



SBGco Connect - October 2021

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Greetings to all our readers!!

We hope you are doing well.

As the first half of the financial year comes to an end, the time-limit to make amendments relating to transactions of previous FY 2020-21 also comes closer. A detailed note on such activities to be undertaken was covered in our August 2021 newsletter. In case there are any doubts or queries regarding the same, you may please get in touch with us.

During the onset of the pandemic, the Hon'ble Supreme Court in March 2020 had *suo moto* proceedings held that the period from 15.03.2020 till such further orders shall be excluded while determining the limitation period for filing cases / appeals / suits. With things returning to normalcy across the country, the SC has recalled its' Order w.e.f. 02.10.2021. As a result, for all appeals, the orders for which were received during 15.03.2020 to 02.10.2021, grace period of 90 days or actual period as per provision of the respective law, whichever is higher would be applicable for filing any cases / appeals / suits.

The Directorate General of Foreign Trade (DGFT) has also notified revised guidelines to avail the benefit of SEIS Scheme for FY 2019-20 for service providers. Some of the key changes notified include capping of overall benefits at Rs. 5 Crore per IEC, exclusion of certain services which were earlier part of this scheme and time-limit to avail the benefit has been set at 31 December 2021. The detailed notifications can be accessed from the DGFT's website by clicking [here](#).

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 October 2021](#)

The 45th GST Council meeting was held on 17.09.2021. Subsequently, a number of circulars were issued based on decisions taken in the meeting. We had issued a News Flash post the meeting, covering the circulars issued at that point in time.

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

Team SBGco



A. What's New?

I. Notifications issued during the month:

1. Furnishing of Bank Accounts details linked to PAN of the taxpayer

The Government amended Rule 10A under the CGST Rules and now requires a registered taxpayer provide bank account details which is the name of the taxpayer and linked to their PAN. Further, in the case of a proprietorship concern, the PAN of the proprietor shall also be linked with the Aadhaar number of the proprietor. The above provision shall be made applicable from a future date to be notified.

Notification 35/2021 - Central Tax, dated 25.09.2021

2. Aadhaar Authentication made mandatory for all registered tax-payers applying for refund under GST.

A new Rule 10B has been inserted that mandates compulsory Aadhaar Authentication in GST Registration in order to be eligible for filing refund application in Form GST RFD-01 under Rule 89.

Further, if Aadhaar number is not available, then various documents need to be uploaded including Aadhaar Enrolment ID slip with other documentary evidence and also requires mandatory Aadhaar Authentication within 30 days of allotment of the Aadhaar number. The above provision shall be made applicable from a future date to be notified.

Notification 35/2021 - Central Tax, dated 25.09.2021

3. Aadhaar Authentication mandatory for filing revocation of cancellation of registration

Rule 23 of the CGST Rules provides for filing application for revocation of cancellation of registration. From a future date to be notified, it will be mandatory to complete Aadhaar Authentication process (as provided in Rule 10B above) before filing an application for revocation of cancellation of registration.

Notification 35/2021 - Central Tax, dated 25.09.2021

SBGCO comments:

Aadhaar Number is becoming more and more relevant under the GST law. Right from registration to filing of refund and also applying for revocation, authorized signatories and promoters/principals are mandatorily required to undergo Aadhaar Authentication.

4. Rationalization for filing ITC-04

W.e.f. 01.10.2021, the periodicity for filing GST ITC-04 containing details of goods dispatched to a job worker or received from a job worker has been amended depending on the aggregate turnover of Principal, as tabulated below:

Aggregate turnover of the principal	Periodicity
Exceeds Rs. 5 crores	Half yearly
Others	Annually



Notification 35/2021 – Central Tax, dated 25.09.2021

SBGCO comments:

Relaxation in filing of Form ITC-04 will a major relief for principals sending their goods for job work as the frequency of filing has been reduced from quarterly to half-yearly / annual. Since such a return did not have any potential tax cash-flow impact, the move will be welcomed by the tax-payers at large.

5. Stringent implementation of Rule 59(6) on GST Portal

Currently, the GSTN portal checks filing status of GSTR 3B for last two months and if not filed, subsequent GSTR 1 is not permitted. W.e.f. 01.01.2022, the said restriction will apply if GSTR 3B for only last one month is pending.

Notification 35/2021 – Central Tax, dated 25.09.2021

SBGCO comments:

With various GST scams being unearthed all across the country with increasing frequency, the Government is very adamant on ensuring timely compliance and these measures will not only ensure streamlining of compliance process but also ensure that the diligent and honest tax payers are not troubled on account of non-compliant vendors.

6. Refund related amendments

Compliance with amendments vide Rule 10A & 10B regarding Aadhar Authentication and linking of bank accounts with PAN made mandatory for refund filed u/r 89 of the CGST Rules, 2017.

Section 77 of the CGST Act, 2017 provides that if a taxpayer has classified a supply as inter-state and supply and subsequently the same is held as intra-state supply, such taxpayer would be liable to pay applicable CGST & SGST (without any interest) and be eligible to claim refund of IGST wrongly paid. Similarly, section 19 of the IGST Act, 2017 deals with reverse scenario, i.e., a transaction classified as intra-state subsequently held to be inter-state supply.

Rule 89 (1A) has been inserted which deals with refund claims arising on account of the above provisions and provides that in such cases, refund claim shall be filed within a period of two years from the date of payment of IGST.

Further, for cases where correct tax has already been paid by the appellant before implementation of these provisions, the period of 2 years shall begin from the date these provisions are notified.

Notification 35/2021 – Central Tax, dated 25.09.2021

SBGCO comments:

A very welcome move by the Government and considering the fact the period of 2 years shall begin from notification of these provisions and hence, no taxpayer who had made payment of correct tax will suffer and will be eligible to claim refund of the previously tax payments of incorrect



nature. This will however also give rise to a spate of litigations on determining the time-limit since the right to claim refund emanated from section 77 of CGST Act, 2017/19 of the IGST Act, 2017 and not u/s 54 of the CGST Act, 2017.

7. Rationalization of Rates - Services

- A. Composite supply of Works contract of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of building for an entity registered under Section 12AB of the Income Tax Act, 1961 used for centralised cooking or distribution, for mid-day meals under the mid-day meal scheme sponsored by the Government would attract 12%. Earlier, the benefit of lower rate was only applicable to an entity registered under Section 12AA of the Income Tax Act, 1961 only. Now, the scope has been widened include entity registered under Section 12AB as well.
- B. With a view to bring the same in parity between distribution and licensing services in the Intellectual Property (IP) right segment, the Government has now notified a rate of 18% Temporary or permanent transfer or permitting use of all IP rights. Earlier, GST rate on licensing services / right to broadcast and show original films, sound recordings, radio and television programmes was 12%, but with this amendment, the same will now taxable at 18%.
- C. Job-work in relation to manufacture of alcoholic liquor for human consumption will now attract GST rate of 18%.
- D. Upto 30.09.2021, Services by way of printing of all goods falling under Chapter 48 or 49 including newspapers, books (including Braille books), journals and periodicals where only content is supplied by the publisher and the physical inputs including paper used for printing belonged to the printer attracted GST rate of 12%. However, moving ahead, such entry has now been omitted. Hence, all manufacturing services, publishing, printing and reproduction services; material recovery services shall now attract GST rate of 18%.
- E. The Government has now segregated and clarified that Services by way of admission to casinos or race clubs or any place having casinos or race clubs or sporting events like IPL shall attract GST rate of 28% and in all other cases of amusement parts / theme parks / water parks and so on, will attract GST rate of 18%
- F. In the scheme of Classification of Services provided as an Annexure to Notification 11/2017 - Central Tax (Rate), dated 28.06.2017, a new entry has been inserted under HSN code 9965 (Goods Transport Services), namely, 996541 for Multimodal transportation of goods within India

All the above changes shall be effective from 01.10.2021.

Notification 06/2021 - Central Tax (Rate), dated 30.09.2021



8. Amendment to Exemption list (Services)

- A. Scope of exemption has been widened by permitting exemption for an entity registered under Section 12AB of the Income Tax Act, 1961 for:
- services by way of charitable activities
 - services of running an old age home
 - services provided by rehabilitation professionals recognized under the Rehabilitation Council of India Act by way rehabilitation, therapy or counselling
 - services by way of training or coaching in recreational activities relating to sports
- B. Services related to AFC Women's Asia Cup 2022 provided by and to Asian Football Confederation (hosted in India) shall be exempted from GST. Further, services by way of right to admission to the events organised under AFC Women's Asia Cup 2022 have also been granted exemption from GST.
- C. Services of transportation of goods from India to a place outside India by vessel and aircraft has been further extended upto 30.09.2022.
- D. Services of leasing of assets (rolling stock assets including wagons, coaches, locos) by the Indian Railways Finance Corporation to Indian Railways will no longer be exempted as such entry has now been omitted.
- E. Fees paid for obtaining National Permit for a goods carriage to operate across India or contiguous states shall henceforth be treated as exempt services.
- F. Previously, exemption under GST was available for services provided to SG, CG, UT only if total expenditure for any training programme was borne by CG, SG, UT. The said exemption has now been relaxed and the exemption shall now be available when 75% or more of the total expenditure is borne by CG, SG, UT.

All the above changes shall be effective from 01.10.2021.

Notification 07/2021 - Central Tax (Rate), dated 30.09.2021

9. Rationalization of Rates - Goods

- A. Tamarind seeds, falling under HSN code 1209, which are used for any purpose other than sowing shall attract GST rate of 5%
- B. All the Ores and concentrates of metals such as iron, copper, aluminium, zinc, nickel, cobalt, lead, tin, chromium and manganese shall now attract 18% (instead of 5% previously)
- C. Bio-diesel supplied to Oil Marketing Companies for blending with High-Speed Diesel will attract GST Rate of 5% (HSN Code 3826). Bio-diesel in other case, will continue to attract GST rate of 12%.
- D. Waste, parings or scrap, of plastics with HSN code 3915 shall now attract 18%



- E. Renewable energy devices & parts for their manufacture namely, Bio-gas plant, Solar power-based devices, Solar power generating system, Wind mills, Wind Operated Electricity Generator, Waste to energy plants / devices, Solar lantern / solar lamp, Ocean waves / tidal waves energy devices/plants, Photo voltaic cells which earlier attracted 5%, shall now attract a GST rate of 12%.
- F. Retro fitment kits for vehicles used by the disabled shall now attract a GST rate of 5%.
- G. Pembrolizumab (Keytruda) falling under the category of Drugs or medicines shall now attract GST Rate of 5%
- H. Cartons, boxes, cases of corrugated paper or paper board, paperboard, cellulose wadding or webs of cellulose fibres; box files, letter trays, and similar articles, of paper or paperboard of a kind used in offices, shops or the like shall now attract a GST rate of 18% from the existing rate of 12% (HSN Code 4819)
- I. Plans and drawings for architectural, engineering, industrial, commercial, topographical or similar purposes, Unused postage, revenue or similar stamps of current or new issue, Transfers (decalcomanias), Printed or illustrated postcards; printed cards bearing personal messages / greetings, printed calendars of any kind, other printed materials such as trade advertising material, Commercial catalogues, etc. all covered under Chapter heading 49, shall now attract a rate of 18% GST from the current 12% rate.
- J. All types of pens (including fountain and stylograph pens) along with pencil holders and similar holders and caps / clips of such pens shall now attract a uniform rate of 18%.
- K. Railway parts, locomotives & other goods in Chapter 86 have been shifted from 12% GST bracket to GST rate of 18%
- L. Carbonated Beverages of Fruit Drink or Carbonated Beverages with Fruit Juice shall now be taxable at highest slab rate of 28%.

Notification 08/2021 - Central Tax (Rate), dated 30.09.2021

- M. Fortified Rice Kernel (Premix) supply for ICDS or similar scheme duly approved by the Central Government or any State Government shall attract GST rate of 5%.

Notification 11/2021 - Central Tax (Rate), dated 30.09.2021

All the above changes shall be effective from 01.10.2021.

10. Amendment to the exemption and reverse charge list for Goods

- A. W.e.f. 01.10.2021, Seeds, fruit and spores (falling under HSN code 1209) shall be exempt from GST only if the same are used for sowing.

Notification 09/2021 - Central Tax (Rate), dated 30.09.2021

- B. Supply of essential oils namely, of peppermint, Spearmint oil, Water mint-oil, Horsemint oil, Bergamot oil are hereby notified under u/s 9(4) of the CGST Act. Hence, any registered



person purchasing the above mentha oil-based items from unregistered persons, shall be liable to pay GST under reverse charge mechanism, w.e.f. 01.10.2021.

Notification 10/2021 - Central Tax (Rate), dated 30.09.2021

C. Fortified Rice Kernel (Premix) supply for ICDS or similar scheme duly approved

Notification 11/2021 - Central Tax (Rate), dated 30.09.2021

11. Covid-19 related Drugs and essential goods

The table below summarizes the various rate change for Covid-19 related essential goods:

Sl. No.	Chapter, Heading, Sub-heading or Tariff item	Description of Goods	From 14.06.2021 to 30.09.2021	From 01.10.2021 onwards
1	2804	Medical Grade Oxygen	5%	Old Rates before 14.06.2021
2	30	Tocilizumab	Nil	Nil (upto 31.12.2021)
3	30	Amphotericin B	Nil	Nil (upto 31.12.2021)
4	30	Remdesivir	5%	5% (upto 31.12.2021)
5	30	Heparin (anti-coagulant)	5%	5% (upto 31.12.2021)
6	3002 or 3822	Covid-19 testing kits	5%	Old Rates before 14.06.2021
7	3002 or 3822	Inflammatory Diagnostic (marker) kits, namely- IL6, D-Dimer, CRP (C-Reactive Protein), LDH (Lactate De-Hydrogenase), Ferritin, Pro Calcitonin (PCT) and blood gas reagents.	5%	Old Rates before 14.06.2021
8	3,80,494	Hand Sanitizer	5%	Old Rates before 14.06.2021
9	6506 99 00	Helmets for use with non-invasive ventilation	5%	Old Rates before 14.06.2021
10	8417 or 8514	Gas/Electric/other furnaces for crematorium	5%	Old Rates before 14.06.2021
11	9018 19 or 9804	Pulse Oximeter	5%	Old Rates before 14.06.2021
12	9018	High flow nasal canula device	5%	Old Rates before 14.06.2021
13	9019 20 or 9804	Oxygen Concentrator/ generator	5%	Old Rates before 14.06.2021
14	9018 or 9019	Ventilators	5%	Old Rates before 14.06.2021



Sl. No.	Chapter, Heading, Sub-heading or Tariff item	Description of Goods	From 14.06.2021 to 30.09.2021	From 01.10.2021 onwards
15	9019	BiPAP Machine	5%	Old Rates before 14.06.2021
16	9019	(i) Non-invasive ventilation nasal or oronasal masks for ICU ventilators (ii) Canula for use with ventilators	5%	Old Rates before 14.06.2021
17	9025	Temperature check equipment	5%	Old Rates before 14.06.2021
18	8702 or 8703	Ambulances	12%	Old Rates before 14.06.2021
19	30	Itolizumab	Old Rates upto 30.09.2021	5% (upto 31.12.2021)
20	30	Posaconazole	Old Rates upto 30.09.2021	5% (upto 31.12.2021)
21	30	Infliximab	Old Rates upto 30.09.2021	5% (upto 31.12.2021)
22	30	Favipiravir	Old Rates upto 30.09.2021	5% (upto 31.12.2021)
23	30	Casirivimab & Imdevimab	Old Rates upto 30.09.2021	5% (upto 31.12.2021)
24	30	2-Deoxy-D-Glucose	Old Rates upto 30.09.2021	5% (upto 31.12.2021)
25	30	Bamlanivimab & Etesevimab	Old Rates upto 30.09.2021	5% (upto 31.12.2021)

II. Circulars issued during this month:

12. Refund of tax wrongfully collected and paid

CBIC has clarified the scope of the term 'subsequently held' as appearing in section 77 of CGST Act, 2017 and Section 19 of the IGST Act, 2017. The circular has now clarified that the term 'subsequently held' would include subsequently held by tax officers in course of scrutiny / assessment / audit / investigation / adjudication and also include cases where the mistake is found by taxpayer himself and the two-year time limit to claim refund shall be triggered from such date.

This clarification would provide relief to all the taxpayers who applied for refund of incorrect tax after paying correct tax on *suo moto* identification as a liberal interpretation is now given to the term 'subsequently held' by the Board Circular.

Circular No. 162/18/2021-GST dated 25.09.2021

B. Recent Decision from the Judiciary:

1. Union of India vs. VKC Footsteps India Pvt Ltd [2021-TIOL-237-SC-GST]

Issue Raised:

Whether refund of ITC on Input services shall be granted in cases of 'Inverted Duty Structure' wherein the definition of 'Net ITC' only specifies Inputs?

Understanding the dispute:

Section 54(3) of CGST Act, 2017 prescribes refund of unutilized input tax credit in the case of inverted duty structure based on a formula provided in Rule 89(5) of CGST Rules, 2017. The revised formula (w.e.f. April 2018) excluded input services from the scope of 'net input tax credit' for computation of refund. The explanation to Rule 89(5) of the CGST Rules, 2017 restricted the benefit of such refund only to the extent of the 'inputs (i.e., goods)' procured by the supplier. Hence, since the rate of tax on final product was lower than the tax paid on inputs and input services procured and no refund was being granted for tax paid on input services, such anomaly was leading to accumulation of credit with no solution provided under the law for such suppliers.

Subsequently, the doors of the High Court were knocked - one in Gujarat HC (VKC Footsteps India Pvt Ltd vs UoI) and another in Madras HC (Tvl. Transtonnelstroy Afcons Joint Venture vs UOI). The Gujarat High Court held that refund of input services must be allowed as well and the term 'inputs' must be read to include 'input services' within its scope. However, the Madras High Court did not agree to Gujarat HC's views and held that refund of only inputs can be permitted. As a result, the Supreme Court was moved to decide on this matter.

Gist of the Decision:

The Supreme Court held that the law-makers are within their legislative authority in determining whether refunds should be allowed of unutilised ITC tracing its origin to input goods and input services or input goods alone. The Supreme Court further held that refund is neither a constitutional guarantee nor a statutory entitlement and hence, there is no legal requirement to treat goods and services at part. The explanation restricting the scope of 'Net ITC' to mean ITC on input only, does not violate any Articles of the Constitution. The Apex Court, did acknowledge certain 'inequities' in the refund formula, but held that allowing refund of inputs only is legal and not ultra-vires.

SBGCO Comments:

Industries falling under the 'Inverted Duty Structure' would definitely feel a little dejected by this decision as the GST was introduced with one of the intentions of seamless flow of credit i.e., to avoid cascading of tax. However, this judgement would definitely feel like going 2 steps backwards. The Judgement may uphold the law, but it clearly goes against the fundamentals on the basis of which GST was introduced. The 45th GST Council meeting did acknowledge the comments of the Supreme Court, but deferred the decision on implementation of correction of inverted duty structure to January 2022.



2. 24/7 Customer Pvt Ltd vs. Commissioner of CT, Bengaluru [2021-TIOL-593-CESTAT-BANG]

Issue Raised:

Whether eligibility of claim of credit be questioned at the time of claiming refund?

Gist of the Decision:

Rule 5 of CENVAT credit Rules, 2004 clearly provides that claim refund can be made for unutilized CENVAT credit and at the time of refund, eligibility of the credit cannot be questioned, especially when the department had not questioned the input services and its utilization for rendering the output services.

SBGCO Comments:

The availment of credit and claim of refund are two different and independent events. The former cannot be challenged when deciding on the latter. Both the activities have separate provisions governing them with separate procedures to be followed for each of them and hence, challenging the eligibility of the claim of credit, cannot be merged with the refund application for such credit. The same must only be dealt with via separate proceedings. The applicability of this decision will be of utility for refund claims under GST where the CBIC itself has issued Circulars directing the authorities to check ITC eligibility while filing the refund claims.

3. M/s. Ghadshyam Enterprises vs. Commissioner of CGST [2021-TIOL-590-CESTAT-DEL]

Issue Raised:

Can mere dispatch of order / notice be considered as a sufficient proof of service of order?

Gist of the Decision:

The Department was not able to produce any evidence challenging the submission made by the Appellant that they did not receive the notice to appear for the personal hearing and they came to know about the order only when recovery proceedings were initiated. The Tribunal held that the Appellate Authority should have verified the claim of the Appellant as mere dispatching of order does not imply the receipt of the same. The period prescribed for filing an appeal begins not from the date the order was issued but from the date of receipt of the same.

SBGCO comments:

The logic of this principle is ingrained in the very fundamentals of the law namely, the Indian Contract Act, 1872 whereby communication of any offer is said to be completed only when it comes to the knowledge of the other person to whom it is made and not any-time before it. Since, many of the timelines are based on the date of receipt of notice / orders, it is always a good practice to save the envelope in which such notice / orders were received and stamping them with date and time for future references. In many case, postal tracking details available on India Post website can also be saved as record.

4. Interdrill Repairs and Services Pvt Ltd vs. Commissioner of C. Ex. and S.T. [2021-TIOL-1916-HC-MUM-ST]

Issue Raised:

Can Appellant be allowed benefit of wrong timelines mentioned in the order, namely, the time limit to file appeal against such an order?

Gist of the Decision:

The indication in Hindi mentioned that the time limit to file an appeal against the said order was 90 days, however, the actual limitation prescribed in the law was only 60 days. The Hon'ble High Court held that the Petitioner was entitled to the benefit of the order and since the appeal was preferred after 60 days but within 90 days, the same must be decided on merits and not dismissed on the grounds of time-barring.

SBGCO Comments:

This judgement is a very interesting one as it lays down the importance of every word printed in the order including the appeal filing instructions in case the assessee is not agreeable with the order. Any written communication must be thoroughly checked and reviewed before being issued, whether it is by the taxpayer or the department officer as such things in writing do tend to boomerang in least expected cases.

5. OPC Assets Solutions Pvt Ltd vs. State of Tripura [WP(C) No.399/2021]

Issue Raised:

Can multiple orders for multiple periods be issued when the show-cause notice is issued only a single period?

Gist of the Decision:

In this case, the Superintendent of Taxes had passed five separate orders for different tax periods starting with FY 2017-18 to FY 2020-21 but issued a single show cause notice only for FY 2018-19. The Superintendent of Taxes was of the opinion that once notice is issued for a particular tax period, no notice is required for other periods. The High Court, setting aside the orders, held that such an action is a fundamental breach of the basic principles of natural justice and such a belief that no notice is required represents ignorance of law.

SBGCO Comments:

With the advent of GST and the beginning of assessments and audits, it is becoming more and more clear that officers are not well-versed with the law and the procedures laid down for various actions that can be initiated under the law. The basic fundamentals of natural justice require the person who is going to be put in an adverse position must be first put to notice highlighting the basis / information relied by the officer and the same cannot be done away with in any case. It is therefore important that any notice/ Order received from the Department should be scrutinized for such procedural lapses on the part of Department as well.



6. Hindustan Zinc Ltd vs. Commissioner of C. Ex., Udaipur [2021-TIOL-601-CESTAT-DEL]

Issue Raised:

Can a demand be confirmed merely because of difference between the figures in balance sheet and ST-3 Returns without providing any other basis for confirming such a demand?

Gist of the Decision:

The Tribunal held that if the Department had proposed the demand, it was for the Department to substantiate from the records that the proposed demand was justified. Further, to confirm any demand, the adjudicating authority should specify the taxable service and the demand cannot be confirmed merely because of difference between the figures in balance sheet and ST-3 Returns.

SBGCO Comments:

Off-late there has been a spurt in the number of notices issued by the department alleging tax evasion only because there is some difference in values as per balance sheet / ITR with that of ST-3 returns. It is a settled principle that without establishing the rendering of a service, there cannot be a demand of service tax. Hence, even if there are differences in the values reported in the balance sheet / ITR and ST-3 return, it must be first established by the Department that such a difference is on account of some taxable service that was rendered, and tax has not been paid on such taxable service. Without such proof, the entire process might be infructuous.

C. Recent Decisions from Advance Authority

1. B G Shirke Construction Technology Pvt Ltd [GST-ARA-42/2019-20/21-22/B-56 (MH)]

Question raised:

- Whether Managerial and leadership services provided by the Registered / Corporate Office to its Group Companies can be considered as “supply of services”?
- Whether lumpsum amount charged by the Registered / Corporate Office on its Group Companies would be liable to GST?
- If the answer to the above two question is in affirmative, whether applicant can continue to charge a lumpsum amount (in terms of proviso to Rule 28 of CGST Rules) as most of the Group Companies, barring one or two, are eligible for full ITC?

Gist of the Ruling:

All the above three questions were answered in affirmative by the Advance Ruling Authority. The Authority noted that as per the GST Law, branch offices and head office are distinct persons and all transactions between them are brought under the GST net.

SBGCO comments:

More and more companies are now opting to cross-charge expenses of the head-office (including such managerial / leadership services of the top management) to the branches with the help of the Rule 28 of the CGST Rules that accepts the value adopted by the company, provided ITC is eligible to the recipient branch. The policy adopted by the company would be accepted and hence, it becomes all the more necessary to ensure, there is a uniformity in the practise adopted by each company. There is no restriction as to whether such cross-charge to branches need to be monthly or quarterly or half-yearly or annually, as long as Rule 28 comes to the rescue.

2. Wago Pvt Ltd [GUJ/GAAR/R/33/2021 (Guj) = 2021-TIOL-224-AAR-GST]

Question raised:

Whether ITC credit is admissible on procurement, installation and commissioning of air conditioning with cooling system and ventilation system under the GST law?

Gist of the Ruling:

Input tax credit is not admissible on Air-conditioning and Cooling System and Ventilation System as this is blocked credit falling under Section 17(5)(c) CGST Act.

SBGCO comments:

This Ruling shows the failure on the part of the AAR to not appreciate the fact that though becoming a part of immovable property, an Air Conditioning system is a plant & machinery for all purposes and infact, in books of accounts as well as for Income tax Depreciation claim, are classified as plant & machinery only. Such rulings only give rise to controversies, and it remains to be seen if the same survives judicial scrutiny or not.

3. **Karma Buildcon [GUJ/GAAAR/APPEAL/2021/08 (Guj) = 2021-VIL-48-AAAR]**

Question raised:

Whether actual value of land can be deducted from the total consideration (i.e., value including land value) instead of the deemed 1/3rd value as prescribed for the purposes of arriving at the taxable value of supply in the case of construction of residential / commercial complex?

Gist of the Ruling:

The AAAR upheld the ruling pronounced by the AAR, whereby it was held that the deduction of actual value of land from the sale value was not prescribed under the law and hence, not permitted. In such cases of construction of residential / commercial complex, the value of transfer of land or undivided share of land will have to be taken as per the deeming provisions which is 1/3rd of the total consideration, even if actual value of land is determinable.

SBGCO comments:

If sale of land has been excluded from the scope of Supply under GST via Schedule III (activities or transactions which are neither supply of goods nor services), then actual value of sale of land must be permitted to excluded as against a fiction / deemed value of land for arriving at value on which tax shall be applicable. At one point, the law provides for exclusion of sale of land but on the other hand does not consider the actual value of such sale but provides for a deeming fiction restricting the exclusion to only 1/3rd value of the total consideration.

4. **Global Vectra Helicorp Ltd [GUJ/GAAAR/APPEAL/2021/23 (Guj) = 2021-VIL-46-AAAR]**

Question raised:

Whether amount recovered as reimbursement (at actual) from the customer, for the fuel procured on behalf of the customer is required to be included in the value of services provided?

Gist of the Ruling:

The AAAR analysed the contract of the applicant and their customer and arrived at the conclusion that it was the responsibility of the supplier to provide fuel and further noted that reimbursement of fuel would be covered by Section 15(2)(c) of the CGST Act, 2017 as *'incidental expenses including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of supply of goods or services or both at the time of, or before delivery of goods or supply of services'* and thereby, such recovery of fuel cost would be required to be included in the value of services provided i.e., supply of services of 'Rental services of aircrafts'

SBGCO comments:

It is very critical to draft agreements in a manner that they reflect the correct intentions of the party. The roles and responsibilities must be clear and free from ambiguity. Even though section 9 of the CGST Act, exclude fuel from the scope of GST, the AAAR intends to include such fuel cost in the value of services if the same is the responsibility of the supplier.



5. **Nepra Resource Management Pvt Ltd [GUJ/GAAAR/APPEAL/2021/05 (Guj) = 2021-VIL-51-AAAR]**

Question raised:

Whether the solid waste management service provided by the applicant to Notified Area Authority, Vapi (“NAA, Vapi”) is exempted under Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 as pure service provided to Governmental Authority?

Gist of the Ruling:

The AAAR accepted that services of collection, sorting, recovery of solid waste and establish / set up Material Recovery Facility for sustainable waste management (solid waste management) was in the nature of pure service and that such services were covered by entry 6 of the Twelfth Schedule (Article 243W) of the Constitution of India. However, the AAAR held that NAA, Vapi is not a “Governmental Authority” and hence, the benefit of exemption would not be available to the applicant.

SBGCO comments:

The AAAR distinguished between an authority or entity constituted or set up “**under**” an Act of Parliament or State Legislature viz-a-viz an authority or entity constituted or set up “**by**” an Act of Parliament or State Legislature. The exemption shall be available only if the service is provided to an authority or entity falling in the latter category. Even if the assessee performs services listed under Article 243W or 243G of the constitution, it is equally important that such services are performed for a Municipality or a local authority or State Government or Central Government. Hence, any of the pure services listed in the Article 243W or 243G are provided to say for example, a co-operative housing society, the same would be taxable and to that extent, the understanding of the exemption entry provided in the above ruling is correct.



D. Compliance chart for October 2021

S N	Due Date	Form	Period	Periodicity	Special Remarks
1.	10.10.2021	GSTR - 7	Sept 2021	Monthly	To be filed by those who are required to deduct TDS under GST
2.	10.10.2021	GSTR - 8	Sept 2021	Monthly	To be filed by those who are required to collect TCS under GST
3.	11.10.2021	GSTR - 1	Sept 2021	Monthly	Taxpayers filing GSTR - 1 monthly
4.	13.10.2021	GSTR - 6	Sept 2021	Monthly	To be filed by an ISD
5.	13.10.2021	GSTR - 1	July to Sept 2021	Quarterly	To be filed by those under QRMP Scheme
6.	18.10.2021	CMP - 08	July to Sept 2021	Quarterly	To be filed by Composition Dealer (Payment of Self-assessed tax)
7.	20.10.2021	GSTR - 3B	Sept 2021	Monthly	To be filed by Taxpayer filing monthly GSTR 3B
8.	20.10.2021	GSTR - 5A	Sept 2021	Monthly	To be filed by non-resident Online Information and Database Access or Retrieval (OIDAR) services provider
9.	20.10.2021	GSTR - 5	Sept 2021	Monthly	To be filed by a non-resident foreign taxpayer registered in GST
10.	22.10.2021	GSTR - 3B	July to Sept 2021	Quarterly	To be filed by those under QRMP Scheme (#)
11.	24.10.2021	GSTR - 3B	July to Sept 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:

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