



*Your GST Knowledge Partner*



# **The GST Bulletin**

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## About The GST Bulletin

The GST Bulletin is a Weekly Newsletter from Team CGA Legal, a leading Indirect Tax Consultancy firm. The Newsletter is intending to keep its readers updated with all important legal and judicial updates in Goods & Services Tax and other Indirect Tax laws. The Newsletter also has a special column of GST Compliance Calendar for the month. Along with it, CGA Legal also sends various legal recommendations which have immense implications in improving the compliance of GST in your business.

All editions of our newsletters can be referred from below link below;

<https://www.cgalegal.co.in/home/newsletters.php>

## Other Offerings from Team CGA Legal

- **CGA Legal GST Compliance Calendar:** Our Monthly Calendar detailing all GST related compliances for the month so that you never miss of any of the compliances.
- **CGA Legal Meet:** Our Monthly Webinar series discussing various trending GST legal and compliance issues

All the previous editions can be accessed on our website

[www.cgalegal.co.in](http://www.cgalegal.co.in)

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## GST Updates - GST Technical Updates

**CBIC enabled new feature, now users can directly check BOE Transmission status to GSTN at ICEGATE**

**Dated: 19-04-2022**

The Central Board of Indirect Taxes & Customs (CBIC) has enabled a new feature, now SEZ units can check the status of integration of their Bills of Entry (DTA Sale) with GSTN, on ICEGATE.

Go to Public Enquiry > Get BE Details Link or Visit

[https://enquiry.icegate.gov.in/BE\\_HelpDesk\\_View/getInsertBEDetailsPage](https://enquiry.icegate.gov.in/BE_HelpDesk_View/getInsertBEDetailsPage)

Source: [https://twitter.com/cbic\\_india/status/1516372945538805763](https://twitter.com/cbic_india/status/1516372945538805763)

## GST News

### **GST Council May Do Away With 5% Slabs In Meet Next Month**

**Dated: 19-04-2022**

The GST Council in its meeting next month may consider a proposal to do away with the five per cent slab by moving some goods of mass consumption to three per cent and the remaining to eight per cent categories, news agency PTI reported. The Council may also decide to prune the list of exempt items by moving some of the non-food items to 3 per cent slab.

The report said discussions are on to raise the 5 per cent slab to either 7 or 8 or 9 per cent, a final call will be taken by the GST Council which comprises finance ministers of both Centre and states. The Council is most likely to settle for an 8 per cent GST for most items that currently attract 5 per cent levy.

According to an FE report earlier, the government is also planning to reduce the number of GST slabs from the current four to three. The report said a new media slab of 15 per cent may be introduced in place of 12 per cent and 18 per cent slabs. "The 5 per cent rate will be replaced by a new rate which will be 6 per cent or 7 per cent, but the rate tweaking will be done in a manner that not more than four slabs are created at any point of time," the report said.

*Source:*

<https://www.news18.com/news/business/tax/gst-council-may-do-away-with-5-slabs-in-meet-next-month-know-in-details-5005195.html>

## GST – Judicial Precedents

### 1. Supply

**Whether liquidated damages/penalties received by the applicant can be said to be for any 'supply' under the CGST, 2017, thereby attracting the levy of 'GST' or should be treated as price adjustment to the main supply?**

#### **M/s. The Singareni Collieries Company Limited [AAR Telangana]**

**Held:** When the parties to a contract specify the time for its performance, it is expected that either party will perform his obligation at the stipulated time. But if one of them fails to do so, the question arises what is the effect upon the contract.

A combined reading of the provisions of sub-section (1) & (3) of Section 55 of the Indian Contract Act, 1872 reveals that a failure to perform the contract at the agreed time renders it voidable at the option of the opposite party and alternatively such party can recover compensation for such loss occasioned by non-performance - Section 73 & 74 of the Indian Contract Act enables recipient of supplies under a contract to be compensated with damages for breach of any provision of the contract.

In the present case, Liquidated damages are claimed by the applicant from the contractor due to the delay in performance of the contract, beyond the date prescribed in such contract by the contractor. Similarly, penalties are fixed for breach of the provisions of the contract. These amounts are consideration for tolerating an act or a situation arising out of the contractual obligation - Further Section 2(31)(b) of the CGST Act mentions that consideration in relation to the supply of goods or services or both includes the monetary value of an act of forbearance. Therefore, such a toleration of an act or a situation under an agreement constitutes supply of service and the consideration or monetary value is exigible to tax.

The Consideration received for such forbearance is taxable under CGST and SGST @9% each under the chapter head 9997 at serial no. 35 of Notification No.11/2017-Central/State tax rate.

**CGA Comment:** *Contrary view has been taken on the taxability of Liquidated damages in case of Madhya Pradesh Kshetra Vidyut Vitran Company Ltd. Vs Commissioner of CGST [CESTAT New Delhi] and various other judgments.*

## GST – Judicial Precedents

### 2. Exemption

#### Whether Treated Water obtained from Sewage Treatment Plant is eligible for exemption?

#### **M/s. Rashtriya Chemicals and Fertilizers Limited [AAAR Maharashtra]**

**Facts:** The Appellant have a Sewage Treatment Plant (“STP”) at its Trombay premises. This plant uses sewage water and converts it into water for use in the factory for manufacture of the fertilizers.

The Appellant had preferred an application for Advance Ruling under Section 97 of CGST Act, 2017 before the MAAR on the following questions of law as to -

Q. Whether “Treated Water” obtained from STP [classifiable under Chapter 2201] will be eligible for exemption from GST by virtue of SI. No. 99 of the Exemption Notification No. 02/2017- Integrated Tax (Rate) dated 28 June 2017 (as amended) having entry as “Water [other than aerated, mineral, purified, distilled, medicinal, ionic, battery, de-mineralized and water sold in sealed container]”? or

Q. Whether “Treated Water” obtained from STP [classifiable under Chapter 2201] is taxable at 18% by virtue of SI. No. 24 of Schedule -III of Notification No. 01/2017- Integrated Tax (Rate) dated 28th June 2017 (as amended) as “Waters, including natural or artificial mineral waters and aerated waters, not containing added sugar or other sweetening matter nor flavoured [other than Drinking water packed in 20 litres bottles]”?

AAR held that “Treated Water” obtained from STP [classifiable under Chapter 2201] will not be eligible for exemption from GST by virtue of SI. No. 99 of the Exemption Notification No. 02/2017- Integrated Tax (Rate) dated 28 June 2017 (as amended) and the same will be taxable at the rate of 18% in terms of the entry at the SI. No. 24 of the Schedule III to the Notification No. 1/2017- I.T. (Rate) dated 28.06.2017. Being aggrieved by this Ruling, applicant preferred this appeal.

## GST – Judicial Precedents

### 2. Exemption

#### Whether Treated Water obtained from Sewage Treatment Plant is eligible for exemption?

##### **M/s. Rashtriya Chemicals and Fertilizers Limited [AAAR Maharashtra]**

On perusal of the facts of the case, it is seen that the impugned product, i.e., STP treated water, is obtained after carrying out various physical and biological processes on the sewage water. By carrying out the said physical and biological processes on the sewage water inside the Sewage Treatment Plant, the sewage water is made free from various organic and inorganic substances, such as suspended particles, grit, clays, pollutants like nitrogen, phosphorus, etc. However, even after carrying out the said physical and biological processes, water coming out from the Sewage Treatment Plant still contains various biological contaminants such as bacteria, virus, E coli, along with other impurities. Thus, it can be safely concluded that the resultant water is not pure due to presence of the said impurities and foreign elements - Thus, it is adequately clear that water containing anything apart from the Hydrogen and Oxygen will not be construed as pure water. It is further observed that even potable water, which is fit for human consumption, will not be treated as pure water due to the presence of various minerals and ether elements like chlorine, which are added to it to kill the harmful micro-organisms that causes diseases.

All these groups of specific water mentioned under the exclusion clause of the relevant entry are supplied in the packaged form, i.e., in the sealed container, in order to preserve their characteristics and specificity, while the same is not the case with the impugned product, i.e., STP treated water, which are supplied through pipelines without any such concerns - it is amply clear that the term “purified”, mentioned under the exemption clause of the relevant entry, will definitely not include the STP treated wager. Hence, the impugned product, i.e., STP treated water, is rightfully eligible for exemption under entry at Sl. No. 99 of the exemption notification no. 02/2017-C.T. (Rate) dated 28.06.2017.



## GST – Judicial Precedents

### 3. Registration

**Whether separate registration is required in the state in which goods are imported if the said goods are directly sold from the port of importation to the customers located across different states in India?**

**M/s. Euroflex Transmissions (India) Private Limited [AAR Telangana]**

**Facts:** The applicant M/s. Euroflex Transmissions (India) Private Limited wishes to supply some of the imported goods directly from the port of importation to the customers located across different states in India without bringing such goods to the Applicant's registered premises located in the State of Telangana by raising tax invoice from Telangana location. The applicant sought AAR on the following issues:

1. Whether the Applicant is required to obtain registration in the state in which goods are imported if the said goods are directly sold from the port of importation to the customers located across different states in India?
2. Whether the Applicant is entitled to avail Input Tax Credit of IGST paid on import of goods if the said goods are sold directly from the port of importation to the customers located across different states in India, without bringing such goods into Telangana?

**Held:** The transactions made by the applicant after clearing them from customs in their own account are subsequent sales and not sales in course of import, where the customs clearance will be made by the purchaser in which case the transactions will be covered under Entry 8 of Schedule III to the CGST Act, 2017 prescribed above. Therefore, this subsequent sale when made to a customer within the State of Telangana will be an intra State sale liable to CGST & SGST and when such sale is made to a customer in other States of a country it will be a Inter-State sale liable to IGST.

It is seen that the applicant has already obtained a registration in the state of Telangana. Therefore this registration is sufficient to cover the transactions or supplies in nature described by the applicant.

Further, under Section 16 of the CGST Act, 2017 read with Section 20 of IGST Act, the IGST paid on imports is eligible to be availed as Input Tax Credit (ITC) both on intra-state and inter-state sales.

## GST – Judicial Precedents

### 4. Rectification of GSTR-1

**Honorable High Court exercised its discretionary power to allow rectification in GSTR-1 for supplies relating to Deemed Exports**

**M/s. Screenotex Engineers Pvt Ltd through its Director Hemantkumar Maneklal Patel versus Commissioner of CGST [Gujarat High Court]**

**Held:** Section 37 of the GST Act is with respect to the furnishing of details of the outward supplies. In accordance with Section 37 of the Act, every registered person other than an input service distributor, a non resident taxable person and a person paying tax under the provisions of Section 10, Section 51 or Section 52 respectively, is obliged to furnish electronically in such form and manner the details of the outward supplies of goods or services or both effected during a tax period on or before the tenth day of the month succeeding the said tax period. Such details are to be communicated to the recipient of the said supplies within such time and in such manner that may be prescribed.

We are not getting into the controversy whether there was any mistake on the part of the writ applicant No.1 so far as the GSTR-1 is concerned. The department permitted the writ applicant No.1 to amend the GSTR-1 with respect to all the nine invoices however, for some reason or the other, the writ applicant No.1 was in a position to amend only four such invoices. He is here before this Court as he is not able to amend the remaining five. There is a controversy whether those five invoices could have also been amended in the first instance or not - One last opportunity is granted to the writ applicant to get his GSTR-1 with respect to all the five invoices amended for one last time.

The Respondents are directed to process the request of the writ applicant No. 1 for carrying out amendment in its GSTR -1 returns pertaining to the respective months in 2019 in all the aforesaid writ petitions with respect to ticking of the 'Deemed Export' column in regard to the balance 5 invoices, which the writ applicant did not amend in the first request, however, the respondents are granted liberty to undertake necessary exercise to verify the same with the recipient as well - Application disposed off.

# CONTACT US



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