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

This circular clarify the applicable GST rate in case of the following items-

- Classification of leguminous vegetables such as grams when subjected to mild heat treatment
- Almond Milk
- Applicable GST rate on Mechanical Sprayer
- Taxability of imported stores by the Indian Navy
- Taxability of goods imported under lease.
- Applicable GST rate on parts for the manufacture solar water heater and system
- Applicable GST on parts and accessories suitable for use solely or principally with a medical device

Clarification are as below

Classification of leguminous vegetables when subject to mild heat treatment (parching):

- Doubts have been raised whether mild heat treatment of leguminous vegetables (such as gram) would lead to change in classification
- Dried leguminous vegetables are classified under HS code 0713.
- As per the explanatory memorandum to the HS 2017, the heading 0713 covers leguminous vegetables of heading 0708 which have been dried, and shelled, of a kind used for human or animal consumption.
- They may have undergone moderate heat treatment designed mainly to ensure better preservation by inactivating the enzymes and eliminating part of the moisture.

- Thus, it is clarified that such leguminous vegetables which are subjected to mere heat treatment for removing moisture, or for softening and puffing or removing the skin, and not subjecting to any other processing or addition of any other ingredients such as salt and oil, would be classified under HS code 0713.
- Such goods if branded and packed in a unit container would attract GST at the rate of 5%.
- In all other cases such goods would be exempted from GST
- However, if the above dried leguminous vegetable is mixed with other ingredients (such as oil, salt etc) or sold as namkeens then the same would be classified under Sub heading 2106 90 as namkeens, bhujia, and similar edible preparations and attract applicable GST rate.

Classification and applicable GST rate on Almond Milk:-

References have been received as to whether "almond milk" would be classified as "Fruit Pulp or fruit juice-based drinks" and attract 12% GST under tariff item 2202 99 20.

- Almond Milk is made by pulverizing almonds in a blender with water and is then strained.
- As such almond milk neither constitutes any fruit pulp or fruit juice.
- Therefore, it is not classifiable under tariff item 2202 99 20. Almond milk is classified under the residual entry in the tariff item 2202 99 90 and attract GST at the rate of 18%.

Applicable GST rate on Mechanical Sprayer:-

This circular give clarification on the scope and applicable GST rate on "mechanical sprayers" of entry No. 195B of the Schedule II to notification No. 3 of 7 1/2017- Central Tax (Rate), dated 28.06.2017.

- All goods of heading 8424 i.e. [Mechanical appliances (whether or not hand-operated) for projecting, dispersing or spraying liquids or powders; spray guns and similar appliances; steam or sand blasting machines and similar jet projecting machines (other than fire extinguishers, whether or not charged)] attracted GST @18% till 25th January, 2018.
- Subsequently, keeping in view various requests/ representations, the GST Council in its 25th meeting recommended 12% GST on mechanical sprayers
- Accordingly, vide amending notification No. 6/2018- Central Tax (Rate), dated 25thJanuary, 2018, GST at the rate of 12% was prescribed (entry No. 195B I Schedule II of notification No. 1/2017-Central Tax (Rate) dated 28.6.2017).

- Simultaneously, mechanical sprayers were excluded from the ambit of the said S. No. 325 of Schedule III
- Accordingly, it is clarified that the S. No. 195B of the Schedule II to notification No. 1/2017-Central Tax (Rate), dated 28.06.2017 covers “mechanical sprayers” of all types whether or not hand operated (like hand operated sprayer, power operated sprayers, battery operated sprayers, foot sprayer, rocker etc.)

Clarification regarding taxability of imported stores by the Indian Navy

Representation has been received from the Indian Navy seeking clarification on the taxability of imported stores for use of a ship of Indian Navy.

- In accordance with letter No. 21/31/63-Cus-IV dated 17 Aug 1966 of the then Department of Revenue and Insurance, the Indian Naval ships were treated as "foreign going vessels" for the purposes of Customs Act, 1962 and the naval personnel serving on board these naval ships were entitled to duty-free supplies of imported stores even when the ships were in Indian harbour.
- However, in the GST era, no such circular has been issued regarding exemption from IGST on purchase of imported stores by Indian Naval ships.
- The doubt has arisen as there is a no specific exemption, while there is a specific exemption for the Coast Guard

- Similar exemption has not been specifically provided for Navy. 4 of 7. Indian Naval ship stores are exempted from import duty in terms of section 90(1) of the Customs Act, 1962.
- Further, as per section 90(2), goods “taken on board a ship of the Indian Navy” shall be construed as exported to any place outside India.
- Also, section 90(1) and 90(3) of the Customs Act, 1962 provides that imported stores for the use of a ship of the Indian Navy and stores supplied free by the Government for the use of the crew of a ship of the Indian Navy in accordance with their conditions of service will be exempted from duty.
- Accordingly, it is clarified that imported stores for use in navy ships are entitled to exemption from GST.

Clarification regarding taxability of goods imported under lease:-

Representations have been received seeking clarification on the taxability of goods imported under lease.

- In respect of goods imported on temporary basis, aircrafts, aircraft engines and other aircraft parts imported into India under a transaction covered by item 1(b) or 5(f) of Schedule II of the Central Goods and Service Tax Act, 2017 are exempted from IGST vide S. No. 547A of notification No. 50/2017-Customs dated 30.06.2017, subject to condition No. 102.
- Similarly, rigs and ancillary items imported for oil or gas exploration and production taken on lease by the importer for use after import have also been exempted from IGST vide S. No. 557A of the said notification.
- Subsequently, all goods, vessels, ships (other than motor vehicles) imported under lease, by the importer for use after import, were also exempted from IGST vide S. No. 557B of the said notification.

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- Both these entries are subject to the same condition No. 102 of the said notification.
- The intention of S. No. 557 A and 557 B is to exempt from IGST the imports of goods under an arrangement of supply of service covered by item 1(b) or 5(f) of Schedule II of the CGST Act, 2017 so as to avoid double taxation.
- Accordingly, it is hereby clarified that the expression "taken on lease/imported under lease" covers imports under an arrangement so as to supply services covered by item 1(b) or 5(f) of Schedule II of the CGST Act, 2017 to avoid double taxation.

Applicability of GST rate on parts for the manufacture solar water heater and system

- Representations have been received seeking clarification on applicable GST rate on Solar Evacuated Tubes used in manufacture of solar water heater.
- While 5% GST rate applies to parts used in manufacture of Solar Power based devices (S.No. 234 of Notification No. 1/2017 -Central tax (Rate) dated 28.06.2017), doubts have been raised in respect of parts of Solar water heaters on the ground that Solar Based Devices are being considered only as devices which run on Solar Electricity.
- As per entry No 232, solar water heater and system attracts 5% GST.
- Further, as per S. No. 234 of the notification No. 1/2017-Central Tax (Rate) dated 28.6.2017, solar power-based devices and parts for their manufacture falling under chapter 84, 85 and 94 attract 5% 6 of 7 concessional GST.

- Solar Power based devices function on the energy derived from Sun (in form of electricity or heat).
- Thus, solar water heater and system would also be covered under S. No 234 as solar power device.
- Thus, Solar Evacuated Tubes which falls under Chapter 84 and other parts falling under chapter 84, 85 and 94, used in manufacture of solar water heater and system would be eligible for 5% GST under S. No. 234.
- Accordingly, it is clarified that parts including Solar Evacuated Tube falling under chapter 84, 85 and 94 for the manufacture of solar water heater and system will attract 5% GST.

Applicability of GST on the parts and accessories suitable for use solely or principally with a medical device

Representations have been received seeking clarification on applicability of GST on the parts of ophthalmic equipment suitable for use solely or principally with an ophthalmic equipment.

- Briefly stated, medical equipment falling under HS 9018, 9019, 9021 and 9022 attract 12% GST
- The imports of parts of ophthalmic equipment suitable for use solely or principally with an ophthalmic equipment, were being assessed at 12% GST by classifying it under heading 9018.
- However, objection has been raised by Comptroller and Auditor General of India (CAG) on the said practice, suggesting that since such goods were not specifically mentioned in the GST rate notification, they fall under tariff item 9033 00 00 [residual entry] and should be assessed at 18% IGST.

- In this background, representations have been received from trade and industry, seeking clarification in this matter
- The matter has been examined. As per chapter note 2(b) of the Chapter 90, parts and accessories of the instruments used mainly and principally for the medical instrument of chapter 90 shall be classified with the machine only.
- Chapter note 2(b)- other parts and accessories, if suitable for use solely or principally with a particular kind of machine, instruments or apparatus, or with a number of machines, instruments or apparatus of the same heading (including a machine, instrument or apparatus of heading 9010, 9013 or 9031) are to be classified with the machines, instruments or apparatus of that kind;" 7 of 7.
- Thus, as per chapter note 2(b), parts of ophthalmic equipment suitable for use solely or principally with an ophthalmic equipment should be classified with the ophthalmic equipment only and shall attract 12%.
- In view of the above, it is clarified that 12% IGST would be applicable on the parts and accessories suitable for use solely or principally with a medical device falling under heading 9018, 9019, 9021 or 9022 in terms of chapter note 2 (b).

Clarification on scope of support services to exploration, mining or drilling of petroleum crude or natural gas or both-reg.

- The matter has been examined. Most of the activities associated with exploration, mining or drilling of petroleum crude or natural gas fall under heading 9986. A few services particularly technical and consulting services relating to exploration also fall under heading 9983.

Therefore, following entry has been inserted under heading 9983 with effect from 1 st October 2019 vide Notification No. 20/2019- Central Tax(Rate) dated 30.09.2019; -

Other professional, technical and business services relating to exploration, mining or drilling of petroleum crude or natural gas or both"

Explanatory Notes to the Scheme of Classification of Services adopted for the purposes of GST, which is based on the United Nations Central Product Classification describe succinctly the activities associated with exploration, mining or drilling of petroleum crude or natural gas under heading 9983 and 9986.

The relevant Explanatory Notes for Heading 9983 are as follow

- 998341 Geological and geophysical consulting services
- 998343 Mineral exploration and evaluation
- 998621 Support services to oil and gas extraction
- 998622 Support services to other mining n.e.c

- It is hereby clarified that the scope of the entry at Sr. 24 (ii) under heading 9986 of Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017 shall be governed by the explanatory notes to service codes 998621 and 998622 of the Scheme of Classification of Service
- It is further clarified that the scope of the entry at Sr. No. 21 (ia) under heading 9983 of Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017 inserted with effect from 1 st October 2019 vide Notification No. 20/2019- CT(R) dated 30.09.2019 shall be governed by the explanatory notes to service codes 998341 and 998343 of the Scheme of Classification of Services.
- The services which do not fall under the said entries under heading 9983 and 9986 of the said notification shall be classified in their respective headings and taxed accordingly.

Clarification on issue of GST on Airport levies – reg.

- Various representations have been received seeking clarification on issues relating to GST on airport levies and to clarify that airport levies do not form part of the value of services provided by the airlines and consequently no GST should be charged by airlines on airport levies.
- Passenger Service Fee (PSF) is charged under rule 88 of Aircraft Rules, 1937 according to which the airport licensee may collect PSF from embarking passengers at such rates as specified by the Central Government.
- According to the rule the airport license shall utilize the said fee for infrastructure and facilitation of the passengers.

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- User Development Fee (UDF) is levied under rule 89 of the Aircraft rules 1937 which provides that the licensee may levy and collect, at a major airport, at such rate as may be determined under clause (b) of sub-section (1) of section 13 of the Airports Economic Regulatory Authority of India Act, 2008.
- Though the rule does not prescribe the specific purpose of levy and whether it is to be charged from the airlines or the passengers.
- However, it is seen from section 2(n) of Airports Economic Regulatory Authority of India Act, 2008, that the authority which manages the airport is eligible to levy and charge UDF from the embarking passengers at any airport.
- Further, Director General of Civil Aviation has clarified vide order No. AIC Sl. No. 5/2010 dated 13.09.2010 that in order to avoid inconvenience to passengers and for smooth and orderly air transport/airport operations, the User Development Fees (UDF) shall be collected from the passengers by the airlines at the time of issue of air ticket and the same shall be remitted to Airports Authority of India in the line system/procedure in vogue.
- For Circular No. 115/34/2019-GST 2 this, collection charges of Rs. 5/- shall be receivable by the airlines from AAI, which shall not to be passed on to the passengers in any manner

- The above facts clearly indicate that PSF and UDF are charged by airport operators for providing the services to passengers.
- Section 2(31) of the CGST Act states that "consideration" in relation to the supply of goods or services or both includes any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person.
- Thus, PSF and UDF charged by airport operators are consideration for providing services to passengers.
- Thus, services provided by an airport operator to passengers against consideration in the form of UDF and PSF are liable to GST.

Levy of GST on the service of display of name or placing of name plates of the donor in the premises of charitable organizations receiving donation or gifts from individual donors – Reg.

Representations have been received seeking clarification whether GST is applicable on donation or gifts received from individual donors by charitable organizations involved in advancement of religion, spirituality or yoga which is acknowledged by them by placing name plates in the name of the individual donor.

The issue has been examined-

- Individual donors provide financial help or any other support in the form of donation or gift to institutions such as religious institutions, charitable organizations, schools, hospitals, orphanages, old age homes etc
- The recipient institutions place a name plate or similar such acknowledgement in their premises to express the gratitude.
- When the name of the donor is displayed in recipient institution premises, in such a manner, which can be said to be an expression of gratitude and public recognition of donor's act of philanthropy and is not aimed at giving publicity to the donor in such manner that it would be an advertising or promotion of his business, then it can be said that there is no supply of service for a consideration (in the form of donation).
- Therefore, there is no GST liability on such consideration.

Where all the three conditions are not satisfied namely:-

- The gift or donation is made to a charitable organization
- The payment has the character of gift or donation
- The purpose is philanthropic (i.e. it leads to no commercial gain) and not advertisement

. GST is not leviable.

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Clarification on applicability of GST exemption to the DG Shipping approved maritime courses conducted by Maritime training institute of India

- A representation has been received regarding applicability of GST exemption to the Directorate General of Shipping approved maritime courses conducted by the Maritime Training Institutes of India.
- Under GST Law, vide Sl. No. 66 of the notification No. 12/2017- Central Tax (Rate) dated 28.06.2017, services provided by educational institutions to its students, faculty and staff are exempt from levy of GST

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- GST exemption on services supplied by an educational institution would be available, if it fulfils the criteria that the education is provided as part of a curriculum for obtaining a qualification/ degree recognized by law.
- In order to streamline and monitor the maritime education and trainings by maritime institutes and to administer the assessment agencies, the Merchant Shipping (standards of training, certification and watch-keeping for Seafarers) Rules, 2014 has been notified.
- Under Rule 9 of the said Rules, the Director General of Shipping is empowered to designate Circular No. 117/36/2019-GST 2 assessment centres.
- Further the provisions of sub- rules (6), (7) and (8) of the Rule 4 of the said Rules, empowers the Director General of Shipping, to approve (i) the training course, (ii) training, examination and assessment programme, and (iii) approved training institute etc.
- From the above discussion, it is seen that the Maritime Training Institutes and their training courses are approved by the Director General of Shipping which are duly recognised under the provisions of the Merchant Shipping Act, 1958 read with the Merchant Shipping (standards of training, certification and watch-keeping for Seafarers) Rules, 2014
- Therefore, the Maritime Institutes are educational institutions under GST Law and the courses conducted by them are exempt from levy of GST.
- The exemption is subject to meeting the conditions specified at Sl. No. 66 of the notification No. 12/ 2017- Central Tax (Rate) dated 28.06.2017

Clarification regarding determination of place of supply in case of software/design services related to Electronics Semi-conductor and Design Manufacturing (ESDM) industry – reg.

- Various representations have been received from trade and industry seeking clarification on determination of place of supply in case of supply of software/design services by a supplier located in taxable territory to a service recipient located in nontaxable territory by using the sample hardware kits provided by the service recipient.
- It is stated that a number of companies that are part of the growing Electronics Semiconductor and Design Manufacturing (ESDM) industry in India are engaged in the process of developing software and designing integrated circuits electronically for customers located overseas.

- The client/customer electronically provides Indian development and design companies with design requirements and Intellectual Property blocks ("IP blocks", reusable units of software logic and design layouts that can be combined to form newer designs).
- Based on these, the Indian company digitally integrates the various IP blocks to develop the software and the silicon or hardware design.
- These designs are communicated abroad (in industry standard electronic formats) either to the customer or (on behest of the customer) a manufacturing facility for the manufacture of hardware based on such designs.
- The trade has requested clarification on whether provision of hardware prototypes and samples and testing thereon lends these services the character of performance-based services in respect of "goods required to be made physically available by the recipient to the provider"
- The provisions relating to determination of place of supply as contained in the Integrated Goods & Services Tax Act, 2017 (hereinafter referred to as "the IGST Act") have been examined.
- In order to ensure uniformity in the implementation of the provisions of the law, the Board, in exercise of its powers conferred by sub-section (1) of section 168 of the Central Goods & Services Tax Act, 2017 (hereinafter referred to as "the CGST Act") clarifies the same as below.

- In contracts where service provider is involved in a composite supply of software development and design for integrated circuits electronically, testing of software on sample prototype hardware is often an ancillary supply, whereas, chip design/software development is the principal supply of the service provider.
- The service provider is not involved in software testing alone as a separate service.
- The testing of software/design is aimed at improving the quality of software/design and is an ancillary activity. The entire activity needs to be viewed as one supply and accordingly treated for the purposes of taxation.
- Artificial vivisection of the contract of a composite supply is not provided in law. These cases are fact based and each case should be examined for the nature of supply contracted.
- Therefore, it is clarified that the place of supply of software/design by supplier located in taxable territory to service recipient located in non-taxable territory by using sample prototype hardware / test kits in a composite supply, where such testing is an ancillary supply, is the location of the service recipient as per Section 13(2) of the IGST Act.
- Provisions of Section 13(3)(a) of IGST Act do not apply separately for determining the place of supply for ancillary supply in such cases.

Clarification regarding taxability of supply of securities under Securities Lending Scheme,1997.reg.

Trade has requested clarification on whether the supply of securities under Securities Lending Scheme, 1997 ("Scheme") by the lender is taxable under GST

- Securities and Exchange Board of India (SEBI) has prescribed the Securities Lending Scheme, 1997 for the purpose of facilitating lending and borrowing of securities
- Under the Scheme, lender of securities lends to a borrower through an approved intermediary to a borrower under an agreement for a specified period with the condition that the borrower will return equivalent securities of the same type or class at the end of the specified period along with the corporate benefits accruing on the securities borrowed.

- The transaction takes place through an electronic screen-based order matching mechanism provided by the recognized stock exchange in India.
- There is anonymity between the lender and borrower since there is no direct agreement between them.
- It may be noted for the purpose of GST Act, “securities” shall have the same meaning as assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 [Section 2(101) of CGST Act]
- The definition of services as per Section 2(102) of the CGST Act, “services” means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.
- Securities as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 are not covered in the definition of goods under section 2(52) and services under section 2(102) of the CGST Act.
- Therefore, a transaction in securities which involves disposal of securities is not a supply in GST and hence not taxable.

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- The activity of lending of securities is not a transaction in securities as it does not involve disposal of securities.
- The clause 4 of para 4 relating to the Scheme under the Securities Lending Scheme, 1997 doesn't treat lending of securities as disposal of securities and therefore is not excluded from the definition of services.
- The lending fee charged from the borrowers of securities has the character of consideration and this activity is taxable in GST since 01.07.2017.
- Apart from above, the activities of the intermediaries facilitating lending and borrowing of securities for commission or fee are also taxable separately.
- The supply of lending of securities under the scheme is classifiable under heading 997119 and is leviable to GST@18% under Sl. No. 15(vii) of Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017 as amended from time to time.
- Circular No. 119/38/2019-GST 3 5.1 For the past period i.e. from 01.07.2017 to 30.09.2019, GST is payable under forward charge by the lender and request may be made by the lender (supplier) to SEBI to disclose the information about borrower for discharging GST under forward charge.

- The nature of tax payable shall be IGST. However, if the service provider has already paid CGST / SGST / UTGST treating the supply as an intra-state supply, such lenders shall not be required to pay IGST again in lieu of such GST payments already made.
- With effect from 1st October, 2019, the borrower of securities shall be liable to discharge GST as per Sl. No 16 of Notification No. 22/2019-Central Tax (Rate) dated 30.09.2019 under reverse charge mechanism (RCM).
- The nature of GST to be paid shall be IGST under RCM.

Clarification on the effective date of explanation inserted in notification No. 11/2017- CT Rate dated 28.06.2017, Sr.No.3(vi)-reg

Representations have been received to amend the effective date of notification No. 17/2018-CTR dated 26.07.2018 whereby explanation was inserted in notification No. 11/2017- CTR dated 28.06.2017, Sr. No. 3(vi) to the effect that for the purpose of the said entry, the activities or transactions under taken by Government and Local Authority are excluded from the term 'business'

As recommended by GST Council, the explanation in question was inserted vide notification No. 17/2018-CTR dated 26.07.2018 in exercise of powers under section 11(3) within one year of the insertion of the original entry prescribing concessional rate, so that it would have effect from the date of inception of the entry i.e. 21.09.2017.

- Section 11(3) of CGST Act provides that the Government may insert an explanation in any notification issued under section 11, for the purpose of clarifying its scope or applicability, at any time within one year of issue of the notification and every such explanation shall have effect as if it had always been the part of the first such notification.
- However, like other notifications issued on 26.07.2018 to give effect to other recommendations of the GST Council, the said notification also contained a line in the last paragraph that the notification shall come into effect from 27.07.2018.
- It is hereby clarified that the explanation having been inserted under section 11(3) of the CGST Act, is effective from the inception of the entry at Sl. No. 3(vi) of the notification No. 11/2017- CTR dated 28.06.2017, that is 21.09. 2017.
- The line in notification No. 17/2018-CTR Circular No. 120/39/2019- GST 2 dated 26.07.2018 which states that the notification shall come into effect from 27.07.2017 does not alter the operation of the notification in terms of Section 11(3)

GST on license fee charged by the States for grant of Liquor licenses to vendors reg.

- GST Council in its 26th meeting held on 10.03.2018, recommended that GST was not leviable on license fee and application fee, by whatever name it is called, payable for alcoholic liquor for human consumption and that this would apply mutatis mutandis to the demand raised by Service Tax/Excise authorities on license fee for alcoholic liquor for human consumption in the pre-GST era, i.e. for the period from 01-04-2016 to 30-06-2017.
- Grant of liquor licenses by State Government against payment of consideration in the form of license fee, application fee etc. was a taxable service under Service Tax, therefore to implement GST Council's recommendation, Central Government decided to exempt service provided or agreed to be provided by way of grant of liquor license by the State Government, against consideration in the form of license fee or application fee, by whatever name called, during the period from 01.04.2016 to 30.06.2017.

Circular No. 121/40/2019-GST

- GST Council in its 37th meeting held on 20.09.2019 further recommended that the decision of the 26th GST Council meeting be implemented by notifying service by way of grant of alcoholic liquor license, against consideration in the form of license fee or application fee or Circular No. 121/40/2019-GST by whatever name it is called, by State Government as neither a supply of goods nor a supply of service.
- Therefore, in exercise of powers conferred under sub-section 2 (b) of section 7 of CGST Act, 2017, Notification No. 25/2019-Central Tax (Rate) dated 30th September, 2019 has been issued.
- GST Council further decided in the 37th meeting held on 20.09.2019, to clarify that this special dispensation applies only to supply of service by way of grant of liquor licenses by the State Governments as an agreement between the Centre and States and has no applicability or precedence value in relation to grant of other licenses and privileges for a fee in other situations, where GST is payable.