </tr> <tr> <td data-bbox="542 1058 646 1948">2.</td> <td data-bbox="646 1058 1094 1948"><b>What is the documentation required for sending / taking the specified goods out of India?</b></td> <td data-bbox="1094 1058 1511 1948"> <p>The activity of sending / taking specified goods out of India is not a supply. The said activity is in the nature of <b>“sale on approval basis”</b>. The activity of sending / taking specified goods is covered under the provisions of sub-section (7) of section 31 of the CGST Act read with rule 55 of CGST Rules, 2017 (hereinafter referred to as the “CGST Rules”).</p> <p><b>The specified goods shall be accompanied with a delivery challan</b> issued in accordance with the provisions contained in rule 55 of the CGST Rules. The activity of sending / taking specified goods out of India is not a zero-rated supply.</p> </td> </tr> </tbody> </table>			Sr No	Issue	Clarification	1.	<b>Whether any records are required to be maintained by registered person for sending / taking specified goods out of India?</b>	The registered person dealing in specified goods shall maintain a record of such goods as per the <b>format at Annexure to this Circular.</b>	2.	<b>What is the documentation required for sending / taking the specified goods out of India?</b>	<p>The activity of sending / taking specified goods out of India is not a supply. The said activity is in the nature of <b>“sale on approval basis”</b>. The activity of sending / taking specified goods is covered under the provisions of sub-section (7) of section 31 of the CGST Act read with rule 55 of CGST Rules, 2017 (hereinafter referred to as the “CGST Rules”).</p> <p><b>The specified goods shall be accompanied with a delivery challan</b> issued in accordance with the provisions contained in rule 55 of the CGST Rules. The activity of sending / taking specified goods out of India is not a zero-rated supply.</p>
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				That being the case, <b>execution of a bond or LUT, as required under section 16 of the IGST Act, is not required.</b>
		3.	<b>When is the supply of specified goods sent / taken out of India said to take place?</b>	<p>The specified goods sent / taken out of India are required to be either sold or brought back within the stipulated period of six months from the date of removal as per the provisions contained in sub-section (7) of section 31 of the CGST Act.</p> <p><b>The supply would be deemed to have taken place, on the expiry of six months from the date of removal, if the specified goods are neither sold abroad nor brought back within the said period.</b></p> <p><b>If the specified goods are sold abroad, fully or partially, within the specified period of six months, the supply is effected, in respect of quantity so sold, on the date of such sale.</b></p>
		4.	<b>Whether invoice is required to be issued when the specified goods sent / taken out of India are not brought back, either fully or partially, within the stipulated period?</b>	When the specified goods sent / taken out of India have been sold fully or partially, within the stipulated period of six months, the sender shall issue a tax invoice in respect of such quantity of specified goods which has been sold abroad, in accordance with the provisions contained in section 12 and section 31 of the CGST Act read with rule 46 of the CGST Rules.

				<p>When the specified goods sent / taken out of India have neither been sold nor brought back, either fully or partially, within the stipulated period of six months, the sender shall issue a tax invoice on the date of expiry of six months from the date of removal, in respect of such quantity of specified goods which have neither been sold nor brought back, in accordance with the provisions contained in section 12 and section 31 of the CGST Act read with rule 46 of the CGST Rules.</p>
		5.	<p><b>Whether the refund claims can be preferred in respect of specified goods sent / taken out of India but not brought back?</b></p>	<p>Since, it is not a zero-rated supply, the sender of goods cannot prefer any refund claim when the specified goods are sent/taken out of India. It is further clarified, that the sender can prefer refund claim even when the specified goods were sent / taken out of India without execution of a bond or LUT, if he is otherwise eligible for refund as per the provisions contained section 54(3) of the CGST Act read with rule 89(4) of the CGST Rules, in respect of zero rated supply of goods after he has issued the tax invoice on the dates as has been clarified in answer to the question no. 4 above. It is further clarified that refund claim cannot be preferred under rule 96 of CGST Rules as supply is taking place at a time after the goods have already been sent / taken out of India earlier.</p>

3. 109/28/2019-  
Central Tax,  
Dt- 22-07-2019

• Clarification on issues related to GST on monthly subscription/contribution charged by a Residential Welfare Association from its members.

Sr.No.	Issue	Clarification
1.	Are the maintenance charges paid by residents to the Resident Welfare Association (RWA) in a housing society exempt from GST and if yes, is there an upper limit on the amount of such charges for the exemption to be available?	Supply of service by RWA (unincorporated body or a non-profit entity registered under any law) to its own members by way of reimbursement of charges or share of contribution up to an amount of Rs. 7500 per month per member for providing services and goods for the common use of its members in a housing society or a residential complex are exempt from GST.
2.	A RWA has aggregate turnover of Rs.20 lakh or less in a financial year. Is it required to take registration and pay GST on maintenance charges if the amount of such charges is more than Rs. 7500/- per month per member?	No. If aggregate turnover of an RWA does not exceed Rs.20 Lakh in a financial year, it shall not be required to take registration and pay GST even if the amount of maintenance charges exceeds Rs. 7500/- per month per member.  RWA shall be required to pay GST on monthly subscription/contribution charged from its members, only if such subscription is more than Rs. 7500/- per month per member and the annual aggregate turnover of RWA by way of supplying of services and goods is also Rs. 20 lakhs or more.

Annual turnover of RWA	Monthly maintenance charge	Whether exempt?
More than Rs. 20 lakhs	More than Rs. 7500/-	No
	Rs. 7500/- or less	Yes
Rs. 20 lakhs or less	More than Rs. 7500/-	Yes

			Rs. 7500/- or less	Yes
		3.	Is the RWA entitled to take input tax credit of GST paid on input and services used by it for making supplies to its members and use such ITC for discharge of GST liability on such supplies where the amount charged for such supplies is more than Rs. 7,500/- per month per member?	RWAs are entitled to take ITC of GST paid by them on capital goods (generators, water pumps, lawn furniture etc.), goods (taps, pipes, other sanitary/hardware fillings etc.) and input services such as repair and maintenance services.
		4.	Where a person owns two or more flats in the housing society or residential complex, whether the ceiling of Rs. 7500/- per month per member on the maintenance for the exemption to be available shall be applied per residential apartment or per person?	As per general business sense, a person who owns two or more residential apartments in a housing society or a residential complex shall normally be a member of the RWA for each Residential apartment owned by him separately. <b>The ceiling of Rs. 7500/- per month per member shall be applied separately for each residential apartment owned by him.</b>
		5.	How should the RWA calculate GST payable where the maintenance charges exceed Rs. 7500/- per month per member? <b>Is the GST payable only on the amount exceeding Rs. 7500/- or on the entire amount of maintenance charges?</b>	The exemption from GST on maintenance charges charged by a RWA from residents is available only if such charges do not exceed Rs. 7500/- per month per member. <b>In case the charges exceed Rs. 7500/- per month per member, the entire amount is taxable.</b> For example, if the maintenance charges are Rs. 9000/- per month per member, GST @18% shall be payable on the entire amount of Rs. 9000/- and not on [Rs. 9000 - Rs. 7500] = Rs. 1500/- .
<p><b>For detailed Notifications kindly follow below link-</b>  <a href="http://www.cbic.gov.in/htdocs-cbec/gst/central-tax-notfns-2017">http://www.cbic.gov.in/htdocs-cbec/gst/central-tax-notfns-2017</a></p>				

## RECENT CASE LAWS

### 1. No requirement of GST Registration if the turnover consists only of exempt supplies.

Applicant	<b>M/s Time Tech Waste Solutions Pvt. Ltd.</b>
Journal of Publication	14/WBAAR/2019-2020
Date of Ruling	27th June, 2019.
Ruling Authority	<b>Authority for Advanced Rulings - West Bengal</b>

FACTS
<ul style="list-style-type: none"> <li>• The Applicant is stated to be providing conservancy/solid waste management service to the Bally Municipal Corporation and Howrah Municipal Council.</li> <li>• The Applicant claims that their services to the BMC are exempt under Sl. No. 3 of Notification No. 12.1.2017 - Central Tax (Rate) dated 28.06.2017.</li> <li>• The BMC, however, is deducting TDS while paying consideration for the above supply.</li> <li>• The BMC insists that the Applicant needs to get himself registered under the GST Act</li> </ul>
ISSUE
<ul style="list-style-type: none"> <li>• Are the supplies provided by the Applicant exempted from the levy of GST?</li> <li>• Would the applicant need to get registered under GST?</li> </ul>
HELD
<ul style="list-style-type: none"> <li>• In accordance with Sl No. 3 of Notification No. 12/2017 - Central Tax (Rate) dated 28.06.2017, pure services provided to the Central Government, State Government or Union territory or local authority or a Government authority by way of any function entrusted to a Municipality. As per Article 243W of the Constitution, waste management services are covered as a function entrusted to a Municipality.</li> <li>• If the Applicant's turnover consists entirely of exempt supplies; he is not liable to registration in terms of section 23(1)(a) of the GST Act.</li> </ul>

## 2. Applicability of GST on leasing/renting of a dwelling of a residential unit to a company.

Applicant	<b>Borbheta Estate Pvt Ltd</b>
Journal of Publication	13/WBAAR/2019-20
Date of Ruling	27 <sup>th</sup> June 2019
Ruling Authority	<b>Authority for Advanced Rulings - West Bengal</b>

<b>FACTS</b>
<ul style="list-style-type: none"><li>• The applicant has executed agreements for leasing/ renting of four dwelling units it owns at different locations in Kolkata.</li><li>• Three flats have been rented to individuals and one flat has been rented out to M/s Larsen &amp; Tubro Ltd.</li><li>• The applicant argues that he is not liable to pay tax on leasing or renting of these dwelling units, as they are all let out for residential purpose, and service by way of renting of dwelling units for residence is exempted under SI No. 12 of Notification No. 12/2017-CT (Rate) dated 28/06/2017 (corresponding state Notification No. 1136- FT dated 28/06/2017)</li></ul>
<b>ISSUE</b>
<ul style="list-style-type: none"><li>• Whether applicant is liable to pay GST on leasing of a dwelling unit to a company for residential purpose?</li></ul>
<b>HELD</b>
<ul style="list-style-type: none"><li>• The concerned officer states that the provisions of SI No.12 of the Exemption Notification apply to renting of dwelling units for residential purpose and the same should not be available when dwelling units have been rented to a commercial unit like M/s Larsen &amp; Tubro Ltd.</li><li>• The housing complex certifies that the Applicant owns the flat and it is a residential flat and cannot be used for any other purpose. Further the association confirms that an employee of M/s Larsen &amp; Tubro is staying in the flat.</li><li>• Thus, it was held that the applicants service of renting/dwelling units for residential purpose is exempt as per Notification No. 12/2017-(CT) dated 28/06/2017 and thus the applicant is not liable to pay tax on supply of such service.</li></ul>

### 3. Is GST applicable on interest free security deposit and notional interest if any?

<b>Applicant</b>	<b>E-Square Leisure Pvt Ltd</b>
<b>Journal of Publication</b>	GST-ARA, Application No.76
<b>Date of Ruling</b>	29 <sup>th</sup> December 2018.
<b>Ruling Authority</b>	<b>Authority for Advanced Rulings - Maharashtra</b>

<b>FACTS</b>
<ul style="list-style-type: none"> <li>• The applicant is engaged in various services including renting of immovable property to business entities for commercial purpose and is discharging GST on the rent received from the lessees.</li> <li>• The security deposit is taken from the lessees on account of security against damages, if any, caused to the furniture, equipment's, fittings supplied along with the premises or any damage done to the properties. Further, such security deposit is taken on returnable basis and shall be returned on completion of tenure of lease.</li> <li>• The deposit is interest free and is to be returned after the tenure of the lease.</li> <li>• As per the terms and conditions of copy of agreement, lessor has determined the rent at market value. Interest free Security Deposits does not provide for any additional consideration to the lessor.</li> </ul>
<b>ISSUE</b>
<ul style="list-style-type: none"> <li>• Whether GST would be applicable on interest free security deposit and notional interest if any?</li> <li>• In case GST is applicable what would be value of notional interest for levy of GST?</li> </ul>
<b>HELD</b>
<ul style="list-style-type: none"> <li>• As per section 2(31) of MGST Act, 2017, deposit does not form part of consideration, unless adjusted against consideration.</li> <li>• At the time of completion of lease tenure, if the entire deposit or a part of it is withheld and not paid back, as a charge against damages, etc. then at that stage such amounts not returned back will be liable to GST as per the present laws.</li> <li>• With respect to the facts of the case, since the deposit does not affect the consideration of the lease, section 2(31) of MGST Act, 2017 is not applicable in the present case.</li> <li>• In the view of the above discussion, GST is not applicable on interest free security deposit and thus no value is to be determined for levy of the same.</li> </ul>



4. [Whether Input Tax Credit on Motor Vehicles purchased for demonstration purpose can be availed as credit on capital goods.](#)

<b>Applicant</b>	<b>M/s. Chowgule Industries Private Limited</b>
<b>Journal of Publication</b>	GOA/GAAR/07 of 2018-19/4796
<b>Date of Ruling:</b>	25 <sup>th</sup> January, 2019.
<b>Ruling Authority</b>	<b>Authority of Advance Ruling -GOA</b>

<b>FACTS</b>
<ul style="list-style-type: none"> <li>• The applicant is an authorized dealer for Maruti Suzuki India Limited. It sales motor vehicles and its spares. It also provides servicing services for other commercial vehicle manufacturers.</li> <li>• The applicant has purchased a motor vehicle and the same is reflected in the books of account as a capital asset.</li> <li>• The vehicles are used as demo cars for providing trial run to customers to understand the features of the vehicle. This is an essential part of marketing and sales promotion to facilitate sale of cars.</li> <li>• As per the dealership norms every sales outlet is bound to maintain at least one demo vehicle of each model per location. When the demo Vehicles are sold applicable GST is paid on the selling price.</li> </ul>
<b>ISSUE</b>
<ul style="list-style-type: none"> <li>• Whether Input Tax Credit on the Motor Vehicle purchased for demonstration purpose can be availed as credit on Capital Goods and set off against output tax.</li> </ul>
<b>HELD</b>
<ul style="list-style-type: none"> <li>• As per section 16(1) of the GST Act, every person shall be entitled to take input tax credit on every supply of goods or services or both which are used or intended to be used in course or furtherance of business.</li> <li>• As per section 17(5) of the GST Act input tax credit shall not be available in respect of motor vehicle except when they are used for making taxable supply and for transportation of goods or passengers or imparting training on driving flying navigating such vehicles or conveniences. When the demo vehicles are sold at the written down value GST is charged at applicable rate at that point of time. Hence the provision of section 17(5) will not be applicable. The applicant is entitled for input tax credit on Demo Vehicles.</li> <li>• In the instant case, the applicant purchases demo vehicles against tax invoices from the supplier after paying taxes. The demo vehicle is a tool for promotion of sale by providing trial run to the customer. <b>The vehicles are capital goods which are used in the course or furtherance of business is entitled for Input Tax Credit.</b></li> </ul>

5. Identification of correct classification of Poly Propylene Leno Bags and identification of rate of duty applicable.

<b>Applicant</b>	<b>M/s Mahalaxmi Polypack Pvt. Ltd.</b>
<b>Journal of Publication</b>	Ruling No. 14 of 2018-19
<b>Date of Ruling</b>	7th January, 2019.
<b>Ruling Authority</b>	<b>Authority for Advanced Rulings - Uttarakhand</b>

<b>FACTS</b>
<ul style="list-style-type: none"><li>M/s Mahalaxmi Polypack Pvt. Ltd. based in Uttarakhand is engaged in the supply of 'PolyPropylene Leno Bags'.</li></ul>
<b>ISSUE</b>
<ul style="list-style-type: none"><li>Whether Poly Propylene Leno Bags will be classified among heading Nos. 63063300 or 39232990.</li><li>Identification of rate of duty applicable as per respective HSN of Poly Propylene Leno Bags.</li></ul>
<b>HELD</b>
<ul style="list-style-type: none"><li>As per "Introduction to GST Tariff", Customs Tariff is adopted for, inter alia, descriptive classification of the goods that are not classified anywhere in GST Tariff.</li><li>Accordingly, the item "Poly Propylene Leno Bags (PP Leno Bags) will be classified under HSN Code 3923 of Customs Tariff.</li><li>As per the existing CBEC Revised Duty Drawback rates schedule applicable with effect from 1-10-2017, the item "Poly Propylene Leno Bags (PP Leno Bags) will be classified under GST Tariff Heading '39232990'.</li><li>Further relying on the advance ruling passed by West Bengal Appellate Authority arising out of Order No. 09/WBAAR/2018-19 in the case of "Mega Flex Plastics Ltd., the supply of 'Poly Propylene Leno Bags' would be chargeable to GST at the rate of 18 per cent [CGST at the rate of 9 per cent and SGST at the rate of 9 per cent].</li></ul>

6. No GST on supply of goods located outside India to customers within India without physically bringing goods to India

<b>Applicant</b>	<b>Enmarol Petroleum India Pvt. Ltd.</b>
<b>Journal of Publication</b>	NO.GST-ARA-53/2018-19/B-127
<b>Date of Ruling</b>	10/10/2018
<b>Ruling Authority</b>	<b>Advance Ruling Authority - Maharashtra</b>

<b>FACTS</b>
<ul style="list-style-type: none"> <li>• The applicant is an authorized dealer of M/s Innospec Limited which is registered as a company in England and Wales.</li> <li>• The Applicant sells the marine fuel additive chemicals of Innospec Limited to shipping lines in India and outside India.</li> <li>• M/s. AZA Shipping Pvt. Ltd., an Indian Company, placed a purchase order to be delivered at Singapore Port with Enmarol Petroleum India Pvt. Ltd. The said requirement has been specifically placed for the vessel M T CHAFA to be delivered to the vessel at Singapore Port.</li> <li>• To fulfill the same, Enmarol Petroleum India Pvt. Ltd. placed an order with M/s. Innospec Limited vide P.O. No. EPM-1718-608 dated 08.01.2018 for delivering 75 Litres of OCTAMAR LI-5 to vessel M T Chafa at Singapore.</li> <li>• Thereafter, Innospec Limited delivered the goods through its Singapore Logistics Partner M/s. CWT Logistics Pte. Ltd. to the vessel MT Chafa at Singapore Port.</li> <li>• Thereafter, Innospec Limited raised an invoice on Enmarol Petroleum India Pvt. Ltd. in USD. Subsequently, Enmarol Petroleum India Pvt. Ltd. raised an invoice on its customer M/s. AZA Shipping Pvt. Ltd.</li> </ul>
<b>ISSUE</b>
<ul style="list-style-type: none"> <li>• Whether there is liability to pay GST on the supply of goods located outside India to customers within India without physically bringing goods in India?</li> <li>• Whether the out &amp; out supplies in the facts of the present case will be considered as export supplies or exempted supplies for the purpose of GST?</li> </ul>
<b>HELD</b>
<ul style="list-style-type: none"> <li>• The applicant is <b>NOT</b> liable to pay GST on the supply of goods located outside India to customers within India without physically bringing the goods to India.</li> <li>• The supplies in the present case would be “<u>non-taxable supply</u>” as per Section 2(78) of the CGST Act, 2017 which means a supply of goods or services or both which is not leviable to tax under this Act or under the Integrated Goods and Services tax Act.</li> </ul>

- It is further reiterated and confirmed by Circular No. 3/1/2018 – IGST dated 25.05.2018 issued by the Central Board of Indirect Taxes and Customs, GST Policy Wing.

7. [Applicability of GST on Advisory and Management fees received in Indian Currency from Domestic Contributors and Overseas Contributors Located outside India in case where one is appointed as the Investment Manager of AIF fund.](#)

<b>Applicant</b>	<b>MULTIPLES ALTERNATE ASSET MANAGEMENT PRIVATE LIMITED</b>
<b>Journal of Publication</b>	GST-ARA , Application No. 81
<b>Date of Ruling:</b>	6 <sup>th</sup> March, 2019
<b>Ruling Authority</b>	<b>Advance Ruling Authority - Maharashtra</b>

<b>FACTS</b>
<ul style="list-style-type: none"> <li>• The applicant is an Indian focused Investment Advisory firm for the primary purpose of advising, managing and administering the Fund assets by providing professional Advice and investment management related services for operation a management of AIF (Alternative Investment fund) fund which it is proposing to set up.</li> <li>• For the aforesaid services, the applicant will raise invoices on regular intervals on Domestic Customers in Indian Currency and on Overseas customers in US Dollars.</li> </ul>
<b>ISSUE</b>
<ul style="list-style-type: none"> <li>• Whether GST is applicable on the Advisory &amp; Management Fees received in Indian Currency from Domestic Contributors located in India and foreign currency from Overseas Contributors located outside India for the services rendered by the applicant?</li> </ul>
<b>HELD</b>
<ul style="list-style-type: none"> <li>• The applicant is not providing the services directly to the customers though it raises the invoices on them.</li> <li>• It will in fact be advising and servicing the AIF based on which the AIF fund will take the investment or disinvestment decision on behalf of the investors who have pooled in their money</li> <li>• Thus, it is very clear that both the applicant and AIF are in taxable territory and service is rendered by the applicant to AIF and therefore, GST is payable as per the provisions of section 12(12) of IGST ACT, 2017.</li> <li>• Also, in case of Overseas Contributors, it cannot be said as export of services as the condition specified in sub clause (ii) of sub section (6) of section 2 of IGST Act, 2017 that recipient of service should be outside India is not satisfied and therefore, it is not a zero rated supply.</li> </ul>

**8. Services provided to NGO registered under section 12AA of Income Tax Act amounts to provision of service and grants / donations received for performing such services defined as 'Charitable Activities' are exempted by way of Notification No.12/ 2017-Central Tax (Rate) dated 28/06/2017 of GST Act**

<b>Applicant</b>	<b>ECOSAN SERVICE FOUNDATION</b>
<b>Journal of Publication</b>	GST-ARA, Application No.70
<b>Date of Ruling</b>	19 <sup>th</sup> December 2018
<b>Ruling Authority</b>	<b>Advance Ruling Authority - Maharashtra</b>

<b>FACTS</b>
<ul style="list-style-type: none"> <li>• Applicant is Section 8 Company and registered under section 12AA of Income Tax Act, 1961.</li> <li>• The applicant's activities are broadly categorized into sanitation capacity building, construction of suction toilets as an alternative to flush toilets to prevent wastage of large quantities of water and in turn for the preservation of environment.</li> </ul>
<b>ISSUE</b>
<ul style="list-style-type: none"> <li>• Whether services provided to NGO registered as a Trust having registration u/s 12AA of Income Tax Act, 1961 amounts to provision of service?</li> <li>• Whether such services would be liable for GST?</li> </ul>
<b>HELD</b>
<ul style="list-style-type: none"> <li>• It was held that the activities carried out by the applicant can be considered as charitable activities and within the scope of 'Charitable activities' as defined in 2 (r) of the exemption Notification No. 12 / 2017- Central Tax (Rate) dated 28/06/2017 of the GST Act.</li> <li>• Further grants/ Donations received towards provision of such services would be considered as received towards charitable activities (here, for the preservation of the environment) and therefore covered under Exemption.</li> </ul>

## 9. Applicability of Rule 28 as a replacement of Rule 30.

<b>Applicant</b>	<b>M/s Kansai Nerolac Paints Limited</b>
<b>Journal of Publication</b>	GST-ARA- 84/2018-19/B- 30
<b>Date of Ruling</b>	19.03.2019
<b>Ruling Authority</b>	<b>Advance Ruling Authority - Maharashtra</b>

<b>FACTS</b>
<ul style="list-style-type: none"><li>• Company is engaged in manufacture and sale of industrial and decorative paints to its customers across the states from its factories and depots located all over India.</li><li>• Apart from paints, there is also a flow of raw materials, capital goods and other traded goods from one factory to another factory across the country.</li><li>• At present, company is discharging GST liability on such transfer of paints, raw materials and capital goods and other traded goods from one factory/depot, after valuing them on the basis of one hundred and ten percentage of manufacturing cost as prescribed under Rule 30 of CGST rules, 2017.</li><li>• Factories and Depots of the company are duly qualified as distinct entity, are eligible for full Input tax credit. As per Rule 28, valuation of the goods should be based on Open Market Value of the said goods. Second Proviso to Rule 28 of CGST Rules 2017 provides that where the recipient is eligible of full input tax credit, then the value on the invoice shall be deemed to be the open market value of the goods or services. Rule 30 will be applicable only if Rule 27, Rule 28 and Rule 29 are not applicable.</li></ul>
<b>ISSUE</b>
<ul style="list-style-type: none"><li>• Apart from paints, there is also a flow of raw materials, capital goods from one factory to another. At present the company is discharging GST as prescribed under Rule 30 of CGST Rules 2017.</li><li>• However, second proviso to Rule 28 of CGST Rules 2017 empowers us to declare cost of inputs/ outputs as open market value. Since Rule 28 is applicable, applicant contends that Rule 30 should not be applicable.</li></ul>
<b>HELD</b>
<ul style="list-style-type: none"><li>• As per the scheme of GST, tax is payable on ad valorem basis and taxable value is the transaction value i.e. the price actually paid or payable, provided the supplier and recipient are not related and the price is the sole consideration.</li><li>• In case of related persons Rule 28 is applicable, which shall determine the value of transaction between related persons. We also find that Rule 30, will come into operation when in a situation where the value of supply is not determinable by any other rules preceding Rule 30. As per Rule 28,1. Open Market Value ,2. Value of Supply of like kind and quality, 3. Value of Supply as determined by application of Rule 30 &amp; 31</li></ul>

- Held that above applicant can apply Rule 28 of the CGST Rules 2017 to determine the value of supply of goods for supply of goods by one distinct entity as defined u/s 25 (4) of the CGST Act to another distinct entity having the same PAN (factory/depot).



## 10. Mixed Supply or Composite Supply?

<b>Applicant</b>	<b>M/s. Siemens Limited</b>
<b>Journal of Publication</b>	GST-ARA- 69/2018-19/B- 164
<b>Date of Ruling</b>	19.12.2018
<b>Ruling Authority</b>	<b>Advance Ruling Authority - Maharashtra</b>

### FACTS

- The applicant, a leading manufacturer and distributor of a wide range of power and control cables in India, is engaged in the work of supply, laying and terminating cables package to the recipient and the engagement comprises of two separate contracts with respect to onshore supply contract [first contract] and onshore services contract [second contract].
- It sought advance ruling in respect of the following questions:
  - ✚ Where the freight charges recovered by applicant under the aforesaid contract from the customer without issuance of consignment note will be eligible for exemption from CGST as prescribed in Serial No.18 of Notification No. 12/2017-Central Tax (Rate).
  - ✚ Whether the freight charges recovered by the applicant under the aforesaid contract from the customer without issuance of consignment note will be eligible for exemption from SGST as prescribed in Serial No. 18 of Notification No. 12/2017-State Tax (Rate).

### ISSUE

- The contracts are for supply of goods /services /both. There are six independent contracts.
- The scope of work is a package, for performance of all other activities inter alia including port handling of the plant and equipment including mandatory to be supplied from abroad, loading, inland transportation and insurance for delivery at site, insurance, unloading, storage and handling at site, installation including civil works, testing and commissioning of all plant and equipment supplied. There is no break-up of the contract price, the contract shall, at all times, be construed as a single source responsibility contract.

### HELD

- Considering the facts and the essence of the contracts, it is clear that that the first contract includes on shore ex works supply of all equipment's and materials. The scope of the work includes testing and supply of cable package. The second contract includes onshore services, i.e., all other activities like transportation, insurance and all incidental services.
- It is apparent that the first contract cannot be executed independent of the second contract. There cannot be any 'supply of goods' without a place of supply.

- The two contracts are, therefore, linked by a cross fall breach clause deeming that any breach in either of the contracts to be a breach of the other contract as well, providing the recipient with an absolute right to terminate both the contracts or claim damages.
- Composite nature of the contract is clear from the facts that first contract cannot be performed satisfactorily unless the goods have been transported and delivered to the contractee's site. The two contracts for supply of the goods and allied services are not separately enforceable. Both the first contract and second contract having cross fall breach provisions are in the nature of 'composite supply of works contract' which is a service and would be taxable at the rate of 18 per cent in terms of Notification No. 11/2017-Central Tax (Rate), dated 28-6-2017.