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# INDIRECT

**TAX LAWS**  
GST & Customs

**For CA, CS, CMA  
Final & Professionals**

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EDITION  
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**CA. YASHVANT MANGAL**

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**INDIRECT TAX LAWS**

*Volume – 2*

*For*

**CA Final – November 2023 / May 2024**

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**&**

**Professionals**

**CA. Yashvant Mangal**

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# Exemptions Under GST

## 9.1 Introduction

- When a supply of goods and/or services falls within the purview of charging section, such supply is chargeable to GST. However, for determining the liability to pay the tax, one needs to further check whether such supply of goods and/or services are exempt from tax.
- Exempt supply has been defined as supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax and includes non-taxable supply. Power to grant exemption from GST has been granted vide section 11 of the CGST Act and vide section 6 of the IGST Act. State GST laws also contain identical provisions granting power to exempt SGST.
- Under earlier Indirect Tax regime, a larger number of exemptions were enjoyed by the taxpayers. The idea is to continue the exemption list under GST Regime also. Further, various area based exemptions are not continued under GST.
- Essential goods/services, i.e. public consumption products/services, have been exempted. Items such as unpacked food grains, milk, eggs, curd, kassi and fresh vegetables are among the items exempted from GST. Further, essential services like health care services, education services, etc. have also been exempted.
- In this chapter, we shall discuss the power to grant exemption from tax under CGST Act/IGST Act and list of services exempt from GST in detail and an overview of the goods exempt from tax.

## 9.2 Power To Grant Exemption From Tax [Section 11 of The CGST Act / Section 6 of IGST Act]

Statutory Provisions	
Sec. 11	Power to grant exemption from tax
Sub-sec.	Particulars
(1)	Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by notification, exempt generally, either absolutely or subject to such conditions as may be specified therein, goods or services or both of any specified description from the whole or any part of the tax leviable thereon with effect from such date as may be specified in such notification.
(2)	Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by special order in each case, under circumstances of an exceptional nature to be stated in such order, exempt from payment of tax any goods or services or both on which tax is leviable.
(3)	The Government may, if it considers necessary or expedient so to do for the purpose of clarifying the scope or applicability of any notification issued under sub-section (1) or order issued under sub-section (2), insert an explanation in such notification or order, as the case may be, by notification at any time within one year of issue of the notification or order under sub-section (1) or order under sub-section (2), and every such explanation shall have effect as if it had always been the part of the first such notification or order, as the case may be.
Explanation: In the purposes of this section, where an exemption in respect of any goods or services or both from the whole or part of the tax leviable thereon has been granted absolutely, the registered person supplying such goods or services or both shall not collect the tax, in exercise of the effective rate, on such supply of goods or services or both.	



**ANALYTICAL VIEW OF THE TOPIC**

1. **Exemption from payment of tax:** The Government is empowered to grant exemption from tax, if it is necessary in public interest so to do, on recommendation of the GST council, by way of issuance of -

**(i) Notification :**

- The Government may generally exempt supply of goods and/or services of any specified description
- On recommendation of the GST council
- BY NOTIFICATION
- Either absolutely or subject to such conditions as may be specified in the notification
- Wholly/partly
- With effect from such date as may be specified in such notification.

**(ii) Special Order :**

- The Government may exempt any goods and/or services on which tax is leviable
- BY SPECIAL ORDER
- On recommendation of the GST Council
- Under circumstances of an exceptional nature to be stated in such order in the public interest.

2. **No need to pay tax on goods and/or services on which absolute exemption granted:** Where an exemption in respect of goods and/or services has been granted absolutely, the registered person supplying such goods and/or services shall not collect tax on such goods and/or services, in excess of the effective rate.

3. **Explanation inserted within 1 year to have retrospective effect:** The Government can issue an explanation within 1 year of issue of notification/order of exemption and such explanation shall have effect as if it was a part of the original notification or order, when it was issued, i.e. explanation so inserted would have retrospective effect.

**Note :** Similar provisions granting power to exempt IGST have been provided under section 6 of the IGST Act.

**Illustration 1 :**

When exemption from whole of tax collected on goods or services or both has been granted absolutely, can a person pay tax?

**Answer :**

No, the person supplying exempted goods or services or both shall not collect the tax in excess of the effective rate.

**9.3 Goods Exempt From GST**

A list of items has been notified under section 11(1) of the CGST Act, 2017/section 6(1) of the IGST Act, 2017. These items have been exempted from whole of the tax. Since GST is a tax for common man, everyday items used by the common man have been included in the list of exempted items.

Items such as unpacked food grains, milk, eggs, curd, lassi and fresh vegetables are among the items exempted from GST.

**Goods imported by unit/developer in SEZ exempt from IGST:** All goods imported by a unit/developer in the Special Economic Zone (SEZ) for authorised operations are exempt from the whole of the integrated tax leviable thereon under section 3(7) of the Customs Tariff Act, 1975 read with section 5 of the IGST Act, 2017 [Notification No. 64/2017 - Customs, dated 05.07.2017].

**9.4 List of Services Exempt From GST****I. SPECIFIC SERVICES EXEMPT FROM CGST/IGST**

Notification No. 12/2017 CT (R) dated 28.06.2017/ Notification No. 9/2017 IT (R) dated 28.06.2017 unless otherwise specified, has exempted the following services wholly from CGST / IGST respectively:



Sl. No.	Description of Services
	<b>Health Care Related Services</b>
1.	Services by way of -
	(a) health care services by a clinical establishment, an authorised medical practitioner or paramedics;
	Provided that nothing in this entry shall apply to the services provided by a clinical establishment by way of providing room [other than Intensive Care Unit (ICU)/Critical Care Unit (CCU)/Intensive Cardiac Care Unit (ICCU)/Neo natal Intensive Care Unit (NICU)] having room charges exceeding Rs. 5000 per day to a person receiving health care services. [Proviso inserted by NN. 01/2022 -CT (R), w.e.f. 18.07.2022]
	(b) services provided by way of transportation of a patient in an ambulance, other than those specified in (a) above.
	[Entry No. 74 of NN. 12/2017 CT (R)]
	Notes :
	(1) As per clause (zg) under this notification, 'Health care services' means any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India and includes services by way of transportation of the patient to and from a clinical establishment, but does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma.
	(2) As per clause (s) under this notification, 'Clinical establishment' means a hospital, nursing home, clinic, sanatorium or any other institution by, whatever name called, that offers services or facilities requiring diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India, or a place established as an independent entity or a part of an establishment to carry out diagnostic or investigative services of diseases.
	(3) As per clause (k) under this notification, 'Authorised medical practitioner' means a medical practitioner registered with any of the councils of the recognised system of medicines established or recognised by law in India and includes a medical professional having the requisite qualification to practice in any recognised system of medicines in India as per any law for the time being in force.
	(4) Paramedics are trained health care professionals, for example, nursing staff, physiotherapists, technicians, lab assistants, etc.
	(5) Recognised system of medicines in India are
	(i) Allopathy
	(ii) Yoga
	(iii) Naturopathy
	(iv) Ayurveda
	(v) Homeopathy
	(vi) Siddha
	(vii) Unani
	(viii) Any system of medicines that may be recognized by Central Govt.
	(6) Rent of rooms provided to in-patients (i.e. patients admitted) in hospitals is also exempt from GST. [Circular No. 27/01/2018- GST, dated 01.01.2018]
	However, if any clinical establishment charges room rent exceeding Rs. 5000 per day, then, room rent will be chargeable to GST. But, charges for Intensive Care Unit (ICU) / Critical Care Unit (CCU) / Intensive Cardiac Care Unit (ICCU) / Neo natal Intensive Care Unit (NICU) will be exempt from GST irrespective of charges. [Proviso inserted by NN. 01/2022 -CT (R), w.e.f. 18.07.2022]



- (7) Hospitals hire senior doctors/ consultants/technicians independently, without any contract of such persons with the patient; and pay them consultancy charges, without there being any employer employee relationship. Will such consultancy charges be exempt from GST? Will revenue (department) take a stand that they are providing services to hospitals and not to patients and hence must pay GST?

**Answer :**

Services provided by senior doctors/consultants/technicians hired by the hospitals, whether employees or not, are healthcare services, which are exempt from GST. [Circular No. 32/06/2018 - GS, dated 12.02.2018]

- (8) **Retention money:** Hospitals charge the patients, say, Rs. 10,000/- and pay to the consultants/ technicians only Rs. 7,500/- and keep the balance for providing ancillary services which include nursing care, infrastructure facilities, paramedic care, emergency services, checking of temperature, weight, blood pressure, etc. Will GST be applicable on such money retained by the hospitals?

**Answer :**

Healthcare services have been defined to mean any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India [para 2(zg) of notification No. 12/2017-CT (Rate)]. Therefore, hospitals also provide healthcare services. The entire amount charged by them from the patients including the retention money and the fee payments made to the doctors, etc., is towards the healthcare services provided by the hospitals to the patients and is exempt. [Circular No. 32/06/2018 - GST, dated 12.02.2018]

- (9) **Food supplied to the patients:** Health care services provided by the clinical establishments will include food supplied to the patients; but such food may be prepared by the canteens run by the hospitals or may be outsourced by the Hospitals from outdoor caterers. When outsourced, there should be no ambiguity that the suppliers shall charge tax as applicable and hospital will get no ITC. If hospitals have their own canteens and prepare their own food; then no ITC will be available on inputs including capital goods and in turn if they supply food to the doctors and their staff; such supplies, even when not charged, may be subjected to GST.

**Answer :**

Food supplied to the in-patients as advised by the doctor/nutritionists is a part of composite supply of healthcare and not separately taxable. Other supplies of food by a hospital to patients (not admitted) or their attendants or visitors are taxable. [Circular No. 32/06/2018 - GST, dated 12.02.2018]

- (10) Whether GST is applicable on services by way of Assisted Reproductive Technology (ART) procedures such as In vitro fertilization (IVF) ?

**Clarification:** The abnormality/disease/ailment of infertility is treated using ART procedure such as IVF. It is clarified that services by way of IVF are also covered under the definition of health care services for the purpose of above exemption notification [Circular No. 177/09/2022 - GST, dated 03.08.2022].

2. Services by a veterinary clinic in relation to health care of animals or birds. [Entry No. 46 of NN. 12/2017 CT (R)]

3. Services by way of artificial insemination of livestock (other than horses). [Entry no. 55A of NN 12/2017 CT(R)]

4. ~~Services provided by operators of the common bio-medical waste treatment facility to a clinical establishment by way of treatment or disposal of bio-medical waste or the processes incidental thereto.~~ [Entry No. 75 of NN. 12/2017 CT (R), omitted by NN 04/2022 - CT(R), w.e.f. 18.07.2022]

**Analysis:** W.e.f. 18.07.2022, the services of common bio-medical waste treatment facility is made taxable.

5. ~~Services provided by the cord blood banks by way of preservation of stem cells or any other service in relation to such preservation.~~ [Entry No. 73 of NN. 12/2017 CT (R), omitted by NN 04/2022 - CT(R), w.e.f. 18.07.2022]