

Unlock 2.0 !!

Reviving the Economy ...

*SBGco Connect – June 2020*



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Greetings to all our readers!!

On 1<sup>st</sup> July 2020, the nation entered phase Unlock 2.0. As we come out of these difficult times, it is important that we continue to be cautious and continue to implement the rigours of social distancing and other measures required to combat the virus.

As we enter this new month, it also marks the end of the 1<sup>st</sup> quarter of FY 2020-2021. All eyes would be on the results of various corporates, which would indicate the state of economy and the times coming forward. However, one positive from the last month is the GST collection figures in the month of June 2020 which stand at 90,917 crores, back to pre-lockdown levels. This indicates that the economy is on its' way towards revival.

In this Newsletter, we have summarized the various developments in the field of GST, summarizing it into following sections:

1. [Notifications, circulars & press-releases](#)
2. [Decisions from the Judiciary](#)
3. [Advance Rulings](#)

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, Orders, Circulars & Press-releases

### 1. Filing of form GSTR 3B 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) was introduced. Vide this Rule, the taxpayers who want to file a Nil GSTR-3B return may do so, by just sending out an SMS from the registered mobile number and verify using a One-time password (OTP). The Government has appointed 08.06.2020 as the date of implementation of this facility.

***[Notification No. 44/2020 – Central Tax dated 08.06.2020]***

### 2. Special procedures for registered persons having principal place of business in the merged UT of Daman and Diu and Dadra and Nagar Haveli

Vide Notification No. 10/2020 – Central Tax dated 21.03.2020, the Government had introduced special procedures which were required to be followed by persons whose principal place of business or place of business is now in the merged Union territory of Daman and Diu and Dadra and Nagar Haveli for the period 27.01.2020 to 31.05.2020. The Government has extended the compliance of these special procedures by further 2 months and now, such special procedures are required to be followed upto 31.07.2020.

This notification is effective from 31.05.2020.

***[Notification No. 45/2020–Central Tax dated 09.06.2020]***

### 3. Extension of time limit for issuance of order in the case where notice has been issued for rejection of refund claim

In the case where notice has been issued for rejection of refund claim in part or full and the time limit for issuance of order in terms of Section 54 of the CGST Act, 2017 falls between 20.03.2020 and 29.06.2020, the Government has extended the time limit for issuance of such order to 15 days after the receipt of reply from refund claimant (i.e. registered person) or 30.06.2020, whichever is later.

Further, on 27.06.2020, extension of the above time limit was further amended and increased by a further period of 2 months i.e. time limit for issuance of order in terms of Section 54 of the CGST Act, 2017 that falls between 20.03.2020 and 30.08.2020, the Government has extended the time limit for issuance of such order to 15 days after the receipt of reply from refund claimant (i.e. registered person) or 31.08.2020, whichever is later.

This notification shall come into force with effect from 20.03.2020 (i.e. retrospective application)

***[Notification No. 46/2020–Central Tax dated 09.06.2020, further amended vide Notification No. 56/2020–Central Tax dated 27.06.2020]***



**4. Further extension of validity of E-Way Bill**

Any e-way bill generated under CGST Rules, 2017 on or before 24th March 2020, shall remain valid until 30th June 2020 if its validity period expired anytime on or after 20th March 2020.

This notification is effective from 31.05.2020.

***[Notification No. 47/2020–Central Tax dated 09.06.2020]***

**5. Further extension of filing of Form GSTR 1 and GSTR 3B via EVC mode**

Furnishing of Form GSTR 1 and GSTR 3B via EVC mode has been further extended upto 30.09.2020 for all persons registered under the Companies Act, 2013.

***[Notification No. 48/2020–Central Tax dated 19.06.2020]***

**6. Extension of due date for various compliances**

Notification 35/2020 – CT dated 03.04.2020 extended the requirement for furnishing of any report, document, return, statement or such other record, the due date of which was during the period from 20.03.2020 to 29.06.2020, to 30.06.2020.

The current notification extends this above period by further 2 months. i.e. due date will be 31.08.2020 for any compliances in regards to furnishing of any report, document, return, statement or

such other record, the due date of which was during the period from 20.03.2020 to 30.08.2020.

For example, time limit for filing of LUT for the year 2020-21 shall stand extended to 31.08.2020 or this extension shall apply to refund applications also which were to be made during this period.

***[Notification No. 55/2020–Central Tax dated 27.06.2020]***

**7. Conditional waiver of late fees for the period from July, 2017 to July, 2020**

Maximum late fees for the for delayed filing of GSTR 3B has been capped as Rs. 250 each under CGST and SGST each (i.e. Rs. 500/- in total) subject to the condition that returns are furnished before 30.09.2020. The above capping is of late fees is available to all assesseees, irrespective of their turnover only on the condition that the returns are filed on or before 30.09.2020.

This conditional waiver is brought about amending notifications 76/2018-CT dated 31.12.2018, 52/2020-CT dated 24.06.2020.

The notification is issued on 30.06.2020, however it is made applicable retrospectively from 25.06.2020.

***[Notification No. 57/2020–Central Tax dated 30.06.2020]***



**8. 'Removal of Difficulty Order' for extension of time limit for filing an application for revocation of cancellation of registration**

Certain taxpayers could not apply for revocation of cancellation of their GST Registration Numbers within the specified time period of thirty days from the date of service of the cancellation order and this had resulted into various difficulties for such taxpayer.

Hence, in exercise of the powers conferred by section 172 of the CGST Act, 2017, a 'Removal of Difficulty Order' has been issued on 25.06.2020, to address the above grievance. The summary of the Order is provided here under:

In cases where cancellation of registration order was passed upto 12.06.2020, for the purpose of the calculating period of 30 days for filing of application for revocation of cancellation of registration, the later of the following dates shall be considered:

- a. Date of service of the said cancellation order, or
- b. 31.08.2020.

(i.e. period upto 30.09.2020 is the minimum extension provided to such taxpayers)

**[Order No. 01/2020–Central Tax dated 25.06.2020]**

**9. Clarification in respect of applicability of GST on Director's remuneration**

The Government has issued a circular to clarify the levy of GST on Director's remuneration. The summary of the circular is presented in the table below:

<b>Particulars</b>	<b>GST Applicability</b>
Remuneration paid to independent directors, or those directors, by whatever name called, <b><u>who are not employees of the company.</u></b>	Such remuneration is taxable in hands of the company, under RCM
Remuneration paid to Directors which is: a. Booked as 'Salaries' in the books of the Company; <b>AND</b> b. Subjected to TDS under section 192 of the Income Tax Act, 1961	Such remuneration is <b>NOT</b> taxable as the same is consideration for services by an employee to the employer in the course of or in relation to his employment.
Remuneration paid to Directors which is: a. declared separately (i.e. other than "salaries") in the books of the Company; <b>AND</b> b. Subjected to TDS under section 194J of the Income Tax Act, 1961.	Such remuneration is taxable in hands of the company, under RCM.

**[Circular No. 140/10/2020-GST dated 10.06.2020]**



**10. Circular for clarification regarding claim of refund w.r.t. imports, ISD invoices and the inward supplies liable to RCM.**

The Circular clarifies that refund of ITC relating to imports, ISD invoices and the inward supplies liable to RCM shall be available on the basis of presentation of Bill of Entry in case of imports evidencing payment of IGST, ISD invoices and payment of GST under RCM with invoice respectively, as it were before the issuance of Circular 135/05/2020 dated 31.03.2020.

Circular 135/05/2020 dated 31.03.2020 restricted the claim of refund in respect of missing invoices in GSTR 2A. However, it is now clarified that the aforesaid circular shall not impact the claim of refund of ITC in relation of imports, ISD invoices and the inward supplies liable to RCM only for the reason that these are not appearing in GSTR 2A of the applicant.

***[Circular No. 139/09/2020-GST dated 10.06.2020]***

**11. Clarification in respect of various measures announced by the Government for providing relief to the taxpayers in view of spread of Novel Corona Virus**

- a. Manner of calculation of interest for taxpayers having aggregate turnover > Rs. 5 Cr. (revised from earlier manner of calculation)

Calculation of interest for delayed filing of return for the month of March, 2020 (due date of filing being 20.04.2020) may be illustrated as per the below table:

Applicable Rate of Interest: NIL for 15 days after due date, 9% p.a. thereafter till the 24.06.2020 and 18% p.a. after 24.06.2020.

For Tax Period – March 2020

Sr. No.	Date of filing GSTR-3B	No. of days of delay	Interest
1	02.05.2020	11	Zero interest
2	20.05.2020	30	Zero interest for 15 days + interest rate @9% p.a. for 15 days
3	24.06.2020	65	Zero interest for 15 days + interest rate @9% p.a. for 50 days
4	30.06.2020	71	Zero interest for 15 days + interest rate @9% p.a. for 50 days + interest rate @18% p.a. for 6 days

- b. Manner of calculation of interest for taxpayers having aggregate turnover < Rs. 5 Cr. (revised from earlier manner of calculation)  
Calculation of interest for delayed filing of return for the month of March, 2020 (due date of filing being 20.04.2020) may be illustrated as per the below table:

Applicable Rate of Interest: NIL till the 03.07.2020, 9% p.a. thereafter till the 30.09.2020 and 18% p.a. after 30.09.2020.



**For Tax period - March 2020**

<b>Date of filing GSTR-3B</b>	<b>No. of days of delay</b>	<b>Interest</b>
22.06.2020	61	Zero interest
22.09.2020	153	Zero interest for 72 days, + interest rate @ 9% p.a. for 81 days
22.10.2020	183	Zero interest for 72 days, + interest rate @ 9% p.a. for 89 days + interest rate @ 18% p.a. for 22 days

Please note - Vide notification 57/2020-Central tax dated 30.06.2020, made effective from 25.06.2020, the late fees for delayed filing of Form GSTR 3B for the period July 2017 to July 2020 has been capped to Rs. 250/- each in CGST and SGST (i.e. Rs. 500/- in total) provided that the returns for the said period are filed on or before 30.09.2020.

***[Circular No. 141/10/2020-GST dated 24.06.2020]***



## Decisions from the Judiciary

Citation	Gist of the Judgment	SBGco Views
<p>Infosys Ltd vs. Deputy Commissioner ST, STU-III and another [2020 - VIL - 254 – HC Telangana]</p>	<p>The Telangana HC dealt with case where, in the wake of outbreak of Covid-19, the taxpayer was not provided proper opportunity to represent its case before the assessing officer.</p> <p>In the present case, the officer had fixed personal hearing on 07.03.2020 to which the petitioner replied on 11.03.2020. Further, due to technical glitches, online response could not be filed and the same was recorded and informed to the officer. Despite the same, ex-parte Order was passed which was challenged before the HC by the taxpayer.</p> <p>The Hon'ble HC observed that on account of lack of time in view of the impending lapsing of limitation for completing assessment, not only was the petitioner denied proper opportunity to personally represent its case before the officer, but also noted that errors might have crept into the order of the officer issued on 31.03.2020. Further, the HC also noted that the petitioner's Representative could not be blamed for not attending the personal hearing given by the officer due to such lockdown.</p>	<p>This is a welcome decision from the High Court. The lockdown was announced in March 2020 when various assessments were also getting time barred. Due to the inability of the assessee to attend the proceedings, various extensions were also issued.</p> <p>However, many instances were reported wherein tax authorities were insisting on personal hearings resulting in ex-parte orders being passed due to non-appearance by the taxpayers. Such orders, owing to their arbitrariness should not have been passed at all.</p> <p>This decision will be an aid to all such taxpayers who have received ex-parte orders during the lockdown period. Off-course, for claiming the relief, they will have to opt for writ petition route to get the benefit.</p>



<b>Citation</b>	<b>Gist of the Judgment</b>	<b>SBGco Views</b>
Pazhayidom Food Ventures Private Limited vs. Superintendent - CT, Kottayam Kerala and Others	<p>The Hon'ble Kerala HC dealt with a case where SCN was issued for cancellation of Registration but no day, date, time was provided in the notice to appear before the officer.</p> <p>The Hon'ble HC squashed the notice as well as the order and also observed that absence of date, month, year and time makes the notice in violation of principles of <i>audi alteram partem</i>.</p> <p>The Matter was remanded back to the respondent to comply with the FORM GST REG-17.</p>	<p>The Kerala HC has once again upheld the principles of natural justice. This should be a welcome decision for all such taxpayers where incomplete notices not following the principles of natural justice with an intention to take action on taxpayers were issued.</p>
Go Bindas Entertainment Pvt Ltd vs. Comm of ST, Noida [2020 – TIOL – 890 – CESTAT - ALL]	<p>The Hon'ble CESTAT dealt with the issue where demand was confirmed by the lower adjudicating authority on account of difference between values in ST-3 returns and balance sheet figures.</p> <p>The Hon'ble CESTAT held that no demand can be confirmed by comparing the ST-3 return figures with balance sheet figures, in the absence of any evidence to the contrary that income in the balance sheet, if excess, reflects the providing of taxable services.</p> <p>Further, the Bench observes that is the revenue who is making the allegations and as such, the onus to prove said allegation lies very heavily upon the revenue. Consequently, the appeal was allowed and impugned order confirming demand was set aside</p>	<p>A welcome decision from the Tribunal, service tax assessee have been receiving notices based on difference between figures reported in Income Tax Returns, ST 3 and Form 26AS and notice for recovery of differential amounts were being issued by the Authorities.</p> <p>While in most of the cases the assessee would have been able to justify the reason for the difference, the same resulted in unnecessary / unwarranted litigation. This decision will be a strong support to fight the validity of the SCN itself.</p>



<b>Citation</b>	<b>Gist of the Judgment</b>	<b>SBGco Views</b>
<p>GSTN and Others vs. Leo Distributors and others [2020-TIOL-1050-HC-KERALA-GST]</p>	<p>The GSTN filed an appeal in the High Court of Kerala against the CESTAT judgement in which GSTN was ordered to facilitate filing of GST TRAN-1 Forms electronically by making necessary arrangements in the web portal and in the event of the same being not possible, permitting manual filing of such returns.</p> <p>In the present case, details were required to be filled up in Column 7(a), but the assessee had filled up the same in Column 7(b), inadvertently. While upholding the judgement of the CESTAT, the Hon'ble HC held that the fact that the assessee respondent had attempted uploading of the form within the period has been established by the system log. Further, the rejection of the return so submitted was due to the wrong table having been filled up, which is not with any ulterior motive but was only for reason of inadvertence prompted by inexperience. Hence, assessee respondent should be allowed to file FORM TRAN-1 again on the web portal or by manual filing.</p>	<p>This is an addition to the list of decisions from HC granting relief to taxpayers in Tran 1 matters. However, it remains to be seen if the Revenue is accepting the Order of HC or challenges it before the SC.</p> <p>The Revenue has already filed an appeal before the SC in the Brand Equity decision of Delhi HC which had granted relief to taxpayers and in that case, the SC has stayed the decision.</p> <p>Therefore, ultimately it is up to SC as to how they deal with multiple issues revolving around transition credits.</p>



## Advance Rulings

Citation	Ruling sought on	Gist of the Ruling	SBGco Views
M/s. Shreeji Shipping  GUJ / GAAR / R / 2020 / 13 dated 19.05.2020	a. Whether the service of transportation of goods from port to the General Lighterage Area (where the Mother Vessel are anchored, when the same cannot come upto the Port) or vice versa, is covered under exemption contained at Sr. No. 18 of Notification No. 12/2017-Central Tax (Rate)? and  b. Whether the service of above transportation falls in the definition of 'Inland waterways'?	a. The Authority concluded that the service of transportation of goods from port to the General Lighterage Area (where the Mother Vessel are anchored, when the same cannot come upto the Port) or vice versa, is not covered under exemption contained at Sr. No. 18 of Notification No. 12/2017- Central Tax (Rate).  b. The authority also concluded that the service of transportation of goods in barrages from mother vessel to daughter's vessel, or vice versa is neither covered in the definition of 'national waterways', as defined in section 2(h) of the Inland Waterways Authority of India Act, 1985 nor covered in the definition of 'other waterway on any inland water', as defined under Section 2(b) of the Inland Vessel Act, 1917.	AAR has observed that "inland water" means navigable water within a State and the lighterage area is not within the State. Therefore, the transportation activity does not fit with the definition of "inland water".  Interestingly, the question arises that if the lighterage area is not within State, then can the transaction be considered as intra-state?  Area upto 12 nautical miles inside sea is part of State or Union Territory which is nearest, for the purpose of GST.  In this case, factually it should have been considered that whether the lighterage area was within 12 nautical miles inside sea or not?



Citation	Ruling sought on	Gist of the Ruling	SBGco Views
<p>Prasar Bharti Broadcasting Corporation of India (All India Radio), Shimla</p> <p>2020-TIOL-118-AAR-GST</p>	<p>Whether ITC would be available for hiring commercially licensed vehicles for transportation of employees and applicable rate for the same.</p>	<p>After examining section 17(5)(b) of the CGST Act, 2017, the AAR held that, the ITC on transportation of employees is available only on the condition that such goods or service or both is obligatory for an employer to provide to its employees under any law for the time being in force.</p> <p>Further, the applicant could not cite any law under which the service of providing the facility of transportation to his employees is obligatory. Thus, the AAR held that ITC will not be available in such a case.</p> <p>The AAR also clarified the applicable rate of GST on renting of cabs as per Notification No. 20/2017 dated 22.08.2015 is 5% with limited ITC to the supplier of such service or 12% with full ITC to the supplier of such service.</p>	<p>The AAR has been crisp on the point that if the service of providing the facility of transportation to his employees is not obligatory under any Statute, then GST paid on such expenses cannot be claimed as ITC.</p> <p>However, the applicant did not submit the following facts:</p> <ul style="list-style-type: none"><li>a. Whether it was obligatory under any Statute on the part of the employer to provide the vehicles for employee transportation?</li><li>b. Whether the seating capacity of the vehicle was more than 13 persons to be eligible to claim ITC?</li></ul> <p>In view of these constraints, the extent to which one can rely on this AAR would be restricted.</p>



<b>Citation</b>	<b>Ruling sought on</b>	<b>Gist of the Ruling</b>	<b>SBGco Views</b>
<p>Mohana Ghosh 2019-TIOL-179- AAR-GST 08/WBAAR/2019- 20 dated 25/06/19</p>	<p>The applicant was supplying cabs on rental basis.</p> <p>Ruling was sought on whether credit was admissible of the input tax paid on the purchase of motor vehicles for the supply of rent-a-cab service?</p>	<p>It was held that ITC of GST paid on inward supply/purchase of motor vehicles used for supply of rent-a-cab service is inadmissible as per section 17(5)(b)(i) of the GST Act. However, in its suo-motto amended order dated 25.6.2019, the AAR has held that such ITC is inadmissible u/s 17(5)(a) of the GST Act.</p> <p>The AAR has made a distinction between supply of renting or hiring of a motor vehicle classifiable under SAC 9966 and supply of passenger transportation services classifiable under SAC 9964.</p> <p>It was held ITC of GST paid on inward supply/purchase of motor vehicles for supply of renting or hiring of a motor vehicle is not allowed/restricted as per section 17(5)(a) of the GST Act.</p>	<p>In an interesting case, where Revenue Authorities were also in agreement with the admissibility of such ITC, the AAR made a distinction between the supply of passenger transportation services and supply of renting/hiring of motor vehicle and ruled that ITC paid on inward supply/purchase of motor vehicles for supply of renting or hiring of a motor vehicle is not allowed.</p> <p>Does this mean that, when an owner of vehicle rents out motor vehicle to online Cab-aggregators, ITC will be allowed and in case, directly rents out/hires his motor vehicle to customers, irrespective of distance travelled, ITC will be not be allowed?</p> <p>In principal, we do not agree with the above proposition of the AAR, because, renting or hiring as provided in section 17(5)(b)(i) of the GST Act is also subjected to exception that ITC will be allowed if it is used for purposes specified which included passenger transportation.</p>



<b>Citation</b>	<b>Ruling sought on</b>	<b>Gist of the Ruling</b>	<b>SBGco Views</b>
Nagri Eye Research Foundation  2020-TIOL-125-AAR-GST	Applicant is a Charitable Trust and are running a medical store where medicines are given at a lower rate.  Ruling was sought on: a. whether applicant is required to be registered?  b. whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term	The AAR held that the applicant is a charitable trust which appears under the definition of 'person' and falls at Section 2(84)(m) of the CGST Act, 2017.  It was held that sale of medicine is a taxable supply under GST. The lower rate price charged by applicant is consideration for the applicant as defined in Section 2(31) of the Act.  Further, the AAR held that since, aggregate turnover of the medicine of applicant exceeds threshold limit as specified in Section 22(1) of the CGST Act, 2017, the applicant has to obtain registration under the relevant provisions of the CGST Act, 2017.	Under GST, many organisations, including Charitable Trusts, performing charitable activities, have obtained GST registration for discharging GST on that component where consideration is charged and the same is not specifically provided for in the exemption list.  This again raises the doubts with regards to whether the Charitable Trust as a whole must be looked on to determine whether they are undertaking any business activity so as to be liable to GST or whether the each and every activity of the Charitable Trust has to be vivisected and analysed whether GST is applicable on the same?



Citation	Ruling sought on	Gist of the Ruling	SBGco Views
<p>CMS Info Systems Ltd. (GST AAAR Maharashtra)  2020-TIOL-33-AAAR-GST</p>	<p>The Applicant is having cash management network pan India. Inter-alia, the applicant was involved in Managing cash circulation through transporting cash from currency chest to bank branches and cash pick-up and delivery from and to dedicated banks.</p> <p>Before the AAAR, the ruling was sought on whether Input Tax Credit is available to applicant on purchase of motor vehicles i.e. cash carry vans which are purchased, used for cash management business?</p>	<p>In 2018, the AAAR held that since the currency transported in the subject cash carry vans will not be considered as 'goods' as envisaged under section 2(52) of the CGST Act, 2017, accordingly, the ITC of the GST paid on the purchase and fabrication of the said carriage vehicles would not be available.</p> <p>Aggrieved by the said order, the Applicant filed a WP before the Hon'ble HC and the case was remanded for fresh adjudication before the AAAR.</p> <p>This time around, the AAAR (after studying contracts and HC's consideration) concluded that for the applicant, 'money' that is transported by them is not 'legal tender', but merely 'goods' as money belonged to their clients and at any stage of the performance of the services rendered by the applicant, they could not use the said money as 'legal tender'.</p> <p>Once it was held that 'money' transported in this specific case had to be considered as 'goods', the AAAR concluded that ITC paid on the purchase, and fabrication of the motor vehicles, used for carrying cash and bullions, is available to the Applicant.</p>	<p>This is a welcome decision, where due to the persistence of the Applicant, (moving the High Court and getting remand orders) for fresh consideration by the AAAR paid rich dividends in their favour.</p> <p>Important analysis done by AAAR was that the term 'money' as used in the definition of 'goods' had to be understood as legal tender and since the context required to understand the term money was not from general parlance, but from the perspective of the Applicant.</p> <p>The phrase '<i>In this Act, unless the context otherwise requires,</i>' in the definitions section provided under section 2 of the CGST Act, 2017 has been succinctly used to differentiate money as legal tender and money as goods for the Applicant.</p>



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### **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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