

प्रेषक,
राधे कृष्ण
संयुक्त सचिव,
उत्तर प्रदेश शासन।

सेवा में,
निदेशक,
नगरीय निकाय निदेशालय,
उ०प्र० लखनऊ।

नगर विकास अनुभाग-5

लखनऊ:: दिनांक 25 सितम्बर, 2019

विषय:- भारत सरकार वित्त मंत्रालय (राजस्व विभाग) द्वारा जारी अधिसूचना संख्या-12/2017 केन्द्रीय कर (दर) को निकायों में क्रियान्वयन के संबंध में।

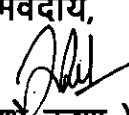
महोदय,

कृपया उपर्युक्त विषयक अपने पत्र संख्या-8/802/जी०एस०टी०/2019-20 दिनांक 03.08.2019 का संदर्भ ग्रहण करने का कष्ट करें, जिसके माध्यम से भारतीय लेखा परीक्षा और लेखा विभाग, उत्तर प्रदेश के पत्र दिनांक 02.07.2019 के माध्यम से लेखा परीक्षा आपत्तियों पर आधारित तथ्यात्मक विवरण जिसका शीर्षक "भारत सरकार की अधिसूचना का उल्लंघन करते हुए सेवाकर/जी.एस.टी. से मुक्त सेवाओं के लिए सेवाकर/जी०एस०टी० पर रू० 1.52 करोड़ का परिहार्य व्यय किया गया, जिससे उक्त धनराशि की सीमा तक अनुमन्य लाभदायक तथा उद्देश्य व्यय सुनिश्चित नहीं किया जा सका" के परिप्रेक्ष्य में नगरीय निकायों में जी०एस०टी० के संबंध में आवश्यक दिशा-निर्देश निर्गत किये जाने का अनुरोध किया गया है।

2- इस संबंध में मुझे यह कहने का निदेश हुआ है कि कर मुक्त (Nil rated) सेवाओं के संबंध में उ०प्र० शासन द्वारा नोटिफिकेशन सं० K.A.NI.-2-843/XI-9(47)/17-U.P.ACT-1-2017-ORDER (10)-2017, दिनांक 30.06.2017 (संलग्नक-1) जारी किया गया है, जिसके अन्तर्गत निहित, प्रश्नगत मामले से संबंधित सुसंगत प्राविधान क्रमांक-3 पर अंकित है, जिसके अनुसार प्रश्नगत सेवा कर मुक्त (Nil rated) है। जी०एस०टी० के संबंध में प्रश्नोत्तर भी संलग्न (संलग्नक-2) है।

कृपया तदनुसार अग्रेतर कार्यवाही सुनिश्चित करने का कष्ट करें।

संलग्नक:यथोक्त।

भवदीय,

(राधे कृष्ण)
संयुक्त सचिव।

Uttar Pradesh Shasan
Sansthatag Vitta, Kar Evam Nibandhan Anubhag-2

In pursuance of the provisions of clause (3) of Article 348 of the Constitution, the Governor is pleased to order the publication of the following English translation of Government notification no KA.NI.-2-843/XI-9(47)/ 17- U.P. Act-1-2017-Order- (10) -2017 dated June 30, 2017:-

NOTIFICATION

No.-KA.NI.-2-843/XI-9(47)/ 17- U.P. Act-1-2017-Order- (10) -2017

Lucknow: Dated: June 30, 2017

In exercise of the powers conferred by sub-section (1) of section 11 of the Uttar Pradesh Goods and Services Tax Act, 2017 (U.P. Act no. 1 of 2017), the Governor, on being satisfied that it is necessary in the public interest so to do, and on the recommendations of the Council, is pleased to exempt the intra-State supply of services of description as specified in column (3) of the Table below from so much of the state tax leviable thereon under sub-section (1) of section 9 of the said Act, as is in excess of the said tax calculated at the rate as specified in the corresponding entry in column (4) of the said Table, unless specified otherwise, subject to the relevant conditions as specified in the corresponding entry in column (5) of the said Table, namely:-

Table

Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent.)	Condition
(1)	(2)	(3)	(4)	(5)
1	Chapter 99	Services by an entity registered under section 12AA of the Income-tax Act, 1961 (43 of 1961) by way of charitable activities.	Nil	Nil
2	Chapter 99	Services by way of transfer of a going concern, as a whole or an independent part thereof.	Nil	Nil
3	Chapter 99	Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State	Nil	Nil

		Government or Union territory or local authority or a Governmental authority 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.		
4	Chapter 99	Services by Central Government, State Government, Union territory, local authority or governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243 W of the Constitution.	Nil	Nil
5	Chapter 99	Services by a governmental authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution.	Nil	Nil
6	Chapter 99	Services by the Central Government, State Government, Union territory or local authority excluding the following services— (a) services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, State Government, Union territory; (b) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; (c) transport of goods or passengers; or (d) any service, other than services covered under entries (a) to (c) above, provided to business entities.	Nil	Nil
7	Chapter 99	Services provided by the Central Government, State Government, Union territory or local authority to a business entity with an aggregate turnover of up to twenty lakh rupees (ten lakh rupees in case of a special category state) in the preceding financial year. <i>Explanation.-</i> For the purposes of this	Nil	Nil

(zzl) "tiger reserve" has the same meaning as assigned to it in clause (e) of section 38K of the Wild Life (Protection) Act, 1972 (53 of 1972);

(zzm) "tour operator" means any person engaged in the business of planning, scheduling, organizing, arranging tours (which may include arrangements for accommodation, sightseeing or other similar services) by any mode of transport, and includes any person engaged in the business of operating tours;

(zno) "trade union" has the same meaning as assigned to it in clause (h) of section 2 of the Trade Unions Act, 1926(16 of 1926);

(zzo) "vessel" has the same meaning as assigned to it in clause (z) of section 2 of the Major Port Trusis Act, 1963 (38 of 1963);

(zzp) "wildlife sanctuary" means a sanctuary as defined in the clause (26) of the section 2 of The Wild Life (Protection) Act, 1972 (53 of 1972);

(zzq) "zoo" has the same meaning as assigned to it in the clause (39) of the section 2 of the Wild Life (Protection) Act, 1972 (53 of 1972).


3. *Explanation.*- For the purposes of this notification,-

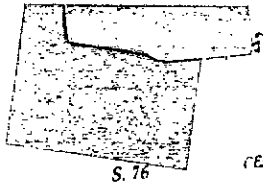
(i) Reference to "Chapter", "Section" or "Heading", wherever they occur, unless the context otherwise requires, shall mean respectively as "Chapter", "Section" and "Heading" in the scheme of classification of services.

(ii) Chapter, Section, Heading, Group, or Service Code mentioned in Column (2) of the Table are only indicative.

4. This notification shall come into force on the 1st day of July, 2017.

By Order,


(S. Rajalingam)
Vishesh Sachiv



S. 76

(7) The amount of tax, interest and penalty demanded in the order shall not be in excess of the amount specified in the notice and no demand shall be confirmed on the grounds other than the grounds specified in the notice.

(8) Where the Appellate Authority or Appellate Tribunal or court modifies the amount of tax determined by the proper officer, the amount of interest and penalty shall stand modified accordingly, taking into account the amount of tax so modified.

(9) The interest on the tax short paid or not paid shall be payable whether or not specified in the order determining the tax liability.

(10) The adjudication proceedings shall be deemed to be concluded, if the order is not issued within three years as provided for in sub-section (10) of section 73 or within five years as provided for in sub-section (10) of section 74.

(11) An issue on which the Appellate Authority or the Appellate Tribunal or the High Court has given its decision which is prejudicial to the interest of revenue in some other proceedings and an appeal to the Appellate Tribunal or the High Court or the Supreme Court against such decision of the Appellate Authority or the Appellate Tribunal or the High Court is pending, the period spent between the date of the decision of the Appellate Authority and that of the Appellate Tribunal or the date of decision of the Appellate Tribunal and that of the High Court or the date of the decision of the High Court and that of the Supreme Court shall be excluded in computing the period referred to in sub-section (10) of section 73 or sub-section (10) of section 74 where proceedings are initiated by way of issue of a show cause notice under the said sections.

(12) Notwithstanding anything contained in section 73 or section 74, where any amount of self-assessed tax in accordance with a return furnished under section 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of section 79.

(13) Where any penalty is imposed under section 73 or section 74, no penalty for the same act or omission shall be imposed on the same person under any other provision of this Act.

Tax collected but not paid to Government.

76. (1) Notwithstanding anything to the contrary contained in any order or direction of any Appellate Authority or Appellate Tribunal or court or in any other provisions of this Act or the rules made thereunder or any other law for the time being in force, every person who has collected from any other person any amount as representing the tax under this Act, and has not paid the said amount to the Government, shall forthwith pay the said amount to the Government, irrespective of whether the supplies in respect of which such amount was collected are taxable or not.

99 Enforced with effect from 1-7-2017.

1.99

(2) Where any amount is required to be paid to the Government under sub-section (1), and which has not been so paid, the proper officer may serve on the person liable to pay such amount a notice requiring him to show cause as to why the said amount as specified in the notice, should not be paid by him to the Government and why a penalty equivalent to the amount specified in the notice should not be imposed on him under the provisions of this Act.

(3) The proper officer shall, after considering the representation, if any, made by the person on whom the notice is served under sub-section (2), determine the amount due from such person and thereupon such person shall pay the amount so determined.

(4) The person referred to in sub-section (1) shall in addition to paying the amount referred to in sub-section (1) or sub-section (3) also be liable to pay interest thereon at the rate specified under section 50 from the date such amount was collected by him to the date such amount is paid by him to the Government.

(5) An opportunity of hearing shall be granted where a request is received in writing from the person to whom the notice was issued to show cause.

(6) The proper officer shall issue an order within one year from the date of issue of the notice.

(7) Where the issuance of order is stayed by an order of the court or Appellate Tribunal, the period of such stay shall be excluded in computing the period of one year.

(8) The proper officer, in his order, shall set out the relevant facts and the basis of his decision.

(9) The amount paid to the Government under sub-section (1) or sub-section (3) shall be adjusted against the tax payable, if any, by the person in relation to the supplies referred to in sub-section (1).

(10) Where any surplus is left after the adjustment under sub-section (9), the amount of such surplus shall either be credited to the Fund or refunded to the person who has borne the incidence of such amount.

(11) The person who has borne the incidence of the amount, may apply for the refund of the same in accordance with the provisions of section 54.

Tax wrongfully collected and paid to Central Government or State Government.

77. (1) A registered person who has paid the Central tax and State tax or, as the case may be, the central tax and the Union territory tax on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall be refunded the amount of taxes so paid in such manner and subject to such conditions as may be prescribed².

1. Enforced with effect from 1-7-2017.
2. See rule 89 of the CGST Rules, 2017.

**NATION
TAX
MARKET**

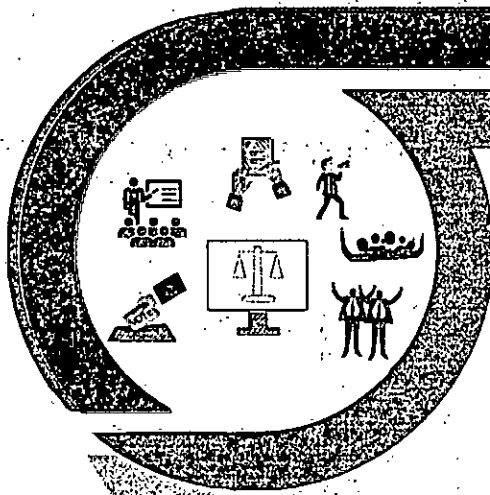


सत्यमेव जयते

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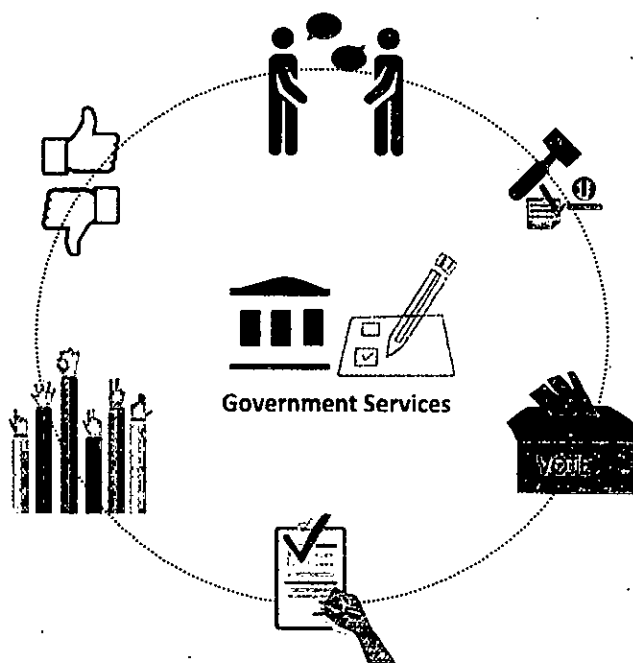


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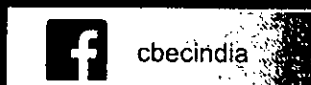
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FAQ: Government Services

Question 1: Are all services provided by the Government or local authority exempted from payment of tax?

Answer: No, all services provided by the Government or a local authority are not exempt from tax. As for instance, services, namely, (i) services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Government; (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of an airport or a port; (iii) transport of goods or passengers; or (iv) any service, other than services covered under (i) to (iii) above, provided to business entities, are not exempt and that these services are liable to tax.

That said, most of the services provided by the Central Government, State Government, Union Territory or local authority are exempt from tax. These include services provided by government or a local authority or governmental authority by way of any activity in relation to any function entrusted to a municipality under Article 243W of the Constitution and services by a governmental authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution.

Question 2: Are Government or local authority, or governmental authority liable to pay tax?

Answer: Yes. The Government or a local authority or a governmental authority is liable to pay tax on supply of services other than the services notified as exempt or notified as neither a supply of goods nor a supply of services under clause (b) of sub-section (2) of section 7 of the CGST Act, 2017. In respect of services other than – (i) renting of immovable property; (ii) services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Government; and (iii) services in relation to an aircraft or a vessel, inside or outside the precincts of an airport or a port, the service recipients are required to pay the tax under reverse charge mechanism.

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Question 3: What is the meaning of 'Government'?

Answer: As per section 2(53) of the CGST Act, 2017, 'Government' means the Central Government. As per clause (23) of section 3 of the General Clauses Act, 1897 the 'Government' includes both the Central Government and any State Government. As per clause (8) of section 3 of the said Act, the 'Central Government', in relation to anything done or to be done after the commencement of the Constitution, means the President. As per Article 53 of the Constitution, the executive power of the Union shall be vested in the President and shall be exercised by him either directly or indirectly through officers subordinate to him in accordance with the Constitution. Further, in terms of Article 77 of the Constitution, all executive actions of the Government of India shall be expressed to be taken in the name of the President. Therefore, the Central Government means the President and the officers subordinate to him while exercising the executive powers of the Union vested in the President and in the name of the President. Similarly, as per clause (60) of section 3 of the General Clauses Act, 1897, the 'State Government', as respects anything done after the commencement of the Constitution, shall be in a State the Governor, and in an Union Territory the Central Government. As per Article 154 of the Constitution, the executive power of the State shall be vested in the Governor and shall be exercised by him either directly or indirectly through officers subordinate to him in accordance with the Constitution. Further, as per article 166 of the Constitution, all executive actions of the Government of State shall be expressed to be taken in the name of Governor. Therefore, State Government means the Governor or the officers subordinate to him who exercise the executive powers of the State vested in the Governor and in the name of the Governor.

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Question 29: Whether the deductee can claim the input tax credit on the deduction of tax at source amount?

Answer: No. The tax deducted at source is not input tax credit. However, the amount deducted shall be credited to the electronic cash ledger (upon being accepted by the deductee in his Form GSTR-2A) of the deductee and can be utilized for payment of output tax.

Question 30: Whether an amount in the form of royalty or any other form paid/payable to the Government for assigning the rights to use of natural resources is taxable?

Answer: The Government provides license to various companies including Public Sector Undertakings, for exploration of natural resources like oil, hydrocarbons, Iron ore, manganese, etc. For having assigned the rights to use the natural resources, the licensee companies are required to pay consideration in the form of annual license fee, lease charges, royalty, etc to the Government. The activity of assignment of rights to use natural resources is treated as supply of services and the licensee is required to pay tax on the amount of consideration paid in the form of royalty or any other form under reverse charge mechanism.

Question 31: Whether a Government Department, required to deduct tax at source, is liable to take registration as a normal taxpayer?

Answer: The Government Department is required to take registration as a normal taxpayer only if it makes a taxable supply of goods and/or services and in such cases, the registration shall be obtained on the basis of PAN but Bank account is not mandatory. However, if it is not making any taxable supply of goods and/or services, it is required to register only as a deductor of tax at source on the basis of TAN/PAN.

Note: Reference to CGST Act, 2017 includes reference to SGST Act, 2017 and UTGST Act, 2017 also.

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Question 27: Can the supplier of services claim the tax paid under reverse charge mechanism as input tax credit?

Answer: Yes. The supplier of services may claim the input tax credit on the amount of tax paid under reverse charge mechanism subject to the provisions of Chapter V of CGST Act, 2017 read with Chapter V of the CGST Rules, 2017.

Question 28: What is the concept called 'tax deduction at source'?

Answer: As per section 51 of the CGST Act, 2017, the Government may mandate (a) a department or establishment of the Central Government or State Government; or (b) local authority; or (c) Governmental agencies; or (d) such persons or category of persons as may be notified by the Government on the recommendations of the Council, to deduct tax at the rate of one per cent on account of CGST and one percent on account of SGST from the payment made or credited to the supplier where the total value of the supply under a contract exceeds two lakh and fifty thousand rupees (excluding tax payable under the GST Acts). The deductor shall remit the deducted amount to the Government and is also required to furnish a certificate to the deductee by mentioning the details of the amount deducted and payment of such deducted amount.

Illustration: ABC Ltd supplies the service valued at Rs. 3,00,000/- excluding tax to Government department. The department while making the payment of Rs. 3,00,000/- should deduct Rs. 3000/- on account of CGST and Rs. 3000/- on account of SGST and make a net payment of Rs. 2,94,000/- to ABC Ltd. Thereafter, the department shall pay the amount of Rs. 3,000/- to the Central Government and Rs. 3,000/- to the State Government and furnish a certificate to the deductee, containing the details of such deduction including the details of such deductee.

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Question 4: Who is a local authority?

Answer: Local authority is defined in clause (69) of section 2 of the CGST Act, 2017 and means the following:

- a "Panchayat" as defined in clause (d) of article 243 of the Constitution;
- a "Municipality" as defined in clause (e) of article 243P of the Constitution;
- a Municipal Committee, a Zilla Parishad, a District Board, and any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund;
- a Cantonment Board as defined in section 3 of the Cantonments Act, 2006;
- a Regional Council or a District Council constituted under the Sixth Schedule to the Constitution;
- a Development Board constituted under article 371 of the Constitution; or
- a Regional Council constituted under article 371A of the Constitution;

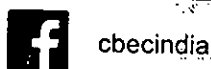
Question 5: Are all local bodies constituted by a State or Central Law regarded as local authorities for the purposes of the GST Acts?

Answer: No. The definition of 'local authority' is very specific and means only those bodies which are mentioned as 'local authorities' in clause (69) of section 2 of the CGST Act, 2017. It would not include other bodies which are merely described as a 'local body' by virtue of a local law.

For example, State Governments have setup local developmental authorities to undertake developmental works like infrastructure, housing, residential & commercial development, construction of houses, etc. The Governments setup these authorities under the Town and Planning Act. Examples of such developmental authorities are Delhi Development Authority, Ahmedabad Development Authority, Bangalore Development Authority, Chennai Metropolitan Development Authority, Bihar Industrial Area Development Authority, etc. Such developmental authorities formed under the Town and Planning Act are not qualified as local authorities for the purposes of the GST Acts.

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Question 6: Would a statutory body, corporation or an authority constituted under an Act passed by the Parliament or any of the State Legislatures be regarded as 'Government' or "local authority" for the purposes of the GST Acts?

Answer: A statutory body, corporation or an authority created by the Parliament or a State Legislature is neither 'Government' nor a 'local authority'. Such statutory bodies, corporations or authorities are normally created by the Parliament or a State Legislature in exercise of the powers conferred under article 53(3)(b) and article 154(2)(b) of the Constitution respectively. It is a settled position of law (Agarwal Vs. Hindustan Steel AIR 1970 Supreme Court 1150) that the manpower of such statutory authorities or bodies do not become officers subordinate to the President under article 53(1) of the Constitution and similarly to the Governor under article 154(1). Such a statutory body, corporation or an authority as a juridical entity is separate from the State and cannot be regarded as the Central or a State Government and also do not fall in the definition of 'local authority'. Thus, regulatory bodies and other autonomous entities would not be regarded as the government or local authorities for the purposes of the GST Acts.

Question 7: Would services provided by one department of the Government to another Department of the Government be taxable?

Answer: Services provided by one department of the Central Government/State Government to another department of the Central Government/ State Government are exempt under notification No. 12/2017-Central Tax (Rate), dated 28.06.2017 [S No 8 of the Table].

However, this exemption is not applicable to:

- (a) services provided by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, the State Government and Union Territory;
- (b) services in relation to a vessel or an aircraft inside or outside the precincts of a port or an airport;
- (c) services of transport of goods and/or passengers.

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Question 25: What is the scope of 'pure services' mentioned in the exemption notification No. 12/2017-Central Tax (Rate), dated 28.06.2017?

Answer: In the context of the language used in the notification, supply of services without involving any supply of goods would be treated as supply of 'pure services'. For example, supply of man power for cleanliness of roads, public places, architect services, consulting engineer services, advisory services, and like services provided by business entities not involving any supply of goods would be treated as supply of pure services. On the other hand, let us take the example of a governmental authority awarding the work of maintenance of street lights in a Municipal area to an agency which involves apart from maintenance, replacement of defunct lights and other spares. In this case, the scope of the service involves maintenance work and supply of goods, which falls under the works contract services. The exemption is provided to services involves only supply of services and not for works contract services.

Question 26: Would services in relation to supply of motor vehicles to Government be taxable?

Answer: Supply of a motor vehicle meant to carry more than twelve passengers by way of giving on hire to a state transport undertaking is exempted from tax. The exemption is applicable to services provided to state transport undertaking and not to other departments of Government or local authority. Generally, such State transport undertakings/corporations are established by law with a view to providing public transport facility to the commuters. In some cases, transport undertakings hire the buses on lease basis from private persons on payment of consideration. The services by way of supply of motor vehicles to such state transport undertaking are exempt from payment of tax. However, supplies of motor vehicles to Government Departments other than the state transport undertakings are taxable.

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Question 22: A small business entity is carrying on a business relating to consulting engineer services in Delhi. Does it need to pay tax on the services received from Government or a local authority?

Answer: If turnover of the entity is less than the limit of Rs. 20 lakhs in a financial year, no tax would be payable. The exemption from payment of tax is applicable to services provided to a business entity having a turnover up to Rs. 20 lakh rupees. However, this exemption is not applicable to (i) services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Government; (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of an airport or a port; (iii) services of transport of goods or passengers and (iv) services by way of renting of immovable property.

Question 23: What is reverse charge in GST?

Answer: As per 2(98) of the CGST Act, 2017, "reverse charge" means the liability to pay tax by the recipient of supply of goods or services or both instead of the supplier of such goods or services or both under sub-section (3) or sub-section (4) of section 9 of the CGST Act, 2017, or under sub-section (3) or sub-section (4) of section 5 of the IGST Act, 2017.

Question 24: Whether reverse charge is applicable to services provided by Government or local authorities?

Answer: Yes, reverse charge is applicable in respect of services provided by Government or local authorities to any person whose turnover exceeds Rs.20 lakhs (Rs.10 lakhs for Special Category States) excluding the following services:

- (i) renting of immovable property;
- (ii) services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Government;
- (iii) services in relation to an aircraft or a vessel, inside or outside the precincts of an airport or a port;
- (iv) transport of goods or passengers.

Thus, the recipient of supply of goods or services is liable to pay the entire amount of tax involved in such supply of services or goods or both.

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Question 8: What are the transport services provided by the Government or local authorities exempt from tax?

Answer: Transport services provided by the Government to passengers by — (i) railways in a class other than— (a) first class; or (b) an air-conditioned coach; (ii) metro, monorail or tramway; (iii) inland waterways; (iv) public transport, other than predominantly for tourism purpose, in a vessel between places located in India; and (v) metered cabs or auto rickshaws (including E-rickshaws) are exempt from tax.

Question 9: Are various corporations formed under the Central Acts or State Acts or various government companies registered under the Companies Act, 1956/2013 or autonomous institutions set up by special Acts covered under the definition of 'Government'?

Answer: No. The corporations formed under the Central or a State Act or various companies registered under the Companies Act, 1956/2013 or autonomous institutions set up by the State Acts will not be covered under the definition of 'Government' and therefore, services provided by them will be taxable unless exempted by a notification.

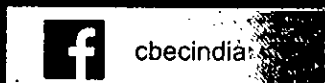
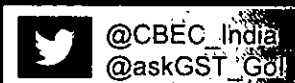
Question 10: Are various regulatory bodies formed by the Government covered under the definition of 'Government'?

Answer: No. A regulatory body, also called regulatory agency, is a public authority or a governmental body which exercises functions assigned to them in a regulatory or supervisory capacity. These bodies do not fall under the definition of Government.

Examples of regulatory bodies are - Competition Commission of India, Press Council of India, Directorate General of Civil Aviation, Forward Market Commission, Inland Water Supply Authority of India, Central Pollution Control Board, Securities and Exchange Board of India.

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Question 11: Will the services provided by Police or security agencies of Government to PSUs or corporate entities or sports events held by private entities be taxable?

Answer: Yes. Services provided by Police or security agencies of Government to PSU/private business entities are not exempt from GST. Such services are taxable supplies and the recipients are required to pay the tax under reverse charge mechanism on the amount of consideration paid to Government for such supply of services.

Illustration: The Karnataka Cricket Association, Bangalore requests the Commissioner of Police, Bangalore to provide security in and around the Cricket Stadium for the purpose of conducting the cricket match. The Commissioner of Police arranges the required security for a consideration. In this case, services of providing security by the police personnel are not exempt. As the services are provided by Government, Karnataka Cricket Association is liable to pay the tax on the amount of consideration paid under reverse charge mechanism.

Question 12: The Department of Posts provides a number of services. What is the status of those services for the purpose of levy of tax?

Answer: The services by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Government or Union territory are not exempt. In respect of these services the Department of Posts is liable to pay tax without application of reverse charge. However, the following services provided by the Department of Posts are not liable to tax.

- (a) Basic mail services known as postal services such as post card, inland letter, book post, registered post provided exclusively by the Department of Posts to meet the universal postal obligations.
- (b) Transfer of money through money orders, operation of savings accounts, issue of postal orders, pension payments and other such services.

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Question 19: Whether services in the nature of change of land use, commercial building approval, utility services provided by a governmental authority are taxable?

Answer: Regulation of land-use, construction of buildings and other services listed in the Twelfth Schedule to the Constitution which have been entrusted to Municipalities under Article 243W of the Constitution, when provided by governmental authority are exempt from payment of tax.

Question 20: Whether fines and penalty imposed by Government or a local authority for violation of a statute, bye-laws, rules or regulations liable to tax?

Answer: No. This gets covered under the exemption by way of tolerating non-performance of a contract for which consideration in the form of fines or liquidated damages is payable to the Government or the local authority.

Question 21: Whether services provided by Government or a local authority to a business entity located in a special category State are subject to tax?

Answer: The expression "special category States" provided in Explanation (iii) to section 22 of the CGST Act, shall mean the States as specified in sub-clause (g) of clause (4) of Article 279A of the Constitution. As per the said clause, the States of Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand have been given the status of special category States for the purpose of GST Acts. Notification No. 12/2017-Central Tax(Rate), dated 28.06.2017 (Sl. No. 7 of the Table) provides for exemption from payment of tax in respect of services provided to a business entity located in a special category State with a turnover up to Rs. 10 lakh rupees. However, this exemption is not be applicable to (a) services - (i) by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Government; (ii) in relation to an aircraft or a vessel, inside or outside the precincts of an airport or a port; (iii) of transport of goods or passengers and (iv) services by way of renting of immovable property.

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Question 18: What is the significance of services provided by Government or a local authority by way of tolerating non-performance of a contract for which consideration in the form of fines or liquidated damages is payable to the Government or the local authority?

Answer: Non-performance of a contract or breach of contract is one of the conditions normally stipulated in the Government contracts for supply of goods or services. The agreement entered into between the parties stipulates that both the service provider and service recipient abide by the terms and conditions of the contract. In case any of the parties breach the contract for any reason including non-performance of the contract, then such person is liable to pay damages in the form of fines or penalty to the other party. Non-performance of a contract is an activity or transaction which is treated as a supply of service and the person is deemed to have received the consideration in the form of fines or penalty and is, accordingly, required to pay tax on such amount.

However non performance of contract by the supplier of service in case of supplies to Government is covered under the exemption from payment of tax. Thus any consideration received by the Government from any person or supplier for non performance of contract is exempted from tax.

Illustration: Public Works Department of Karnataka entered into an agreement with M/s. ABC, a construction company for construction of office complex for certain amount of consideration. In the agreement dated 10.7.2017, it was agreed by both the parties that M/s. ABC shall complete the construction work and handover the project on or before 31.12.2017. It was further agreed that any breach of the terms of contract by either party would give right to the other party to claim for damages or penalty. Assuming that M/s. ABC does not complete the construction and handover the project by the specified date i.e., on or before 31.12.2017. As per the contract, the department asks for damages/penalty from M/s. ABC and threatened to go to the court if not paid. Assuming that M/s ABC has paid an amount of Rs. 10,00,000/- to the department for non performance of contract. Such amount paid to department is exempted from payment of tax.

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Question 13: What is the scope of agency services provided by the Department of Posts mentioned in the Notification No. 12/2017-Central Tax(Rate) dated 28.06.2017?

Answer: The Department of Posts also provides services like distribution of mutual funds, bonds, passport applications; collection of telephone and electricity bills on commission basis. These services are in the nature of intermediary and generally called agency services. In these cases, the Department of Posts is liable to pay tax without application of reverse charge.

Question 14: Would services received by Government, a local authority, a governmental authority from a provider of service located outside India be taxable?

Answer: No tax is payable on the services received by the Government / local authority/ governmental authority from a provider of service located outside India. However, the exemption is applicable to only those services which are received for the purpose other than commerce, industry or any other business or profession. In other words, if the Government receives such services for the purpose of business or commerce, then tax would apply on the same.

Question 15: Whether the exemption is applicable to online information and database access or retrieval services received by Government or local authorities from provider of service located in non taxable territory?

Answer: No. Online information and database access or retrieval services received by Government or local authorities from non taxable territory for any purpose including furtherance of business or commerce are liable to tax.

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Question 16: What are the functions entrusted to a municipality under Article 243W of the Constitution.

Answer: The functions entrusted to a municipality under the Twelfth Schedule to Article 243W of the Constitution are as under:

- (a) Urban planning including town planning.
- (b) Regulation of land-use and construction of buildings.
- (c) Planning for economic and social development.
- (d) Roads and bridges.
- (e) Water supply for domestic, industrial and commercial purposes.
- (f) Public health, sanitation conservancy and solid waste management.
- (g) Fire services.
- (h) Urban forestry, protection of the environment and promotion of ecological aspects.
- (i) Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.
- (j) Slum improvement and upgradation.
- (k) Urban poverty alleviation.
- (l) Provision of urban amenities and facilities such as parks, gardens, playgrounds.
- (m) Promotion of cultural, educational and aesthetic aspects.
- (n) Burials and burial grounds; cremations, cremation grounds; and electric crematoriums.
- (o) Cattle pounds; prevention of cruelty to animals.
- (p) Vital statistics including registration of births and deaths.
- (q) Public amenities including street lighting, parking lots, bus stops and public conveniences.
- (r) Regulation of slaughter houses and tanneries.

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Question 17: What are the functions entrusted to a Panchayat under Article 243G of the Constitution?

Answer: The functions entrusted to a Panchayat under the Eleventh Schedule to Article 243G of the Constitution are as under:

- (i) Agriculture, including agricultural extension.
- (ii) Land improvement, implementation of land reforms, land consolidation and soil conservation.
- (iii) Minor irrigation, water management and watershed development.
- (iv) Animal husbandry, dairying and poultry.
- (v) Fisheries.
- (vi) Social forestry and farm forestry.
- (vii) Minor forest produce.
- (viii) Small scale industries, including food processing industries.
- (ix) Khadi, village and cottage industries.
- (x) Rural housing.
- (xi) Drinking water.
- (xii) Fuel and fodder.
- (xiii) Roads, culverts, bridges, ferries, waterways and other means of communication.
- (xiv) Rural electrification, including distribution of electricity.
- (xv) Non-conventional energy sources.
- (xvi) Poverty alleviation programme.
- (xvii) Education, including primary and secondary schools.
- (xviii) Technical training and vocational education.
- (xix) Adult and non-formal education.
- (xx) Libraries.
- (xxi) Cultural activities.
- (xxii) Markets and fairs.
- (xxiii) Health and sanitation, including hospitals, primary health centres and dispensaries.
- (xxiv) Family welfare.
- (xxv) Women and child development.
- (xxvi) Social welfare, including welfare of the handicapped and mentally retarded.
- (xxvii) Welfare of the weaker sections, and in particular, of the Scheduled Castes and the Scheduled Tribes.
- (xxviii) Public distribution system.
- (xxix) Maintenance of community assets.

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