

SBGco Connect – July 2020

S B Gabhawalla & Co
Chartered Accountants

With Caution and Care!





Greetings to all our readers!!

We wish that we find you in good health & spirits.

As we welcome August, it also marks the beginning of the festival cycle Raksha Bandhan, followed by Independence Day, Janmashtami, Ganesh Chaturthi, Paryushan and so on. Let us pray that while we indulge in these festivities, it also marks a fresh beginning for all of us after the recent turbulent times. Needless to say, while we celebrate the festivals, the need to exercise caution for safety of your own as well as your loved ones should be kept in mind.

We would like to draw your attention to our recent note sent on 28.07.2020 wherein we have compiled a list of to-do action points that must be done before filing GSTR 3B of September. We hope you have read the same and are working on a plan of action to ensure the next two months sail smoothly w.r.t. various compliances in this regard. We would also like to remind our readers, that due date for filing Annual return in Form GSTR 9 and filing of GST Audit in Form GSTR 9C is 30.09.2020 for Financial Year 2018-19. Further, Government is planning roll out e-invoicing from 01.10.2020 for entities with turnover above Rs. 500 crore. Our Relationship Managers will get in touch with clients who are liable to comply with this new requirement.

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

1. [Recent Notifications, circulars & press-releases](#)
2. [Recent decisions from the Judiciary](#)
3. [Recent Advance Rulings and analysis of the same](#)
4. [Compliance Chart for the month of August 2020](#)

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



Recent Notifications, Circulars & Press-releases

1. **Filing of form GSTR 3B and GSTR 1 via SMS**

Notification No. 38/2020 – Central Tax dated 05.05.2020, introduced Rule 67A whereby facility to furnish return by short messaging service (SMS). Vide current notification, earlier Rules 67A has been substituted and the amended Rule 67A now permits the taxpayers to file a NIL GSTR-3B and a NIL GSTR-1 return by sending out an SMS from the registered mobile number and verifying using a One-time password (OTP).

This notification shall come into force with effect from 01.07.2020.

[Notification No. 58/2020 – Central Tax dated 01.07.2020]

2. **Further extension of time limit for filing Form GSTR-4**

Vide notification No. 34/2020 - Central Tax, dated the 03.04.2020, the time limit for filing Form GSTR-4 (to be filed by a GST composition dealer) for FY 2019-20 was extended from 30.04.2020 to 15.07.2020. Now, vide current notification, the due date for filing Form GSTR-4 is further extended from 15.07.2020 to 31.08.2020.

[Notification No. 59/2020 – Central Tax dated 13.07.2020]

3. **Format / Schema for Form GST INV-01 notified (E-invoice schema)**

Form GST INV-01 (E-invoice) format / schema has been notified in detail this notification vide amendments to CGST Rules, 2017. The Format / Schema provides listing along with cardinality rules (whether reporting of the item(s) is mandatory or optional).

[Notification No. 60/2020 – Central Tax dated 30.07.2020]

4. **Class of registered persons for the purpose of E-Invoice amended**

Earlier Vide Notification No 13/2020 – CT dated 21.03.2020, the Government had notified the class of registered persons to whom E-invoice shall be applicable. The said notification is now amended and Special Economic Zone Unit has been exempted from applicability of E-invoice. Further, the threshold limit for applicability of E-invoice has been raised from aggregate turnover in a financial year of 100 crores to aggregate turnover in a financial year of 500 crores.

[Notification No. 61/2020 – Central Tax dated 30.07.2020]

5. **Special Trade Notice issued for administration of merged UT of Dadra & Nagar Haveli and Daman & Diu**

GST Council has decided to give “26” as State code for merged UT of Dadra & Nagar Haveli and Daman & Diu w.e.f. 01.08.2020. The Trade notice also mentions that all the registered persons in the erstwhile UT of Daman & Diu having GSTIN starting with state code ‘25’ will be switched over to new state code ‘26’ w.e.f. 01.08.2020. Further, the log-in credentials, for the new GSTIN with state code ‘26’ for such registered tax payers shall be communicated at the email address of their primary authorized signatory.

[Trade Notice No. 28/2020-21 dated 13.07.2020 issued by Commissioner of UTGST, Dadra & Nagar Haveli and Daman & Diu]



Recent Decisions from the Judiciary

Citation	Gist of the Judgment	SBGco Views
<p>Cosmopolitan Club Vs. Assistant Commissioner CT, Triplicane I Assessment Circle, Chennai [2020 - TIOL - 1171 - HC Madras-VAT]</p>	<p>The issue raised before the Hon'ble Madras HC was whether members' clubs in incorporated form which were created by a body of persons with some common objective in mind could be brought under purview of VAT liability or not?</p> <p>Relying on the judgement of State of West Bengal and others v. Calcutta Club Limited and others [2019-TIOL-449-SC-ST-LB], the Hon'ble HC held that the show-cause notices, demand notices and other action taken to levy and collect service tax from incorporated members' clubs were void and of no effect in law by application of the principle of mutuality.</p>	<p>Whether the mutuality principles apply to indirect taxes or not is now a settled position with the decision of Supreme Court in Calcutta Club Limited. This is a welcome decision as the HC has followed the said decision basis the constitution of the tax payer itself. This indicates that if principles of mutuality apply between parties to a transaction, such transaction would be outside the purview of taxation under the pre-GST Regime.</p>
<p>Comm of ST, Chennai Vs. Repco Home Finance Ltd [2020-TIOL-1039-CESTAT-MAD-LB]</p>	<p>The Hon'ble CESTAT dealt with the issue of whether foreclosure charges levied by banks and non-banking financial companies on premature termination of loans were leviable to service tax under the head "banking and other financial services?</p> <p>The Hon'ble CESTAT observed that only the amount that is payable for taxable service provided or to be provided will be considered as "consideration". It also observed that consideration must flow at the desire of promisor and if the consideration is not at the desire of the promisor, it ceases to be a consideration.</p> <p>The CESTAT further observed that there is a marked distinction between "conditions to a contract" and</p>	<p>The Judgement by the Hon'ble CESTAT is a very detailed one, though it is applicable for pre-negative list under the service tax regime, there are some important findings which we could consider and apply to present day issues such as that of Liquidated damages:</p> <ol style="list-style-type: none"> Only an amount that is payable for the taxable service will be considered as "consideration" "Consideration" must flow from the service recipient to the service provider and should accrue to the benefit of the service provider. There is marked distinction between "conditions to a contract" and "considerations for the contract". These charges should NOT be viewed as 'alternative mode of performance' of the contract because they arise



Citation	Gist of the Judgment	SBGco Views
	<p>“considerations for the contract”. A service recipient may be required to fulfil certain conditions contained in the contract but that would not necessarily mean that this value would form part of the value of taxable services that are provided. Furthermore, it is held that the foreclosure of loan is a material breach of contract as it curtails the loan service period unilaterally, which can prompt the promisor (i.e. the bank) to claim damages. Therefore, it follows that foreclosure charges are recovered as compensation for disruption of a service and not towards "lending" services.</p> <p>Basis the above, the CESTAT concluded that that Service tax cannot be levied on the foreclosure charges levied by the banks and non-banking financial companies on premature termination of loans under "banking and other financial services".</p>	<p>upon repudiation of specified terms of contract and are intended to compensate the injured party</p> <p>e. Thus, merely because the clause relating to damage is featuring in a contract, it would be incorrect to conclude that the party has been given an option to violate the contract. The contract cannot be understood to be providing an option to the parties to either perform or not perform / violate.</p> <p>This would be a welcome decision even from the context of GST where substantial confusion prevails over levy of tax on liquidated damages recovered by a customer from his vendor for failure to deliver the goods/ services as per accepted terms.</p>
<p>Jian International Vs Commissioner of Delhi, Goods and Service Tax</p> <p>[2020-TIOL-1235-HC-DEL-GST]</p>	<p>The issue in this petition was that the Petitioner had filed a refund claim under GST in form GST RFD – 01. However, within the prescribed period, neither the acknowledgement nor any deficiency memo was issued. Therefore, this writ was filed seeking directions to be issued to the respondent (Revenue) to disburse refund claimed by them by treating the application as deemed to be accepted.</p> <p>Allowing the petition, the HC that if the Revenue were allowed to issue a deficiency memo after expiry of the statutory time limit to do so, it would amount to enabling the Revenue to process the refund application beyond the</p>	<p>This is a welcome judgement for all the taxpayers whose refunds are stuck on account of delays by the Department in processing the same.</p> <p>This judgement will also result in the Department becoming pro-active in processing the refunds within prescribed timelines. However, this would mean that the taxpayers will also have to be accordingly pro-active in responding to notices issued during the processing of refund claims else the refund claim might get rejected which might result in litigation.</p>



Citation	Gist of the Judgment	SBGco Views
	<p>statutory timelines as provided in Rule 90 of the CGST Rules, 2017. Further, Revenue could even possibly reject the application by pointing out deficiencies and in such a case, it would not only delay the petitioner's right to seek refund, but also impair petitioner's right to claim interest from the relevant date of filing the refund application.</p> <p>The Delhi HC also concluded that since Revenue had not processed the Application within the timelines prescribed, the Revenue had lost the right to point out any deficiency in the petitioner's refund application and therefore, the Revenue was directed to disburse the refund amount along with interest.</p>	
<p>Shree M Revathi Printers Vs. Deputy Commissioner Chennai Outer Commissionerate C-48</p> <p>[2020-TIOL-1231-HC-MAD-GST]</p>	<p>In the present case, the Petitioner had filed a Writ Petition challenging the order attaching his bank account for realising the tax dues amounting to Rs. 83,58,962/-.</p> <p>The Madras HC took cognisance of the present COVID-19 pandemic and the continuous lockdown affecting business across the country. The Hon'ble HC accepted the plea (and undertaking) that the petitioner will settle the dues provided he is given 6 months' time and accordingly directed the Bank to de-freeze the account of the petitioner and also directed the petitioner to pay the dues within the stipulated period failing which the Revenue Department may resort to the remedies available under the GST law to recover such dues.</p>	<p>The case highlights that Court may take a lenient view keeping in mind the pandemic and the continuous lockdown affecting business. But it is also important to note that returns must be filed within the prescribed due date and tax dues must also be paid in a timely manner so as to avoid any such situation where a recourse has to be taken by way of such writs.</p>
<p>Zones Corporate Solutions Pvt Ltd Vs.</p>	<p>In this case, the issue was that the petitioners had received a favorable order from Commissioner (Appeals) sanctioning their refund claim vide order dated 23.07.2019.</p>	<p>Again, a welcome judgement from the High Court. Once an Appellate Authority passes an Order, the same is binding on the Revenue until a stay has been granted by an Higher</p>



Citation	Gist of the Judgment	SBGco Views
<p>Commissioner of CGST, Delhi East</p> <p>[2020-TIOL-1168-HC- DEL-GST]</p>	<p>However, the refund was not processed by the Department since they intended to appeal against the said Order before the GST Appellate Tribunal which was not constituted till date and therefore, a factor beyond their control.</p> <p>The Hon'ble HC observed that though nearly a year has been passed, no proceedings had been filed challenging the said Order of the Commissioner Appeals. Further, petitioner could not be asked to wait endlessly for the respondents to challenge the order. Hence, the writ petition was disposed of with a direction to the respondents to refund the amount as directed by the Commissioner Appeals Order dated 23.07.2019.</p>	<p>Authority. Merely because an appeal is to be filed against such Order cannot be a basis to not give effect of such Order.</p>
<p>VKC Footsteps India Pvt Ltd vs. Union of India</p> <p>[2020-TIOL-1273-HC- AHM-GST]</p>	<p>This writ petition was filed challenging the action of the Department to deny the refund of accumulated ITC on account of input services u/r 89(5) of the CGST Rules, 2017 (amended).</p> <p>Allowing the petition, the Hon'ble HC held that since the legislature has by way of proviso to section 54 (3) provided that registered person may claim refund of "any unutilised input tax" (which includes inputs and input services both), the restriction introduced by rule 89(5) to deny refund of accumulated ITC on account of input services was ultravires the provisions of the Act and therefore, liable to be set-aside.</p>	<p>This is a welcome judgement for the industry where rate of tax on outward supply is lower than rate of tax of inward supplies (i.e. inverted duty structure)</p> <p>The interpretation of the Hon'ble HC is based on the scheme and the object of the Act, 2017 and the fact that rules cannot override the law. Hence, the Rules which deny refund of 'unutilised input tax' paid on 'input services' as part of the 'input tax credit' accumulated on account of inverted duty structure is ultra vires the provisions of section 54(3) of the Act.</p> <p>It however appears that the Department might file an appeal before the Supreme Court in which case the matter has not attained finality.</p>



Recent Advance Rulings

Citation	Ruling sought on	Gist of the Ruling	SBGco Views
<p>Apsara Co-operative Housing Society Limited</p> <p>[2020-TIOL-166-AAR-GST]</p> <p>=</p> <p>[GST - ARA - 21 / 2019-20 / B-34 dated 17.03.2020]</p>	<p>Whether the activities carried out by applicant (Co-operative Housing Society) for its' members qualify as "supply" under the definition of Section 7 of the CGST Act, 2017?</p>	<p>The Authority primarily concluded that the activities carried out by the society are covered under the definition of business under clause (e) of section 2(17). The Authority further concluded that the Applicant and its' members are separate persons and the concept of 'principle of mutuality' shall not apply in the present case.</p> <p>While arriving at the above conclusion, the Authority placed reliance on the AAR in the case of Emerald Leisure Ltd¹ which was in the context of Service tax. It also concluded that the AAR in the case of Lions Club of Poona Kothrud² was not applicable since there is no collection of 'membership fees' and utilization of the same for administrative expense in the present case.</p>	<p>While the issue of levy of tax in cases of entities where mutuality applies has been settled in the context of pre-GST regime, it appears that the principles laid down by the Supreme Court in Calcutta Club Limited³ and HC in other cases are not treated as not applicable to GST.</p> <p>This would result in ongoing litigation for such entities and a conscious call on whether tax is to be paid or not would need to be taken.</p>
<p>M/s. Master Minds</p> <p>2020-TIOL-178-AAR-GST</p> <p>=</p> <p>o8/AP/GST/2020 dated 05.03.2020</p>	<p>The applicant is a proprietary firm and leading educational institution providing coaching for CA and ICWA. The applicant sought Advanced Ruling on</p> <p>a. Whether the services of supply of service of education as per the</p>	<p>The authority answered all the three questions in negative since, the Applicant does not fall under the definition of 'Educational Institution' as provided under Notification No.12/2017-CT (Rate) dt 28.06.2017.</p> <p>The reasons provided were as under:</p>	<p>The view of the Advance Ruling Authority seems to be correct and upholding the intention of the law.</p> <p>The exemption given to 'educational institutions'</p>

¹ In Re Emerald Leisure Ltd 2015-TIOL-07-ARA-ST

² In Re Lions Club of Poona Kothrud 2019-TIOL-72-AAAR-GST

³ State of West Bengal Vs Calcutta Club Ltd 2019-TIOL-449-SC-ST-LB



Citation	Ruling sought on	Gist of the Ruling	SBGco Views
	<p>curriculum prescribed by the statutory authorities / government to the students of the applicant for obtaining qualifications / certificates duly recognized by the respective statutory authorities / government are exempted under Notification No.12/2017-CT (Rate) dt 28.06.2017 (entry no.66(a)), as amended?</p> <p>b. Whether the charges collected for providing accommodation to the students undergoing the above courses are exempted from GST as provided under Notification No.12/2017-CT (Rate) dt 28.06.2017 (entry no.14), as amended read with Circular No.32/06/2018-GST dt 12.02.2018 since the amount charged from the students by the hostel run by the applicant is less than Rs.1000/- per day?</p> <p>c. Whether the charges collected by the applicant for catering service by supplying food to the students undergoing the above courses are exempted from GST as provided under Notification No.12/2017-CT (Rate) dt 28.06.2017 (entry no.66(a)), as amended?</p>	<ul style="list-style-type: none"> - the applicant is not issuing any 'coaching completion certificate' or 'any study certificate' in respect of CA & ICWA - coaching or training in applicant's coaching Centre is not a mandatory compliance for an aspirant in pursuing their study - the applicant is not accredited or affiliated or recognized or authorized by ICAI or ICWAI or it had any Partnership or MOU with statutory bodies viz., ICAI & ICWAI - the service provided by the applicant to the aspirants of CA (Inter & Final) and ICWA (Inter & Final) does not ensure that the student obtains a qualification recognized by any law <p>The Authority further noted that Students, who prepare on their own, can also appear for these examinations and qualify, basing on their performance. Hence, the coaching or training imparted by the applicant is only a facilitation / improvisation of the preparation for the said exams and cannot be considered as a coaching / training leading to grant of certificate, qualification etc. recognized by law.</p>	<p>does not intend to cover private coaching or such facilitation centres who do not have affiliation or recognition or authorization from statutory bodies. Hence, any services provided such coaching centres will not be eligible for exemptions which are provided to 'educational institutions' as defined in Notification No.12/2017-CT (Rate) dt 28.06.2017.</p>



Citation	Ruling sought on	Gist of the Ruling	SBGco Views
<p>GVS Projects Private Limited</p> <p>2020-TIOL-184-AAR-GST = 33/AP/GST/2019 dated 31.10.2019</p>	<p>The Applicant is engaged in carrying out electrification work for various clients, including Government entities. Vide this application, they had sought ruling on following issues in case of services provided to ASPDCL/ APEPDCL:</p> <p>a. Whether APSPDCL & APEPDCL is a Government authority / Government Entity or not?</p> <p>b. What is the applicable rate of GST on work agreement entered into with the APSPDCL & APEPDCL?</p> <p>c. Under which Notification the work would fall, for discharging the GST liability?</p> <p>d. Whether for the value of materials recovered from RA bills issued on cost recovery basis by APSPDCL & APEPDCL is liable to tax under RCM as per Notification No.13/2017 Central Tax (Rate) dated 28.06.2017 or not?</p> <p>[APSPDCL = Andhra Pradesh Southern Power Distribution Company Limited</p> <p>APEPDCL = Andhra Pradesh Eastern Power Distribution Company Limited]</p>	<p>a. The Applicant's client are Government Companies wholly owned by the Government of Andhra Pradesh and hence they are covered by the definition of 'Government entities'.</p> <p>b. The applicant is engaged in the execution of works awarded by M/s APEPDCL and APSPDCL for 1) Construction of Indoor Sub-station with control Room and all civil works. 2) Electrical Works 3) providing bore well 4) Erection of 33 KV line with 100 Sq.mm. AAA conductor (DC) 5) Erection of 11 KV line with 100 Sq.mm. conductor 6) Erection of 33 KV UG cable 7) Erection of 11 KV UG cable. According to the AAR, the above works undertaken by APSPDCL and APEPDCL are for business purpose and the benefit of concessional Rate of 12% as per notification is not available to the applicant.</p> <p>c. The Applicable rate shall be 18% for Works contract as the work falls under entry no. (ii) of S.No.3 of the table of Notification No. 11/ 2017- CT (Rate) dated 28.06.2020</p> <p>d. Reverse charge is not applicable to the goods issued by the client as per the RCM notification, however the value of materials recovered on cost recovery basis by the client from the RA bills issued by the applicant is includible in the taxable value of supply in terms of section 15(2)(b) of the CGST Act, 2017</p>	<p>The current ruling was sought w.r.t entry 3 of notification 11/2017 - CT (Rate). It is imperative to note that this notification has undergone multiple amendments since introduction. In fact, entry no (ii) referred to in the Ruling has been omitted w.e.f 01.04.2019. Therefore, while placing reliance on this ruling, one will have to treat very cautiously.</p> <p>The Ruling has also dealt with the issue of value of supply which was not sought by the Applicant. The Authority has held that the value of goods supplied by the client is to be included in the value of supply made by the Applicants. However, the Authority fails to appreciate that on a similar issue, the SC has in Bhayana Builders Private Limited⁴ held that</p>

⁴ Commissioner of Service Tax Vs. Bhayana Builders (P) Ltd [2018-TIOL-66-SC-ST]



Citation	Ruling sought on	Gist of the Ruling	SBGco Views
			<p>the value of goods supplied free of cost by client are not includible in the value of taxable services.</p> <p>This is one more area where the taxpayers will have to be careful while entering into contracts with clients.</p>
<p>Springfields (India) Distilleries</p> <p>2020-TIOL-173-AAR-GST = GOA / GAAR /1 of 2020-21 / 531 dated 29.06.2020</p>	<p>The Applicant sought an advance ruling in respect of : Hand Sanitizer is covered under following HSN Code & rate: 30049087 - Antihypertensive drugs: Antibacterial formulations not elsewhere specified or included HS Code and Indian Harmonized System Code. Rate of GST is 12%. Since, the Ministry of Consumer Affairs, Food and Public Distribution, in a notification CG-DL-E13032020- 218645 has classified Hand Sanitizers under the Essential Commodities Act, 1955 as an essential commodity, is Hand Sanitizer exempt from GST?</p>	<p>The Authority held that Hand sanitizers are primarily used for disinfecting / Sanitizing hands. HSN 3004 refers to medicaments for therapeutic or prophylactic uses. General sanitizer is used as an alternative to wash hands (to maintain hygiene) hence general alcohol-based hand sanitizer without any curative or preventive ingredients may not be considered as a medicament. Thus, Alcohol Based Hand Sanitizers manufactured by the applicant are covered by HSN 3808 and applicable rate will be 18%.</p> <p>Further, the Authority held that merely because Hand Sanitizers are classified as essential commodity by Ministry of Consumer Affairs, Food and Public Distribution, does not automatically entitle exemption under GST. Under GST, Exempted goods are covered by Notification no.2 / 2017 - CT (Rate) dated 28.06.2017.</p>	<p>The observation by the Authority that Hand Sanitizers do not have any curative or preventive ingredients may not be an accurate observation and may be debatable.</p> <p>Also, this ruling from the Goa Authority could be influenced by the fact that Director-General of GST Intelligence had issued letters dated 10.06.2020 to Principal Commissioners to check into “alleged” evasion of tax on account of misclassification of Hand Sanitizers.</p>



Compliance Chart for the month of August 2020

Sr No	Due Date	Particulars	Period	Periodicity	Special Remarks
1.	03.08.2020	GSTR - 1	April to June 2020	Quarterly	Tax payers filing GSTR - 1 Quarterly
2.	05.08.2020	GSTR - 1	June 2020	Monthly	Tax payers filing GSTR - 1 monthly
3.	10.08.2020	GSTR - 1	July 2020	Monthly	Tax payers filing GSTR - 1 monthly
4.	20.08.2020	GSTR - 3B	July 2020	Monthly	Tax payers having Aggregate T/o of more than 5Cr in FY 2019-20
5.	31.08.2020	GSTR - 5A	March to July 2020	Monthly	To be filed by non-resident Online Information and Database Access or Retrieval (OIDAR) services provider
6.	31.08.2020	GSTR - 5	March to July 2020	Monthly	To be filed by a non-resident foreign taxpayer registered in GST
7.	31.08.2020	GSTR - 6	March to July 2020	Monthly	To be filed by an Input Service Distributor
8.	31.08.2020	GSTR - 7	March to July 2020	Monthly	To be filed by the person who is required to deduct TDS under GST



S. B. GABHAWALLA & CO.
CHARTERED ACCOUNTANTS

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

Yash Parmar @ yash@sbgco.in

Parth Shah @ parth@sbgco.in

Darshan Ranavat @ darshan@sbgco.in

Prakash Dave @ prakash@sbgco.in

Aman Haria @ 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.in