

ಚಾಮುಂಡೇಶ್ವರಿ ವಿದ್ಯುತ್ ಸರಬರಾಜು
ನಿಗಮ ನಿಯಮಿತ
(ಕರ್ನಾಟಕ ಸರ್ಕಾರದ ಸ್ವಾಮ್ಯಕ್ಕೆ ಒಳಪಟ್ಟಿದೆ)
ನಿಗಮ ಕಾರ್ಯಾಲಯ,
ಚಾವಿಸಿನಿ, ಮೈಸೂರು - 570017
ದೂರವಾಣಿ ಸಂಖ್ಯೆ: 0821- 2343384



CHAMUNDESHWARI ELECTRICITY
SUPPLY CORPORATION LIMITED
(Government of Karnataka undertaking)
Corporate Office,
CESC, Mysuru-570017
Website: www.cescmysore.org
E-mail ID: agmtax@cescmysore.org

Company Identity Number[CIN]:- U40109KA2004SGCO35177

No: CESC/TAX/05/48870/2023-24/

Cys-1434

Date:

31 JAN 2024

Encl:

CIRCULAR

Sub:-GST implications of certain transactions of liabilities and creditors being transferred to income account

Ref:-1. Circular No.178/10/2022, dtd:3.08.2022 issued by Ministry of Finance, Govt. of India.

2. Advance Ruling No. HR/ARL/19/2022-23 Dated: 18.10.2022

3. Ganeshan & Co., CAs opinion dated 6.1.2024

1. The applicability of GST on payments in the nature of liquidated damage, compensation, penalty, cancellation charges, late payment surcharge, deposits transferred to income, etc., arising out of breach of contract or otherwise, and the scope of the entry at para 5 (e) of Schedule II of the Central GST Act, 2017, read with the Karnataka GST Act, 2017, has been clarified in detail by the Department of Revenue, Ministry of Finance, in the Circular instructions dated 03-08-2022, cited under reference.
2. According to the Circular under reference dated 3rd August 2022, the Department of Revenue, Ministry of Finance, has laid down the basic principle/concept for **consideration** of taxation and the applicability of GST on certain transactions (Book adjustments like transfer of Liability amount to Income). Based on the circular, clarification was sought towards applicability of GST on certain transactions from Chartered Accountant.
3. This circular is to bring to the notice of accounting units of CESC, the list of transactions for which an opinion was sought, and opinion has been provided with an explanation on the **applicability of GST** on those transactions are detailed in the following table:-

ನೋಂದಾಯಿತ ಕಛೇರಿ: ನಿಗಮ ಕಾರ್ಯಾಲಯ, ನಂ.29, ವಿಜಯನಗರ, ೨ನೇ ಹಂತ, ಹಿಂಕಲ್, ಮೈಸೂರು-570017

Registered Office: Corporate Office, #29, Vijayanagara, 2nd Stage, Hinkal, Mysuru-570017

Sl. No	Particulars	Opinion provided by Tax consultant	GST Applicability
1	Penalty/ Liquidated damages transferred from Liability account to Income	<p>Reference is drawn to Circular No.178/10/2022-GST which clarifies as hereunder:</p> <p>In case where the amount (“liquidated damages”) is paid only to compensate for injury, loss or damage suffered by the aggrieved party, without any agreement, such liquidated damages are merely a flow of money from the party who causes breach of the contract.</p> <p>Liquidated damages are not the desired outcome of a contract. Thus, such payment would not constitute consideration for supply and hence, not taxable.</p> <p>However, in case payment constitutes consideration for a supply, then it is taxable, irrespective of by what name it is called.</p> <p>Hence, it can be concluded that if the payment does not represent the “object” of the contract, then it cannot be considered “consideration”.</p> <p>By referring to the above, GST is not applicable on Liquidated damages/penalty which is transfer from liability account to income account because it is mere flow of money and does not constitute a consideration for the supply.</p>	Not taxable under GST.
2	Encashment of Bank Guarantee on breach of contract/ Forfeited Transferred to Miscellaneous Income	<p>The nature of receipt / income in the present case is similar to the previous one.</p> <p>The receipt by way of invocation of BG for non-performance is only a penalty or a compensation for breach of contractual terms by one of the parties to the contract and not consideration since performance is the essence of a contract.</p> <p>Hence, the amount of BG encashed does not attract any tax liability under GST law.</p>	Not taxable under GST.
3	EMD collected towards supply of materials/ Turnkey works/ Other services which are subsequently forfeited due to the contractor failed to supply or carrying out the awarded work/service. Forfeited EMD	<p>The nature of receipt / income in the present case is also similar to the earlier ones.</p> <p>EMD is received from a contractor as proof of good faith and interest in entering into a transaction with the payee / recipient on the terms agreed in the Purchase Order / Work Order / Contract and such EMD is normally refunded to the contractor on performance of the stipulated / agreed activities.</p> <p>The forfeiture of EMD arises on breach of agreed terms by one of the parties and is only a penalty or a compensation for such breach and is not consideration since performance is the essence of a contract.</p>	Not taxable under GST.

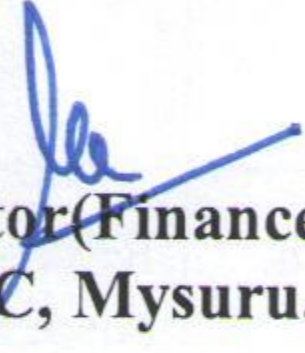
	amount transferred to Misc. Income	Hence, the amount of EMD forfeited does not attract any tax liability under GST law.	
4	Unclaimed Sundry Deposits from suppliers transferred to Miscellaneous Income after 3 years when refund not claimed.	<p>Unclaimed security deposit amounts are amounts liable to be paid but not paid in the absence of any claim for payment even after becoming due and remaining unpaid for a period beyond the period of limitation.</p> <p>Accounting practices mandate retaining any amount as liability only if there is a legally enforceable right by the contractor in respect of such amounts. Unclaimed sundry deposits wherein any further claim is barred by limitation period are hence transferred to income.</p> <p>Such unclaimed sundry deposits do not fall under the ambit of consideration and hence do not attract any tax liability under GST law subject to the fact that GST has been charged and paid by the contractor on the value of taxable supply due under the contractual terms in respect of the contract.</p>	Not taxable under GST.
5	Unclaimed Retention Money transferred to Miscellaneous Income after 3 years	<p>Unclaimed retention money are amounts liable to be paid but not paid in the absence of any claim for payment even after becoming due and remaining unpaid for a period beyond the period of limitation.</p> <p>Accounting practices mandate retaining any amount as liability only if there is a legally enforceable right by the contractor in respect of such amounts. Unclaimed retention money wherein any further claim is barred by limitation period are hence transferred to income.</p> <p>Such unclaimed retention money do not fall under the ambit of consideration and hence do not attract any tax liability under GST law subject to the fact that GST has been charged and paid by the contractor on the value of taxable supply due under the contractual terms in respect of the contract.</p>	Not taxable under GST.
6	Bid/Sale amount received for sale of scrap transferred to Miscellaneous Income	<p>The nature of receipt in the present case is also similar to the earlier one relating to EMD.</p> <p>Bid amount / Sale amount received from a contractor as proof of interest in entering into a transaction of supply with the payee / recipient on the terms agreed and such bid amount / sale amount is normally adjusted against sale consideration at the time of physical supply.</p> <p>The Bid amount is the amount from bidder who failed to take delivery of the goods within the stipulated time and has also failed to claim the refund of the bid amount.</p>	Not taxable under GST.

		<p>Unclaimed bid / sale amounts are amounts liable to be paid but not paid in the absence of any claim for payment even after becoming due and remaining unpaid for a period beyond the period of limitation. Accounting practices mandate retaining any amount as liability only if there is a legally enforceable right by the contractor in respect of such amounts.</p> <p>Unclaimed bid / sale amount wherein any further claim is barred by limitation period are hence transferred to income. Hence, the amount of bid amount / sale amount does not attract any tax liability under GST law in case no tax been collected and only a token bid amount had been received and where tax has been already collected and paid to the credit of the Government.</p> <p>In a case where tax has been collected, the same need to be paid to the credit of the Government at the time of such transfer to income account.</p>	
7	Write back of Liability		
a.	Initial/Additional/Security Deposits from Consumers	<p>Unclaimed amounts are amounts liable to be paid but not paid in the absence of any claim for payment even after becoming due and remaining unpaid for a period beyond the period of limitation.</p> <p>Accounting practices mandate retaining any amount as liability only if there is a legally enforceable right in respect of such amounts. Unclaimed amounts wherein any further claim is barred by limitation period are hence transferred to income.</p> <p>Such unclaimed amounts transferred to income do not fall under the ambit of consideration and hence do not attract any tax liability under GST law.</p>	Not taxable under GST.
b.	Meter Security Deposits from Consumers transferred to Miscellaneous Income	<p>Unclaimed amounts (due for refund after ascertaining that there was no fault of customer) are amounts liable to be paid but not paid in the absence of any claim for payment even after becoming due and remaining unpaid for a period beyond the period of limitation.</p> <p>Accounting practices mandate retaining any amount as liability only if there is a legally enforceable right in respect of such amounts.</p>	Not taxable under GST.
c.	Advance consumption charges -LT7 transferred to Miscellaneous Income	<p>Unclaimed amounts (due for refund after ascertaining that there was no fault of customer) are amounts liable to be paid but not paid in the absence of any claim for payment even after becoming due and remaining unpaid for a period beyond the period of limitation.</p>	Not taxable under GST.

		Accounting practices mandate retaining any amount as liability only if there is a legally enforceable right in respect of such amounts.	
d.	Transfer of Unclaimed Deposits received against burnt meter to Misc. Income when there was no fault of customer	<p>Unclaimed amounts (due for refund after ascertaining that there was no fault of customer) are amounts liable to be paid but not paid in the absence of any claim for payment even after becoming due and remaining unpaid for a period beyond the period of limitation.</p> <p>Accounting practices mandate retaining any amount as liability only if there is a legally enforceable right in respect of such amounts.</p> <p>Unclaimed amounts wherein any further claim is barred by limitation period are hence transferred to income and do not fall under the ambit of consideration and hence do not attract any tax liability under GST law.</p>	Not taxable under GST.
e.	Revenue suspense transferred to Miscellaneous Income after 3 years	<p>Revenue suspense are to be adjusted against some revenue item and not adjusted in the absence of details / in the absence of any claim for refund and remaining unpaid for a period beyond the period of limitation.</p> <p>Accounting practices mandate retaining any amount as liability only if there is a legally enforceable right by the payer in respect of such amounts.</p> <p>Such Unclaimed amounts wherein any further claim is barred by limitation period are hence transferred to income and such unclaimed amounts do not fall under the ambit of consideration and do not attract any tax liability under GST law subject to the fact that GST has been paid on the value of supply by CESC at the time of receipt.</p>	Not taxable under GST.
f.	Stale Cheque remained unpaid for a period more than 3 years	<p>Stale Cheques are liable to be paid but not paid in the absence of any further claim for payment and remaining unpaid for a period beyond the period of limitation.</p> <p>Accounting practices mandate retaining any amount as liability only if there is a legally enforceable right by the contractor in respect of such amounts.</p> <p>Such Unclaimed amounts wherein any further claim is barred by limitation period are hence transferred to income and such unclaimed amounts do not fall under the ambit of consideration and hence do not attract any tax liability under GST law subject to the fact that GST has been charged and paid by the supplier on the value of taxable supply due under the terms</p>	Not taxable under GST.

		agreed and that no ITC was availed in respect of the tax on such unpaid portion of consideration by CESC. Any ITC of GST on the stale cheque amount and not reversed need to be paid to the credit of the Government with interest, where applicable.	
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4. All accounting units are advised that while the *taxability in each case* shall follow the above guidelines in determining the tax. Any difficulty in implementation of the Circular may be brought to the notice to this undersigned office.


**Director(Finance),
CESC, Mysuru.**

Copy to:-

- Chief General Manager(I/A), Corporate office, CESC for Kind information.
- Chief Engineer(EI), CESC, O&M Zone, Mysore/Hassan.
- All General Manager, CESC, Corporate Office, Mysuru.
- All SEEs O&M Circles, CESC.
- All Deputy General Manager, CESC, Corporate Office, Mysuru.
- DGM (MIS)-To publish in CESC, Official website.
- All Executive Engineer (Ele) O&M Division, CESC.
- The Asst. General Manager IM Section/EBC/Finance/Accounts/Pension/Revenue, CESC, Corporate Office, Mysuru.
- All Account Officers(I/A), CESC
- MF/OC.