



Greetings to all our readers!!

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

GST Portal has introduced a new facility for downloading the entire HSN directory in Excel Format for the taxpayers under the option “Download HSN in Excel Format”. You may download the same by clicking [here](#).

Further, it is pertinent to note that the relaxation / concessions / waivers provided for various compliances have not been extended for the for the month of June 2021, the due dates for which shall be falling in July 2021. Hence, our readers are advised to ensure timely compliances to avoid any extra cash-outflows in the nature of late fees and / or interest.

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 July 2021](#)

We would like to remind our readers that in view of the current Pandemic Situation and the recent Lockdown announced by the Maharashtra Government, our office is currently operating with limited staff. However, our teams continue to operate from the safety of their homes and are available over phone / email to assist you to the extent possible.

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

Team SBGco



A. What's New?

I. Rationalization of rates for specified COVID-19 related goods and services for the period from 14th June 2021 up to 30th September 2021.

1. The GST rate for services provided in the nature of “construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a structure meant for funeral, burial or cremation of deceased” during the period from 14th June 2021 upto 30th September 2021 has been reduced from 12% to 5%

Notification No. 04/2021 - CGST (Rate) dated 14.06.2021

2. Reduction in applicable GST rate for various COVID essential goods

HSN	Description	New Rate
2804	Medical Grade Oxygen	5%
30	Tocilizumab	Nil
30	Amphotericin B	Nil
30	Remdesivir	5%
30	Heparin (anti-coagulant)	5%
3002 or 3822	Covid-19 testing kits	5%
3002 or 3822	Inflammatory Diagnostic (marker) kits namely - IL6, D-Dimer, CRP (C-Reactive Protein), Ferritin, Pro Calcitonin (PCT), LDH (Lactate De-Hydrogenase), and blood gas reagents	5%
3808 94	Hand Sanitizer	5%
6506 99 00	Helmets for use with non-invasive ventilation	5%
8417 or 8514	Gas / Electric / other furnaces for crematorium	5%
9018 19 or 9804	Pulse Oximeter	5%
9018	High flow nasal canula device	5%
9019 20 or 9804	Oxygen Concentrator/ generator	5%
9018 or 9019	Ventilators	5%
9019	BiPAP Machine	5%
9019	(i) Non-invasive ventilation nasal or oronasal masks for ICU ventilators (ii) Canula for use with ventilators	5%



HSN	Description	New Rate
9025	Temperature check equipment	5%
8702 or 8703	Ambulance	5%

Notification No. 05/2021 - IT (Rate) dated 14.06.2021

SBGCO comments:

While the reduction in the rate of goods/ services are definitely welcome for consumers, business impact of the same needs to be kept in mind on account of following reasons:

- Taxable goods becoming now exempted will require reversal of the input tax credit of the goods lying in stock as on 14th June 2021 in view of the provisions of Section 18(4).
- Exemption will also have an impact on input tax credit claim in view of provisions of Section 17 (2) of the CGST Act, 2017 read with Rules 42 & 43 of the CGST Rules, 2017
- The provisions of Section 171 of the CGST Act, 2017, i.e., anti - profiteering will have to be kept in mind and the benefit of the reduction in the tax rate will have to be passed on to the customer. In case of manufacturers, this can be done by reduction in MRP. In case of traders, they can offer the amount as discount from MRP on the face of the invoice and clearly state this reason of rate reduction.
- For Hospitals, the inpatient dispatches may be impacted if the same are done at MRP, especially in case of old stock where the MRP would be inclusive of higher GST rate. Such inpatient dispatches too will have to incorporate new GST rate.

II. Other points

3. The penalty for non-compliance with the requirement of incorporating Dynamic QR Code has been further waived till 30.09.2021 provided the notified class of taxpayers comply with the same w.e.f. 01.10.2021

Notification No. 28/2021 - CT dated 30.06.2021



III. Circulars issued during the month:

4. Anganwadis are part of pre-school and serving of food to anganwadis either sponsored by government or through donation from corporates would be exempt from levy of GST under the entry 66(b)(ii) which provides that services provided to an educational institution, by way of catering, including any mid-day meals scheme sponsored by the Central Government, State Government or Union territory.

Circular No. 149/05/2021 dated 17.06.2021

5. Exemption under entry 23A exempts service falling under heading 9967 by way of access to a road or a bridge on payment of annuity shall not apply to annuity (deferred payments) paid for construction of roads.

Circular No. 150/06/2021 dated 17.06.2021

6. GST is applicable on services provided by Central or State Board (including National Board of Examination), other than by way conduct of examination, including entrance examinations. The clarification specifically provides that accreditation services shall be taxable.

Circular No. 151/07/2021 dated 17.06.2021.

SBGCO comments:

It is imperative to however note that services provided by Government are liable to tax under Reverse Charge. The said services are generally received by Educational Institutions which are generally not liable for registration as their activities are not in the course or furtherance of business. This clarification will result in additional confusion for such educational institution as they would now be mandatorily required to obtain registration for discharging their liability under Reverse Charge which would expose them to other compliances under the GST law as well.

7. GST Rate of 18% is applicable on construction services provided to a Government Entity, in relation to construction of a “Ropeway” on turnkey basis as the same is not covered by any of the specific entries provided for concessional rate of tax.

Circular No. 152/08/2021 dated 17.06.2021

8. GST rate of 5% is applicable on milling of wheat into flour or paddy into rice for distribution by State Governments under PDS. Exemption for composite supply of goods and services provided in entry 3A is not available as value of goods supply in such a composite supply exceeds 25%.

Circular No. 153/09/2021 dated 17.06.2021



9. Service supplied by State Government to their undertakings or PSUs by way of guaranteeing loans taken by them is exempted from GST vide Entry no 34A of the exemption notification.

Circular No. 154/10/2021 dated 17.06.2021

10. GST rate of 12% is applicable on laterals / parts to be used solely or principally with sprinklers or drip irrigation system classifiable under HSN 8424.

Circular No. 155/11/2021 dated 17.06.2021

11. Clarifications provided for applicability of Dynamic QR code on B2C invoices:
- Tax invoice issued to persons having a UIN shall be considered as B2C supply and will require compliance with Dynamic QR Code requirement.
 - Separate details of bank account and IFSC may not be provided in the Dynamic QR Code as UPI ID in the Dynamic QR Code is linked to a specific bank account of the payee.
 - When payment is collected by some other person (Eg., E-commerce operators) on behalf of the supplier, then the dynamic QR code must contain UPI ID of such other person.
 - Dynamic QR code is not required for invoices issued to a recipient located outside India, but place of supply is within India for such services.
 - When invoice is generated only after receipt of payment via digital display of Dynamic QR code for over-the-counter sales then in such cases unique order ID / sales reference number uniquely linked to each transaction may be displayed in the Dynamic QR code for digital display.
 - When part payment is received from customer by advance or vouchers, then the Dynamic QR code must provide for only balance value payable and the details of total invoice value with appropriate cross references and balance amount payable should be provided on the invoice.

Circular No. 156/12/2021 dated 21.06.2021



B. Recent Decision from the Judiciary:

1. Dharmendra Jani vs. Union of India [2021-TIOL-1297-HC-Mum-GST] and [2021-TIOL-1326-HC-Mum-GST]

Issue Raised:

Whether provisions of Section 13 (8) (c) of the IGST Act, 2017 which deal with intermediary services is constitutionally valid?

Gist of the Decision:

This is a split verdict from the Division Bench with both Hon'ble Judges having issued separate Orders. The first judgment from Justice Ujjal Bhuyan which is in the favor of petitioners has held that the provisions are not only constitutionally valid and contradicts the overall scheme of the GST law.

However, the dissenting view from Justice Abhay Ahuja has held that the provisions are constitutionally valid and operative.

SBGCO Comments:

The levy of indirect tax on services provided by intermediary has always been litigated, right from the time of Export of Service Rules, 2005 till date. The Department has always denied any benefit to services provided by intermediary located in India to a client outside India and the matter has been substantially litigated in the taxpayers' favor. However, under the negative list regime, w.e.f. 01.07.2012, the said services were specifically excluded from being treated as export of service and unwillingly, taxpayers have been forced to pay service tax on the income earned by them, at times from their own pocket.

Under GST, the same practice has been continued with explicit provisions contained in Section 13 (8) (c) of the IGST Act, 2017 to deny the benefit of export to taxpayers. However, this provision has been challenged by taxpayers on the ground that the same is *ultra vires* the Constitution and contradicts the scheme of the GST law itself, which is a destination-based tax. The Gujarat HC has already stuck down the challenge to the levy in Material Recycling Association of India's case [2020 (40) GSTL 289 (Guj)] which had quashed the hopes of the taxpayers.

However, the decision of Justice Ujjal Bhuyan has definitely reignited hopes for taxpayers and it remains to see how this matter is taken up by a larger bench of the Bombay HC to deal with the issue. In the meanwhile, taxpayers should be conscious and should not alter their position, especially if they are paying the taxes till the time matter attains finality.

2. Ars Steels & Alloy International Pvt Ltd vs. State Tax Officer [2021-VIL-484-MAD]

Issue Raised:

Whether normal loss of inputs during the manufacturing process would attract reversal of input tax credit claimed on such inputs u/s 17 (5)(h) of the CGST Act, 2017?

Gist of the Decision:

- Loss occasioned by the process of manufacture cannot be equated to any of the instances set out in section 17(5)(h), namely 'lost, stolen, destroyed, written off or disposed by way of gift or free samples.'
- The HC held that section 17(5)(h) indicates loss of inputs that are quantifiable and involve external factors or compulsions and not mere consumption in the process of manufacture.
- The HC further held that inherent loss i.e., normal loss by consumption of inputs in the process of manufacturing is not covered by section 17(5)(h).

SBGCO Comments:

The manner in which section 17 (5)(h) shall operate has been debated since the introduction of GST and substantial confusion revolves around the scope of the same. This decision will definitely put to rest some of the confusion, which specifically plagued manufacturing sector where loss of inputs is common in the manufacturing process.

3. Anjappar Chettinad vs. Joint Commissioner [2021-TIOL-1270-HC-MAD-ST]

Issue Raised:

Whether service tax is leviable on take-aways / parcel provided by restaurants?

Gist of the Decision:

Only those services commencing from the point where the food and drinks are ordered from the table till the raising of the bill, are covered under the service tax law, which would include arrangements for seating, decor, music and dance, both live and otherwise, the services of Maître D'Or, hostesses, liveried waiters, fine crockery and cutlery and so on. In the case of take-aways and parcels, it is quite the contrary as the above-mentioned attributes are absent as the consumption of the food and drink is not in the premises of the restaurant. Hence, provision of food and drink to be taken-away in parcels by restaurant are sale of goods and do not attract service tax on the same.

SBGCO comments:

This decision will lay to rest the controversy prevailing under the service tax regime. However, its' utility in the context of GST may need to be analysed in view of the fact that both the legislations, i.e., service tax and GST are unique in themselves.

4. **Satyam Shivam Papers Pvt Ltd vs. Asst. Commissioner [2021-VIL-448-TEL]**

Issue Raised:

Whether expiry of EWB on account of factors beyond control of the taxpayer can be a reason to demand tax and penalty?

Gist of the Decision:

The delay in delivery was on account of protests on the road, which prevented from movement of the vehicle carrying the goods resulting in expiry of the EWB before completion of delivery. An order demanding tax and penalty in such a scenario was arbitrary and illegal and violative of Article 14 of the Constitution of India as it was not the petitioner's fault nor the protests / rally were under his control.

The Hon'ble High Court noted that mere non-extension of the validity of the EWB cannot be inferred an intention to evade tax and not considering the peculiar situation in the present case along with passing of such an order was a blatant abuse of power by the officers and accordingly, cost was awarded to the petitioner.

SBGCO Comments:

This is a welcome decision. The need to analyse a case based on the prevailing situation and to consider the submissions made by the petitioner is a fundamental responsibility of the Adjudicating Authority and this decision reaffirms the same. This decision also reiterates that there should be mens rea on the part of taxpayers to establish intention for tax evasion.

5. **Shree Jagannath Traders vs. Commissioner of State Tax, Odisha [2021-VIL-454-ORI]**

Issue Raised:

Whether failure to submit physical appeal along with certified copy of Order against which the appeal has been filed within 7 days of filing of online appeal was a valid ground for dismissal of appeal?

Gist of the Decision:

The submission of certified copy of appeal, though a legal requirement, is not the most important one and in the interest of justice, such hyper-technical requirements (specially in such COVID times) must be viewed with a liberal approach.

The HC further held that as long as the appeal is accompanied by an ordinary downloaded copy of the order appealed against, any delay in filing certified copy, (not being extraordinary), must be condoned in the interest of justice, in such covid times.

SBGCO Comments:

The HC has again reiterated that failure to comply with procedural requirements should not be a basis for denial of substantive right/ benefit which has accrued to the claimant and has therefore, condoned the same.



C. Recent Decisions from Advance Authority

1. Udupi Nirmiti Kendra [KAR ADRG 30/2021 = 2021-TIOL-139-AAR-GST]

Question raised:

How to interpret the term “a contract” for applicability of TDS u/s 51 of the CGST Act, 2017?

Gist of the Ruling:

Section 51 provides for deduction of tax at source if the total value of supply under a contract crosses the prescribed limit. It does not refer to invoice value. Therefore, if the invoice value does not cross the prescribed limit, TDS provisions would not get triggered. However, if multiple invoices are raised against a single contract and the value of invoices raised exceed the prescribed limit, the TDS provisions would get triggered.

SBGCO comments:

This is a welcome decision from the AAR and will be helpful in determining the applicability of TDS provisions. It places significant importance on ‘contract’ and not necessarily each invoice can be construed to be a ‘contract’. Further, when no ‘contract’ is executed between the parties, the entire scope of supply will have to be looked into.

2. URC Constructions Private Limited [07 / ODISHA-AAR / 2020-21 = 2021-VIL-238-AAR]

Question raised:

Whether services provided to NBCC, an executing agency on behalf of SAIL for construction of ISPAT Post graduate Medical Institute and super speciality Hospital at Rourkela Steel Plant on Design, Engineering, Procurement and Construction (EPC) basis would attract GST @ 12% or 18%?

Gist of the Ruling:

NBCC is not a Government Entity and therefore, lower rate of 12% was not applicable. However, since SAIL was a Government Entity, for whom NBCC was an executing agency, the option of lower rate of 12% extended to subcontractors would be available to the Applicant.

SBGCO comments:

To get a favorable ruling from the AAR is a rarity. However, the conclusion of the AAR that NBCC is not a Government Entity but SAIL is, appears to be debatable since both are Government promoted listed companies where promoter holdings, i.e., holding by Government is around 65% and therefore, neither of them get classified as Government Entity.



D. Compliance chart for July 2021

S N	Due Date	Form	Period	Periodicity	Special Remarks
1.	05.07.2021	GSTR - 3B	May 2021	Monthly	To be filed by Taxpayer having T/o < 5 Cr in Previous FY without interest and late fees
2.	10.07.2021	PMT-06	May 2021	Monthly	To be filed by those under QRMP Scheme without interest and late fees
3.	10.07.2021	GSTR - 7	June 2021	Monthly	To be filed by those who are required to deduct TDS under GST
4.	10.07.2021	GSTR - 8	June 2021	Monthly	To be filed by those who are required to collect TCS under GST
5.	11.07.2021	GSTR - 1	June 2021	Monthly	Taxpayers filing GSTR - 1 monthly
6.	13.07.2021	GSTR - 6	June 2021	Monthly	To be filed by an Input Service Distributor
7.	13.07.2021	GSTR - 1	April to June 2021	Quarterly	To be filed by those under QRMP Scheme
8.	18.07.2021	CMP - 08	April to June 2021	Quarterly	To be filed by Composition Dealer (Payment of Self-assessed tax)
9.	20.07.2021	GSTR - 3B	June 2021	Monthly	To be filed by Taxpayer filing monthly GSTR 3B
10.	20.07.2021	GSTR - 5A	June 2021	Monthly	To be filed by non-resident Online Information and Database Access or Retrieval (OIDAR) services provider
11.	20.07.2021	GSTR - 5	June 2021	Monthly	To be filed by a non-resident foreign taxpayer registered in GST
12.	22.07.2021	GSTR - 3B	April to June 2021	Quarterly	To be filed by those under QRMP Scheme (#)
13.	24.07.2021	GSTR - 3B	April to June 2021	Quarterly	To be filed by those under QRMP Scheme (\$)

(#) 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

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

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