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**SBGCo Connect - March 2022**



Greetings to all our readers!

FY 2021-22 saw following major changes being gradually introduced under GST:

- a. Claiming of ITC only after matching with GSTR 2B,
- b. Widening of E-invoice applicable base,
- c. Changes in mandatory HSN reporting,
- d. GSTN portal enhancements, etc.

The Union Budget of 2022 also proposes to scrap GSTR 1-2-3 matching mechanism and replace this by GSTR 1-2B-3B set-up. Continuing this cycle of ever evolving GST Law, the Government has now proposed to bring more taxpayers in the ambit of E-invoice provisions by reducing threshold limit to Rs. 20 Crores from existing limit of Rs. 50 Crores w.e.f. 01.04.2022.

February 28, 2022 marked the end of another cycle of GSTR 9 and 9C. The month of March 2022 unveils the beginning of another round of compliance for FY 2021-22. There are various exercises that need to be done when a financial year comes to end and GST is no different. To begin with, impact of Annual ITC Reversal Ratio under Rule 42 of the CGST Rules, 2017 should be computed and given effect in GSTR 3B of March 2022 to avoid interest payment subsequently. Similarly, tax liability declared in GSTR 1 and GSTR 3B can be compared with books to ensure all three reflect the same data. The difference, if any, should be adjusted during FY 2021-22 itself. With the advent of claiming ITC only on the basis of matched credits, following up with vendors has automatically been shifted on a regular basis as compared to earlier practice of annual ITC reconciliation.

We would also like to remind our readers that on account of some technical glitches, many registered dealers of Kerala could not file the annual return for Kerala Flood Cess collection in Form KFC-A1. The due date to file the said Annual Return for Kerala Flood Cess for FY 2019-20 and FY 2020-21 has been extended to 15.03.2022.

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 March 2022](#)

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

Team SBGCo



## A. What's New?

### I. Notifications issued during the month

#### 1. E-invoice applicability threshold limit further reduced.

From the initial limit of Rs. 500 crores, the limit has been gradually reduced in a phased manner over time to gradually increase the taxpayer base liable to comply with e-invoicing. The same has now been reduced to Rs. 20 crores w.e.f. 1<sup>st</sup> April, 2022.

The e-invoicing provisions apply to all B2B / B2G transactions and their corresponding Credit notes and Debit notes.

#### ***SBGCO comments:***

*The intention of the Government is very clear, i.e., they want more taxpayers to upload their invoicing details on daily basis, so as to discourage backdating of invoices and cancellations to avoid tax payment due to cash issues or otherwise.*

Notification No 01 / 2022 - Central Tax dated 24.02.2022

### II. Circulars / Guidelines issued during the month

#### 2. Clarifications / Guidelines issued for specific cases by Maharashtra's GST Department for common issues pertaining to FY 2017-18 and FY 2018-19 on account of nascent stages of GST law and issues of GSTN portal (Internal Circular No. 02 of 2022 dated 25.02.2022)

There has been a spate of notices in Form GST ASMT-10 & DRC-01A issued to taxpayers for various errors committed while filing returns for FY 2017-18 & FY 2018-19. The current clarification issues following guidelines to the Department to deal with certain issues.

Issue		Clarification / Guidelines
<u>Issue category I - Incorrect reporting in GSTR 1</u>		
1	Double reporting of same transaction - once in B2C section and once B2B section with no corresponding rectification / amendment in B2C section	Details of outward supplies during the particular period to be reconciled with transactions reported in GSTR 1 with correct classification as B2B and B2C transactions. Subsequently, details of GSTR 1 to be taken on record when such transaction was shifted from B2B to B2C without rectification / amendment in B2C section.
2	Typographical errors in reporting details of B2B, B2C, Exports, Adjustment to Advances	Details of outward supplies during the particular period to be reconciled with transactions reported in GSTR 1 with correct classification. In case of B2B transactions, undertaking from recipient to be taken stating that excess ITC on account such typographical error has not been claimed by them. Likewise, in case of export transactions, verification



Issue		Clarification / Guidelines
		must be done with the turnover of exports considered while granting the refund.
<u>Issue category II - Issues arising in ITC claim</u>		
3	When no amendment is done for following errors committed by suppliers in GSTR 1: a. Supplier reported B2B transaction as B2C transaction b. Supplier reported B2B transaction in incorrect GSTIN instead of actual recipient c. Supplier missed to report B2B transaction altogether. d. Supplier reported B2B transaction in table 4B instead of Table 4A in his GSTR 1	Provided all other conditions of section 16 of the CGST / MGST Act, 2017 are met, such differences shall be permitted on fulfilment of the following requirements: <ul style="list-style-type: none"><li>- Where the difference in ITC claim per supplier is more than Rs. 2.5 lakhs, the recipient is required to obtain certification from the Chartered Accountant of the supplier certifying the output transactions and the tax paid thereon.</li><li>- Where the difference in ITC claim per supplier is less than Rs. 2.5 lakhs, the recipient is required to obtain ledger confirmation from the said supplier along with their own certification.</li></ul>
4	Applicability of proviso to Section 16(4) introduced with Removal of Difficulty Order dated 31.12.2018 for FY 2017-18 which permits claim of ITC only if the details are reflected by supplier in GSTR-1 by March 2019.	The restriction applies only for ITC claimed by the recipient during the extended period i.e., after due date of September 2018 return till due date of March 2019 return.
5	Forward charge B2B transactions reported as B2B-RCM transactions by supplier	Officer to verify whether due tax has been paid by supplier in GSTR 3B on such incorrect reporting.
6	Verification of ineligible ITC already reversed by recipients in subsequent GSTR -3B.	Officer to verify claim of ITC, reversal, other reversals as highlighted by recipient by obtaining transaction list. Alternatively, DRC-03 challan can also be verified, if filed.

**SBGCO comments:**

*This internal circular is a welcome move as many taxpayers have been facing the wrath of the stringent provisions of the new GST law during initial years of FY 2017-18 and FY 2018-19. The guidelines issued by the Maharashtra's GST department will facilitate in resolving many taxpayers' issues facing such notices. It however remains to be seen if the Officials follow the instructions issued by the Commissioner.*

Internal Circular No 02A of 2022 dated 25.02.2022

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

### **1. A G Exports vs. Assistant Commissioner of State Tax [2022-VIL-149-AP]**

#### **Issue Raised:**

Whether rejection of the claim of the petitioner for refund for the period April, 2018 to February, 2019 on the ground that the same was filed beyond the statutory period or *suo moto* cognizance and extension of time limits provided by Supreme Court applicable to refund applications?

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

The HC held that the benefit of Hon'ble Supreme Court's order extending various timelines in view of COVID19 pandemic shall be available for refund applications as well. Hence, the intervening period beginning from 15.03.2020 till the date as prescribed by the Supreme Court's order shall stand excluded while computing the last date for filing of refund application. Hence, refund applications cannot be rejected solely on the grounds of time barring without excluding such period as determined by the SC.

#### **SBGCO Comments:**

After the Bombay HC decision, the AP High Court has also expressed similar views regarding applicability of the Supreme Court's decision in the context of Extension of Limitation period for refund applications. These judgements indeed uphold the spirit of law during Covid-19 pandemic and is a relief for taxpayers who have yet to file refund claims for tax period where the period of limitation would have otherwise expired between 15.03.2020 to 28.02.2022.

### **2. Nkas Services Pvt Ltd vs. State of Jharkhand [2022-TIOL-48-HC-MUM-GST]**

#### **Issue Raised:**

Can a show cause notice be issued in a format without even striking out any relevant portions and without stating the contraventions by taxpayer? Can a summary of show cause notice as issued in Form GST DRC-01 in terms of rule 142(1) of the CGST Rules, 2017 substitute the requirement of proper show cause notice?

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

The Hon'ble HC while setting aside the impugned SCN held that principles of natural justice are violated when the SCN is completely silent on the violation or contravention alleged to have been done by the petitioner / taxpayer.

The HC further held that Summary of SCN cannot substitute a proper SCN and should contain the grounds which according to the Department necessitate an action and the particular penalty / action which is proposed to be taken.

#### **SBGCO Comments:**

It is unequivocally clear from the above judgement that the law may prescribe different procedures for adjudication, but the basic underlying principles of natural justice cannot be ignored in any circumstance. The basic requirement of intimating the cause of action, the nature of alleged violation and the proposed action that may be taken cannot be done away with while issuing a show cause notice.



**3. Wardwizard Innovations and Mobility Ltd Vs. Commissioner, SGST [2022-TIOL-244-HC-AHM-GST]**

**Issue Raised:**

Whether technical glitches in GST portal can prevent one from giving effect to the order of the appellate authority?

**Gist of the Decision:**

The Hon'ble HC not just directed the officer and GSTN to ensure the favourable order to be given effect to within 4 weeks, but also reprimanded them that such complaints (i.e., difficulty in giving effect to the order passed by the appellate authority because of technical glitches on the GSTN portal) should not be received by the High Court again. The HC observed that technical glitches should be attended to at the earliest so that registered dealer does not suffer despite having obtained a favourable order from the Appellate Authority.

**SBGCO Comments:**

In the present case, even though restoration of GSTIN was ordered by Appellate Authority in July 2020, no action was taken until 2022 when the petitioner approached the High Court. It is also very likely that we may see more of such judgements being pronounced in years to come if provisions for exceptions are not built into GSTN portal.

**4. Principal Commissioner of Central Tax vs. Huawei Technology India Pvt Ltd [2022-TIOL-260-HC-KAR-ST]**

**Issue Raised:**

Can refund (under the erstwhile Service Tax Regime) be rejected on the ground that the assessee was not registered for the period in question for which refund application was filed?

**Gist of the Decision:**

The Hon'ble HC observed that the assessee had satisfied all the conditions of Rule 5 of Cenvat Credit Rules, 2004. Further, the HC also held that Notification No. 5/2006 dated 14.03.2006 did not contain any requirement with regard to registration with the Department as a condition precedent for claiming CENVAT under the CCR, 2004. Hence, the HC held that refund was eligible to the assessee even for the period when they did not possess service tax registration certificate.

**SBGCO Comments:**

This is a welcome decision from the HC interpreting beneficial provisions keeping in mind the holistic view of the law and intent behind such provisions.



## 5. **C. P. Ravindranath Menon vs. Union of India [2022-VIL-150-BOM]**

### **Issue Raised:**

Can application for refund claim by unregistered person be rejected on the grounds that the same was not filed electronically?

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

The Hon'ble HC ruled that Rule 97A does not restrict a person from filing a manual refund claim. It is only when a refund claim is filed online that Circular No. 125/44/2019-GST dated 18.10.2019 comes into picture. The HC further held that as per Rule 97A of CGST Rules, any reference to electronic filing of application on the common portal shall also include manual filing of the said application. Hence, the it was held that Circular cannot affect or control the statutory rule i.e., Rule 97A of the CGST Rules or derogate from it. The unregistered applicant could not have filed application electronically for not having registration under the CGST Act and hence, rejecting the refund application solely on the pretext that refund application was not filed electronically was held to be incorrect.

### **SBGCO Comments:**

Again, a welcome decision, there are many instances where taxpayers (whether or not registered) are forced to file refund applications manually or other than the prescribed mode due to procedural difficulties. Rejection of such refund claims on procedural grounds without going into merits is injustice to such claimants and this decision will certainly come to their aid.

## 6. **Taghar Vasudeva Ambrish vs. AAAR [2022-TIOL-242-HC-KAR-GST]**

### **Issue Raised:**

Whether service provided by petitioner i.e., leasing of residential premises as hostel to students and working professionals is covered under Entry 13 of Notification No. 9 / 2017 (IGST-Rate) dated 28.09.2017 namely 'Services by way of renting of residential dwelling for use as residence'?

### **Background:**

The AAAR had held that the hostel building rented out by the petitioner was more akin to sociable accommodation rather than commonly understood as residential accommodation and therefore, the property rented out by the petitioner was held to be ineligible to claim exemption in under Entry 13 of the Exemption Notification. Being aggrieved by the said advance ruling from the appellate authority, the petitioner preferred the present appeal before the Hon'ble High Court.

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

The Hon'ble High Court of Karnataka has held that the residential dwelling which was being rented as hostel to the students and working women fell within the purview of residential dwelling as the same is used by the students as well as the working women for the purposes of residence.



The HC further held that duration of stay in a hostel is more as compared to hotel, guest house, club, etc. It is also not necessary that lessee itself use the premises as residence.

Therefore, leasing out residential premises as hostel to students and working professionals is eligible for exemption and the same falls under the category of 'Services by way of renting of residential dwelling for use as residence'. While coming to the above conclusion, the HC considered the registration of the entity as a commercial establishment as irrelevant. On the contrary, since GST law did not provide guidance for interpretation of terms - 'residence' and 'residence dwelling', the HC borrowed the meaning from general parlance and erstwhile service tax law to navigate the issue at hand.

**SBGCO Comments:**

This decision will be great aid to such service providers as most of their clients are also unregistered, being students, salaried employees, etc., thus helping them in reducing their costs.



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

### **1. Syngenta India Limited [Order No. GST-ARA-25/2020-21/B-05 (Maharashtra) = 2022-VIL-18-AAR]**

#### **Question raised:**

- a. Whether the GST would be payable on recoveries made from the employees towards providing parental insurance?
- b. Whether the GST would be payable on the notice pay recoveries made from the employees on account of not serving the full notice period?

#### **Gist of the Ruling:**

- a. The recovery of Parents Health Insurance expenses from employee does not amount to supply of service under the GST Laws. Hence, GST would not be payable on recoveries made from the employees towards providing parental insurance.
- b. Recovery of notice pay from dues to employee / payment of notice pay by the employee who could not serve the notice for the period as per contractual agreement / appointment letter does not amount to supply and hence, GST would not be payable on the notice pay recoveries made from the employees in this regard.

#### **SBGCO comments:**

The AAR lays down a very basic yet a fundamental principle that not all recoveries is towards a supply under GST. It is important to analyse the transaction from all angles before arriving at any conclusion regarding applicability of GST.

Also, the conclusion that notice pay recovery from employee is a supply under GST since it emanates from an employment agreement and that employer-employee relation is outside the purview of GST law is welcome and in line with the various decisions in the context of service tax.

### **2. M/s. Golden Tobie Private Limited [Order No. UP ADRG 84/2021 (Uttar Pradesh) = 2022-VIL-37-AAR]**

#### **Question raised:**

- a. What would be the taxability (in the hands of the supplier) of supply of additional quantity of goods under promotional scheme namely, supply of additional 30 packs of cigarettes on purchase of 100 packs of cigarettes at the price of 100 packs of cigarettes.
- b. What would be the impact on ITC on account of supply of such additional 30 packs of cigarettes under promotion scheme?

#### **Gist of the Ruling:**

- a. The said transaction under promotion scheme shall be considered as a supply of two products at the price of one. Hence, the supply made free of cost (i.e., without consideration) will not attract GST in such a case.



- b. The extra packs of cigarettes will not be considered as exempt supplies or free samples and hence, ITC of inputs, input services and capital goods used in relation to such supply of goods or services or both as part of such offers shall be available.

***SBGCO comments:***

The analysis by the AAR is spot on. When additional products are supplied along with the existing / ordered products at the same price of the existing / ordered products, it essentially means that all products are supplied for the price agreed and that is the only consideration. The AAR has rightly acknowledged the same and held that no additional GST liability is required to be incurred for such additional products supplied under the promotion scheme. Likewise, additional products are not considered as 'exempt' supply so as to warrant reversal of ITC which also has been correctly analysed by the AAR.



**D. Compliance chart for March 2022**

<b>SN</b>	<b>Due Date</b>	<b>Form</b>	<b>Period</b>	<b>Periodicity</b>	<b>Special Remarks</b>
1.	10.03.2022	GSTR - 7	Feb 2022	Monthly	To be filed by those who are required to deduct TDS under GST
2.	10.03.2022	GSTR - 8	Feb 2022	Monthly	To be filed by those who are required to collect TCS under GST
3.	11.03.2022	GSTR - 1	Feb 2022	Monthly	Taxpayers filing GSTR - 1 monthly
4.	13.03.2022	GSTR - 6	Feb 2022	Monthly	To be filed by an ISD
5.	13.03.2022	IFF	Feb 2022	Monthly	To be filed by those under QRMP Scheme (optional)
6.	20.03.2022	GSTR - 3B	Feb 2022	Monthly	To be filed by Taxpayer filing monthly GSTR 3B
7.	20.03.2022	GSTR - 5A	Feb 2022	Monthly	To be filed by non-resident Online Information and Database Access or Retrieval (OIDAR) services provider
8.	20.03.2022	GSTR - 5	Feb 2022	Monthly	To be filed by a non-resident foreign taxpayer registered in GST
9.	25.03.2022	PMT - 06	Feb 2022	Monthly	Challan to be filed for payment by those under QRMP Scheme



## **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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