

Narendra Sharma
Advocate
M : 9415127075, 7081784144
9/76, Arya Nagar, Kanpur
e-mail : narendra.advo@rediffmail.com
Website : www.narendrasharmaandcompany.in

Levy of GST on Equipments & Aids of Disabled and Blind Persons,
Inhumane and against Social Justice

Reason to introduce GST Act : Aims & Objects

Presently, the State Government levies Valued Added Tax, Entry Tax, Entertainment Tax, Betting Tax, Luxury Tax, Purchase Tax etc. Similarly, the Central Government levies Central Excise Duty, Additional Excise Duty, Service Tax etc. There is multiplicity of taxes which are being levied on the same supply chain. Cascading of taxes exists in the present tax system on goods and services.

In view of the aforesaid difficulties, most of the indirect taxes levied by the Central Government of the State Government are to be subsumed in a single tax, called goods and service tax which will be levied on supply of goods or services or both at each stage of supply chain starting from manufacture or import and till the last retail level.

Instruments/Appliances of Handicapped/Disabled/Blinds : Taxed :

GST Law provides levy of tax @ 5% under **Chapter Heading 90** which includes Crutches, Wheel chairs, Walking frames, Tricycles, Brailers and Artificial Limbs and under **Chapter Heading 9021**. Orthopaedic appliances, including **crutches, surgical belts and trusses; splints and other fracture appliances**, artificial parts of the body liable to tax @ 12%.

There are more than 350 types of instruments/appliances/accessories and constituents thereof. Further, there are **Orthosis, Prosthesis, Orthotic Components, Prosthetic Components, Rehabilitation Aids, Associated Special Tools and Orthotic and Prosthetic Supplies**. Many of these items which are not specifically classified attract GST @ 18%.

Taxable @ 2.5% (CGST) + 2.5% (SGST)

S.No.	Chapter Heading/ Sub-heading/ Tariff item	Description of goods	Rate of Tax
256	90 or any other Chapter	Parts of the following goods, namely - (i) Crutches (ii) Wheel chairs (iii) Walking frames (iv) Tricycles (v) Brailleurs; and (vi) Artificial Limbs	5%

Taxable @ 6% (CGST) + 6% (SGST)

S.No.	Chapter Heading/ Sub-heading/ Tariff item	Description of Goods
221	9021	Orthopaedic appliances, including crutches, surgical belts and trusses; splints and other fracture appliances, artificial parts of the body.

Taxable @ 9% (CGST) + 9% (SGST)

S.No.	Chapter Heading/ Sub-heading/ Tariff item	Description of Goods
453	Any Chapter	Goods which are not specified in Schedule-I, II, IV, V or VI

Hearing Aids Exempt :

GST Council was liberal to exempt **Hearing Aids** falling under **Chapter Heading 9021** vide **Notification No. 2/2017 Central Tax (Rate)** dated **28th June, 2017**.

Constitution of India : Provisions related to disabled/Blind Persons**(a) Preamble**

We, THE PEOPLE OF INDIA, to secure to all its citizens

JUSTICE, Social, Economic and Political

.....
.....
.....
.....
.....
.....

(26th Day of Nov. 1949)

- (b) **Article 16 - Equality of opportunity in matters of public employment.**
- (c) **Directive Principle of State Policy**, Article 38(1) and Article 39(a) mention about Social Justice suitable legislation and to ensure opportunities for securing justice.

Thus, Constitution of India takes sufficient care from beginning, regarding disabled and blind persons.

Supreme Court of India on Disabled Persons

The **Hon. Apex Court** observed as below in :

★ **Mahesh Gupta & Ors. vs. Yashwant Kumar Ahirwar & Ors. [AIR 2007 S.C. 3136]**

10. The State in terms of Article 16 of the Constitution of India may make two types of reservations vertical and horizontal. Article 16(4) provides for vertical reservation; whereas Clause (1) of Article 16 provides for horizontal reservation.
13. Furthermore, when the decision was taken, the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short "the 1995 Act") had come into force. In terms of the 1995 Act, **the States were obligated to make reservations for handicapped persons.** The State completely lost sight of its commitment both under its own policy decision as also the statutory provision.

The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

This Act was repealed by **The Right of Persons with Disabilities Act, 2016 (49 of 2016) w.e.f. 07-02-1996.**

Preamble of the Act

An Act to give effect to the Proclamation on the Full Participation and Equality of the People with Disabilities in the Asian and Pacific Region.

WHEREAS the Meeting to Launch the Asian and Pacific Decade of Disabled Persons 1993-2002 convened by the Economic and Social Commissioner for Asia and Pacific held at Beijing on 1st to 5th December, 1992, adopted the Proclamation on the Full Participation and Equality of People with Disabilities in the Asian and Pacific Region;

AND WHEREAS India is a signatory to the said Proclamation;

AND WHEREAS it is considered necessary to implement and Proclamation aforesaid.

Conclusions :

The matter discussed in the Article establishes that :

- 1- In India, all States exempted from Sales Tax/Value Tax Added Tax, the Appliances and Aids of disabled persons including blinds. Hence, there was no revenue being collected on these goods.
- 2- Aims and Objects for introduction of GST Laws state that States levy Valued Added Tax, Entry Tax, Entertainment Tax, Betting Tax, Luxury Tax, Purchase Tax etc. GST (State, Central & Union Territory) is being levied, the Central Government levies, Central Excise Duty, Additional Excise Duty, Service Tax etc., but before 01-07-2017, there was no tax on these equipments by any of these names.
- 3- Beginning from Preamble of Constitution of the India, we can notice that Directive Principle and everywhere Government is expected to do needful in favour of disabled persons including blinds.
- 4- India is signatory to the proclamation on the Full Participation and Equality of the People with Disabilities in the Asian and Pacific Region. (**Beijing Convention 1992**)
- 5- Only Hearing Aids have been exempted, Why?

Therefore, I am of the opinion that there seems to be known **Moral/ Ethical/ Legal Ground** for the Government or GST Council to continue to levy GST Tax on those equipments which are used only by disabled and/or blind persons. The related equipments for disabled and blinds, they should be declared exempt under GST Laws (State/Central/Union Territory).

Tools and Implements used by the Handicapped Exempt Throughout Country

States	
Andhra Pradesh	Andhra Pradesh Value Added Tax : Schedule-I : SI.No. 2 Orthopaedic or fracture appliances, Artificial joints, Hearing Aids, Others etc.
Bihar	Bihar Value Added Tax : Schedule-I : SI.No. 2 Aids and Implements used by handicapped persons.
Delhi	Delhi Value Added Tax : Schedule-I : SI.No. 2 (i) Orthopaedic or fracture appliances (ii) Artificial joints and Artificial parts of the body (iii) Hearing aid system (iv) Parts and accessories of hearing aids (v) Wheel chairs for invalid, whether or not mechanically propelled and their parts and accessories
Gujarat	Gujarat Value Added Tax : Schedule-I : SI.No. 3 Aids & implements (used by handicapped persons) (1) Braille educational equipment, Braille typewriter, Braille writing slates and Braille Watch (2) Group hearing aids and Hearing aids (3) Induction group aids (4) Speech Trainer (5) Language Master (6) Audiometer (7) Voice chord (8) Walker (9) Wheel chair (10) Calipers of all type (11) Artificial Limbs (12) Crutches
Rajasthan	Rajasthan Value Added Tax : Schedule-I : SI.No. 2 Aids and implements used by handicapped persons/Artificial Hearing Aid , Artificial Limbs , Audiometer, crutches and calipers, tricycle, wheeled chair.
Uttar Pradesh	Uttar Pradesh Value Added Tax : Schedule-I : SI.No. 2 Aids & implement including motorized/non-motorized tricycle used by handicapped persons.
West Bengal	West Bengal Value Added Tax : Schedule-I : SI.No. 2 Aids & implements (used by handicapped persons including cervical spinal collar, walking stick, wheel chair and hearing aid)