



**SBGco Connect - September 2021**

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Greetings to all our readers!!

We wish you good health.

GSTR 9 (Annual Return) and GSTR 9C (Self-certified Reconciliation statement) for FY 2020-21 have been enabled on the Common Portal. The formats for FY 2020-21 are more or less the same, as they were for previous years with some minor tweaks and elimination for the need of certification. Hence, it is imperative that work on the same may be commenced at the earliest to complete the last GST compliance aspect for FY 2020-21 well in time.

Recently, guidelines for Remission of Duties and Taxes on Exported Products (“RoDTEP”) scheme were notified by the Director General of Foreign Trade on 17.08.2021. The RoDTEP scheme, replacing the existing MEIS scheme for exports of goods w.e.f. 01.01.2021, is in the nature of drawback, instead of incentive. It enables refund of taxes paid on goods and services which were not refunded by any other means. The said notification can be accessed by clicking [here](#).

A quick reminder to our readers about the various timelines under the GST law for amendments / changes to return filing details (outward and inward, both) for the preceding financial year is approaching in September and a detailed note on such activities to be undertaken have been 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 or respective relationship managers / partners with whom you regularly interact with.

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 September 2021](#)

We would like to remind our readers that in view of the current Pandemic Situation and the recent Lockdown announced by the Maharashtra Government, our office is currently operating with limited staff. However, our teams continue to operate from the safety of their homes and are available over phone / email to assist you to the extent possible.

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. Filing of GST Returns with Email / Mobile OTP option enabled for Body Corporates**

The Government has enabled the EVC (OTP) option for filing of GST returns for the period up to 31.10.2021 for companies registered under Companies Act, 2013 for filing GSTR 1/ IFF (for QRMPs) / GSTR 3B.

Notification 32/2017 - Central Tax, dated 29.08.2021

**2. Blocking of E-way Bill generation to resume for defaulting taxpayers**

Taxpayers defaulting by way of non-filing of GSTR 1 / GSTR 3B / CMP-08 for a continuous period of more than two months will not be able to generate Part A of the E-Way Bill w.e.f. 19.08.2021, as per rule 138E. Relaxation granted from 01.05.2021 ended on 18.08.2021.

Notification 32/2017 - Central Tax, dated 29.08.2021

**3. Extension of Amnesty Scheme**

The Amnesty scheme announced by way of capping of late fees for filing of pending GSTR-3B for the period of July, 2017 to April, 2021 during the period 01.06.2021 to 31.08.2021 vide previous Notification no 19/2021-Central Tax dated 01.06.2021 has now been extended upto 30.11.2021. So, in effect, the total late fees payable for all the pending GSTR-3B filed between 01.06.2021 and 30.11.2021 for the period July, 2017 to April, 2021 would be as under:

<b>Particulars</b>	<b>Total Late Fees Payable</b>
Having no liability for that particular GSTR - 3B	Rs. 500
Other cases	Rs. 1,000

Notification 33/2017 - Central Tax, dated 29.08.2021

**4. Extension for filing an application of revocation of cancellation of registration**

If the due date for filing an application for revocation of cancellation of registration on account of non-filing of returns falls during the period 01.03.2020 to 31.08.2021, then the last day for filing such application has now been extended upto 30.09.2021.

Notification 34/2017 - Central Tax, dated 29.08.2021

**SBGCO comments:**

*These notifications have been issued keeping in mind that the country is still recovering from the pandemic. Though certain relaxations have been extended, it can be seen that certain relaxation have also been withdrawn. However, one thing that seems very evident right throughout is that the Government wants to streamline the return filing process and encourage all taxpayers to be compliant.*



## **II. GST Portal related updates:**

### **5. Implementation of Rule 59(6) on GST Portal**

Earlier, as we saw, default in filing GST Returns would impact generation of E-Way Bills. Moving further, the GSTN has now upgraded the system whereby, if the taxpayer (filing monthly returns) has not filed GSTR 3B for two consecutive months, then system would not permit filing of GSTR 1 unless, at least one of the two pending GSTR 3B is filed.

Similarly, for quarterly return filers, the GSTN portal will check if GSTR 3B for the previous quarterly tax period is filed or not. If the same is not filed, then the filing of GSTR-1/IFF shall not be permitted.

The above changes on the portal shall be made effective from 01.09.2021, which is in line with Rule 59(6) of the CGST Rules. Hence, for any GSTR 1 / IFF filed after 01.09.2021, the above changes would govern which has been clarified by the GST Portal and can be accessed by clicking [here](#).

### **6. Other miscellaneous updates rolled out by the GSTIN**

- A. Enabling facility for taxpayers / persons to submit a complaint, in case of misuse of their PAN, for getting a registration in GST
- B. Auto Restriction for taxpayers opting for Composition scheme based on their Annual Aggregate Turnover and also sending an alert on crossing the limit during the concerned financial year.
- C. NIL filing of GSTR 1 (Quarterly) through SMS facility for taxpayers under the QRMP Scheme
- D. Auto Population of GSTR 3B liabilities based on GSTR 1/ IFF filed by taxpayers under the QRMP Scheme
- E. Facility to request for extending the due date for filing of reply or for adjourning the personal hearing after a SCN has been issued in a refund case

Along with the above updates, other minor updates too have been rolled out and the summary of the same can be accessed by clicking [here](#).



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

### **1. V S Enterprises vs. State of UP [2021-TIOL-1600-HC-ALL-GST]**

#### **Issue Raised:**

Can multiple notices, orders be issued for an identical issue pertaining to the same tax period?

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

Multiple orders issued which are covering the same tax period were set aside by the High Court. Likewise, any order issued without giving due opportunity to the petitioner for presenting his case was also squashed.

#### **SBGCO Comments:**

It is a welcome decision for many taxpayers wherein they have received multiple notices for overlapping periods on the same issue. Even during Pre-GST regime, this principle was upheld regularly and getting an early High Court decision in this regard in GST regime should prevent unnecessary litigation rounds for both, the taxpayer and the department.

### **2. Outsource Partners International Private Ltd vs. Commissioner of Central Tax and C. Ex., Thiruvanthapuram [2021- TIOL-483-CESTAT-BANG]**

#### **Issue Raised:**

Whether CENVAT credit of service tax paid on conducting of Quiz Competition, being in the nature of recreation activities as a part of team building efforts and improving morale of the employees is eligible?

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

CENVAT credit on recreational activities was denied thereby, upholding the order appealed against to that extent.

#### **SBGCO Comments:**

It is a little surprising to note that the decision of the Hon'ble Tribunal in the present case is merely a one-line statement while denying the eligibility of CENVAT Credit of Service Tax on recreational activities for the employees. While assessing the impact of such judgement on ITC under the GST law, it can be said that the scope of ITC under the GST regime is comparatively wider than the erstwhile service tax regime. If one can succinctly establish that such expenditure is incurred in the course or furtherance of business, directly or indirectly, then such ITC should be eligible for credit. Moreover, such expenditure is incurred to ensure that various teams of the organisation function like a well-oiled machine and in turn help the organisation achieve its goals and targets.



3. **NSSL Pvt Ltd vs. Commissioner of CGST & C. Ex., Nagpur [2021-VIL-351-CESTAT-MUM-ST]**

**Issue Raised:**

Can refund of service tax paid belatedly under Reverse Charge Mechanism (RCM) be granted after the repeal of the Service Tax Law and the introduction of the GST Law?

**Gist of the Decision:**

The relevant section governing such refund application is Section 142(3) of the CGST Act. Since the adjudicating authorities did not question the issue regarding the entitlement of CENVAT credit for such service tax paid belatedly under RCM, the refund application must be disposed of by the authorities in accordance with the service tax provisions even after the introduction of the GST Law. Hence, the refund applications were allowed i.e., the refund was granted.

**SBGCO comments:**

One very interesting observation that comes out of the said judgement is that even though service tax was paid belatedly under RCM, the time limit generally applicable for claim of CENVAT Credit was not questioned by the department while rejecting the refund on the ground level and even the Tribunal did not consider this as a road block for claim of refund. Similarly, even under GST law, can it be said that ITC of GST paid under RCM is available for belated payments.

4. **F R Trader Links vs. State Tax Officer, KGST, Pala [2021-VIL-576-KER]**

**Issue Raised:**

Can GST Registration be cancelled by proper officer on the basis of report of the intelligence officer but without independently assessing such situation?

**Gist of the Decision:**

When the taxpayer produced proof of receipt of the building tax from the local authority, the proper officer cannot have cancelled the GST registration of the taxpayer only because some intelligence report suggested that the business place is situated in a building which is partially completed only and no building number is affixed by the local authority. The GST Registration was ordered to be restored by the High Court.

**SBGCO Comments:**

This judgement lays down an important principle that the proper officer always has to apply his own mind, his own reasoning when taking any action which is detrimental to the taxpayer and such reasoning must be recorded in writing. Merely because some intelligence report suggests something, it cannot substitute proper officer's own reasoning and investigation in the said matter.



5. **Prakash Mica Exports Private Limited vs. State of Jharkhand [2021-VIL-600-JHR]**

**Issue Raised:**

Can assessee claim interest if GST PMT-03 (order to re-credit cash / ITC amount) is issued but actual credit happens after a long delay?

**Gist of the Decision:**

Even though GST PMT-03 were issued in June 2018, the actual credit was made only during April 2021 and the taxpayer cannot be made to suffer on account of laches on the part of the department. Hence, the Department was ordered to pass appropriate order with the claim of statutory interest in this regard, in the favour of the taxpayer.

**SBGCO Comments:**

Ever since the advent of the online refund mechanism in the GST law, many assesseees have faced this issue wherein, the money to be refunded or ITC to be recredited have stuck in limbo for no fault of theirs for a very long time. This judgement will hopefully aid them in claiming their statutory right in terms of the interest for delayed receipt.

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

### **1. Tata Motors Ltd [GUJ/GAAR/R/39/2021 (Gujarat) = 2021-TIOL-197-AAR-GST]**

#### **Question raised:**

- Whether ITC is available on GST charged by service provider for canteen facilities provided in the factory?
- Whether GST is applicable on nominal amount recovered from employees for usage of canteen facility?

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

ITC on GST paid on canteen facility is held to be blocked credit under Section 17(5)(b)(i) of CGST Act and inadmissible to applicant even though it is mandatory requirement as per the Factories Act, 1948 because of the use of 'semi-colons' after 17(5)(b)(iii) indicating that the proviso after Section 17(5)(b)(iii) is not applicable to 17 (5)(b)(i).

The AAR also noted that GST is not leviable on the amount representing the employees' portion of canteen charges, which is collected by the applicant and paid to the Canteen service provider.

#### **SBGCO comments:**

The ruling has noted that proviso after section 17(5)(b)(iii) that permits claim of ITC if the said expense is mandatorily required to be incurred by the registered person under some other law in force is applicable only for travel benefits or home travel concessions, which does not seem to be giving correct effect to the intention of the law makers. In our view, the ruling has also failed to note the use of conjunction 'and' in Section 17(5)(b)(ii) which also gives an indication that the proviso after Section 17(5)(b)(iii) is applicable not just to clause (iii) but applicable to sub-clauses (i), (ii) and (iii).

### **2. M/s. Goodwill Auto's [KAR ADRG 44/2020 (Karnataka) = 2021-TIOL-191-AAR-GST]**

#### **Question raised:**

Whether GST is applicable on cost of the diesel incurred for running DG Set in the course of providing DG Rental Service?

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

The cost of the diesel incurred for running DG Set in the course of providing DG Rental Service are incidental expenses and is a part of the consideration as per section 2(31) for the supply of DG Set on rent as per section 15 of the CGST Act and hence, it would attract GST as applicable on the rental services.

#### **SBGCO comments:**

It is pertinent to note that the agreement was not for supply of diesel but for rental of DG set. The total consideration may be a combination of fixed (rental) and variable component (consumption based) but, the fact remains that the agreed supply between service provider





and recipient was that of rental service of DG set and hence, all incidental expenses should form part of the consideration as held by the AAR.

3. **CMS Engineering Concern [05/WBAAR/2021-22 (West Bengal) = 2021-TIOL-183-AAR-GST]**

**Question raised:**

Whether exemption under Sr.No3 of Notification 12/2017 - Central Tax (Rate) dated 28.06.2017 is available for operation of water pump and safeguarding pumping machinery at various Pump Houses for supply of drinking water, upon receipt of work order from Directorate of Public Health Engineering (“PHE”), Government of West Bengal?

**Gist of the Ruling:**

Operation of water pump and safeguarding pumping machinery is in the nature of ‘Pure Service’ provided by the applicant to Directorate of PHE and since such services are in relation to a matter as listed in the Eleventh and / or Twelfth Schedule in relation to functions entrusted to a Panchayat under article 243G and / or to a Municipality under article 243W of the Constitution of India, exemption under Sr. No 3 of Notification 12/2017 - Central Tax (Rate) dated 28.06.2017 is available in the present case.

**SBGCO comments:**

The AAR has noted that exemption is not just available to ‘Pure Services’ for matters listed in the Eleventh and / or Twelfth Schedule of the Constitution of India, but the exemption is also available when any service is provided to the Central Government, State Government or Union Territory or local authority or a Governmental authority which is ‘in relation to’ such matters listed in the aforesaid mentioned schedules.



**D. Compliance chart for September 2021**

<b>S N</b>	<b>Due Date</b>	<b>Form</b>	<b>Period</b>	<b>Periodicity</b>	<b>Special Remarks</b>
1.	10.09.2021	GSTR - 7	August 2021	Monthly	To be filed by those who are required to deduct TDS under GST
2.	10.09.2021	GSTR - 8	August 2021	Monthly	To be filed by those who are required to collect TCS under GST
3.	11.09.2021	GSTR - 1	August 2021	Monthly	Taxpayers filing GSTR - 1 monthly
4.	13.09.2021	GSTR - 6	August 2021	Monthly	To be filed by an Input Service Distributor
5.	13.09.2021	IFF	August 2021	Monthly	To be filed by those under QRMP Scheme (Optional)
6.	20.09.2021	GSTR - 3B	August 2021	Monthly	To be filed by Taxpayer filing monthly GSTR 3B
7.	20.09.2021	GSTR - 5A	August 2021	Monthly	To be filed by non-resident Online Information and Database Access or Retrieval (OIDAR) services provider
8.	20.09.2021	GSTR - 5	August 2021	Monthly	To be filed by a non-resident foreign taxpayer registered in GST
9.	25.09.2021	PMT-06	August 2021	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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