

# SBGco Connect - December 2021

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SALES





Greetings to all our readers!!

We hope you are doing well.

The deadline for GST Annual Return (GSTR 9) and Reconciliation Statement (GSTR 9C) for FY 2020-21 is 31<sup>st</sup> December 2021. Even though due dates for direct tax compliances were extended well-in-advance by the Finance Ministry, it is unlikely that the due date for GSTR 9 and GSTR 9C for FY 2020-21 will be extended. It is therefore advised that readers take proactive measures for timely filing of their GSTR 9 and GSTR 9C for FY 2020-21 as there is limited time at everyone's disposal now.

November 2021 saw some major amendments in exemptions and GST rate for various goods and services. The same was extensively covered in our NewsFlash released the very next day on 18.11.2021. The NewsFlash can be accessed from our website by clicking [here](#). The NewsFlash was also followed by a detailed interactive virtual session conducted by Shri. Sunil B Gabhawalla explaining the ramifications of the changes along with subsequent steps to be taken by the impacted parties. The recorded virtual session can be viewed by clicking on the link [here](#).

The GSTN team has been constantly upgrading the GST Portal to enhance the user's experience. In November 2021, they have brought about certain changes in GSTR 1 / IFF to be made online from returns to be filed in December onwards. The improvements include Reorganized GSTR 1 Dashboard, Table / Tile Document Counts with colour coding, B2B and CDNR table enhancements, updating Records per page feature and changes in Steps to file GSTR 1 / IFF. Detailed advisory issued by the GSTN team can be accessed by clicking [here](#).

We would like to remind our readers that limitation period for filing cases / appeals / suits for the orders received after 03.10.2021 do not have any grace period and the normal timeline as provided in the respective law shall be applicable for such orders.

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 December 2021](#)

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

Team SBGco



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

### **I. Circulars issued during the month:**

#### **1. Dynamic QR code applicability in cases where service recipient is outside India but Place of Supply is in India**

In accordance with Notification 14 / 2020 - CT, dated 21.03.2020, all taxpayers with an annual turnover of more than Rs. 500 crores in any preceding financial year (starting 2017-18) have to compulsorily generate a dynamic QR code to enable digital payments on all B2C invoices (w.e.f. 01.10.2021). The Government has now clarified that in cases where the unregistered service recipient is located outside India, but the service provided does not qualify as export of service on account of place of supply being in India, invoices can be issued without dynamic QR code because dynamic QR code will not be used by the recipient located outside India for making payment to the supplier.

Circular No. 165/21/2021 - GST, dated 17.11.2021

#### **SBGCO comments:**

*By relaxing the dynamic QR Code compliance for taxpayers with an annual turnover of more than Rs. 500 crores in any preceding FY for the specific case of unregistered service recipient located outside India, the Government has opted for a practical approach by easing the compliance as such customers would ideally be making the payment in convertible foreign exchange or in Indian Rupees wherever permitted by the RBI and may not be using the dynamic QR code to make payments.*

#### **2. Clarification on certain refund related issues**

The Government has taken cognizance of challenges / issues faced by taxpayers while claiming refund and has therefore issued following clarifications:

- Clarifications on issues relating to refund of balance lying in electronic cash ledger
  - Time limit to claim refund to not apply
  - Furnishing of a certificate / declaration for not passing the incidence of tax to any other person not required
  - TDS / TCS deposited in electronic cash ledger under the provisions of section 51 / 52 of the CGST Act also eligible for refund
- Relevant date for the refund of tax paid on supplies regarded as deemed export for the supplier or recipient shall be determined as per Explanation (2)(b) under section 54 of CGST Act viz., the date on which the return relating to such deemed exports is furnished by the supplier.

Circular No. 166/22/2021 - GST, dated 17.11.2021



**SBGCO comments:**

*These clarifications by the Board are welcome as they explain the position of the Government related to the specific issues faced by the industry and in turn leading to smoother facilitation of refunds.*

**II. Instructions issued during this month:**

**3. Guidelines for disallowing debit of electronic credit ledger under Rule 86A of the CGST Rules, 2017.**

Rule 86A of the CGST Rules, 2017 provides that in certain circumstances, Commissioner or an officer authorised by him, on the basis of reasonable belief that credit of input tax available in the electronic credit ledger (“E. Cr. L”) has been fraudulently availed or is ineligible, may not allow debit of an amount equivalent to such credit in electronic credit ledger. However, the proper officers had started to arbitrarily use this power, and in many cases, the High Court had to intervene. Hence, the following guidelines (summarized hereunder) are issued with respect to exercise of power under rule 86A of the CGST Rules.

**I. Grounds for disallowing debit of an amount from electronic credit ledger:**

The reasons for such belief must be based on one of the following grounds, which must be arrived at after proper application of mind considering all the facts of the case, namely:

- ITC is availed on the basis of invoices or debit notes issued by a supplier, who is found to be non-existent or is found not to be conducting any business from the place declared in registration.
- ITC is availed without actually receiving goods or services
- ITC is availed by recipient but tax is not paid by the supplier
- ITC is availed by recipient without having any invoice or debit note or any other valid document
- ITC is claimed by a recipient who is found to be non-existent or is found not to be conducting any business from the place declared in registration

The guidelines specifically instruct the officers carefully examine all the facts, before resorting to disallow debit of amount from E. Cr. L. Further, the reasons are to be arrived at on the basis of material evidence available or gathered in relation to fraudulent availment of input tax credit or ineligible ITC availed and not purely subjective of suspicion.

**II. Determination of Proper Authority**

The Additional Director General / Principal Additional Director General of DGGI can also exercise the power of authorization as per the monetary limits below. Further, Commissioner / Principal Commissioner of CGST Audit may refer the issue to the jurisdictional CGST Commissioner for examination of the matter for exercise of power under Rule 86A, if any such issue is observed in the course of Audit

Authorization by Commissioner / Principal Commissioner under Rule 86A must be based on the following monetary limits:



<b>Total amount of ineligible or fraudulently availed ITC</b>	<b>Rank of Officer to exercise powers under Rule 86A</b>
Not exceeding Rs. 1 crore	Deputy / Assistant Commissioner
Between Rs 1 crore and Rs 5 crore	Additional / Joint Commissioner
Above Rs 5 crore	Principal Commissioner / Commissioner

### III. Procedure to be followed

- Prima facie ascertainment should be on the basis of material evidence available or gathered on record
- Monetary limits defined above must be following when issuing authorization by Principal Commissioner / Commissioner.
- Application of mind by proper officer to arrive at 'reasons to believe' that ITC has been fraudulently availed or is ineligible.
- Such 'reasons to believe' shall be duly recorded by the concerned officer in writing on file before disallowing debit of amount in E. Cr. L
- The amount disallowed for debit from E. Cr. L should not be more than amount of ITC believed to have been fraudulently availed or is ineligible.
- The registered person must be made aware of the actions taken on the GST portal along with the details of the officer who has disallowed such debit.

### IV. Allowing debit of disallowed / restricted credit

- Based on the submissions made by the taxpayer with material evidence or on his own motion, the proper officer may consider the matter afresh and on being satisfied with the same, may allow the use of the credit, either partially or fully which was earlier believed to fraudulently availed or ineligible.
- Such change of opinion must also be recorded in writing before allowing such debit of E. Cr. L.
- The investigation and adjudication must be completed at the earliest (within the period of restriction of 1 year) as the restriction on debit of E. Cr. L is not just resorted to protect the interests of the revenue but also impacts the working capital of the registered person.

#### **SBGCO comments:**

*These guidelines shall provide much required clarification on the process to be followed by the proper officers, and in turn lead to appropriate use of such extraordinary powers only in appropriate cases. A few High Court decisions also have been honoured as such HC orders had specifically sought for guidelines from Government for such cases.*

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

### **1. Aakanksha Distributors P. Ltd vs. Asst Commissioner, Chennai [2021-TIOL-2158-HC-MAD-GST]**

#### **Issue Raised:**

Whether any adjudication can be done without affording an opportunity of personal hearing?

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

The High Court held that Personal hearing is a statutorily imperative qua sub-section (4) of Section 75 of TN-GST Act. Section 75(4) of the TN-GST Act read as follows:

*“(4) An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person.”*

Hence, only on the sole ground of not affording an opportunity of personal hearing, the order by adjudicating authority was set aside by the HC.

### **2. M/s. S S Traders vs. State of UP [2021-TIOL-2147-HC-ALL-GST]**

#### **Issue Raised:**

What is the significance of the procedure laid down under the law? Can Registration of the taxpayer be cancelled without following the due procedure laid down in the law?

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

There was a difference in the show cause notice issued to the taxpayer and the format provided in the law. Further, after issuance of the SCN, no opportunity of hearing was granted as date and time fixed for hearing were not mentioned. Moreover, Section 29(2) mandates opportunity of hearing to be provided to the person whose registration is proposed to be cancelled. Hence, the High Court held that where the statute provides for a procedure then the procedure has to be followed in the letter and spirit of the statute or not at all. Therefore, denial of opportunity of hearing vitiates the proceedings and orders cancelling the registration are set aside.

#### **SBGCO Comments (combined for Sr. No 1 & 2):**

It is very imperative that when any adverse decision is proceeded to be made against any assessee be it cancellation of registration or confirming demand, it is the statutory duty of the officer to provide opportunity of personal hearing. If no opportunity of personal hearing is afforded, it is a clear violation of natural justice and also contradictory to one of the fundamental legal principles of ‘*Audi alteram partem*’ which means that that no person shall be condemned or punished without being heard.

### **3. Appario Retail Pvt Ltd vs. Union of India [2021-TIOL-2142-HC-TELANGANA-GST]**

**Issue Raised:**

Can a taxpayer claim refund of the excess balance in electronic cash ledger (“E.C.L.”) accumulated on account of TCS deposited by e-commerce operator?

**Gist of the Decision:**

The Hon’ble HC held Section 52 is specified in Chapter X, which deals with 'Payment of tax' and the heading of Section 52 also deals with 'Collection of tax at source' and hence, amount collected by e-commerce operator and paid to the Government is ‘tax’ which a taxpayer is entitled to claim credit in his E.C.L. Further, the judgement also held that claiming refund balance in E.C.L is covered by the proviso to section 54(1) of the CGST Act.

The Judgment also held that ‘FAQ’ issued by CBIC in this regard that categorically states that refund of excess cash balance on account of TCS eligible for refund is a form of clarification and the same is binding on the department. Order-in-Appeal disallowing refund was set aside and it was held that the taxpayer is entitled to claim refund of excess cash balance in the E.C.L.

**SBGCO Comments:**

It is clear that the CBIC took cognizance of the above-mentioned judgement and immediately clarified via Circular No. 166/22/2021 - GST, dated 17.11.2021 that refund of excess cash balance in the E.C.L is eligible for refund. This circular now puts a final nail to the coffin, viz., should put to rest all unsettled matters where refund for such a case was not granted.

### **4. SBI Cards and Payment Services Ltd vs. Union of India [2021-TIOL-2141-HC-P&H-GST]**

**Issue Raised:**

Can refund of tax which had been wrongly paid in excess be disallowed when the taxpayer has Suo-moto paid the correct tax before filing of refund application?

**Gist of the Decision:**

There was no dispute regarding the amount of tax paid by the taxpayer in the correct head before applying for refund of equal amount of tax paid inadvertently in the incorrect head in the early phases of GST. The High Court also took heed of the recent circular no 162/18/2021-GST dated 25.09.2021 issued by the CBIC which clarified that that while applying for refund of incorrect payment of tax under section 77 of CGST Act, the term ‘subsequently held’ also covers cases where the assessee Suo-moto corrects his mistakes and pays the correct tax. Hence, in the present case, the refund of incorrect nature of tax was ordered to be refunded to the taxpayer along with interest and the appellate order disallowing the claim on the basis of restricted interpretation of ‘subsequently held’ was set aside.

**SBGCO Comments:**

A string of judgement based on recent circulars clearly indicate that Government is taking keen interest to resolve the issues faced by the taxpayers and circulars are also being issued so as to clarify the stance of the government on various interpretational issues. These circulars and clarifications are in-turn helping the taxpayers to get their issues resolved much quicker.

**5. Green Agro Pack Pvt Ltd vs. Commissioner of Central Tax, Bengaluru [2021-TIOL-745-CESTAT-BANG]**

**Issue Raised:**

Whether the change in tax regime be a valid reason to deprive the right of a taxpayer, specifically when specially when substantial conditions have been fulfilled by the assessee?

**Gist of the Decision:**

The filing of ER-3 return was done away with, after the arrival of GST. The taxpayer is a 100% EOU unit and had debited the cenvat refund amount manually at the time of filing of the refund claim. The Tribunal held that introduction of a new law cannot be held to deprive the rights of a Taxpayer and the taxpayer having complied with substantial conditions, is eligible for refund of the cenvat lying with the government.

**SBGCO Comments:**

The Hon'ble Courts have consistently held two principles which are again re-iterated in the above judgement namely, vested rights of the taxpayer cannot be taken away mere on account of introduction of a new law and benefit of substantial compliance must be upheld keeping in mind the purpose to be achieved and facts of the case.

**6. State of Karnataka vs. M/s. Hemanth Motors [2021-VIL-758-KAR]**

**Issue Raised:**

Can unloading of the conveyance after expiry of EWB be held to be a valid reason for detention and seizure procedure when the conveyance had reached the destination before the expiry of EWB?

**Gist of the Decision:**

The Hon'ble High Court held that the material evidences on record clearly indicate that the action by the authorities was taken at the destination and not during transit. Since, the conveyance had reached the destination well within the valid period stipulated under the EWB, the detention and seizure procedure initiated by the proper officer was held to be incorrect.

**SBGCO comments:**

In the present case, the department has failed to under the purpose of introduction of EWB and cases which require invocation of strict actions such as detention and seizure. Merely delay in unloading of the goods from the conveyance on the delivery date and unloading the goods after expiry of EWB cannot be said to have contravened the provisions of the EWB Rules. The argument by department that taxpayer should seek extension of EWB because unloading could not happen before expiry even though the goods reached the destination seems far-fetched.



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

#### **1. Tata Power Company Ltd [Order No. GST-ARA-99/2019-20/B-92 (MH) = 2021-TIOL-258-AAR-GST]**

**Question raised:**

Whether the recovery of an amount towards Top-up / parental insurance premium from the employees, amounts to a supply of any service under GST by the Applicant?

**Gist of the Ruling:**

- The activity of providing Mediclaim policy for the employees and their parents is neither covered under the term “business” of section 2(17) of CGST Act, 2017 nor satisfies the conditions to be treated as ‘supply’ under GST
- The applicant is not rendering any services of health insurance to their employees / employees’ parent.
- The recovery of the Top Up Insurance / Parental Insurance Premium from employees do not amount to “supply of service” under GST.

**SBGCO comments:**

This is a very welcome ruling given by the authority for advance ruling. The said ruling would have significant ramification such interpretation may not be only restricted to Top-up / parental insurance premium. Application of such decision will also cover other recoveries from employees which are not affecting / relating to the ‘business’ of the taxpayer, as analysed by the above ruling.

#### **2. Mahavir Nagar Shiv Srushti Co-Operative Housing Society Limited [Order No. GST-ARA-19/2021-22/B-94 (MH) = 2021-VIL-418-AAR]**

**Question raised:**

Whether the applicant is eligible to obtain the ITC of such GST charged by contractor for carrying our major repairs, renovations and rehabilitation works for the society?

**Gist of the Ruling:**

A housing society provides club and association services to its members but does not provide works contract service to its members. Hence, in terms of Section 17 (5) (c) of the CGST Act 2017, ITC shall not be allowable to the housing society. The ruling did not accept the argument of the applicant that the input works contract services were used to provide output works contract service to its members.

**SBGCO comments:**

Whether the GST law does recognize principle of mutuality or not, is still debatable and department is clear that transaction between members and society is a Supply. Therefore, the applicant did attempt to claim ITC on this ground but the same has been disallowed. The Department may be blowing hot and cold at the same time by collecting tax on the outward and disallowing ITC on the inward.

3. **M/s. Pine Subsidiary Industry [No. KAR ADRG 57/2021 (Karnataka) = (2021) 05 CCHGST 0725 AAR Kar]**

**Question raised:**

- a. Whether the applicant, having registration and place of business only in Karnataka, can directly dispatch goods from Chennai Sea Port to his customers in other states without obtaining registration in Tamil Nadu i.e., state of import?
- b. Can EWB be issued with GSTIN of Karnataka and the place of dispatch as Chennai Sea Port?
- c. Whether ITC would be eligible to the GSTIN of Karnataka even though goods are not received physically at such premises, but directly dispatched to customers from the Chennai Sea Port?

**Gist of the Ruling:**

- a. A separate registration need not be obtained at the place of importation i.e., Tamil Nadu, in the present case. When goods are directly dispatched from Chennai Sea Port, tax invoice with IGST can be issued to the customers outside Karnataka.
- b. Yes, EWB be issued with GSTIN of Karnataka and the place of dispatch as Chennai Sea Port.
- c. Relying on Explanation to Section 16(2)(b), the ruling held that ITC would be eligible to the GSTIN of Karnataka as the explanation provides a deeming fiction that goods are deemed to have been received by applicant even though the goods are directly shipped to the end customer.

**SBGCO comments:**

The Advance Ruling has correctly analysed the provisions of 'location of supplier' to hold that separate registration is not required in the state of importation as there is no place of business in such state in accordance with the Section 22 read with Section 2(85) of the CGST Act. Further, eligibility of ITC of IGST paid at the time of clearance of goods has also been upheld for such registration which is not same as state of importation. This will also help all taxpayers as they need not import only in the state where they have a registration, but can import from any state and can avail the ITC of IGST paid in their existing registration itself.



**D. Compliance chart for December 2021**

<b>SN</b>	<b>Due Date</b>	<b>Form</b>	<b>Period</b>	<b>Periodicity</b>	<b>Special Remarks</b>
1.	10.12.2021	GSTR - 7	Nov 2021	Monthly	To be filed by those who are required to deduct TDS under GST
2.	10.12.2021	GSTR - 8	Nov 2021	Monthly	To be filed by those who are required to collect TCS under GST
3.	11.12.2021	GSTR - 1	Nov 2021	Monthly	Taxpayers filing GSTR - 1 monthly
4.	13.12.2021	GSTR - 6	Nov 2021	Monthly	To be filed by an ISD
5.	13.12.2021	IFF	Nov 2021	Monthly	To be filed by those under QRMP Scheme
6.	20.12.2021	GSTR - 3B	Nov 2021	Monthly	To be filed by Taxpayer filing monthly GSTR 3B
7.	20.12.2021	GSTR - 5A	Nov 2021	Monthly	To be filed by non-resident Online Information and Database Access or Retrieval (OIDAR) services provider
8.	20.12.2021	GSTR - 5	Nov 2021	Monthly	To be filed by a non-resident foreign taxpayer registered in GST
9.	25.12.2021	PMT - 06	Nov 2021	Monthly	Challan to be filed for payment by those under QRMP Scheme
10.	31.12.2021	GSTR - 9	FY 2020-21	Annual	To be filed by those having Aggregate T/o of > 2Cr in FY 2020-21
11.	31.12.2021	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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