



Unlock 1.0 !! India Fights Back

SBGco Connect
-May 2020

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Greetings to all our readers!!

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

Financial Year 2020 is set to be an important year in the history books when the entire country came to a tragic standstill in view of the global pandemic. This was the year when the country witnessed a nationwide lockdown on all fronts, bringing economic activity almost to a standstill. The impact of this lockdown was visible on the Q4 GDP of the country, which has come down to 3.1%. Fortunately, while the research for vaccine for virus is still underway, the spread of virus has come down drastically across the country, sparing a few cities (such as Mumbai, Delhi, etc.) and the lockdown is being lifted gradually w.e.f 01.06.2020, which will restart the activities and improve the overall economic scenario within the country as well as globally. However, lifting of lockdown would not mean that we go back to the pre-lockdown days. We need to continue to be cautious and follow the principles of social distancing vigilantly to ensure there is no relapse / further spread of the virus.

While the Country was in the lockdown, there were a few decisions from the judiciary on important principles as well as certain notifications / circular issued during the month of May 2020. In this Newsletter, we have summarized the various developments into following sections:

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

We would also like to remind our readers that, we had organized a series of online sessions from 20th to 24th April 2020 wherein our Leader, Sunil Gabhawalla had dealt with various aspects of the GST law and the issues revolving around them, key being input tax credit, RCM, Exports & Refund Procedures, Documentation & year end exercises from GST perspective. Encouraged by the strong participation of our clients, we extended the online sessions and from 25th to 30th April 2020, we had sector specific discussion on GST provisions & issues which was taken up by Mr. Sunil Gabhawalla along with other Partners / Senior Managers. The above sessions are also hosted on our YouTube channel – SBGCO. We hope you find it informative.

We 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. Relaxation in filing GSTR 3B introduced

- a. Registered taxpayers incorporated under the Companies Act, 2013 can file GSTR-3B returns using the Electronic Verification Code (EVC) option between 21st April 2020 and 30th June 2020, vide insertion of proviso to Rule 26(1) w.e.f. 21st April 2020.
- b. Rule 67A introduced to facilitate furnishing of return by short messaging service facility. 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). However, the implementation of this facility will be notified by the government from a subsequent date.

[Notification No. 38/2020 – Central Tax dated 05.05.2020]

2. Validity of E-Way Bill Extended

Any e-way bill generated under CGST Rules, 2017 on or before 24th March 2020, shall remain valid until 31st May 2020 if its validity period expired anytime between 20th March 2020 and 15th April 2020

[Notification No. 40/2020–Central Tax dated 05.05.2020]

3. Retrospective amendment to section 140 vide Finance Act, 2020 notified

Section 128 of the Finance Act, 2020 proposed to retrospectively amend section 140 of the CGST Act, 2017 to empower the government to prescribe time-limit within which the transition claim was to be filed. The same has been notified vide notification 43/2020 – Central Tax dated 16.05.2020 which appoints 18.05.2020 as the date on which

the provisions of such section 128 of the Finance Act, 2020 shall come into force.

[Notification No. 43/2020–Central Tax dated 16.05.2020]

It appears that this notification is issued with an intention to nullify the decision of Delhi HC in Brand Equities Treaties Limited vs. UOI [2020 - TIOL - 900 - HC Delhi] where it was held that Rule 117 was ultra-vires the provisions and therefore liable to be set-aside.

4. Extension of various time limits under notification 35/2020 Central Tax to apply to time limit in case of deemed exports also

Notification 41/ 2017 – CT (rate) provides an option to supply goods to exporters at a reduced effective rate of 0.1% subject to various conditions. One such condition therein is that the buyer should export the goods within 90 days from the date of issue of tax invoice by the registered supplier.

Vide Circular 138/08/2020 – GST dated 06.05.2020, it has been clarified that the extension up to 30.06.2020 by notification 35/2020 shall also apply to requirement of exporting the goods by the merchant exporter within 90 days from the date of issue of tax invoice by the registered supplier, provided the completion of such 90 days period falls within during the period 20.03.2020 to 29.06.2020.



5. Amendments / Clarification relating to Insolvency Resolution Professionals (IRP)

The Insolvency Resolution Professional (IRP) must obtain separate GST registration in every state/Union Territory where the corporate debtor was earlier registered. The time limit allowed is within thirty days of his appointment or by 30th June 2020, whichever is later. Further, the special procedure notified vide Notification No. 11/2020 dated 21st March 2020 shall not apply to those corporate debtors who have already filed GSTR-1 and GSTR-3B returns for all the tax periods prior to the appointment of the IRP. This notification seeks to amend notification 11/2020 – Central Tax.

[Notification No. 39/2020 – Central Tax dated 05.05.2020]

Further, on the issue of whether a fresh registration would be required in case there is change in the IRP during the insolvency process, the Board has vide Circular 138/08/2020 – GST dated 06.05.2020 clarified that such change in the GST system may be carried out by an amendment in the registration form. However, if the previous authorized signatory does not share the credentials with his successor, then the newly appointed person can get his details added through the Jurisdictional authority as Primary authorized signatory.

6. Extension of Due Dates

Due Date for	Period	New Due Dates	Corresponding Notifications
Annual Returns & Reconciliation Statements (GSTR 9 & 9C)	2018-19	30 th September 2020	Notification No. 41/2020–Central Tax
GSTR 3B for the state of Ladakh	January 2020 to March 2020	20 th May 2020	Notification No. 42/2020–Central Tax
GSTR 3B for the state of Ladakh	November 2019 to December 2019	24 th March 2020	Notification No. 42/2020–Central Tax
GSTR 3B for the UT of Jammu & Kashmir	November 2019 to February 2020	24 th March 2020	Notification No. 42/2020–Central Tax
ITC – 04 relating to goods sent on Job Work	January 2020 to March 2020	30 th September 2020	Circular 138/08/2020 – GST Dated 06.05.2020



Recent Decisions from the Judiciary

Citation	Gist of the Judgment	SBGco Views
<p>Brand Equities Treaties Ltd vs. UoI & Others [2020 - TIOL - 900 - HC Delhi]</p>	<p>The Delhi HC dealt with the time limit prescribed in Rule 117 of the CGST Rules, 2017 for claiming the transition input tax credit provided in section 140 of the CGST Act, 2017. The HC held that procedural rules cannot run contrary to the substantive right vested under section 140(1) of the CGST Act, 2017. Further, the court observed that since there are no consequences provided in Rule 117 of the CGST Rules, 2017 on account of failure to file Form GST TRAN-1, the said rule had to be read and understood as directory and not mandatory. The Bench in their judgement read down the provision of Rule 117 insofar as it prescribed the time-limit for transitioning the credit. The Court held that failure to file Form GST TRAN-1 within the time limit prescribed in the said Rule 117 would not result in forfeiture of the rights in case the credit is not availed within the period prescribed. However, the HC did hold that such credit cannot be availed in perpetuity and hence should be claimed within a period of three years from the appointed date. Thus, the petitioners were permitted to file relevant TRAN-1 form on or before 30.06.2020.</p>	<p>The subject of claim of whether there can be a time limit to claim transitional credits or not has seen substantial litigation. In our view, the decision of the Delhi HC is very just and adheres to the principles laid down by the SC. However, it remains to be seen as to whether the HC modifies its' order which allowed the tax payers to claim refund by 30th June 2020 considering the current pandemic times which would make it difficult for many to file the refund claims due to lockdown. However, this decision is sought to be nullified vide notification 43/2020 - CT which notifies the effective date from which section 128 of the Finance Act, 2020 shall come into force. Section 128 retrospectively confers powers to the Parliament to notify time-limits within which transition credits can be claimed, thus attempting to regularize Rule 117 of the CGST Rules, 2017. Further, the Revenue has also filed an appeal against this decision before the SC and the matter now awaits finality. It would be interesting to see how the SC deals with the following issues:</p> <ol style="list-style-type: none">1. Whether Rule 117 was overriding the provision of Section 140 of the Act to the extent it imposed a condition not provided for in the Act?2. Can the retrospective amendment to Section 140 survive since it takes away substantive rights of a taxpayer which had already accrued to him?3. In case the SC upholds the retrospective amendment, whether interest and penalties would be leviable?



Citation	Gist of the Judgment	SBGco Views
<p>Bharti Airtel Ltd vs UoI & Others [2020 - TIOL - 900 - HC Delhi]</p>	<p>The Delhi HC had an opportunity to deal with paragraph 4 of the CBIC Circular 26/26/2017-GST dated 29.12.2017 that did not provide cogent reasoning for restricting rectification of Form GSTR 3B in the same month in which error had occurred and correction of such errors were to be adjusted in the period(s) / return(s) in FORM GSTR- 3B of subsequent period(s) / returns(s) and, in cases where such correction was not feasible, refund was to be claimed. The Delhi HC also held that is trite proposition of law that Circular issued by the CBIC was contrary to the Act and the Government could not impose conditions which go against the scheme of the statutory provisions contained in the Act. The High Court also noted that Respondents had failed to fully enforce the scheme of the Act and thus they could not take benefit of its own wrong of suspension of the statutory forms of GSTR 2 and GSTR 3 and thereby, deprive the rectification / amendment of the returns to reflect the ITC pertaining to a tax period to which the return relates to, for the petitioner. The Hon'ble Delhi HC held that only remedy that can enable the petitioner to enjoy the benefit of seamless utilisation of the input tax credit was by way of rectification of its return of Form GSTR-3B for the period July 2017 to September 2017 to which the error of the petitioner related to.</p>	<p>While this decision was aimed to deal with a specific situation in the telecom sector of credit accumulation, it will be of help to those taxpayers who had committed genuine mistakes in filing of their GSTR 3B.</p> <p>The important issue that however needs to be noted is that the decision does not deal with retrospective amendment to Rule 61 which treats GSTR 3B as return u/s 39 w.r.e.f 01.07.2017. While in the case of Brand Equities Treaties referred above, there was a substantive right which was sought to be denied by a retrospective amendment, the same cannot be said so for the current case since the law in itself does not provide any right to file revised returns.</p>



Citation	Gist of the Judgment	SBGco Views
<p>Nirmal Kumar Parsan and Others vs Commissioner of Commercial Taxes & Others, West Bengal (CIVIL APPEAL NO. 7863 OF 2009 – SC)</p>	<p>This judgment revolves around the question of what shall constitute sale in the course of import into India.</p> <p>The brief facts of the case were that the Appellant had imported certain goods from a foreign country, which were stored in the bonded warehouse without payment of customs duty after unloading of the same on the land mass of West Bengal. The goods were then sold to the master of a foreign going ship as “ship stores” without payment of customs duty and were escorted to the ship under supervision of Customs Officials. The question raised before the SC was whether such sales were amenable to tax under the West Bengal Sales Tax Act, 1954 or not? The Appellant had argued that it was a sale in the course of import and therefore not amenable to Sales Tax.</p> <p>The Supreme Court held that for a sale to be treated as in the course of import into India, the goods must actually be imported within the territory of India and further, the sale must be part & parcel of the import so as to occasion the import thereof. Importantly, the Court also concluded that there was no evidence provided by the Appellants that the bonded warehouse formed part of customs port/ customs station area and therefore, it could not be said that the goods had not crossed the customs frontiers of India. In summary, the SC upheld the decision of the lower courts that sales or appropriation of goods kept in bonded warehouse within the landmass of West Bengal were neither in the course of import nor export and more so, were effected beyond the customs port. Therefore, in law, such transaction was a sale amenable to levy of sales tax under the 1954 Act and the 1994 Act read with Section 4 of the CST Act, as the case may be.</p>	<p>Though this decision is in the context of pre-GST regime, the applicability of principles laid down by the Larger Bench will have to be analysed in the context of GST, specifically in view of proviso to Section 5 (1) of the IGST Act, 2017 and Entry 8 of Schedule III of the CGST Act, 2017. Furthermore, this decision will also be of relevance when analysing the taxability of Duty-Free Shops under the GST Regime.</p>



Citation	Gist of the Judgment	SBGco Views
<p>CTO vs. Bombay Machinery Stores [2020 - VIL - 16 - SC]</p>	<p>This judgment revolves around Section 6 (2) of Central Sales Tax Act, 1956 and more importantly, should there be time a frame within which the delivery of goods need to be concluded for claiming the benefit of exemption u/s 6 (2) or not?</p> <p>The facts of the case were that the assessee had purchased electricity motors and its parts in a particular year from out of the State and sold them to purchasers within the Kota region of the State of Rajasthan. However, after the goods were purchased from out of the state, they remained with the transport company upon arrival in Kota for more than a month and the goods were further sold to their clients by claiming the benefit of exemption under Section 6(2) of the Central Sales Tax Act, 1956. However, the same was sought to be denied by the Revenue who had vide Circular clarified that constructive delivery should be looked into in cases where the benefits were claimed and it should be ascertained whether the goods remained with the transporter beyond reasonable time or not?</p> <p>The SC, upholding the decision of the HC, held that Section 3 specifically provides that when goods are given for transmission to a carrier, movement shall commence at the time when goods are delivered to a carrier and terminate at time when delivery of goods is taken from the carrier. The provisions do not provide for a time frame as to by when the delivery has to be taken and therefore the Circular fixing the time frame was impermissible.</p>	<p>While this decision would be a welcome decision for ongoing assessments under the VAT / CST regime, how similar transactions are dealt with under GST, which are dealt with u/s 10 (2) of the IGST Act, 2017. It remains to be seen as to how the revenue analyses this transactions in the context of GST, whether the issues faced under the CST, such as pre-determined sales, constructive delivery, etc., shall continue to haunt the tax-payers or they would be laid to rest?</p>



Recent Advance Rulings

Citation	Issue raised	Gist of the Ruling	SBGco Views
Anil Kumar Agarwal [2020 VIL 118 AAR]	<p>Ruling was sought on whether the following incomes / receipts received by an individual shall be considered while calculating the “aggregate turnover” for determining the need for obtaining registration or not?</p> <ol style="list-style-type: none">1. Interest Income (in different forms)2. Remuneration from Partnership Firm3. Salary as Director from Company4. Commercial / Residential property rent5. Dividend on Shares6. Amounts received on maturity of insurance policies7. Capital gains on sale of securities	<p>The Authority concluded that income received from each source should be examined as to whether it is in relation to any transaction that amounts to supply or not and accordingly, for each income stream, held as under:</p> <ol style="list-style-type: none">1. Interest Income (in different forms) to be included.2. Remuneration from Partnership Firm is not to be included3. Salary as Executive director not includible. However, salary as non-executive Director includible though the tax to be discharged under RCM4. Commercial / Residential property rent to be included in both cases5. Receipts in items 5-7 not to be included as there is no element of goods or service involved	<p>This is a welcome ruling for individuals where there are different sources of income, which though not relating to the business, might have an impact on ones’ liability to obtain registration.</p> <p>The conclusion more welcome is in respect to director remuneration where it clarifies that in case of executive directors, no RCM is applicable and in case of non-executive director, RCM shall be applicable.</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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