**Circular No. 80/54 /2018-GST**

**F. No.354/432/2018-TRU**
**Government of India**
**Ministry of Finance**
**Department of Revenue**
**(Tax Research Unit)**
*****

**North Block, New Delhi**
**Dated 31st December, 2018**

**To,**

**Principal Chief Commissioners/ Principal Directors General,**
**Chief Commissioners/ Directors General,**
**Principal Commissioners/ Commissioners of Central Excise & Central Tax**

**Madam/ Sir,**

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**Subject: Clarification regarding GST rates & classification (goods)–reg.**

Representations have been received seeking clarification in respect of applicable GST rates on the following items:

(i) Chhatua or Sattu
(ii) Fish meal and other raw materials used for making cattle/poultry/aquatic feed
(iii) Animal Feed Supplements/ feed additives from drugs
(iv) Liquefied Petroleum Gas for Domestic Use
(v) Polypropylene Woven and Non-Woven Bags and PP Woven and Non-Woven Bags laminated with BOPP
(vi) Wood logs for pulping
(vii) Bagasse based laminated particle board
(viii) Embroidered fabric sold in three pieces cloth for lady suits
(ix) Waste to Energy Plant-scope of entry No. 234 of Schedule I of notification No.1/2017- Central Tax (Rate) dated 28.6.2017
(x) Turbo Charger for railways
(xi) Rigs, tools & Spares moving inter-state for provision of service

2. The matter has been examined. The issue-wise clarifications are discussed below:

3. **Applicability of GST on Chhatua or Sattu:**

3.1 Doubts have been raised regarding applicability of GST on Chhatua (Known as "Sattu" in Hindi Belt).

3.2 Chhatua or Sattu is a mixture of flour of ground pulses and cereals. HSN code 1106 includes the flour, meal and powder made from peas, beans or lentils (dried leguminous vegetables falling under 0713). Such flour improved by the addition of very small amounts of additives continues to be classified under HSN code 1106. If unbranded, it attracts Nil GST (S. No. 78 of notification No. 2/2017-Central Tax (Rate) dated 28.06.2017) and if branded and packed it attracts 5% GST (S. No. 59 of schedule I of notification No. 1/2017-Central Taxes (Rate) dated 28.06.2017).

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4. **Applicable GST rate on Fish meal and other raw materials used for making cattle/poultry/aquatic feed:**

4.1. Representations have been received seeking clarification regarding GST rate applicable on the other raw materials/inputs used for making cattle/poultry/aquatic feed. The classification dispute here is between the following two entries in the two notifications. The details are as under:

| Notification | Tariff Line | Description | Rate |
|---|---|---|---|
| S. No. 102 of notification No. 2/2017- Central Tax (Rate) dated 28.6.2017 | **2301**, 2302, 2308, **2309** | **Aquatic feed** including shrimp feed and prawn feed, **poultry feed & cattle feed**, including grass, hay & straw, supplement & husk of pulses, concentrates & additives, wheat bran & de-oiled cake | NIL |
| S. No. 103 of notification No. 1/2017- Central Tax (Rate) dated 28.6.2017 | **2301** | Flours, **meals** and pellets, of meat or meat offal, **of fish** or of crustaceans, molluscs or other aquatic invertebrates, **unfit for human consumption**; greaves | 5% |

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4.2 A number of raw materials such as fish meal falling under heading 2301, meat and bone meal also falling under heading 2301, oil cakes of various oil seeds, soya seeds, bran, sharps, residue of starch and all other goods falling under headings 2302, 2303, 2304, etc are used to manufacture/formulation of, aquatic feed, animal feed, cattle feed, poultry feed etc. These raw materials/inputs cannot be directly used for feeding animal and cattle. The Larger Bench of the Hon'ble Supreme Court in the Commissioner of Customs (Import), Mumbai vs. Dilip Kumar [2018 (361) E.L.T 577] has laid down that inputs for animal feed are different from the animal feed. Said S. No. 102 covers the prepared aquatic/ poultry/cattle feed falling under headings 2309 and 2301. This entry does not apply to raw material/inputs like fish meals or meat cum bone meal (MBM) falling under heading 2301.

4.3 It is accordingly clarified that fish meals, meat cum bone meal (MBM) etc., attract 5% GST under S. No. 103 in notification No. 1/2017- Central Tax (Rate) dated 28.6.2017

5. **Applicable GST rate on Animal Feed Supplements/feed additives from drugs:**

5.1. Representations have been received seeking clarification regarding GST rate applicable on Animal Feed Supplements/feed additives from drugs. The dispute is in classification of Animal Feed Supplements/feed additives from drugs between tariff heading 2309 and 2936.

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5.2 As per the HSN, 2309 interalia covers reading vitamins and provitamins which improve digestion and, more generally, ensure that the animal makes good use of the feeds and safeguard its health. On the other hand, HS code 2936 coves vitamins and provitamins which are medicinal in nature and have much higher concentration of active substance.

5.4 Thus while deciding the classification of the products claimed to be animal feed supplements, it may be necessary to ensure that the said animal feed supplements are ordinarily or commonly known to the trade as products for a specific use in animal feeding.

5.5 A product deserves classification chapter 29 ( equally applicable to heading 2936), if it is an item of general use, e.g., if a product is of specific use, say dietary supplement for human being product particularly suitable for a specific use rather than for general use. Vitamins and provitamins are normally covered under code

heading 2936, but if they're prepared as food supplements in the form of tablets, etc. they would not be classifiable under this heading as the way they are presented, they are suitable for a specific use. Heading 2309 would cover items like feed supplements for animals that contain vitamins and other ingredients - such as cereals and proteins. These are covered in chapter 23 under heading code 2309, or antibiotic preparations used in animal feeding - for example a dried antibiotic mass on a carrier like cereal middling. The antibiotic content in these items is usually between 8% and 16%. Thus, HS code 2309 would cover only such product, which in the form supplied, are capable of specific use as food supplement for animals and not capable of any general use. If the vitamins, provitamins are supplied in a form in which they are capable of general use, i.e. in the form in which it could be used as inputs or raw materials for further processing, instead of being ready to use, then these would be classifiable under heading 2936.

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**6. Applicability of GST on supply of Liquefied Petroleum Gas for Domestic Use:**

6.1 Representations have been received seeking clarification regarding applicability of GST rate at 5% on LPG supplied by refiners/fractionators (like GAIL / ONGC) to Oil Marketing Companies (OMC) for ultimate supply to household domestic consumers in terms of Ministry of Petroleum and Natural Gas (MoPNG) letter No. P 20023/2/2011-PP dated 23.07.2013. The references point to the fact that refiners/ fractionators like GAIL and ONGC are supplying LPG for domestic use to OMCs and this supply is not being treated as a supply for domestic use by field formations.

6.2 The issue seems to have arisen in the context of addition of S. No. 165A to notification No.1/2017-Central Tax (Rate) dated 28.6.2017, vide notification No. 6/2018 dated 25.01.2018. This entry was added on the recommendations of the GST Council in its 25th meeting, extending 5% GST rate for supply of LPG to household domestic consumers.

6.3 It is observed that the LPG stream for domestic LPG is differentially priced and packed differently from commercial LPG. The usage of LPG for domestic supply is known at the time of supply being made by refiner/fractionators to OMCs.

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6.4 Therefore, it is being clarified that LPG supplied in bulk, whether by a refiner/fractionator to an OMC or by one OMC to another for bottling and further supply for domestic use will fall under the S. No. 165A of the notification No. 1/2017- Central Tax (Rate) dated 28.06.2017 and shall, accordingly, attract a GST rate of 5%, with effect from 25.1.2018.

7. **Applicability of GST on supply of Polypropylene Woven and Non-Woven Bags and PP Woven and Non-Woven Bags laminated with BOPP:**

7.1 Representations have been received seeking the classification and GST rates on Polypropylene Woven and Non-Woven Bags and Polypropylene Woven and Non-Woven Bags laminated with BOPP

7.2 As per the explanatory notes to the HSN to HS code 39.23, the heading covers all articles of plastics commonly used for the packing or conveyance of all kinds of products and includes boxes, crates, cases, sacks and bags.

7.3 Further as per the Chapter note to Chapter 39, the expression "plastics" means those materials of headings 39.01 to 39.14 which are or have been capable, either at the moment of polymerization or at some subsequent stage, of being formed under external influence (usually heat and pressure, if necessary with a solvent or plasticizer) by moulding, casting, extruding, rolling or other process into shapes which are retained on the removal of the external influence.

7.4 Thus it is clarified that Polypropylene Woven and Non-Woven Bags and PP Woven and Non-Woven Bags laminated with BOPP would be classified as plastic bags under HS code 3923 and would attract 18% GST.

7.5 Non-laminated woven bags would be classified as per their constituting materials.

8. **Applicability of GST on supply of wood logs for pulping:**

8.1. Representation has been received seeking clarification on applicability of GST rate on wood log for pulping. Wood in the rough (whether or not stripped of bark or sapwood, or roughly squared) is classified under heading 4403 and attracts 18% GST.

8.2 As per HSN, heading 4403 also covers.

*"timber for sawing; poles for telephone, telegraph or electrical power transmission lines; unpointed and unsplit piles, pickets, stakes, poles and props; round pit-props;*

***logs, whether or not quarter-split, for pulping****; round logs for the manufacture of veneer sheets, etc.; logs for the manufacture of match sticks, wood ware, etc.".*

8.3 Thus, it is clarified that wood logs or any kind of wood in the rough/timber, including the wood in rough/log/timber used for pulping falls under heading 4403 and attract GST at the rate of 18%.

9. **Applicability of GST on supply of Bagasse based laminated particle board*:***

9.1 Representation has been received seeking clarification on applicability of GST rate on Bagasse based laminated particle board. In this context, it is sated that the Bagasse Board has specific entry at S. No. 92 in Schedule II to the Notification 1/2017-Central Tax (Rate). Accordingly, the said entry covers Bagasse boards falling under 44 or any other chapter and 12% GST. Further, it is also stated the description "Bagasse board" in the said entry also covers Bagasse board [ whether plain or laminated].

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9.2 Thus, it is clarified Bagasse board [whether plain or laminated] falling under chapter 44 will attract concessional GST rate of 12%.

10. **Applicability of GST on supply of embroidered fabric sold in three piece for lady suits:**

10.1. Representations have been received seeking clarification regarding GST rate applicable on supply of embroidered fabric sold in three pieces fabric pack/set for lady suits (fabric for suit, salwar and dupatta)**.** It has been informed that before

becoming readymade articles or an apparel, the fabric is cut from bundles or *thans* and sold in that unstitched state with certain embellishment like gota etc. The consumers buy these sets or pieces and get it tailored which entails cutting of fabric in shape and stitching thereof. Doubts have arisen as regards applicable rates on such three fabric pieces in sets/packs.

10.2 Fabrics are classifiable under chapters 50 to 55 and 60 of the First Schedule to the Customs Tariff Act, 1975 on the basis of their constituent materials and attract a uniform GST rate of 5%. Garments and made up articles of textiles under chapters 61, 62 and 63 attract GST at the rate of 5% when value is upto Rs 1000 per piece and 12% when the value exceeds Rs. 1000 per piece.

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10.3 Earlier, vide Circular no. 13/13/2017-CGST dated 27th October 2017, it has been clarified that mere packing of fabrics into pieces of different lengths will not change the nature of these goods and such pieces of fabrics would continue to be classifiable under the respective heading as the fabric and attract the 5% GST rate. This clarification would equally apply to three pieces of fabrics sold in a pack as ladies salwar suit. Any embroidery on a fabric piece or certain embellishment thereon does not change the basic nature of their being a fabric. The chapter 63 covers garment, including the unstitched garments which may or may not be sufficiently completed to be identifiable as garments or parts of garments. However, heading 6307 would not cover a fabric pieces or a set of pre-packed fabric pieces, even if embroidered or embellished. Such set of fabric pieces would attract GST at the rate of 5%.

11. **Applicability of GST on supply of Waste to Energy Plant:**

11.1. Representations have been received regarding applicable GST rate on the goods used in the setting up of Waste to Energy plants (WTEP) in term of Sr. No. 234 of Schedule I of Notification No 1/2017-Central Tax (Rates) dated 28th June, 2018. The said entry 234 prescribes 5% rate on the following renewable energy devices & parts for their manufacture:

(a) Bio-gas plant

(b) Solar power based devices

(c) Solar power generating system

(d) Wind mills, Wind Operated Electricity Generator (WOEG)

(e) Waste to energy plants / devices

(f) Solar lantern / solar lamp

(g) Ocean waves/tidal waves energy devices/plant

(h) Photo voltaic cells, whether or not assembled in modules or made up into panels

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11.2 The notification specifically applies only the goods falling under chapters 84, 85 and 94 of the Tariff. Therefore, this concession would be available only to such machinery, equipment etc., which fall under Chapter 84, 85 and 94 and used in the initial setting up of renewable energy plants and devices including WTEP. This entry does not cover goods falling under other chapters, say a transport vehicle falling under Chapter 87 that may be used for movement of waste to WTEP.

11.3 Another related doubt raised is as to how would a supplier satisfy himself that goods falling under Chapter 84, 85 and 94, say a turbine or a boiler, required in a WTEP, would be used in the WTEP. In this context it is clarified that GST is to be self-assessed by a taxpayer. Therefore, he needs to satisfy himself with the requisite document from a buyer such as supply contracts/order for WTEP from the concerned authorities before supplying goods claiming concession under said entry 234.

12. **Applicability of GST on supply of Turbo Charger for railways:**

12.1. Representations have been received seeking clarification regarding classification and applicable GST rate on Turbo Chargers supplied to railways. It is stated that some of the supplier are classifying turbo charges supplied to Railways under Chapter 86 and paying GST at the rate of 5%

12.2 The turbocharger is a turbine-driven forced induction device that increases an internal combustion engine's efficiency and power output by forcing extra compressed air into the combustion chamber. It has the compressor powered by a turbine. The turbine is driven by the exhaust gas from the engine.

12.3 Turbo charger is specifically classified under chapter HS code 8414 80 30. It continues to remain classified under this code irrespective of its use by Railways. Therefore, it is clarified that the turbo charger is classified under heading 8414 and attracts 18% GST.

13. **Applicability of GST on supply of cranes, rigs, tools & Spares and other machinery when moved from one state to another by a person on his account for there use for supply of service**

13.1 As per Circular No. 21/21/2017-GST dated 22.11.2017, it was clarified that no IGST would be applicable on such interstate movements of rigs, tools & spares and all goods on wheels. Doubts have been raised regarding applicability of GST on inter-state movement of machinery like tower cranes, rigs, batching plants, concrete pumps and mixers which are not mounted on wheels, but require regular means of conveyance (used by companies in Infrastructure business).

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13.2 Any inter-state movement of goods for provision of service on own account by a service provider, where no transfer of title in such goods or transfer of goods to the distinct person by way of stock transfer is not involved, does not constitute a supply of such goods. Hence, it is clarified that any such movement on own account (not involving distinct person in terms of section 25), where such movement is not intended for further supply of such goods does not constitute a supply and would not be liable to GST.

14. Difficulty, if any, may be brought to the notice of the Board immediately. Hindi version shall follow.

Yours faithfully,

(Mahipal Singh)
Technical Officer (TRU-1)
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