

GST NEWSLETTER

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**GST Newsletter:
Compiled and Edited by**

INCORP INDIRECT TAX DIVISION

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ARTICLE - 1

GST On Services Between Clubs & Its Members

Clubs / Associations are groups or spaces where individuals with similar interests or activities meet and interact. Membership to these clubs is exclusive in nature and requires certain criteria to be fulfilled.

Under the erstwhile indirect tax laws, goods and services provided to members of incorporated clubs & associations were not subjected to Service Tax, based on the 'Principle of Mutuality'. According to this principle, no tax had to be paid on such transactions. But the same treatment was not extended to non-members.

The Principle of Mutuality was upheld by the hon'ble Supreme Court in the State of West Bengal vs Calcutta Club Ltd. wherein the club was supplying food & beverages to its members but was not paying Sales Tax on the supply of the same. The case entered litigation with the West Bengal VAT authorities holding the club and its members as two different persons. The West Bengal Taxation Tribunal and Calcutta High Court upheld the 'principle of mutuality' and decided in favour of the club by stating that VAT is not applicable for supplies made by the club to its members. The revenue department chose to appeal in the Supreme Court wherein it also upheld the judgement of the Calcutta High Court that valuable consideration necessarily requires two persons and there cannot be sale to oneself.

Subsequent to this judgement, the government has made a retrospective amendment to the definition of 'Supply' in the Finance Act, 2021. The amended definition of supply now includes 'the activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration.'

But is the amendment constitutionally valid?

With the introduction of GST, Article 246A was introduced in the Constitution to provide both the Centre & the State to concurrently tax goods and services. The GST Council was established to ensure that enacted laws are complied with by the both the Centre & State.

The GST levy is on Supply as defined under section 7 of the CGST Act, 2017. As per Section 7, the supply definition does not mandate two separate parties in a transaction. The flow of consideration requires at least two parties to the transaction and this may see further litigation in courts based on this.

Taxability After Amendment:

Q. Is GST applicable on services provided to members by their clubs / associations?

A. A recent amendment in Finance Bill, 2021 to include services to members by clubs / associations:

- ✓ All activities / transactions by any club, association of persons or such other entity to its members or by the members to such entities are considered as 'supply'
- ✓ The activity / transaction must be carried out for some form of consideration such as cash, credit, barter, exchange or the like

The amendment has thus brought 'activities / transaction' between clubs / associations and its members under the purview of GST by considering it as a 'Supply'.



Q. What constitutes activities / transactions as provided in the amendment?

A. Activity literally means “the work of a group or organization to achieve an aim”. Hence, activities refer to the core intention put into action by groups or organizations for its members and which is usually the aim or vision of such organizations.

Transaction means “the process of doing business”. Hence, transactions refer to those processes undertaken by various groups or organizations to achieve their business goals and usually involves payment of cash or in kind for their goods or services.

Further, as per section 2(17)(e) of the CGST Act, 2017 business includes ‘provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members. Thus activities / transactions also refer to such facilities or benefits.

Q. From what date will GST be levied on the services by clubs / associations?

A. The amendment to the Finance Bill, 2021 will become effective from a date as notified by the Central Government and the State governments. On notification, the GST levy shall be applicable retrospectively, i.e., from 1st July, 2017.

Q. Is the retrospective amendment valid?

A. A popular principle of law is ‘lex prospicit non respicit i.e., law looks forward not backward. A law once passed is meant for present and future events and not for events already undertaken. Retrospective amendments can be held valid provided that

they are constitutionally legitimate. Constitutional legitimacy means the act or amendment must conform to the basic structure/principles of the constitution of India and should not be unjust to the citizens. Amendments are considered retrospective only if the language used clearly provides that the amendment will have a retrospective operation.

Normally, retrospective amendments are to be reserved in rare cases and used sparingly. In the case of Commissioner of Income Tax vs. Vatika Township, the Supreme Court held that if any legislation confers any benefit to some persons but without inflicting a corresponding detriment on some other person or on the public generally then that would warrant the legislation to have a retrospective effect.

The intention should be to rectify / cure any defects which may not be foreseen at the time of passing the legislation. Though the amendment for clubs / associations does have the principal requirements to be valid, it is to be seen if it would be challenged for its validity on previous favourable judgements and for cases arising during the interim of such retrospective amendment.

If retrospective amendment is held as valid, then interest on the GST payable and the respective penalty subject to voluntary compliance may be levied on the taxpayers. This may cause financial hardships to the taxpayers and may be litigious.

Q. What was the legal understanding prior to the amendment?

A. The Maharashtra Appellate for Advance Ruling had issued a ruling that fees collected for administrative expenditure and meetings, i.e., running the association or club does not constitute 'facilities or benefits' and therefore, no GST can be levied on the membership fees collected from the members.

And recently, the Karnataka Authority for Advance Ruling also issued a ruling that till the date the new amendments that classify activities and transactions by clubs / associations to its members as supply is notified, then till such date GST will not be leviable on such transactions.

Hence, based on these two rulings it can be understood that GST on membership fees collected by clubs / associations was not leviable.

Q. Is money / fee collected for Corpus Fund / Sinking fund subject to GST?

A. As per the amended definition, any activities or transactions shall be treated as supply. Accordingly, the tax authorities might ask to pay GST on corpus fund / sinking fund also. Further, in an Advance Ruling issued by the AAR-Karnataka, it was held that GST will be applicable on collections for setting up the Sinking Fund/ Corpus Fund of the association as it represents advances collected for future services to be provided by the association to its members. The advance ruling was issued on an application from Olety Landmark Apartment Owner's Association. Though advance rulings are not applicable for taxpayers other than the one making the application, it is entirely possible that the GST department may refer to it and use the ruling as a general interpretation and start issuing notices.



ARTICLE - 2

Mission Oxygen Independence

SPECIAL INCENTIVES TO LIQUID MEDICAL OXYGEN MANUFACTURING ALONG WITH STORAGE AND CYLINDER FILLING FACILITY (LMO)

- 01 Industries department, Government of Maharashtra has announced above scheme on 21st May, 2021.
- 02 Due to situation created by Corona Pandemic since March 2020 the requirement of Medical Oxygen in state has is on priority.
- 03 The present capacity is 1300 MT per day but current requirement is 1800 MT per day.
- 04 3rd wave of Corona is expected within 4 to 5 months so the demand of Medical Oxygen may increase by 500 MT per day.
- 05 Therefore the need for the state shall be of 2300 MT per day.
- 06 So government has announced special scheme for New units as well as units under Expansion.
- 07 MSME with Fixed Capital Investment (FCI) upto 50 Crores will be eligible for special incentives. They have to go in production by 31/03/2022.
- 08 New as well as existing Units manufacturers of LMO with capacity of more than 25 MT per day going in to production before 31/12/2021 will be eligible for capital subsidy.
- 09 The time limit to start production for units with capacity of 50 MT per day and above is 30/06/ 2022. They shall be eligible for special capital incentive if they go in production within the above date.
- 10 The investment period for these units will be of 2 years commencing from 01/04/2021.
- 11 Units which have gone in production after 01/04/2021 shall be eligible incentives under the scheme.
- 12 The application should be submitted to the Development Commissioner (Industries), Directorate of Industries, Mumbai before 30/06/2021 only.

13 The basis of incentives as per the location will be as follows:

Yearly Incentive Limit will be Total Incentive Amount divided by Incentive availment period.

SR. NO.	REGION / DISTRICT	% to eligible FCI
1	Vidharbha, Marathwada, Dhule, Nandurbar, Ratnagiri & Sindhudurg	150 %
2	Remaining Parts of the State	100 %

14 The LMO manufacturing units with capacity of 25 to 50 MT per day will have the period for availing incentives under the scheme to 9 years & the LMO manufacturing units with capacity of more than 50 MT per day will have the period for availing incentives under the scheme to 12 years.

15 For MSME units upto FCI of 50 Crores the incentive availment period is of 7 years.

16 Fixed Capital Investment comprises of :

✓ Land

✓ Building

✓ Plant & Machinery including Manifold, LMO transport Tankers, Cylinders for Oxygen filling & Refilling

✓ Oxygen producing Units with capacity of 25 MT per day and above should have storage capacity of 5 times the existing storage capacity.

✓ Other Assets

17 Investment in Forward linkage / Backward linkage by expansion units will be considered for incentives.

18 There should be increase in fixed capital investment and production capacity by 25% in case of expansion units for being eligible under the scheme .

INCENTIVES AVAILABLE TO THE ELIGIBLE UNITS

- 01 Capital Subsidy payable in 5 installments in proportion to the fixed Capital Investment made by the unit

SR. NO.	REGION / DISTRICT	Production Capacity (MT / Day)	% to Fixed Capital Investment	Maximum Ceiling (Amount in Crores)
1	Vidharbha, Marathwada, Dhule, Nandurbar , Ratnagiri & Sindhudurg	25 MT –50 MT	20 %	Rs. 10 Crores
		50 MT & above	20 %	Rs. 15 Crores
2	Remaining Parts of the State	25 MT –50 MT	10 %	Rs. 5 Crores
		50 MT & above	10 %	Rs. 10 Crores

- 02 Industrial Promotion Subsidy will 100% on Gross SGST of first sale .
- 03 Stamp duty exemption for plot purchase, lease, Bank Term loan, Hypothecation during the investment period.
- 04 Electricity Duty Exemption: corresponding to the incentive availment period.
- 05 Power Tariff Subsidy: Rs. 2/- per unit for a period of 5 years. This is not included in the annual cap.
- 06 MSME units upto FCI of 50 Crores - Interest on Term loan taken for fixed assets from the banks / public Financial institutes (It will be limited to double the amount of electric bills paid during the financial year)

For more clarity and for taking any decision requested to refer the Government Resolution in Marathi dated : 21 st May, 2021

CASE LAWS

Facts of the case: M/S. HADI POWER SYSTEMS – AAR KARNATAKA

The applicant is an electrical contractor and a registered entity under the GST. Ocean Constructions (India) Pvt. Ltd., the main contractor, received a contract from Karnataka Neeravari Nigam Ltd., a government company, for civil, electrical and mechanical works. The main contractor subcontracted certain electrical works to M/s. Shaaz Electricals and they in turn entered into another sub-contract with the applicant for providing electrical works. The applicant approached the AAR to determine whether the GST rate chargeable by them to Shaaz Electricals is 12% or 18%.

Provisions of the law:

Under clause (ix) to serial number 3 of Notification 11/2017-Central Tax (Rate) dated 28-06-2017 – 'Composite supply of works Contract as defined in clause(119)of section 2 of the Central Goods and Services Tax Act, 2017 provided by a sub - contract or to the main contractor Providing services specified in item (iii) or item (vi) above to the Central Government, State Government, Union territory, a local authority, a Governmental Authority or a Government Entity' attracts 12% GST rate 'provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union territory or local authority, as the case maybe'.

Ruling:

The AAR - Karnataka held that the privity of contract is between the applicant and the M/s. Shaaz Electricals, however M/s. Shaaz Electricals is not covered under Central Government, State Government, Union Territory, a local authority or a Governmental Authority or a Government Entity and hence the supply made by the applicant is not covered entry no.3 (iii) of Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017'. The AAR ruled that the main contractor, Ocean Constructions (India) Pvt. Ltd and the sub-contractor M/s. Shaaz Electricals would be eligible for concessional rate of 12% GST. Whereas, the applicant is a sub-contractor to the sub-contractor and therefore does not attract concessional rate.

CASE LAWS

Facts of the case: M/S. D.Y. BEATHEL ENTERPRISES VERSUS THE STATE TAX OFFICER – MADRAS HIGH COURT

The petitioner is a person registered under Tamil Nadu GST and has received goods from his supplier, Mr. Charles for which he has paid GST and claimed the same as Input Tax Credit (ITC). It was subsequently found by the Tamil Nadu GST department that the petitioner's supplier, Mr. Charles has not paid the collected GST to the government. Hence, proceedings to recover the ITC claimed by the petitioner were initiated without attempting to recover the same from Mr. Charles. Aggrieved by this, the petitioner approached the Madras HC for relief.

Provisions of the law:

As per Section 16 (2)(c) of the CGST Act, 2017 ITC will be eligible to be claimed only if 'the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply.'

Further, as per a press release by the GST council on 04.05.2018 it has been stated that 'there shall not be any automatic reversal of input tax credit from the buyer on nonpayment of tax by the seller. In case of default in payment of tax by the seller, recovery shall be made from the seller. However, reversal of credit from buyer shall also be an option available with the revenue authorities to address exceptional situations like missing dealer, closure of business by the supplier or the supplier not having adequate assets etc.'

Ruling:

The Madras HC questioned the respondent GST department as to why the supplier Mr. Charles was not questioned and demand raised against him for non-remission of taxes collected. The HC also stated that when it has come out that the seller has collected tax from the purchasing dealers, the omission on the part of the seller to remit the tax in question must have been viewed very seriously and strict action ought to have been initiated against him. Hence, the HC remanded the case back to the GST department asking them to initiate recovery proceedings against Mr. Charles and quash the demand order against the petitioner.

NOTIFICATIONS AND CIRCULARS FOR THE MONTH OF MAY & JUNE 2021

- ✓ Twenty Central Tax Notification.
- ✓ Twenty Karnataka State Tax Notification.
- ✓ Three Central Tax Rate Notifications.
- ✓ Three Karnataka State Tax Rate Notification.
- ✓ Three Integrated Tax Notification.
- ✓ Three Integrated Tax Rate Notification.
- ✓ One Central Tax Circular.

Sl. No	Subject	Notifications/Circulars No. Date of Issue
1	Seeks to provide relief by lowering of interest rate for the month of March and April, 2021	08/2021-Central Tax dated 01.05.2021
2	Seeks to amend notification no. 76/2018-Central Tax in order to provide waiver of late fees for specified taxpayers and specified tax periods	09/2021-Central Tax dated 01.05.2021
3	Seeks to extend the due date for filing FORM GSTR-4 for financial year 2020-21 to 31.05.2021	10/2021-Central Tax dated 01.05.2021
4	Seeks to extend the due date for furnishing of FORM ITC-04 for the period Jan-March, 2021 till 31st May, 2021	11/2021-Central Tax dated 01.05.2021
5	Seeks to extend the due date of furnishing FORM GSTR-1 for April, 2021	12/2021-Central Tax dated 01.05.2021
6	Seeks to make third amendment (2021) to CGST Rules	13/2021-Central Tax dated 01.05.2021
7	Seeks to extend specified compliances falling between 15.04.2021 to 30.05.2021 till 31.05.2021 in exercise of powers under section 168A of CGST Act	14/2021-Central Tax dated 01.05.2021
8	Seeks to make fourth amendment (2021) to CGST Rules, 2017	15/2021-Central Tax dated 18.05.2021
9	Seeks to appoint 01.06.2021 as the day from which the provisions of section 112 of Finance Act, 2021, relating to amendment of section 50 of the CGST Act, 2017 shall come into force	16/2021-Central Tax dated 01.06.2021



Sl. No	Subject	Notifications/Circulars No. Date of Issue
10	Seeks to extend the due date for FORM GSTR-1 for May, 2021 by 15 days	17/2021-Central Tax dated 01.06.2021
11	Seeks to provide relief by lowering of interest rate for a specified time for tax periods March, 2021 to May, 2021	18/2021-Central Tax dated 01.06.2021
12	Seeks to rationalize late fee for delay in filing of return in FORM GSTR-3B ; and to provide conditional waiver of late fee for delay in filing FORM GSTR-3B from July, 2017 to April, 2021; and to provide waiver of late fees for late filing of return in FORM GSTR-3B for specified taxpayers and specified tax periods	19/2021-Central Tax dated 01.06.2021
13	Seeks to rationalize late fee for delay in furnishing of the statement of outward supplies in FORM GSTR-1	20/2021-Central Tax dated 01.06.2021
14	Seeks to rationalize late fee for delay in filing of return in FORM GSTR-4	21/2021-Central Tax dated 01.06.2021
15	Seeks to rationalize late fee for delay in filing of return in FORM GSTR-7	22/2021-Central Tax dated 01.06.2021
16	Seeks to amend Notification no. 13/2020-Central Tax to exclude government departments and local authorities from the requirement of issuance of e-invoice	23/2021-Central Tax dated 01.06.2021
17	Seeks to amend notification no. 14/2021-Central Tax in order to extend due date of compliances which fall during the period from "15.04.2021 to 29.06.2021" till 30.06.2021	24/2021-Central Tax dated 01.06.2021
18	Seeks to extend the due date for filing FORM GSTR-4 for financial year 2020-21 to 31.07.2021	25/2021-Central Tax dated 01.06.2021
19	Seeks to extend the due date for furnishing of FORM ITC-04 for QE March, 2021 to 30.06.2021.	26/2021-Central Tax dated 01.06.2021
20	Seeks to make amendments (Fifth Amendment, 2021) to the CGST Rules, 2017	27/2021-Central Tax dated 01.06.2021



Sl. No	Subject	Notifications/Circulars No. Date of Issue
21	Seeks to provide relief by lowering of interest rate for the month of March and April, 2021	(04/2021) FD 16 CSL 2021 03-05-2021
22	Seeks to amend notification no. 76/2018-Central Tax in order to provide waiver of late fees for specified taxpayers and specified tax periods	05/2021) FD 16 CSL 2021 06-05-2021
23	Seeks to extend the due date for filing FORM GSTR-4 for financial year 2020-21 to 31.05.2021	(06/2021) FD 16 CSL 2021 06-05-2021
24	Seeks to extend the due date for furnishing of FORM ITC-04 for the period Jan-March, 2021 till 31st May, 2021	(02/2021)-KGST.CR. 01/17-18 03-05-2021
25	Seeks to extend the due date of furnishing FORM GSTR-1 for April, 2021	(03/2021)-KGST.CR. 01/17-18 03-05-2021
26	Seeks to make third amendment (2021) to CGST Rules	NA
27	Seeks to extend specified compliances falling between 15.04.2021 to 30.05.2021 till 31.05.2021 in exercise of powers under section 168A of CGST Act	(07/2021) FD 16 CSL 2021 06-05-2021
28	Seeks to make fourth amendment (2021) to CGST Rules, 2017	NA
29	Seeks to appoint 01.06.2021 as the day from which the provisions of section 112 of Finance Act, 2021, relating to amendment of section 50 of the CGST Act, 2017 shall come into force	NA
30	Seeks to extend the due date for FORM GSTR-1 for May, 2021 by 15 days	(04/2021)-KGST.CR. 01/17-18 03/06/2021
31	Seeks to provide relief by lowering of interest rate for a specified time for tax periods March, 2021 to May, 2021	NA
32	Seeks to rationalize late fee for delay in filing of return in FORM GSTR-3B ; and to provide conditional waiver of late fee for delay in filing FORM GSTR-3B from July, 2017 to April, 2021; and to provide waiver of late fees for late filing of return in FORM GSTR-3B for specified taxpayers and specified tax periods	NA

Sl. No	Subject	Notifications/Circulars No. Date of Issue
33	Seeks to rationalize late fee for delay in furnishing of the statement of outward supplies in FORM GSTR-1	NA
34	Seeks to rationalize late fee for delay in filing of return in FORM GSTR-4	NA
35	Seeks to rationalize late fee for delay in filing of return in FORM GSTR-7	NA
36	Seeks to amend Notification no. 13/2020-Central Tax to exclude government departments and local authorities from the requirement of issuance of e-invoice	NA
37	Seeks to amend notification no. 14/2021-Central Tax in order to extend due date of compliances which fall during the period from "15.04.2021 to 29.06.2021" till 30.06.2021	NA
38	Seeks to extend the due date for filing FORM GSTR-4 for financial year 2020-21 to 31.07.2021	NA
39	Seeks to extend the due date for furnishing of FORM ITC-04 for QE March, 2021 to 30.06.2021	(05/2021)-KGST.CR. 01/17-18 03/06/2021
40	Seeks to make amendments (Fifth Amendment, 2021) to the CGST Rules, 2017	NA
41	Seeks to amend notification No. 1/2017-Central Tax (Rate) to prescribe change in CGST rate of goods	01/2021-Central Tax (Rate) ,dt. 02-06-2020
42	Seeks to amend notification No. 11/2017- Central Tax (Rate) so as to notify CGST rates of various services as recommended by GST Council in its 43rd meeting held on 28.05.2021	02/2021-Central Tax (Rate) ,dt. 02-06-2020
43	Seeks to amend notification No. 06/2019- Central Tax (Rate) so as to give effect to the recommendations made by GST Council in its 43rd meeting held on 28.05.2021	03/2021-Central Tax (Rate) ,dt. 02-06-2020
44	Seeks to amend notification No. 1/2017-Central Tax (Rate) to prescribe change in CGST rate of goods	(01/2021) FD 55 CSL 2021 02/06/2021

Sl. No	Subject	Notifications/Circulars No. Date of Issue
45	Seeks to amend notification No. 11/2017- Central Tax (Rate) so as to notify CGST rates of various services as recommended by GST Council in its 43rd meeting held on 28.05.2021	(02/2021) FD 55 CSL 2021 02/06/2021
46	Seeks to amend notification No. 06/2019- Central Tax (Rate) so as to give effect to the recommendations made by GST Council in its 43rd meeting held on 28.05.2021	(03/2021) FD 55 CSL 2021 02/06/2021
47	Seeks to provide relief by lowering of interest rate for the month of March and April, 2021	01/2021- Integrated Tax dated 01-05-2021
48	Seeks to provide relief by lowering of interest rate for a specified time for tax periods March, 2021 to May, 2021.	02/2021- Integrated Tax dated 01-06-2021
49	Seeks to amend Notification No. 4/2019-Integrated Tax dt. 30.09.2019 to change the place of supply for B2B MRO services in case of Shipping industry, to the location of the recipient	03/2021- Integrated Tax,dt. 02-06-2021
50	Seeks to amend notification No. 1/2017- Integrated Tax (Rate) to prescribe change in CGST rate of goods	01/2021-Integrated Tax (Rate) ,dt. 02-06-2021
51	Seeks to amend notification No. 08/2017- Integrated Tax (Rate) so as to notify CGST rates of various services as recommended by GST Council in its 43rd meeting held on 28.05.2021	02/2021-Integrated Tax (Rate) ,dt. 02-06-2021
52	Seeks to amend notification No. 06/2019- Integrated Tax (Rate) so as to give effect to the recommendations made by GST Council in its 43rd meeting held on 28.05.2021	03/2021-Integrated Tax (Rate) ,dt. 02-06-2021
53	Seeks to prescribe Standard Operating Procedure (SOP) for implementation of the provision of extension of time limit to apply for revocation of cancellation of registration under section 30 of the CGST Act, 2017 and rule 23 of the CGST Rules, 2017.	148/04/2021-GST dated z

DUE DATES OF GST FOR THE MONTH OF JUNE 2021

JUNE

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
		1	2	3	4	5
6	7	8	9	GSTR-7 & GSTR-8 10	*GSTR-1 11	12
*IFF/GSTR-1& GSTR-6 13	14	15	16	17	CMP-08 18	19
GSTR- *3B & 5/5A 20	21	GSTR-*3B 22	23	24	25	26
27	28	29	GSTR-4(FY 2020-21) 30			

2021

- * For taxpayers with Annual Turnover more than Rs. 5 Crores or who have opted for monthly return.
- * For taxpayers with Annual Turnover less than Rs. 5 Crores and who have opted for QRMP scheme.
- * For taxpayers who have opted for monthly return.
- * For taxpayers who have opted for QRMP scheme.

The GST Council has announced a slew of relief measures to taxpayers on GST compliances for the months of April, May & June 2021. Please visit our website for more information on the same.



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