

# EY Tax Alert

## CBEC issues clarification on classification of certain activities as goods or services under GST

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### Executive summary

This Tax Alert summarizes a recent Circular<sup>[1]</sup> issued by the Central Board of Excise and Customs (CBEC), dealing with the classification of certain activities as goods or service and the taxability thereon.

Clarification is provided in respect of the following activities:

- ▶ Priority Sector Lending Certificates
- ▶ Activities carried by Distribution Companies (DISCOMS)
- ▶ Guarantee provided by the Government against consideration
- ▶ Retreading of tyres
- ▶ Bus body building activity

The clarification has been issued in accordance with the approval of issues by the Fitment Committee to the GST Council in its meeting held in January 2018.

<sup>[1]</sup> Circular No. 34/8/2018-GST dated 1 March 2018

## Background

Central Board of Excise and Customs (CBEC) has issued clarification vide Circular No. 34/8/2018-GST dated 1 March 2018 regarding classification of certain activities as goods or service and the taxability thereon.

Clarification is provided in respect of certain issues approved by the Fitment Committee to the GST Council, in its meeting held on 9, 10 and 13 January 2018.

## Clarifications

### Priority Sector Lending Certificates (PSLC) to be treated as goods

- ▶ One of the Frequently Asked Questions on PSLC in Reserve Bank of India states that PSLC may be construed to be in the nature of goods.
- ▶ Dealing in PSLC has been notified as a permissible activity under section 6(1) of the Banking Regulation Act, 1949 vide Government of India notification dated 4 February, 2016.
- ▶ It is clarified that PSLC are not securities.
- ▶ PSLC are akin to freely tradeable duty scrips, Renewable Energy Certificates, REP license or replenishment license, which attracted VAT under erstwhile regime.
- ▶ There is no exemption to trading in PSLC under GST.
- ▶ Thus, PSLC are taxable as goods at 18% under the residuary Serial Number 453 of Schedule III of Notification No. 1/2017-Central Tax (Rate) dated 28 June 2017.
- ▶ GST payable on the certificates would be available as Input Tax Credit (ITC) to the bank buying the certificates.

### Only transmission or distribution of electricity is exempt. Other activities by Distribution Companies (DISCOMS) are taxable under GST

- ▶ The Circular clarifies that only service by way of transmission or distribution of electricity by an electricity transmission or distribution utility is exempt from GST under Serial Number 25 of Notification No.12/2017-Central Tax (Rate) dated 28 June 2017.
- ▶ Other services provided by DISCOMS to consumers are taxable under GST. Such services include:
  - ▶ Application fee for releasing connection of electricity
  - ▶ Rental Charges against metering equipment
  - ▶ Testing fee for meters/ transformers, capacitors etc.
  - ▶ Labour charges from customers for shifting of meters or shifting of service lines
  - ▶ Charges for duplicate bill

### Guarantee provided by Government to business entities against consideration, is taxable under GST

- ▶ Central Government or State Government may guarantee the loans taken by any business entity including Public Sector Undertakings.
- ▶ Such service, against a consideration in any form, including Guarantee Commission, is taxable.

### Activity of bus body building is a composite supply. Classification will depend on the nature of principal supply

- ▶ There is supply of both goods and services in the case of bus body building.
- ▶ Thus, classification of this composite supply, as goods or services will depend on the nature of the principal supply.
- ▶ This may be determined on the basis of facts and circumstances of each case.

### Retreading of tyres is a supply of service

- ▶ Retreading of tyres is a composite supply.
- ▶ In retreading of tyres, the pre-dominant element is the process of retreading, which is a supply of service.
- ▶ The rubber used for retreading is merely an ancillary supply and cannot be treated as the principal supply.
- ▶ While value may be one of the guiding factors in this determination, it cannot be considered as the sole factor.
- ▶ The principal supply will depend on the essential nature of the composite supply and which element of the supply imparts that essential nature.
- ▶ Supply of retreaded tyres, where the old tyres belong to the supplier, is a supply of goods.
- ▶ Retreaded tyres (under heading 4012) attract GST at 28% as per Notification No.1/2017-Central Tax (Rate) dated 28 June 2017.

## Comments

The ambiguity in the industry with respect to the classification of PSLC has now been clarified by the Circular. The Circular also mentions that banks buying certificates can avail ITC. Considering that PSLCs are traded on e-KUBER, an online platform where details of buyers and sellers are not available, there could be issues in tax credit matching for buyers to claim ITC.

Clarification on the tax treatment in respect of incidental supplies by DISCOMS may require to be revisited. As per the Circular, supplies such as rental charges for meter equipment are taxable under GST. However, this is contrary to the earlier Circular issued under the Service tax regime, which clarified that supply of electricity meters for hire to consumers was covered by the exemption since it was an essential activity having a direct and close nexus with the transmission and distribution of electricity.

It may be argued that such renting of electricity meters may be treated as composite supply under GST, with principal supply being electricity distribution, and hence exempted.

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