

# SBGCo Connect - April 2022

**S B Gabhawalla & Co**  
**Chartered Accountants**





Greetings to all our readers!

The Finance Bill, 2022 was passed by both the Houses of the Parliament in last week of March 2022 and has immediately received the assent of President of India on 30.03.2022. The Finance Act, 2022 can be accessed by our readers by clicking [here](#). Our analysis of the Finance Bill, 2022 in relation to GST-related changes can also be accessed by clicking [here](#). The amendments relating to GST shall come into force from a future date which shall be notified by the Government, separately.

With the start of Financial Year 2022-23, one major change that has been implemented is the downward reduction threshold of limit for applicability of E-invoicing. Therefore from 01.04.2022 all taxpayers having aggregate turnover of more than Rs. 20 Crores in any previous financial year is required to generate E-invoice from 01.04.2022.

The GST collections have been touching a record high of 1.30 lakh crore+ for consecutive months and sixth time since the inception of GST without any major change in GST rates, thus indicating economic recovery and growth. The higher collections could be also reflective of the fact that stricter compliances have prompted various dealers to file monthly returns within mandated timelines.

Through this newsletter, we bring to you a summary of recent developments in GST, divided into following sections:

- A. [What's New?](#)
- B. [Recent decisions from the Judiciary](#)
- C. [Recent Advance Rulings and analysis of the same](#)
- D. [Compliance Chart for the month of April 2022](#)

We look forward to hearing from you for any feedback or suggestion.

Team SBGCo



## **A. What's New?**

### **I. Notifications issued during the month**

#### **1. Administrative delegating of powers.**

Additional Commissioner or Joint Commissioner of Central Tax have now been vested with additional powers to adjudicate and pass orders or decision in respect of notices issued by the officers of Directorate General of Goods and Services Tax Intelligence (DGGI).

Notification No 02 / 2022 - Central Tax dated 11.03.2022

### **II. Circulars / Guidelines / Instructions issued during the month**

#### **2. Standard Operating Procedure (SOP) for Scrutiny of returns for FY 2017-18 and 2018-19 (Centre Jurisdiction only)**

The CBIC has come out with an SOP for scrutiny of returns for FY 2017-18 and FY 2018-19. The same is summarized hereunder:

- a. Scrutiny would be based on specific risk parameters wherein data / details available from sources like DGARM, GSTN, E-Way Bill Portal, etc and officer should rely on latest data only because data generated earlier may undergo changes.
- b. "Superintendent of Central Tax" (i.e., by Superintendent of Central Tax in-charge of the jurisdictional range of the taxpayer) shall be treated as proper officer for the purposes of conducting the said scrutiny
- c. Month-wise scrutiny schedule shall be prepared by the Proper Officer in consultation with Assistant / Deputy Commissioner.
- d. Riskier GSTIN (based on the likely revenue implication indicated by DGARM) shall be taken up on priority.
- e. The Proper Officer shall scrutinize the returns and related particulars furnished by the registered person to verify correctness of returns.
- f. Indicative list of parameters for scrutiny are as under:
  - Comparison of tax liability on account of outward supplies declared in GSTR 1 and GSTR 3B
  - Liability of GST under reverse charge mechanism declared in Table 3.1(d) of GSTR 3B to be compared with:
    - ITC availed in Table 4(A)(2) and Table 4(A)(3) of FORM GSTR-3B
    - ITC in respect of invoices attracting RCM reflected in GSTR 2A by suppliers
    - Cash payment in Form GSTR 3B
  - ITC availed from supplies from ISD to be verified with details reflected in Form GSTR 2A.
  - ITC availed under "All other ITC" tab of Form GSTR 3B to be verified with details reflected in Form GSTR 2A



- Outward taxable supplies reported in GSTR 3B should be greater than or equal to net amount liable for TDS and TCS as disclosed by corresponding deductors in FORM GSTR-7 and FORM GSTR-8, respectively.
  - Liability on outward supplies as per GSTR 3B to be compared with tax liability as declared in e-way bills
  - Claim of ITC in respect of supplies from taxpayers whose registrations have been cancelled retrospectively
  - Ineligible ITC availed in respect of invoices / debit notes issued by the suppliers who have not filed their GSTR-3B returns
  - Whether GSTR-3B of a tax period is filed after the last date of availment of ITC in respect of any invoice / debit note i.e., after due date of Form GSTR 3B for September of following financial year
  - ITC availed in GSTR 3B on account of import of goods to be verified with details reflected in ICEGATE portal
  - Reversals under Rule 42 / 43 of the CGST Rules
  - Payment of appropriate interest liability in terms of section 50
  - Payment of appropriate late fees
- g. Based on the details available, the proper officer need not seek documents / records from the taxpayers before issuance of Form GST ASMT-10
- h. The discrepancies communicated should be specific in nature and not vague or general and quantify the amount of tax, interest and any other amount payable, if any. Payments made by assessee in Form GST DRC-03 shall also be taken into consideration by proper officer.
- i. The proper officer shall issue a single notice for corresponding financial year to a single assessee.
- j. On receipt of explanation in Form GST ASMT-11 from the assessee for such discrepancy, the proper officer shall conclude the proceedings by issuing Form GST ASMT-12, if the explanation is found appropriate or assessee has made payment of dues.
- k. In case no satisfactory explanation is provided by the assessee, the proper officer may proceed to determine the tax and other dues under section 73 or section 74 i.e., issuance of notices in Form DRC-01A and DRC-01.
- l. The SOP provides for timelines to be followed by proper officer for scrutiny of returns.
- m. The SOP also highlights maintenance of scrutiny register by the proper officer.
- n. The SOP is envisaged to enable the department to leverage technology and risk-based tools to encourage self-compliance and to conduct scrutiny of returns with minimal interaction with the assessee.

**SBGCO comments:**

*Having an SOP is always good as it ensures uniform procedure across the tax department. Further, the instructions in the SOP are detailed and provide all necessary details that may be*

required in assisting proper officer. The SOP also lays down guidelines which are clearly technology driven to ensure diligent taxpayers are not harassed.

Instruction No. 02 / 2022 - GST dated 22.03.2022.

**3. The Maharashtra Settlement of Arrears of Tax, Interest, Penalty or Late Fees Act, 2022.**

A large number of cases involving outstanding dues and litigation were pending under various State Tax laws that have been repealed and subsumed into GST. In order to unlock the amount involved in the outstanding dues and reduce the old pending litigations, Government of Maharashtra has introduced this Scheme.

Salient features of the scheme are tabulated hereunder:

Sr. No	Particulars	Details
1.	Acts Covered	<ul style="list-style-type: none"> <li>• The Central Sales Tax Act, 1956</li> <li>• The Bombay Sales of Motor Spirit Taxation Act, 1958</li> <li>• The Bombay Sales Tax Act, 1959</li> <li>• The Maharashtra Purchase Tax on Sugarcane Act, 1962</li> <li>• The Maharashtra State Tax on Professions, Trades, Callings and Employments Act, 1975</li> <li>• The Maharashtra Sales Tax on the Transfer of Right to use any Goods for any Purpose Act, 1985</li> <li>• The Maharashtra Tax on Entry of Motor Vehicles into Local Areas Act, 1987</li> <li>• The Maharashtra Tax on Luxuries Act, 1987</li> <li>• The Maharashtra Sales Tax on the Transfer of Property in Goods involved in the Execution of Works Contract (Re-enacted) Act, 1989</li> <li>• The Maharashtra Tax on the Entry of Goods into Local Areas Act, 2002: and</li> <li>• The Maharashtra Value Added Tax Act, 2002</li> </ul>
2.	Period Covered	<ul style="list-style-type: none"> <li>• Any period ending on or before 30<sup>th</sup> June, 2017</li> </ul>
3.	Duration of Scheme	<ul style="list-style-type: none"> <li>• 01.04.2022 to 30.09.2022</li> </ul>
4.	Arrears covered by the scheme	<ul style="list-style-type: none"> <li>• Return Dues</li> <li>• Statutory Order Dues</li> </ul>



<b>Sr. No</b>	<b>Particulars</b>	<b>Details</b>
		<ul style="list-style-type: none"><li>• Case litigated by the State before the Maharashtra Sales Tax Tribunal or the Courts</li></ul>
5.	Eligible Criteria	<ul style="list-style-type: none"><li>• Applicant whether registered or unregistered</li></ul>
6.	Divided of taxes due	<ul style="list-style-type: none"><li>• Undisputed Tax Dues - To be paid fully</li><li>• Disputed Dues - To be paid as per Annexure "A" &amp; "B"</li></ul>
7.	Waiver of Arrears	<ul style="list-style-type: none"><li>• Arrears of Rs.10,000/- or less per year shall be written off</li><li>• Post assessment interest on such written off dues shall stand waived</li></ul>
8.	Conditions of Settlement	<ul style="list-style-type: none"><li>• Full and unconditional withdrawal of any appeal filed by applicant before appellate authority, Tribunal or Court</li><li>• Where any excess set-off or refund under VAT Act is adjusted against CST dues, then order to settle dues under CST, appeal filed under VAT Act has to be withdrawn fully and unconditionally along with appeal under CST Act</li><li>• The acknowledgement of application of withdrawal of appeal along with the application of settlement shall be treated as sufficient proof towards withdrawal of such appeal</li></ul>
9.	Refund under this Scheme	<ul style="list-style-type: none"><li>• Under no circumstances, the applicant shall be entitled to get refund of any amount paid under this Act</li><li>• In case of order of settlement is revoked or rejected, the amount paid by the applicant under this Act shall be treated to have been paid under the relevant Act.</li></ul>
10.	Determination of requisite amount and waiver	<ul style="list-style-type: none"><li>• The requisite amount payable towards settlement of arrears and waiver shall be as specified in Table 1 or Table 2, as the case may be.</li><li>• Where any arrears as per any statutory order is of Rs. 10 lakh or less and if, the applicant opts for payment of a lump sum amount under One Time Payment option, then the extent of lump sum payment and applicable waiver has been specified in Table 1 or Table 2 as the case may be.</li><li>• In case the arrears are in excess of Rs. 50 lakhs, then the applicant may opt to pay the requisite amount under installment option.</li></ul>

**Table 1**

 (For the periods commencing FY 2005-06 and ending on or before 30<sup>th</sup> June 2017)

Sr No	Amount	One Time Payment Option		Instalment Option	
		Amount to be paid	Amount of waiver	Amount to be paid	Amount of waiver
(a)	(b)	(c)	(d)	(e)	(f)
(1)	Un-disputed Tax	100 % of the amount in (b)	NIL	100% of the amount in (b)	NIL
(2)	Disputed Tax	50 % of the amount in (b)	50% of the amount in (b)	56% of the amount in (b)	44% of the amount in (b)
(3)	Interest payable as per statutory order or returns	15% of the amount in (b)	85% of the amount in (b)	15% of the amount in (b)	85% of the amount in (b)
(4)	Outstanding Penalty as per statutory order	5% of the amount in (b)	95% of the amount in (b)	5% of the amount in (b)	95% of the amount in (b)
(5)	Post assessment interest or penalty	0% of the amount in (b)	100% of the amount in (b)	0% of the amount in (b)	100% of the amount in (b)
(6)	Late fees payable in respect of returns filed on or before 31 <sup>st</sup> March 2022	5% of the amount in (b)	95% of the amount in (b)	5% of the amount in (b)	95% of the amount in (b)
OR					
(7)	Where amount of arrears as per statutory order is of Rs. 10 lakh or less, applicant may opt for lumpsum payment instead amount as per Sr. Nos. (1) to (5) above	20% of the arrears	80% of the arrears along with post assessment interest or penalty or both	Not applicable	Not applicable

**Table 2**

 (For the periods ending on or before the 31<sup>st</sup> March 2005)

Sr No	Amount	One Time Payment Option		Instalment Option	
		Amount to be paid	Amount of waiver	Amount to be paid	Amount of waiver
(a)	(b)	(c)	(d)	(e)	(f)
(1)	Un-disputed Tax	100% of the amount in (b)	NIL	100% of the amount in (b)	NIL

Sr No	Amount	One Time Payment Option		Instalment Option	
		Amount to be paid	Amount of waiver	Amount to be paid	Amount of waiver
(a)	(b)	(c)	(d)	(e)	(f)
(2)	Disputed Tax	30% of the amount in (b)	70% of the amount in (b)	34% of the amount in (b)	66% of the amount in (b)
(3)	Interest payable as per statutory order or returns	10% of the amount in (b)	90% of the amount in (b)	10% of the amount in (b)	90% of the amount in (b)
(4)	Outstanding penalty as per statutory order	5% of the amount in (b)	95% of the amount in (b)	5% of the amount in (b)	95% of the amount in (b)
(5)	Post assessment interest or penalty	0% of the amount in (b)	100% of the amount in (b)	0% of the amount in (b)	100% of the amount in (b)
OR					
(6)	Where amount of arrears as per any statutory order is of Rs. 10 lakh or less, applicant may opt for lump sum payment instead amount as per Sr. Nos. (1) to (4) above	20% of the amount of arrears	80% of arrears along with post assessment interest or penalty levied or leviable	Not applicable	Not applicable

**SBGCO comments:**

*This scheme is similar to SVLDRS scheme announced by Central Government with the intention to clear pending litigation and also simultaneously unlock funds for the Government.*

*Our readers who may wish to apply under the scheme shall connect with respective Partners / RMs for further course of action.*

**4. Guidelines issued by Delhi's Department of Trade & Taxes (State GST Department) regarding "Indicative Guidelines for Issuance of Show Cause Notices (SCNs)"**

On account of surge in several instances of non-speaking & vague SCNs issued in violation of provisions of the GST Act and Rules, the State GST department of Delhi has issued guidelines for issuance of SCN which are reproduced hereunder in a simplified manner:

- a. SCN should be issued after proper inquiry / investigation and ascertainment of correct facts.
- b. SCN should be issued in the manner and format prescribed under the law





- c. Alleged violation of the provisions of law and other anomalies should be clearly brought out in the SCN
- d. Copies of the documents to be submitted or compliance to be made by noticee should be specifically mentioned in SCN
- e. Possibility of additional evidence being needed or additional anomalies being detected should be kept open during the pendency of proceedings
- f. Reasons for issuance of SCN should be attached with SCN and Proper Officer should not depend only on the drop-down menus of GSTN portal
- g. Amount of dues should be quantified and possibility of raising additional demand should be highlighted in SCN
- h. Option for personal hearing should be categorically provided in the SCN
- i. Authority to which SCN is answerable should be specifically stated along with Ward, designation, e-mail id
- j. SCN should be disposed of within timelines mentioned in the law.

**SBGCO comments:**

*This internal circular is a welcome move but should also be taken with a pinch of salt since this is not the first case where department has issued guidelines regarding issuance of SCNs. Hopefully, these guidelines do suggest an improvement in the manner of issuance of SCNs and the content therein. It however remains to be seen if the Officials strictly follow the instructions issued by Department.*

F. No.1 (2) / DTT / L&J / Misc. / 2019-20 / 77-79 dated 01.02.2022

## **B. Recent Decision from the Judiciary:**

### **1. ITC Ltd vs. State of Tripura [2022-TIOL-355-HC-TRIPURA-VAT]**

#### **Issue Raised:**

Can Department insist on physical personal appearance for hearing when severe restrictions on movements were imposed by states on account of pandemic?

#### **Gist of the Decision:**

The HC held that insisting on physical personal hearing during the time when Pandemic was at its peak would either expose the representatives of assessee to catching infection or force the Assessing Officer to adjourn the hearings resulting into delays. Passing an ex-parte order without establishing proof of service of notice for hearing resulted into breach of principles of natural justice. The HC set aside the order of assessment on the ground of inadequate hearing and also noted that the department should use technology to conduct virtual hearing.

#### **SBGCO Comments:**

Courts at different levels, including High Courts and the Supreme Court, operated virtually for months on virtual mode to dispose of large number of cases. Officers at ground level should not have insisted on physical appearance for hearing in the interest of providing fair and adequate opportunity to assessee for representing their case. The judgment of HC clearly lays down that mode of personal hearing cannot be a bar and the adjudicating officer must adapt to changing times to ensure that principles of natural justice are followed.

### **2. Khodiar Export Import vs. State of Gujarat [2022-TIOL-408-HC-GUJ-GST]**

#### **Issue Raised:**

Can an Appeal be dismissed / rejected based on reasons / grounds which were neither a part of the show cause notice nor the order challenged before the Appellate Authority?

#### **Gist of the Decision:**

The Hon'ble HC while setting aside the impugned order of adjudicating authority and the appellate authority held that dismissal of appeal on grounds which were not a part of the order challenged is absolute violation of the principles of natural justice. The HC further held that the appellate authority should not go behind the back of the petitioner to assign new grounds for dismissal of appeals which were not considered earlier / did not put petitioner to cause earlier.

#### **SBGCO Comments:**

There are umpteen number of cases wherein the higher forums have constantly held that Order cannot transverse beyond the scope of show cause notice. If the notice is issued for a particular issue, the orders / adjudication should be based on the said reason only. If any other reason is assigned, it would mean that the assessee never got the opportunity to represent his case for the new ground and it would eventually lead to violation of principles of natural justice. The HC in the present case, set aside the order.

### **3. M/s V R S Traders Vs. Assistant Commissioner of State Taxes [2022-TIOL-322-HC-MAD-GST]**

**Issue Raised:**

Whether any notice (viz., Form GST DRC-01) under Section 74(1) of the Act is required to be issued after issuance of Form GST DRC-01A but before passing an order?

**Gist of the Decision:**

The Hon'ble HC held that revenue department cannot proceed to directly issue an order after receipt of reply from the petitioner in response to Form DRC-01A. The HC held that Section 74 of the CGST Act is an independent provision and such provision requires the department to mandatorily initiate such proceedings by serving a notice to pay the amount of tax along with interest and penalty. This step of putting the petitioner to cause cannot be skipped in any scenario. Hence, in the present case, the order passed without issuing a notice in Form GST DRC-01 (as required in Section 74) could not stand the legal scrutiny of the law and thus the same was set-aside by the HC without any hesitation.

**SBGCO Comments:**

The procedure and steps laid down in the law cannot be by-passed / skipped / avoided by the officers at any cost. It is equally important for the tax-payer to be aware of the same so that their rights, if any, are not affected on account of such non-compliant orders. Such arbitrary orders only waste time, energy and resources of the assessee and department. Hence, this decision must be taken very seriously by the department and appropriate guidelines should be issued / training must be conducted so that officers do not pass orders that would not withstand legal scrutiny of higher courts.

### **4. Educational Initiatives Pvt Ltd VS Union of India [2022-TIOL-402-HC-AHM-GST]**

**Background:**

The petitioner enters into contracts with various schools to provide education upto the higher secondary school. The schools make it mandatory for their students to take up the Assessment of Scholastic Skill Through Educational Testing (ASSET) exams wherein the paper is set and evaluated by petitioner, which are conducted by the schools in their own premises. The marks obtained in the ASSET are given due weightage in the semester and the final examination results by the schools.

AAR has provided a ruling in the favour of the petitioner that such services are eligible for exemption under GST under Sr. No. 66(b)(iv) of NN 12/2017 - CT (R) dated 28.06.2017. The Revenue being aggrieved by the decision of the AAR, appealed to AAAR and the AAAR held that such conduct of examination is not eligible for exemption under the said entry. The Petitioner then approached the HC to set aside the ruling of AAAR.

Relevant portion of exemption entry:

66(b)(iv). *Services provided to an educational institution by way of services in relation to conduct of examination by such institution.*



**Issue Raised:**

Whether schools are facilitating the petitioner to conduct ASSET or petitioner is providing service to schools?

Whether conduct of such examination should be treated as services provided by Petitioner to school which are exempt under GST?

**Gist of the Decision:**

The Hon'ble HC held that the word 'education' cannot be given a natural meaning by restricting it to the actual imparting of education to the students but should be given a wider meaning which would take within its sweep all the matters relating to imparting and controlling education. 'Examination' is an essential component of education as it is one of the major means to assess and evaluate the skills of a candidate and the knowledge.

Even though the petitioner set the paper and evaluated the students, the key fact that should be noted is that the evaluation by the petitioner is used by schools / educational institutions to give internal marks which bear weightage in the final examination. The HC held that this is case where the examination is conducted by the schools / educational institutions but is outsourced to the Petitioner.

Hence, HC set aside the ruling of AAAR and upheld the ruling of the AAR, wherein, it was held that conduct of ASSET eligible for exemption under Sr. No. 66(b)(iv) of NN 12/2017 - CT (R) dated 28.06.2017

**SBGCO Comments:**

Right to Education is now a fundamental right of every child in India. The present decision of the HC, while analysing the activities of the petitioner, upholds the spirit of the exemption entry which is to ensure that the core educational services are fully exempt from GST. The HC has rightly held that education is not restricted to basic teaching and examination but covers various other types of assessments that evaluate a candidate's skills, knowledge, progress, strengths and weaknesses.

## **C. Recent Decisions from Advance Authority**

### **1. Chennai Water Desalination Ltd [Order No. 02/AAR/2022 (TN) = 2022-TIOL-33-AAR-GST]**

#### **Question raised:**

- i. Whether GST is applicable on supply of safe drinking water for public purpose by Applicant to Chennai Metropolitan Water Supply and Sewerage Board (CMWSSB), a Government Authority?
- ii. If the transaction is considered as a service, applicability of SI. No. 3 of Notification 12/2017 for transaction of supply of safe drinking water for public purpose by Chennai Water Desalination Plant Limited (CWDL) to Chennai Metro Water Supply and Sewerage Board, a Government Authority?

#### **Gist of the Ruling:**

- a. The activity of the applicant is not service and is sale of potable water, obtained after the process of desalination of sea water. The said product – water, falls under HSN 2201 and is entitled to Nil rate of GST in terms of SI. No 99 of Notification 2/2017 – CT (R).
- b. Since the activity is not a service, the said question was not answered.

#### **SBGCO comments:**

The AAR answered the questions raised by the applicant in their favour by analysing the process followed by the applicant correctly. The process of desalination to make the water potable is an internal one because the end product that is supplied is potable water which is then finally supplied to general public at large. Hence, the end product supplied is goods and classifiable under HSN 2201 which attracts nil rate of tax.

### **2. Maanicare system India Private Limited [Order No. GST-ARA-104/2019-20/B-14 (MH) = 2022-TIOL-29-AAR-GST]**

#### **Question raised:**

- Whether the applicant is eligible to take input tax credit on GST paid under Reverse Charge Mechanism (RCM) @ 5% for hiring of buses for transportation of employees?

#### **Gist of the Ruling:**

- The bus hired by the applicant is a 49-seater bus used for transportation employees. W.e.f. 01.02.2019, motor car having approved seating capacity greater than 13 is not part of blocked credit under section 17(5) of the CGST Act, 2017 provided the same is used for, inter alia, for transportation of persons. Hence, the applicant is eligible to take input tax credit on GST paid under RCM @ 5% for hiring of buses which are used for transportation of employees.

#### **SBGCO comments:**

The analysis by the AAR is perfect in the present case. The AAR has rightly acknowledged the amendment in the provisions of Section 17(5) relating to blocked credits and held that ITC for expenses in relation to motor vehicle with capacity greater than 13-seater will be eligible credit for transportation of passengers used in the course of the business.

### **3. Abbott Healthcare Ltd [Order No. AAR/19/2021 (Kerala) = 2022-TIOL-11-AAAR-GST]**

#### **Question raised:**

- Whether the placement of specified medical instruments by applicant at the premises of unrelated hospitals, labs etc. without consideration in pursuance of the agreement for their use for a specific period constitute a 'supply' under GST?

#### **Gist of the Ruling:**

- According to the AAAR, the transaction of placement of instruments at premises of unrelated hospitals, labs etc. satisfies all the essential ingredients of 'supply' as defined under Section 7 of the CGST Act, 2017 as follows:
  - a. The primary intention of applicant is to enter into an agreement to place instrument at the premises of those customer only where the customer in turn agrees to purchase products like reagents, calibrators, controls and accessory.
  - b. The agreement of the customer to purchase the reagents, calibrators and disposables for use in the instrument exclusively from the Appellant for a minimum value every month with obligation to pay the deficit amount in case the purchase in a month falls short of the minimum agreed value constitutes a valid consideration (meaning of consideration encompasses the monetary value of any act or forbearance for the inducement of the supply of goods or services or both.)

#### **SBGCO comments:**

*The analysis by the AAR seems to lack the depth required to understand the present transaction structure of the applicant. The sale of goods like reagents, calibrators etc. is distinct from placement of equipments. There is practically no consideration for placement of equipments. For similar facts, Hon'ble Kerala High Court has already given a favourable decision, but the same has been ignored in the present case by the AAAR.*

### **4. Platinum Motocorp LLP [Order No. HAR/AAAR/2019-20/03 (Haryana) = 2022-TIOL-09-AAAR-GST]**

#### **Question raised:**

- Whether ITC can be claimed on purchase of 'demo cars' being capital goods and ancillary input services such as insurance and repair and maintenance availed in respect of such demo cars?

#### **Gist of the Ruling:**

- The Applicant has raised similar question before the AAR and received a non-favourable order and hence, preferred an appeal before the AAAR.
- The AAAR has concluded that Demo cars do not fall under any of the uses mentioned in the exception list provided under Section 17(5) to treat ITC in relation to demo cars are eligible for claim. As per the AAAR, demo cars are not meant for 'further supply of such motor vehicles' as the same are first used for demonstration for a prolonged period and then may

be sold as a second-hand car. Hence, ITC in relation to Demo cars are not eligible for claim of ITC as the same are blocked under Section 17(5) of the CGST Act.

**SBGCO comments:**

The analysis by the AAAR seems to be very narrow because in normal trade parlance Demo cars are essential for promoting sale of motor vehicles. In another Advance ruling pronounced in the state of Maharashtra, in Re: Chowgule Industries Pvt Ltd (2019-TIOL-225-AAR-GST), the decision was given in the favour of applicant and ITC was held to be eligible for Demo Cars. The present ruling has once again lit fire to the on-going debate regarding divergent rulings from different states for same issue creating more confusion and litigation. We hope that the provisions regarding establishment of National Appellate Authority finds light of the day and brings uniformity to this entire process.

**5. GITEC-IGIP, GmbH [Order No. 04/AAR/2022 (TN) = 2022-TIOL-34-AAR-GST]**

**Question raised:**

- Whether the pure services, supplied by M/s GITEC-IGIP, GmbH, Cologne, Germany, by way of rendering Consulting Services for Programme Management and Accompanying Measures for implementation of Integrated Storm Water Drain to the Superintending Engineer, Storm Water Drain Department, Greater Chennai Corporation, Chennai are exempted from payment of GST as per the S. No. 3 of the NN. 12/2017 - CT (R) dated 28.06.2017?

**Gist of the Ruling:**

- The AAR has held that services of the applicant are in the nature of technical expertise in documentation, supervision, etc. of Construction and Maintenance of 'Storm Water Drain' which is a pure service. The AAR also concluded that the said project is undertaken to improve the 'urban Infrastructure of the Chennai City' (which a part of Article 243W of the Constitution of India) & the Storm Water Drain Department, Greater Chennai Corporation is a 'Local Authority.' Hence, the pure services by applicant to a local authority in relation to activity specified in the Article 243W of the Constitution of India is eligible for exemption as per the S. No. 3 of the NN. 12/2017 - CT (R) dated 28.06.2017.

**SBGCO comments:**

The decision by the AAR is a well-reasoned ruling that has analysed the key conditions of the exemption and correctly applied to the present transaction / activity of the applicant.



#### D. Compliance chart for April 2022

S N	Due Date	Form	Period	Periodicity	Special Remarks
1.	10.04.2022	GSTR - 7	March 2022	Monthly	To be filed by those who are required to deduct TDS under GST
2.	10.04.2022	GSTR - 8	March 2022	Monthly	To be filed by those who are required to collect TCS under GST
3.	11.04.2022	GSTR - 1	March 2022	Monthly	Taxpayers filing GSTR - 1 monthly
4.	13.04.2022	GSTR - 6	March 2022	Monthly	To be filed by an ISD
5.	13.04.2022	GSTR - 1	Jan 2022 to March 2022	Quarterly	To be filed by those under QRMP Scheme
6.	18.04.2022	CMP - 08	Jan 2022 to March 2022	Quarterly	To be filed by Composition Dealer (Payment of Self-assessed tax)
7.	20.04.2022	GSTR - 3B	March 2022	Monthly	To be filed by Taxpayer filing monthly GSTR 3B
8.	20.04.2022	GSTR - 5A	March 2022	Monthly	To be filed by non-resident Online Information and Database Access or Retrieval (OIDAR) services provider
9.	20.04.2022	GSTR - 5	March 2022	Monthly	To be filed by a non-resident foreign taxpayer registered in GST
10.	22.04.2022	GSTR - 3B	Jan 2022 to March 2022	Quarterly	To be filed by those under QRMP Scheme (#)
11.	24.04.2022	GSTR - 3B	Jan 2022 to March 2022	Quarterly	To be filed by those under QRMP Scheme (\$)
12.	25.04.2022	ITC-04	Oct 2021 to March 2022	Half-yearly	Taxpayers who are sending goods for job-work
13.	30.04.2022	GSTR - 4	FY 2021-22	Annually	To be filed by a Composition Dealer

(#) Last date for filing return without late fees and interest for the states of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, the Union Territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands and Lakshadweep.

(\$) Last date for filing return without late fees and interest for the states of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand, Odisha, the Union Territories of Jammu and Kashmir, Ladakh, Chandigarh and Delhi.





## **Disclaimer**

This newsletter is for general public information and knowledge sharing. In case any clarifications required, you may connect with us at:

Sunil Gabhawalla @ [sunil@sbgco.in](mailto:sunil@sbgco.in)

Yash Parmar @ [yash@sbgco.in](mailto:yash@sbgco.in)

Parth Shah @ [parth@sbgco.in](mailto:parth@sbgco.in)

Darshan Ranavat @ [darshan@sbgco.in](mailto:darshan@sbgco.in)

Prakash Dave @ [prakash@sbgco.in](mailto:prakash@sbgco.in)

Aman Haria @ [aman@sbgco.in](mailto:aman@sbgco.in)

Our office address:

S B Gabhawalla & Co.,

802-803 Sunteck Grandeur

Off S V Road, Opp Subway

Andheri West Mumbai 400058

Landline - 022 - 66515100

Web: [www.sbgco.co.in](http://www.sbgco.co.in)

Want to stay connected, join our Whatsapp group by clicking on the link -  
<https://chat.whatsapp.com/KJRD8SHyjSK5FUkFj8Of4t>