



SBGco Connect – October 2020

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Greetings to all our readers!!

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

As we move towards the end of 2020, we are also moving into that zone where there have been so many changes, amendments, extensions, relaxations in various laws that it is difficult to keep track of all the things happening simultaneously along with businesses now slowing resuming to normalcy in phased manner all across the nation. Not just indirect taxes, but even in direct taxes, there have been slew of changes and hence, it is important to sort and filter out the relevant and applicable changes to one's own business and ensure timelines are met well within the prescribed due dates.

One important change that was brought about from 01.10.2020 was introduction of E-invoice for companies having a turnover of Rs. 500 crores and above in any of the financial years starting from FY 2017-18. The law also states that if E-invoice provisions are applicable to a particular registered tax payer, then any tax invoice which does not comply the provision of E-invoice shall not be a valid invoice. In such a case, there is one school of thought to say that input tax credit may be questioned in the hands of buyer as well. Hence, as a recipient of goods and service, one must be vigilant about their own vendors lest input tax credit may be disallowed by adjudicating officers. Further, the Government has also indicated that E-invoice may be made applicable for companies having turnover of Rs. 100 crores and above from January 2021.

Year 2020 has been unique for all. Businesses have borne the maximum brunt of it due to the shutting down of operations and the economic impact of the COVID-19 pandemic induced lockdown. But things are now turning to open up and we look at resurrection of the business and as a result, the economy. This month, we also look forward to celebrate the festival of Diwali, which also marks the end of the year gone by and beginning of a new year. We hope that this New Year brings a new perspective for all and everyone can start afresh, keeping aside the difficult times of 2020.

Through this newsletter, we bring to you a summary of recent developments in GST, divided into following sections:

1. [Recent Notifications, circulars & press-releases](#)
2. [Recent decisions from the Judiciary](#)
3. [Recent Advance Rulings and analysis of the same](#)
4. [Compliance Chart for the month of November 2020](#)

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

Wishing you all a Happy & a Safe Diwali and a Prosperous New Year,

Team SBGCO



Recent Notifications, Circulars & Press-releases

1. Due Date amendments

The due date for filing Form GSTR-9 (i.e. annual return) for financial year 2018-19 has been further extended upto 31.12.2020.

[Notification No. 80/2020 – Central Tax dated 28.10.2020]

Due date for filing of GSTR 1 and GSTR 3B for October 2020 to March 2021 notified.

[Notification Nos: 74/2020, 75/2020, and 76/2020 – Central Tax, all dated 15.10.2020]

2. Late Fee Relaxation / Waiver

The late fees for delayed filing of GSTR-4 for quarters from July 2017 to March 2019 have been restricted to Rs. 250/- (under CGST i.e. Rs. 500/- in total) if the same is filed between 22.09.2020 to 31.10.2020. The late fees payable shall be NIL in case the amount of tax payable is NIL for a particular period.

[Notification No. 67/2020 – Central Tax dated 21.09.2020 read with corrigendum issued on 22.09.2020]

Similarly, the late fees for delayed filing of GSTR-10 (Final Return) have been restricted to Rs. 250/- (under CGST i.e. Rs. 500/- in total) where the same is filed between 22.09.2020 to 31.12.2020.

[Notification No. 68/2020 – Central Tax dated 21.09.2020 read with corrigendum issued on 22.09.2020]

3. Exemptions / relaxations

Exemption on services by way of transportation of goods by air (i.e. air-freight) or by sea (i.e. sea-freight) from customs station of clearance in India to a place outside India has been further extended by a period of one year i.e. upto September 30, 2021.

[Notification No. 04/2020 – Central Tax - Rate dated 30.09.2020]

Satellite launch services provided by Indian Space Research Organization, Antrix Corporation Limited and New Space India Limited have been exempted vide entry 19C.

[Notification No. 05/2020 – Central Tax - Rate dated 16.10.2020]

Annual Return made optional for small taxpayers whose aggregate turnover is less than Rs 2 crores for FY 2019-20.

[Notification No. 77/2020 – Central Tax dated 15.10.2020]

The aggregate turnover limit for furnishing a copy of audited annual accounts and a reconciliation statement duly certified in FORM GSTR-9C has been set at Rs. 5 Crore for FY 2019-20 as well by amending Rule 80 (3). Further, modification / changes made in existing Form GSTR 9 and 9C so as to make it relevant and applicable for FY 2019-20 as well.

[Notification No. 79/2020 – Central Tax dated 15.10.2020]



Restriction / blocking of generation of E-Way bill facility shall not apply for the period 20.03.2020 till 15.10.2020 in case returns are not filed by registered tax-payers by virtue of insertion of 4th proviso to Rule 138E

[Notification No. 79/2020 – Central Tax dated 15.10.2020]

4. HSN Code on tax invoices

The number of digits of HSN code to be reflected in tax invoices to be issued from 01.04.2021 has been revised as under:

Sr. No	Aggregate Turnover in the preceding Financial Year	Number of Digits of HSN code
1.	Upto 5 Crore	4 digits
2.	Above 5 Crore	6 digits

Further, exemption from reflecting HSN code in tax invoices if issued to unregistered persons (i.e. B2C supplies).

[Notification No. 78/2020 – Central Tax dated 15.10.2020]

5. E-invoicing related amendments

- a. E-invoicing and Dynamic QR Code, which was earlier applicable to a taxpayer having aggregate turnover of more than Rs 500 crores in FY 2019-20, has now been amended to apply to any taxpayer who had aggregate turnover more than Rs 500 crores in any financial year since the introduction of GST.

- b. E-invoicing is now made applicable on Exports (with / without payment) along with earlier list of applicable transactions viz. supply registered persons (B2B), Supplies to SEZs (with/without payment), Deemed Exports by the notified class of taxpayers.
- c. The implementation of dynamic QR code for B2C transactions has been postponed to 01.12.2020 from 01.10.2020.
- d. QR code having embedded Invoice Reference Number (IRN) has been made mandatory requirement of invoice particulars (in Rule 46 of CGST Rule, 2017) in case where E-invoice is mandatory for notified class of taxpayers.
- e. Similarly, amendment is made in the list of documents to be carried by person-in-charge of conveyance, whereby invoice issued in the manner prescribed for E-invoice [i.e. under rule 48(4)], the Quick Reference (QR) code having an embedded Invoice Reference Number (IRN) in it can be produced electronically instead of physical copy of such tax invoice.
- f. Special relaxation has been granted vide the said notification for tax payers to whom E-invoice generation was made applicable from 01.10.2020., whereby, such tax payers could obtain an Invoice Reference Number (IRN) for their tax invoices by uploading specified particulars in FORM GST INV-01 on the Common GST Portal, within thirty days from the date of such invoice (instead of the regular 24-hour window). The said relaxation has been granted only for the 1st month of implementation of E-invoice.

[Notification No. 70/2020, 71/2020, 72/2020 & 73/2020 – Central Tax dated 30.09.2020]



Recent Decisions from the Judiciary

Citation	Facts of the case	Gist of the Judgment	SBGco Views
<p>BG Exploration and Production India Ltd vs. Commissioner of Service Tax (Audit-I)</p> <p>2020-TIOL-1510-CESTAT-MUM</p>	<p>The Appellant was engaged in exploration, development and production of hydrocarbons within the framework of 'production sharing contract' (PSC) entered into by Government of India with M/s ONGC, M/s RIL and themselves.</p> <p>In the said PSC, GOI brings in its rights over the resources, ONGC handled contracts and documentation and RIL managed financial and commercial requirements and the Appellants were vested with the responsibility for technical operations. The Appellants had recorded the cost equivalence of their contribution in their books as revenue for accounting purposes, which was alleged to be the value of taxable services provided by the Appellants and tax was sought to be recovered from them on the same.</p>	<p>The Hon'ble Tribunal has observed that parties to the PSC' constituted a joint venture where each party was saddled with certain responsibilities and the deployment of personnel by the appellant was in pursuance of the said obligation.</p> <p>The Hon'ble Tribunal also noted that the activity undertaken by the appellant with its cost equivalence recorded in the books is nothing but 'capital contribution' and such capital contributions are NOT 'consideration' for rendering of any taxable service as the fulfilment of obligation to contribute to the capital of the joint venture is beyond the scope of taxation under Finance Act, 1994.</p>	<p>The Hon'ble Tribunal has equated obligation of each member of the joint venture to their capital contribution to the same. Further, the Tribunal has relied on precedents wherein it has been held that activities done by a partner for the furtherance of business are solely for his own interest to earn rewards in the nature of profits for the risks undertaken by him and do not constitute an independent service.</p> <p>This is an interesting judgment and its' applicability in the context of GST would be something to look out for, especially where Ind – AS accounts are maintained in case of BOT contracts.</p>
<p>Lanco Solar Pvt Ltd vs Commissioner, Central Tax, Central Excise Customs</p>	<p>The Appellant is a developer in the SEZ. When they had filed application for refund, SCN was issued to deny the refund claimed on account of the same being time bar (invoices submitted were more than 12 months old as on</p>	<p>Relying on the decision in the case of Intas Pharma Ltd. vs. Commissioner of Service Tax, Ahmedabad - 2013-TIOL-1091-CESTAT-AHM, the Hon'ble Tribunal held that exemption provided under SEZ Act have an overarching</p>	<p>The Hon'ble Tribunal has read down the condition specified in the notification that restricted the claim of refund to invoices dated prior to 12 months from the date of filing</p>



Citation	Facts of the case	Gist of the Judgment	SBGco Views
2020-TIOL-1480-CESTAT-DEL	the date of filing of the refund application)	effect over the Finance Act, 1994 and since, there is no overriding condition in Finance Act, 1994 that eclipses the SEZ Act, any notification that restricts the claim of refund in service tax for SEZ unit/ Developer shall not hold good.	of refund application. Since section 51 of the SEZ Act, overrides the provisions of the Finance Act, 1994, any notification issued under the Finance Act, 1994 too would not hold good against the exemption provided under the SEZ Act. It remains to be seen if this decision will continue to hold good under GST regime?
Siemens Technology and Services Pvt Ltd vs. Commissioner of CGST 2020-TIOL-1519-CESTAT-MUM	<p>The Appellants have provided output services which has been exported outside India (export of Information Technology Services) and the same has been accepted by the Department as well.</p> <p>The refund claim of the appellant was rejected on the grounds of, inter alia, that appellant did not provide proof of nexus / co-relation between the services received by it and the export of output services.</p>	<p>The Hon'ble Tribunal has observed that Rule 5 of Service Tax Rules, 2005 read along with the notifications issued in this regard, do not provide any stipulation or embargo that one-to-one co-relation or nexus has to be established between the input and exported output services.</p> <p>Further, The Hon'ble Tribunal also relied on circular 334/1/2012 - TRU dated 16.03.2012 issued by CBEC, that stated, inter alia, co-relation between the input and export of output services cannot be insisted upon while granting refund.</p>	The CESTAT has rightly allowed the appeal of the appellants on the grounds that there is no direct nexus that needs to be established between input services and output export services. Any cost which is a part of profit and loss statement has been incurred for the business and such expenses, if eligible for claim of credit, must also be eligible for claim of refund.
Transtonnestroy Afcons Joint Venture and	The Petitioners were engaged in businesses wherein the rate of tax on input goods and/or input services	The Hon'ble High Court has noted that Refund is a statutory right and the extension of the benefit of refund only	Vide this judgement, the Madras Bench has differed with the decision of the DB of



Citation	Facts of the case	Gist of the Judgment	SBGco Views
<p>Others vs. Union of India and Others</p> <p>2020-TIOL-1599-HC-MAD-GST</p>	<p>exceeded the rate of tax on output supplies (i.e. Inverted duty structure). Due to the inverted duty structure, they were not able to utilize the Input tax credit completely against their output liability, leading to accumulation of credits.</p> <p>While Rule 54 (3) did not contain any express restriction on claim of refund on account of input services, the formula prescribed u/r 89(5) of the CGST Rules, 2017 did not permit the claim of refund of 'input services' being accumulated on account of inverted duty structure. Being aggrieved, the Petitioners had filed a Writ Petition to challenge the said rule and contested that they were entitled to a refund of the entire unutilised input tax credit, irrespective of whether such credit accumulated on account of procurement of input goods and/or input services.</p>	<p>accumulated credit on account of input goods is a valid classification and a valid exercise of legislative power. The exclusion of accumulated credit on account of input services does not infringe Article 14 (Equality before Law) of the Constitution of India.</p> <p>The High Court also observed that Rule 89(5) of the CGST Rules 2017 is in conformity with section 54(3) of the CGST Act, 2017.</p>	<p>Gujarat HC which has in the case of VKC Footsteps India Pvt Ltd vs. Union of India [2020-TIOL-1273-HCAHM-GST] allowed the petitioners claim.</p> <p>The issue is now surely to go to the Supreme Court and it remains to be seen as to how fast a finality to this controversy is arrived at.</p>



Recent Advance Rulings

Citation	Ruling sought on?	Gist of the Ruling	SBGco Views
<p>M/s. Ambara</p> <p>KAR ADRG 51/2020 = 2020-TIOL-266-AAR-GST dated 08.10.2020</p>	<p>The Applicant are engaged in providing 'health care services' and run a hospital by the name of CURA Hospital. The Applicant sought advance ruling in respect of the following questions:</p> <ol style="list-style-type: none"> Whether input tax credit is required to be restricted on medicines supplied to patients admitted in hospital? Whether input tax credit is required to be restricted on medicines supplied to patients treated as out-patients? Whether input tax credit is required to be restricted on medicines supplied to other than inpatients and out-patients? Whether input tax is required to be restricted on supply of food and beverages to the patients admitted in hospital? 	<ol style="list-style-type: none"> Yes, ITC is required to be restricted on medicines supplied to patients admitted to the hospital because output services in the nature of 'health care services' supplied by applicant are exempt. Yes, ITC is required to be restricted on medicines supplied to out-patients since output services to out-patients in the course of providing 'health care services' supplied by applicant are exempt. ITC is eligible in this case because medicines sold from pharmacy counter to customers are liable to tax as per normal rates (acting in the capacity of a 'trader') Yes, ITC is required to be restricted on supply of food and beverages to the patients admitted in hospital as the same is naturally bundled with the treatment i.e. health care service and the supply becomes composite supply which are exempted under GST. 	<p>The ruling pronounced by the AAR is in consonance with the general practice that is being followed in the health care industry at large.</p>
<p>Datacon Technologies</p> <p>KAR ADRG 47/2020 = 2020-TIOL-259-AAR-GST</p>	<p>The applicant was awarded a contract by Bihar School Educational Board for activities of scanning of OMR Flying slip, OMR Marks Foil, OMR attendance sheet, OMR absentee sheet and finalisation of data. The Applicant sought advance ruling as regards to whether the activities performed by them are exempted by</p>	<p>Since examination is an incomplete activity without assessment, thus scanning of answer sheets and / or qualifying marks is an integral part of conduct of examination. Therefore, the activities carried out by the applicant, as states in the facts, are exempted by virtue of Sr. No. 66 of Notif No. 12/2017-CT (Rate) dated 28.06.2017</p>	<p>The AAR has correctly interpreted that conduct of examination is not restricted to test centres. Also, from the perspective of students and educational institutions, assessment is not an isolated activity but</p>



Citation	Ruling sought on?	Gist of the Ruling	SBGco Views
	virtue of Sr. No 66 Notif No. 12/2017-Central Tax (Rate) dated 28.06.2017?		an integral part of the conduct of examination.
<p>Maninder Singh 2020-TIOL-264-AAR-GST</p>	<p>Numaligarh Refinery Ltd ('NRL') has awarded the applicant the contract for the installation of pipeline from Siliguri (India) to Parbatipur (Bangladesh). The following questions were raised:</p> <ol style="list-style-type: none"> Whether its supply is works contract service? Whether the supply of service to NRL in Bangladesh is an export and exempt under the GST Act? If (b) is no, then what is the tax rate? Whether applicant is entitled to ITC on its inward supplies for the service rendered in the construction of Bangladesh portion of the pipeline? Whether applicant is liable to pay tax on goods or services procured locally within Bangladesh for construction of Bangladesh portion of the pipeline? Whether the applicant is entitled to ITC on procurement of such goods or services in Bangladesh used in the construction of Bangladesh portion of the pipeline? If all the queries come out with responses that led the applicant taxable, then what will be the proper method of valuation of tax? 	<ol style="list-style-type: none"> Since the applicant is making a composite supply involving the transfer of property in goods in the course of the construction of immovable property (i.e. pipeline), therefore, applicant's supply is works contract service. (i) NRL is the 'recipient' located in India, since NRL is paying the consideration. (ii) as per proviso to section 12(3) of IGST Act, Place of Supply will be location of NRL Thus, conditions of 'export' are not satisfied. Since NRL is not a Government entity, rate of tax applicable will be 18% (concessional rate in terms of Entry No. 3(iii)(c) of the Rate Notification is, therefore, unavailable) Since, applicant will be paying tax on the outward supply, ITC shall be eligible on procurements subject to the conditions laid down in section 16 & 17 of CGST Act, 2017. For procurements in Bangladesh for Portion of pipeline in Bangladesh, since such goods do not cross the custom frontier of India, the same shall not attract IGST. Accordingly, since applicant does not pay GST on procurements from Bangladesh, the question of claiming ITC on the same does not arise. GST shall be payable on the consideration receivable for the applicant's service 	<p>The Applicant had proposed to consider NRL as an implementation agency only and consider Bangladesh Petroleum Corporation of Bangladesh as the recipient of service so as to be eligible for benefit of export of services. In the present case, the AAR has correctly understood definition of 'recipient' as per section 2(93) of CGST and accordingly correct place of supply provisions have been applied to determine the nature of supply.</p>



Citation	Ruling sought on?	Gist of the Ruling	SBGco Views
<p>Midcon Polymers Private Limited</p> <p>KAR ADRG 48/2020 = 2020-TIOL-260-AAR-GST dated 16.09.2020</p>	<p>The Applicant planned for engaging in the business of renting of commercial property on monthly rents. They raised the following questions before the AAR:</p> <p>a. For arriving at the value of rental income, whether the applicant can seek deduction of property taxes and other statutory levies?</p> <p>b. For arriving at total income from rental, whether notional interest on the security deposit should be taken into consideration?</p> <p>c. Whether the applicant is entitled for exemption of tax under the general exemption of Rs.20 lakhs?</p>	<p>a. The applicant can't deduct the property taxes and other statutory levies for the purpose of arriving at the value of rental income as section 15(2) of CGST states that any taxes, duties, cesses, fees and charges, levied under any law for the time being in force, shall include in the value of taxable supply. Further, the exclusion only permitted are the taxes, duties, cesses, fees and charges levied under the CGST Act 2017, SGST (KGST) Act 2017, UTGST Act 2017 & GST (Compensation to States) Act.</p> <p>b. The notional interest on the security deposit shall be taken into consideration, for the purposes of arriving at total income from rental, only if it influences the value supply</p> <p>c. The applicant is entitled for exemption of tax under the general exemption of Rs.20 lakhs, subject to the condition that their annual turnover, which includes monthly rent and notional interest, if it influences the value of supply, does not exceed the threshold limit</p>	<p>In the present case, the agreement between applicant and their lessee seems to have not been analysed. If the contract specifies that lessee is required to pay the property taxes and other statutory duties, then there is a possible interpretation that as per Rule 33 of CGST Rules, the Applicant is merely a 'pure agent' and paying property taxes and other statutory duties on behalf of the lessee, provided the property taxes and other statutory duties are recovered at actuals from the lessee.</p> <p>Further, whether 'notional' interest can be a part of 'consideration' or not, is debatable as the current AAR relies on past judgements of pre-GST regime and whether the same shall hold good or not, only time will tell.</p>



Compliance Chart for the month of November 2020

S N	Due Date	Form	Period	Periodicity	Special Remarks
1.	10.11.2020	GSTR – 7	October 2020	Monthly	To be filed by those who are required to deduct TDS under GST
2.	10.11.2020	GSTR – 8	October 2020	Monthly	To be filed by those who are required to deduct TCS under GST
3.	11.11.2020	GSTR – 1	October 2020	Monthly	Taxpayers filing GSTR - 1 monthly
4.	13.11.2020	GSTR – 6	October 2020	Monthly	To be filed by an Input Service Distributor
5.	20.11.2020	GSTR - 3B	October 2020	Monthly	Taxpayers having Aggregate T/o of > 5Cr in FY 2019-20
6.	20.11.2020	GSTR – 5A	October 2020	Monthly	To be filed by non-resident Online Information and Database Access or Retrieval (OIDAR) services provider
7.	20.11.2020	GSTR – 5	October 2020	Monthly	To be filed by a non-resident foreign taxpayer registered in GST
8.	22.11.2020	GSTR – 3B	October 2020	Monthly	Taxpayers having Aggregate T/o of < 5Cr in FY 2019-20 (#)
9.	24.11.2020	GSTR – 3B	October 2020	Monthly	Taxpayers having Aggregate T/o of < 5Cr in FY 2019-20 (\$)

(#) 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

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