

SBGCo Connect - February 2022

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Greetings to all our readers!

The Union Budget 2022-23 sought to complement macro-economic level growth with a focus on heavy capital expenditure to strengthen the vision of “Atmanirbhar Bharat”. GST related key takeaways along with detailed explanation for all the proposed amendments have been summarized in our “SBGCo - Union Budget 2022-23 GST Highlights” issued and shared on the same day as the presentation of the Union Budget. The same can be accessed from clicking on the link [here](#).

We further look forward to continue our tradition of conducting a client seminar (albeit virtual session this time around) to explain and discuss the changes proposed in the Union Budget in relation to GST. The session is scheduled on 08.02.2022 at 5pm on Zoom platform, details of which have already been shared via Email and WhatsApp group. It shall also be streamed live on YouTube and thereafter saved on our YouTube page like our previous sessions for subsequent viewing.

The extended deadline for GST Annual Return (GSTR 9) and Self-Certified Reconciliation Statement (GSTR 9C) for FY 2020-21 is 28th February 2022. The due date was extended only during the last week of the original due date and hence, it is very likely that there will not be any further extension. It is therefore advised that readers take proactive measures for timely filing of their GSTR 9 and GSTR 9C for FY 2020-21, if the same are still pending for filing and ensure all the tax compliances are completed well in advance of the extended due date.

We would like to remind our readers that Aadhar Authentication has been mandatory for taxpayers claiming refund under GST and those applying for cancellation of GST registration w.e.f. 01.01.2022 and adequate steps to be taken to ensure either of these processes are not hampered on account of these new provisions.

We would like to remind our readers that GST law has been amended to ensure that ITC can be claimed by the taxpayer only after the supplier has reflected the tax invoice in recipient’s correct GSTIN. Hence, matching of ITC as per accounts with the details reflecting on the GST portal in the respective month’s GSTR 2B is now mandatory before filing GSTR 3B for that month.

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 February 2022](#)

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

Team SBGCo



A. What's New?

I. GST portal changes and modifications

1. Revamped Search HSN Code Functionality.

The enhanced “Search HSN Code” functionality enabled on the GSTN portal (available at both pre-login and post login) will help taxpayers to search the HSN code and the applicable technical description through common parlance / trade description. Previously, the search facility was based on technical descriptions provided in the HSN descriptions of the Customs Tariff Act, 1975.

As a result of the new improved functionality, HSN details can now be searched on the basis of HSN code, trade / commercial description and technical description to assist the taxpayers. The detailed advisory can be accessed by clicking [here](#).

SBGCO comments:

The enhanced search functionality feature is definitely an added bonus to ease the issues faced by the taxpayers. However, it must also be noted, that commonly used Trade descriptions displayed with this new search feature are based on Artificial Intelligence and Machine Language linked with e-invoice declaration database. Hence, it is basically tax-payers data made available to tax-payers through the use of Artificial intelligence and there is no government sanctity behind such details made available on the portal. Hence, it will be advisable to seek confirmation from legal advisors / consultants even after the implementation of this new functionality.

2. Interest calculator functionality incorporated in GSTR - 3B return filing process

Just like auto-population of Late Fees in subsequent period's GSTR - 3B return for any delay in filing current period's GSTR 3B, the GSTN has now introduced the new feature where in interest liability for delay in tax payment will also be auto-calculated in the subsequent period's GSTR - 3B, as per the amended Section 50 of the CGST Act, 2017

GSTR - 3B is a summary-based return wherein month-wise details of outward liability were previously never submitted at the time of filing GSTR - 3B. However, moving forward, after offsetting the outward liability with available ITC in current month's GSTR - 3B, an additional tab will be enabled on the screen that shall permit the tax payers to mention month wise break-up of the GST liability reflected in the current month's GSTR - 3B. These details fed by the tax-payer himself shall be used to compute interest liability in the subsequent month's GSTR 3B.

Initially, the amounts computed in the subsequent month's GSTR 3B shall be editable, unlike late fees permitting changes by tax-payers. However, any downward reduction in system computed interest calculation shall be marked with red colour for highlighting the same to the tax-payer while filing GSTR - 3B

The detailed advisory on interest calculation can be accessed by clicking [here](#).



SBGCO comments:

Though it is a welcome functionality to ease the tax-payers load, it remains to be seen that such advisory / clarification does not address the issue as to what should be done if the tax-payer is willing to pay interest in the same month as the delay details would be already be available with him as he might not opt to share month-wise details. Overall, the feature is definitely an implementation in the right direction to ease of filing GSTR - 3B return under GST.

B. Recent Decision from the Judiciary:

1. Akshayaa Yaar vs. Assistant Commissioner, Tirupur [2022-TIOL-83-HC-MAD-VAT]

Issue Raised:

Whether merely because the supplier failed to disclose the turnover in the return would mean that the input tax credit would be required to be recovered from the claimant assessee?

Gist of the Decision:

The Hon'ble High Court, in the context of TN VAT law observed that there will not be any demand of tax from the petitioner provided that the input credit is validly availed on the basis of invoices issued by the supplier. The Judgement further states that input credit need not be reversed and recovered from the petitioner merely because the supplier failed to disclose the turnover in the return. The Madras High Court also noted that other conditions prescribed in the law / rules must however be fulfilled.

SBGCO Comments:

Though the above judgement is in the context of VAT law, the basic underlying principle for the period upto 01.01.2022 in GST regime remains the same and it can very well be argued that provided the other conditions of section 16(2) of the CGST Act, 2017 are satisfied, input tax credit under GST need not be reversed only because the invoice is not appearing in GSTR 2A of the recipient. The above judgement along with other previously pronounced judgements under GST (namely, M/s. D. Y. Beathel Enterprises [2021-TIOL-890-HC-MAD-GST]) can be used to counter department's arguments to reverse ITC, which is not reflecting in GSTR 2A on account of errors made by the suppliers.

2. Jose Joseph vs. Assistant Commissioner of Central Tax and C. Ex., [2022-TIOL-15-HC-KERALA-GST]

Issue Raised:

Can a belated appeal (with manual files and submissions) be rejected on the grounds of limitation when the order itself was not uploaded on the GST portal?

Gist of the Decision:

The Hon'ble High Court set aside the order of the Commissioner (Appeals) which rejected the appeal of the petitioner on the grounds of limitation and expiry of time limit for filing an appeal. The Kerala High Court held that there was only one method prescribed for filing an appeal under GST and which is online filing on GST portal. Hence, the time limit of three months (as provided in the GST law) can start only when the petitioner had the opportunity to file the appeal in the electronic mode. In the present case, the order was never uploaded on the GST portal. There are no provisions for manual filing of appeal. Hence, the appeals filed by the petitioner are considered as 'filed in time' and Commissioner (Appeals) was directed to consider them on merits after affording sufficient opportunity of hearing.

SBGCO Comments:

The said Order of the High Court lays emphasis on the fact that uploading of order on the GST portal by the adjudicating authorities and filing of online appeal by assessee are intertwined activities. If the provisions of the law mandate certain procedure then the same must be followed and hence, the petitioner cannot be penalised for any deficiency on the part of the Department in implementing the procedures laid down by the GST law.

3. Saiher Supply Chain Consulting Pvt Ltd vs. UoI [2022-TIOL-48-HC-MUM-GST]

Issue Raised:

Will the Suo-moto Cognizance for Extension of Limitation period by Supreme Court be applicable for refund applications as well?

Gist of the Decision:

The Hon'ble High Court noted that Extension of Limitation period by Supreme Court is applicable to any Suit, Appeal, Application and or proceedings and the time limit prescribed under Section 54(1) for filing of refund shall be governed by such extension of limitation period. Hence, if the due date for filing refund application falls during the Extension of Limitation period, the same shall be excluded for computing the due date in accordance with such order of the Supreme Court.

SBGCO Comments:

This is a welcome Judgement from the Bombay High Court upholding the spirit of the Supreme Court's decision that shall assist many assesseees who could not file their refund claims on account of the Covid-19 pandemic. Given the further extension of limitation period till 28.02.2022, the assessee can now file refund applications for all period for which time limit expired between 15.03.2020 to 28.02.2022.

4. Capital Hi Tech Engineering Pvt Ltd vs. Commissioner of C. Ex. and Customs [2022-TIOL-23-CESTAT-DEL]

Issue Raised:

Rules of Interpretation - impact of provision is inserted by way of substitution.

Gist of the Decision:

The Hon'ble Tribunal held that where a provision is inserted by way of substitution, then the amended provision is deemed to have been inserted from the date of the original statute, unless otherwise provided. Hence, any demand / notice issued after the such substitution even for the period prior to the amendment shall be void as effect of such substitution is deemed to be from date of the original statute.

SBGCO Comments:

Substitution of one provision for the other pre-existing provision is one of the known and well-recognised practices employed in legislative drafting. 'Substitution' has to be distinguished from 'supersession' or a mere repeal of an existing provision where the latter have prospective effect. The act of substitution by the legislative authority would have the effect of amending the operation of law during the period in which it was in force i.e., date of the original statute.

5. Topical Beverages Pvt Ltd vs. UoI [2022-VIL-23-TRI]

Issue Raised:

Can the delay be condoned if the Appellant filed the appeal before the wrong forum (i.e., appeal filed before the Central Portal instead of State Portal of the GST)?

Gist of the Decision:

The Hon'ble High Court of Tripura noted that the Appellants had actually filed physical copy of submissions before the State forum but for some technical reasons, the online appeal was found to be under the administrative office of the Central jurisdiction. As a result of which, the State forum return the physical copy of submission made since they were not able to view the online filing of appeal. The Judgement further noted that all the systems are fairly new and sometimes, it might take time to make necessary corrections in this regard. However, the concerned authorities should have intimated the appellant about such incident so as to enable the Appellants to take necessary corrective actions. Keeping in view the peculiarity of the issue at hand, the HC directed the Appellant to file a fresh appeal and upload the said appeal before the appropriate authority and such authority would condone the delay in filing such Appeal.

SBGCO Comments:

Since the systems and procedures are fairly new and litigation is only picking up steam moving ahead, it is advisable that tax-payers take utmost care at their end to ensure that all the procedures are duly followed. The Appellants should also strive to file appeals well before the due date and not wait till the eleventh hour so that any such error / issue can be tackled with ample time at the disposal of the assessee.

6. CCE and ST vs. Reliance Industries Ltd [2022-TIOL-19-CESTAT-AHM]

Issue Raised:

Can refund be denied on the ground of violation / delayed compliance of procedural conditions prescribed in a notification?

Gist of the Decision:

The Hon'ble CESTAT, while placing reliance on the Supreme Court Judgement in the case of Collector, Land Acquisition, Anantnag Vs. Mst. Katiji [1987 (28) ELT 185 (SC) = 2002-TIOL-444-SC-LMT], held that in case of violation of condition of the notification which is in the nature of procedural lapse, the substantial benefit of the exemption notification cannot be denied. Hence, the Tribunal held that the refund application was to be honoured as the object sought to be achieved by the notification was to be looked over procedural compliances.

SBGCO Comments:

Depending on the circumstances of each case, any lapse must be viewed in consonance with the purpose of the law / notification. If the provision relates to granting of tax exemption, then liberal view may not always be solicited by Courts but in the case beneficial provisions, higher preference is given to achievement of the purpose / object and lesser to procedural lapses.

C. Recent Decisions from Advance Authority

1. Rajesh Kumar Gupta [Order No. 07/2021/AAR/R-28/03 (Madhya Pradesh) = 2022-TIOL-23-AAR-GST]

Question raised:

- (i) Whether the applicant can avail the Input Tax Credit of the full GST charged on invoice of the supply or a proportionate reversal of the same is required in case of post purchase:
 - a. Cash discount for early payment of supply invoices(bills) given by the supplier of goods to the applicant without adjustment of GST
 - b. Incentive/schemes provided through credit note without adjustment of GST by the supplier to the applicant
- (ii) Whether GST is leviable on cash discount offered by supplier to applicant through credit note without adjustment of GST for making the early payment from the date stipulated for payment of such supply as output supply? If yes, then what is the applicable HSN and rate of GST?
- (iii) Whether GST is leviable on incentive/schemes provided through credit note without adjustment of GST by the supplier to the applicant (dealer) as output supply? If yes, then what is the applicable HSN and rate of GST?

Gist of the Ruling:

The following favourable order was passed by the AAR:

- (i) Full ITC can be claimed on the invoice of the supplier and no proportionate reversal of ITC is required in respect of commercial credit note issued by supplier for Cash discount for early payment of supply invoices(bills) and Incentive / schemes provided without adjustment of GST.
- (ii) and (iii) The amount received in the form of credit note is actually a discount and not a supply by the applicant to the supplier and hence no GST is leviable on receiver on cash discount / incentive / schemes offered by the supplier to the applicant through credit note.

SBGCO comments:

The AAR has analysed the provisions of GST well to provide for a rare favourable order which has also correctly interpreted Circular No 92/11/2019-GST dated 07.03.2019 in this regard. The AAR has noted that full ITC on invoices can be claimed only if supplier has neither reduced their tax liabilities nor passed on credit by any other means. As long the above conditions are met, full ITC can be legally claimed by the recipient.

Further with respect to 2nd and 3rd question, the AAR has correctly noted that discount is not a supply from the recipient and hence, there is no scope of levy of GST by recipient on receipt of such discounts.

2. **M/s. Shantilal Real Estate Services [Order No. GOA/GAAR/02 of 2020-21/340 (Goa) = 2022-TIOL-22-AAR-GST]**

Question raised:

- a. Whether sale of plots is a supply?
- b. If yes, whether it is a supply of goods or services and under which category it falls?
- c. The valuation of the supply, if applicable?
- d. Rate of Tax, if applicable?
- e. Abatement, if any?

Gist of the Ruling:

- a. The Sale of plots is not a supply as the same is covered by entry 5 of Schedule III.
- b. Since sale of plot is not a supply, remaining questions are inconsequential.

SBGCO comments:

In the present case, the AAR has considered additional facts surrounding the sale of plot of land which are as under:

- The applicant is sole owner of the plot of land without conditions.
- Larger plot of land shall be subdivided into smaller plots before sale
- Some work will be done such as roads, electricity poles or drainages before sale of plot but the said roads, electricity poles or drainages shall not be transferred to the buyer but shall be transferred / gifted to the local authority.
- Subsequently, no plot owner or collectively all plot owners will be in a position to sell these plots or roads or drainages nor they will be in a position to sell only plots without having these poles or roads on it.

After taking into account all the above facts, the AAR has rightly come to the conclusion that probable plot buyer cannot opt to buy only plot without these amenities and hence, sub divided plots sold after some work on roads, electricity poles or drainages shall not change the nature of the supply viz. sale of land. Hence, such sale of plots are not a supply under GST.

3. **Aristo Bullion Pvt Ltd [Order No. GUJ/GAAAR/APPEAL/2021/36 (Gujarat) = 2022-TIOL-03-AAAR-GST]**

Question raised:

Can the applicant use ITC Balance available in the ECrL legitimately earned on the inputs / raw materials / inward supplies (meant for outward supply of Bullions) towards the GST liability on Castor Oil Seeds which were procured from Agriculturists and subsequently meant for onward supply?

Gist of the Ruling:

The applicant can use the ITC Balance available in its ECrL, which has been legitimately earned on the inputs / inward supplies (meant for outward supply of Bullions) for payment of 'output tax' (GST) on its outward supply of Castor Oil Seeds.



SBGCO comments:

In the present case, the AAR had passed an unfavourable order which stated that ITC validly taken on any 'input' cannot be utilized for payment of 'output tax' (GST) on any outward supply, which has no nexus with the inputs on which ITC was taken. Hence, the applicant preferred an appeal before the Appellate Authority for Advance Ruling.

The AAAR has rightly analysed that Section 16(1) nowhere mandates to prove one-to-one correlation of particular inputs with particular outward supply. The AAAR has also aptly noted the requirement of Section 16(1) is that the inward supply should be used or intended to be used in the course or furtherance of the business of taxpayer and there is no need establish nexus of ITC on inputs with that of output tax at the time of payment of the same.



D. Compliance chart for February 2022

SN	Due Date	Form	Period	Periodicity	Special Remarks
1.	10.02.2022	GSTR - 7	Jan 2022	Monthly	To be filed by those who are required to deduct TDS under GST
2.	10.02.2022	GSTR - 8	Jan 2022	Monthly	To be filed by those who are required to collect TCS under GST
3.	11.02.2022	GSTR - 1	Jan 2022	Monthly	Taxpayers filing GSTR - 1 monthly
4.	13.02.2022	GSTR - 6	Jan 2022	Monthly	To be filed by an ISD
5.	13.02.2022	IFF	Jan 2022	Monthly	To be filed by those under QRMP Scheme (optional)
6.	20.02.2022	GSTR - 3B	Jan 2022	Monthly	To be filed by Taxpayer filing monthly GSTR 3B
7.	20.02.2022	GSTR - 5A	Jan 2022	Monthly	To be filed by non-resident Online Information and Database Access or Retrieval (OIDAR) services provider
8.	20.02.2022	GSTR - 5	Jan 2022	Monthly	To be filed by a non-resident foreign taxpayer registered in GST
9.	25.02.2022	PMT - 06	Jan 2022	Monthly	Challan to be filed for payment by those under QRMP Scheme
10.	28.02.2022	GSTR - 9	FY 2020-21	Annual	To be filed by those having Aggregate T/o of > 2Cr in FY 2020-21
11.	28.02.2022	GSTR - 9C	FY 2020-21	Annual	To be filed by those having Aggregate T/o of > 5Cr in FY 2020-21



Disclaimer

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

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