

A hand holding a black pen points towards a financial chart. The chart features a candlestick pattern with green and red bars, overlaid with several moving average lines in various colors (pink, orange, blue). In the foreground, a semi-transparent table displays bid and ask prices for various quantities. The background is a dark blue grid with faint text and data points.

**SBGco Connect – April 2020**

***S B Gabhawalla & Co.,***

***Chartered Accountants***



Greetings to all our readers!! As you all are aware, the MHA has further extended the lockdown for two weeks w.e.f 4<sup>th</sup> May 2020, i.e., we will be entering the third phase of this lockdown. In this testing times, I hope that you & your loved ones continue to be in the best of spirits & health. While we continue to stay safe at our homes, there are many people who are risking their lives to ensure that the basic needs are satisfied, viz., medical, security, sanitation, etc., Let us take an opportunity to appreciate the efforts taken by them who have helped us in ensuring that the spread of the virus remains contained.

As the lockdown keeps on getting extended, it becomes important that we use this as an opportunity to catch up on things which we could not do earlier due to paucity of time. With this though process in mind, we had organized a series of online sessions from 20<sup>th</sup> to 24<sup>th</sup> April 2020 wherein our Leader, Sunil Gabhawalla had dealt with various aspects of the GST law and the issues revolving around them, key being input tax credit, RCM, Exports & Refund Procedures, Documentation & year end exercises from GST perspective. Encouraged by the strong participation of our clients, we extended the online sessions and from 25<sup>th</sup> to 30<sup>th</sup> April 2020, we had sector specific discussion on GST provisions & issues which was taken up by Mr. Sunil Gabhawalla along with other Partners / Senior Managers. The above sessions are also hosted on our youtube channel – SBGCO. We hope you find it informative.

We reiterate our commitment to serve our clients during this testing times. All our resources are currently working from home and suitably equipped to assist you in various aspect. We bring this Newsletter to you where we will try to provide you insights on quick updates from the field of indirect taxes covering recent amendments, circulars, press releases and recent judgments, including Advance Rulings. We hope that you find this informative.

The article is divided into following sections:

1. Notifications, circulars & press-releases
2. Recent decisions from the Judiciary
3. Recent Advance Rulings and analysis of the same

We look forward to hearing from you for any feedback or suggestion for improvements. Wish you all a Happy reading. Stay Safe, Stay Healthy!

**Regards,**  
**Team SBGco**



## Notifications, Circulars & Press-releases

### 1. Form notified for transfer of balances within electronic cash ledger of a taxable person

Notification 31/2019 – Central Tax dated 28.06.2019 introduced the concept of FORM-GST-PMT-09 allowing any registered person to transfer any amount of tax, interest, penalty, fee or any other amount available in the “electronic cash ledger” on the common portal under any Act to the electronic cash ledger under Other Acts. The effective date for implementation of GST-PMT-09 has been notified as 21.04.2020 vide Notification 37/2020 Central Tax.

### 2. Clarifications issued

Many notifications were issued on 03.04.2020 to give effect to the relief announced in response to the COVID-19. The same has been covered by our previous update shared on 04.04.2020 and therefore, not covered again here. Certain issues have been raised with respect to the said notifications. Therefore, CBIC has issued Circular 137/07/2020 – GST dated 13.04.2020 providing clarifications on the same along with certain other issues. The same are summarized as under:

#### a. Option to file refund of tax on account of cancellation of invoice / refund of advance under the head “Excess payment of tax, if any” through Form

GST RFD – 01, This shall apply in both cases, cancellation of invoices as well as refund of advances. The option has also been enabled in case of credit notes on account of sales return in case of supply of goods.

- #### b. Notification 35/2020 – CT dated 03.04.2020 which extended the requirement for furnishing of any report, document, return, statement or such other record, the due date of which was during between the period from 20.03.2020 to 29.06.2020 has been extended till 30.06.2020 shall apply for LUT also. Hence, time limit for filing of LUT for the year 2020-21 shall stand extended to 30.06.2020 and the taxpayer can continue to make the supply without payment of tax under LUT provided that the FORM GST RFD-11 for 2020-21 is furnished on or before 30.06.2020. It has been further clarified that this extension shall apply to refund applications also which were to be made during this period.
- #### c. Due date for furnishing of return in FORM GSTR-7 along with deposit of tax deducted under section 51 of CGST Act, 2017 for the said period has also been extended till 30.06.2020 and no interest under section 50 shall be leviable if tax deducted is deposited by 30.06.2020.



## Recent Decisions from the Judiciary

### Citation

Mahendra Kumar  
Indermal vs. Deputy  
Assistant  
Commissioner (ST) –  
2020 – VIL – 189 – AP

### Gist of the Judgment

The Andhra Pradesh HC dealt with the issue of powers of inspection by an officer. As per the provisions of Section 67(1) of the Act, power of inspection is specified to an officer not below the rank of joint commissioner. The said officer for the purpose of search as specified in Section 67(1) (a) and (b) may authorize in writing any other officer of Central Tax for inspection of any places of business of the taxable person or the persons engaged in the business of transporting goods or the owner or the operator of warehouse or godown, as the case may be. For the purpose of seizure where the authority is having a reason to believe that proceedings of the confiscation are required in the matter to which inspection has been carried out, after recording the said reason, he may exercise such power for seizure by authorising in writing any of the officers of the Central Tax Department. However, if the Order is passed by a person below the rank of Joint Commissioner, the Order so passed has to refer to the order of authorisation in writing and in the absence of the same, such Order would be illegal, without jurisdiction and not in conformity with the provisions of the Act.

Mahadeo  
Construction Co vs  
UoI – 2020 – VIL – 185  
– JHR

The Jharkhand HC has held that interest liability u/s 50 of the CGST Act, 2017 cannot be determined without initiating recovery proceedings u/s 73 / 74 of the CGST Act, 2017 and recovery proceedings u/s 79 of the CGST Act, 2017 cannot be initiated without adjudication proceedings under the Act. Accordingly, the HC quashed the recovery proceedings and set aside the garnishee proceedings u/s 79 of the CGST Act, 2017 issued to the Petitioners bankers for recovery of interest dues.

### SBGco Views

This is a welcome judgment of the HC and stresses on the importance to check whether the person taking any action in view of the powers is competent to do so. Further, in case of action taken in view of delegated powers, one should also analyse whether the said fact is stated on the Order or not failing which such action can be deemed to be illegal, without jurisdiction and not in conformity with the provisions, as held by the HC in this case.

This is an important decision. Recently, a lot of taxpayers have been receiving notices asking them to pay interest in cases where there was a delay in filing of returns. Wherever there is a genuine liability on account of delay, interest should be paid by the taxpayer to avoid protracted litigation. However, in cases where the notices were received requiring payment of interest on liability discharged using credits, delay on account of portal issues, etc., one can take aid of this decision and contest the demand.



## Recent Advance Rulings

### Citation

T & D Electricals  
- 2020 - VIL -  
102 - AAR

### Issue Raised

A question was raised before the AAR w.r.t interstate works contract entered into by an Applicant registered in Rajasthan to execute a contract in Karnataka. The question was raised in the context of whether the Applicant was required to obtain registration in Karnataka and eligibility to claim credit in two different scenarios stated therein.

### Gist of the Ruling

No registration would be required in the state of Karnataka since there was no place of business. If a supplier from Rajasthan supplies goods to the Applicant under Bill To - Rajasthan / Ship to - Karnataka model, he would charge CGST + SGST notwithstanding the fact that the goods are delivered to Karnataka since the bill to is Rajasthan. Similarly, if a supplier from Karnataka delivers the goods to Karnataka under the Bill to - Rajasthan / Ship to - Karnataka model, he would charge IGST to the Applicant

Megha Agrotech  
Private Limited -  
2020 - VIL - 104  
- AAR

The Applicant was engaged in supplying goods, being micro - irrigation system to farmers. As per the scheme of government, the Applicant was to raise invoice of 100% to the farmer. However, the farmer paid only 10% to the Applicant and the balance 90% was received from Government Department after the goods were supplied and confirmed so by the farmer. The question raised before the Authority was whether the payments received from the Government were

The Authority held that since the amounts received from the Government had no bearing on the price charged for the supply made by the Applicant to Farmer and therefore, the exclusion provided u/s 15 (2) (e) was not applicable to the current case.

### SBGco Views

This is a welcome decision by the Authority and will be useful for contractors who are indulged in executing interstate works contracts as the need to obtain multiple registrations will be done away with. While the Ruling also clarifies the issue in the context of claim of credit of goods under the Bill to - Ship to Model, credit blockage shall continue to be an issue in case of services supplied by sub-contractors where they relate to an immovable property, as the Place of Supply for such cases continue to be the location where the supplies are made in view of section 12 (3) of IGST Act, 2017.

We believe that the view taken by the Authority appears to be correct in the current case. This is because if the claim of subsidy of farmer is not accepted by the Government, the farmer would still be liable to pay to the Appellants. In other words, the liability to pay the consideration to the Appellant continues to be on the farmers. Further, even Explanation to section 15 (2) (e) provides that the



excludible from the value of supply or not?  
The reason for this query was that the Government Department had vide Circular given direction that no GST was to be charged on the subsidy portion. The question raised before the Authority was whether the subsidy would be covered under the exclusion provided for u/s 15 (2) (e) or not?

Solize India  
Technologies  
Private Limited –  
2020 – VIL – 108  
– AAR

Whether the benefit of reduced rate of 5% on supply of specified goods under notification 45/2017 – CT (Rate) would be available to supply of canned software or not?

The benefit under notification 45/2017 – CT Rate for goods supplied to notified organizations shall be available to supply of canned software as it would amount to supply of goods.

value of subsidy shall be included in the value of supply of supplier who receives the subsidy.

While this Ruling does clarify the scope of applicability of notification 45/ 2017 – CT (Rate), the issue still remains as to whether it would apply to customized software or not?



### **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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