



SBGCo Connect - June 2022

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Greetings to all our readers!

3 landmark decisions, 2 from Larger Bench of Supreme Court and 1 from the Gujarat HC were delivered in the month of May on the issues of taxability of secondment expense (Northern Operating), levy of tax under RCM on goods imported under CIF model (Mohit Minerals Private Limited) and legality of deeming fiction to treat value of land at 1/3rd of total value in case of construction contracts (Munjaal Manish Bhatt). A detailed analysis of this decisions form part of this Newsletter.

The option of closing pending disputes under Maharashtra Settlement of Arrears of Tax, Interest, Penalty or Late Fee Act, 2022 is currently available to taxpayers to settle disputes for the period upto 30.06.2017. The time limit to make payment under the said scheme is up to 30.09.2022 and the application has to be filed by 14.10.2022. Taxpayers should analyse the pending litigation under taxes administered by the Department of State Tax, Maharashtra prior to introduction of GST and analyse the benefits arising from this scheme.

In the month of June, taxpayers supplying services of construction of residential projects will have to comply with the 80%-20% rule wherein they need to compute the ratio of value of purchases made from registered suppliers viz-a-viz value of purchases made from unregistered suppliers and if the value of total purchases from registered suppliers is less than 80% of the total procurements for the previous financial year, then tax is required to be paid under RCM to the extent of the short fall. The due date for computing such ratio and paying the required tax under RCM is 30th June.

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 June 2022](#)

GST - Back to Basics

Continuing with our lecture series, we have 4 sessions scheduled in the month of June 2022. The schedule for this month is as under:

Date	Topic	Speaker
07/06/2022	Place of Supply - Domestic	Darshan Ranavat
14/06/2022	Place of Supply - International	Yash Parmar
21/06/2022	Outward Supply - Documentary compliance	Aman Haria
28/06/2022	Input Tax Credit	Parth Shah

The previous sessions conducted in the month of May 2022 are available on our YouTube channel which can be accessed by clicking [here](#).

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

Team SBGCo



A. What's New?

I. Notifications issued during the month

1. Waiver of Late fees for Form GSTR-4 for FY 2021-22

Composition taxpayers are required to file Form GSTR-4 for a particular financial year by 30th April of the next financial year. For FY 2021-22, the due for filing Form GSTR-4 has not been extended, but waiver of late fees is granted if the return in Form GSTR-4 has been filed upto 30th June 2022.

Notification No. 07/2022 - Central Tax dated 26.05.2022

2. Intra-city limit enhancement of E-way Bill in the state of Rajasthan only.

State Tax Department of Rajasthan recently issued a notification to enhance the threshold limit of generation of e-way bill to Rs. 2,00,000/- when the movement commences and terminated within the area of same city (i.e., without crossing the area of the city) for all goods other than tobacco, tobacco products, Pan Masala, Wood and articles of wood and Iron and steel.

Notification No. F.17(131-Pt-II) ACCT/GST/2017/7713 dated 24.03.2022 (Rajasthan)

II. Circulars / Guidelines / Instructions issued during the month

3. Deposit of tax during the course of search, inspection or investigation.

The Department has issued an instruction letter to be followed by the Department and its officers in the course of search, inspection or investigation process. The said instruction focuses on the aspect of recovery of tax made in the course of such search, inspection or investigation process. The instruction letter acknowledges that certain taxpayers have approached various High Courts wherein they have alleged that deposit made during the procedure have been paid on account of force and coercion of officers and it was not a voluntary payment on their part.

The Department has now issued instructions which clarifies that enquiry should be initiated against such officers against whom the tax payers have complained regarding use of force and coercion for “recovery” of tax during such procedure. In case of any wrong doings by the officer, the said instruction letter clarifies that strict disciplinary action should be initiated against such erring officers.

SBGCO Comments:

It is good to see that the instruction acknowledges the challenges of coercive recoveries faced by taxpayers during search, inspection and investigation process and clarifies the official stand of the Government, which has always been the legal position. But, as the use of force and coercion is more often than not difficult to document and demonstrate, the instruction will have limited practical utility at the ground level. Further, it would have been more helpful if the investigating authorities would be instructed to issue SCN in a time-bound manner and not focus on “recovery”, either forceful or voluntary.



B. Recent Decision from the Judiciary:

1. UoI vs. Mohit Mineral Pvt Ltd [2022-TIOL-49-SC-GST-LB]

Issue Raised:

Whether an Indian importer can be subjected to the levy of Integrated Goods and Services Tax (IGST) on the component of ocean freight paid by the foreign seller to a foreign shipping line on reverse charge basis?

Background Facts:

When goods are imported on CIF terms, i.e., cost of insurance and freight is included in the consideration to be paid to the foreign supplier, the foreign supplier is required to arrange for the insurance and transportation of goods. While clearing the goods for home consumption, the importer is liable to pay customs duties (including IGST) on the entire value, i.e., including insurance and freight.

Therefore, notification 10/2017 - IT (Rate) dated 28.06.2017 which required an importer to again pay IGST on freight component was challenged before the Gujarat HC, which had held the entry to be *ultra vires*. In case the value of freight component is not available, the same was deemed to be 10% of CIF value. The same resulted in importer being required to pay tax twice on ocean freight component included in such import transaction, once along with Customs and subsequently under GST.

Gist of the Decision:

The Hon'ble Supreme Court upheld the decision of Gujarat High Court which held that to the extent a tax on the supply of a service which has already been included by the legislation as a tax on the composite supply of goods, second taxation on the same cannot be allowed.

SBGCO Comments:

This is a welcome decision from Supreme Court and will put to rest the controversy surrounding the same. However, it is important to note that the said judgement does not have any implication on FOB imports and tax is payable under reverse charge on such services received by the importer. For a detailed analysis of the decision, please refer our detailed analysis vide flyer dated 26.05.2022.



2. Commissioner of C., C. Ex. and S.T. vs Northern Operating Systems Pvt Ltd [2022-TIOL-48-SC-ST-LB]

Issue Raised:

In the case where personnel are seconded / deputed by foreign entity to an Indian entity, whether the Indian entity is liable to pay tax under RCM for import of such services or such transaction is treated as non-taxable on account of employer-employee relationship?

Gist of the Decision:

The Hon'ble Supreme Court held that there is no single determinative test to determine whether a contract can be construed as a contract of service (employer-employee relation) or a contract for service (manpower supply). In the present case, the Hon'ble SC relied on two critical factors namely, foreign entity continuing to pay salary to seconded employees and employees returning back to their original place after completion of secondment, to decide that the present transaction is that of manpower supply service. The Hon'ble SC gave little importance to the fact that seconded employees worked under the control of Indian entity during the deputation period and the Indian entity re-imbursed the exact salary amount to the foreign entity. Hence, it was held that in the present case, Service Tax was payable under RCM for import of such service.

SBGCO Comments:

While there is no straight jacket formula to determine whether the transaction is that of contract of service or contract for service, there are numerous factors that have to be considered simultaneously. There have been numerous other cases wherein slight change in facts have resulted in a different outcome. Hence, the present case cannot be applied to every transaction to arrive at a conclusion.

The rejection of submission relating to revenue neutrality is likely to have implications for other similar matters where the demand pertained to levy of tax under reverse charge mechanism.

3. Munjaal Manishbhai Bhatt Vs. UoI [2022-TIOL-663-HC-AHM-GST]

Issue Raised:

When the actual value of land is available, can the notification still require the taxpayer to mandatorily apply the deeming fiction whereby 1/3rd amount of total agreement value is deemed to be the value of land in case of construction services involving sale of land as well?

Gist of the Decision:

The Hon'ble HC has held that mandatory deduction of 1/3rd for value of land should be referred to only in the case where the value of land or undivided share of land is not ascertainable. In cases where value of land is clearly ascertainable, mandatory uniform rate of deduction is discriminatory, arbitrary and violative of Article 14 of the Constitution of India. The HC read down Entry 2 of the Notification No. 11 / 2017- CT (R) to the effect that the deeming fiction of 1/3rd will not be mandatory in nature and it will be available at the option of the taxable person in cases where the actual value of land is not ascertainable.



SBGCO Comments:

The effect of the judgment is that it might help reduce the cost of immovable properties in the hands of buyers if the actual value of land is allowed as deduction leading to GST only on actual value of construction service. However, at the ground level, it might be difficult to implement the said judgement in states other than Gujarat as such decisions may not have binding force and the Department may not accept the same. It also remains to be seen if the Revenue files an appeal against the Order/ opts for retrospective amendment to nullify this judgment (as was done in service tax).

4. Seabird Marine Services Pvt Ltd Vs. CCE & ST [2022-TIOL-460-CESTAT-AHM]

Brief Background

The activities carried out by the Container Freight Station (CFS) included transportation of cargo containers from CFS to port and vice versa, handling & storage, stuffing & de-stuffing of cargo, arrange examination of cargo, handling of empty container, etc. For consideration towards storage of containers beyond the normal contracted period, service tax was charged and paid under “storage and warehousing” services on such charges. For all other activities, consideration was charged under “cargo handling services.” Department challenged the classification activity treating all activities as apart of “storage and warehousing” services.

Issue Raised:

Whether the activity of a CFS is that of “Cargo Handling” or “Storage and Warehouse” services?

Gist of the Decision:

The Hon’ble Tribunal held that if a composite all-inclusive rate is charged for handling of cargo from receipt of cargo in the premises of CFS to the clearance upto the port then all the activities undertaken like loading, unloading, warehousing, stuffing, transport, destuffing, etc. will be covered under the category of “cargo handling services”. The HC also held that the argument of the department that CFS is providing storage and warehousing services is misplaced because any goods that are brought into CFS are brought with the intention to export or import them and not for storage and warehousing.

SBGCO Comments:

The above decision of the CESTAT upholds the principal of Composite activity and can be applied under the GST law as well. When multiple activities are done by the supplier for a single all-inclusive price, it is important to identify the principal activity basis of various factors such as intention of parties, predominant value element, perception of the buyer, trade and industry practice and so on. The provisions of the law as applicable to the principal activity shall be applicable to the entire composite activity.



5. Abi Technologies vs Asst Commissioner of Customs [2022-TIOL-746-HC-MAD-GST]

Issue Raised:

Whether refund of IGST be denied on the grounds that details of exports were inadvertently reflected in table 3.1(a) of GSTR 3B as outward taxable supply instead of table 3.1(b) zero-rated supplies, though the same were correctly reflected in GSTR 1?

Gist of the Decision:

The Hon'ble HC held that entitlement of refund granted under the law cannot be taken away on account of such procedural infractions. The judgement further held that in such cases, the department should verify the legitimacy of exports based on the data submitted by the assessee and counterparts in the customs department and then verify whether there was an export and a valid debit of tax by the petitioner on the exports made to foreign buyers. Subsequently after verification of above details and confirmation of inward remittance of foreign currency, the refund should be granted.

SBGCO Comments:

The above decision of the High Court should serve as a welcome relief for various taxpayers whose refunds were stuck on account of minor procedural lapses. Further, the said judgement is a perfect example of upholding the doctrine of substantial compliance wherein, the Court looks at the "essence" or "substance" of the requirements prescribed and ensures that undue hardship is not suffered on account of some minor / inconsequential aspects which are not the "essence" or "substance" of the transaction.

6. Doowon Automotive Systems Private Ltd Vs. Commissioner of GST and C.Ex., Chennai [2022-TIOL-443-CESTAT-MAD]

Issue Raised:

Can refund application in relation to Service Tax regime be rejected on the grounds of limitation (time-barring) after the introduction of GST Law?

Gist of the Decision:

The Hon'ble Tribunal, relying on the decisions in the case of Jai Mateshwaari Steels Pvt Ltd¹ and Punjab National Bank², held that refund applications pertaining to service tax regime will go through the process of review and adjudication but cannot be rejected on account of time-barring. The Tribunal held that in accordance with Section 142(8)(b) of the CGST Act, once it is decided that refund is due in pursuance to assessment / adjudication procedure, the only reason for rejection of refund could be unjust enrichment. Hence, in the present case, the refund rejection order was set-aside by the Hon'ble Tribunal since the same was rejected only on time-barring.

¹ Jai Mateshwaari Steels Pvt Ltd vs. Commissioner [Final Order No. 50165/2022 dated 11.2.2022]

² Punjab National Bank Vs. Commissioner [2021-TIOL-453-CESTAT-BANG]



SBGCO Comments:

The transition provisions of the CGST Act have an overriding effect on the erstwhile refund provisions on account of Section 142(3) read with Section 142(8) of the CGST Act. The Tribunal has rightly held that transition provisions permit rejection only on unjust enrichment and no other reason and hence, the refund may be partially / fully allowed / rejected while reviewing / adjudication, but cannot be rejected on technical grounds of time-barring, when the refund claim pertains to erstwhile indirect tax regime.



C. Recent Decisions from Advance Authority

1. Corbett Natural Reserve, Nainital [Order No. UK/AAAR/03/2021-22 (Uttarakhand) = 2022-TIOL-16-AAAR-GST]

Background:

The Applicant is running a Resort namely “Aahana- The Corbett wilderness” and also runs an independent unit namely “Aahana Naturopathy Centre.” The Naturopathy Centre is registered under the Clinical Establishment Act, 2010. The applicant had sought for a ruling to determine the eligibility of exemption for Naturopathy Centre vide Entry 74 of Notification No. 12/2017-CT (R) under “Services by way of health care services by a clinical establishment, an authorized medical practitioner or para-medics”

The AAR held that such supply is taxable as it is a part of composite supply of service and accommodation is the principal supply. Hence, the applicant preferred an appeal before the AAAR.

Question raised:

Whether the services provided by “the Naturopathy Centre” attracts NIL rate of tax in terms of Entry 74 of Notification No. 12/2017-CT (R), dated 28.06.2017?

Gist of the Ruling:

The AAAR upheld the decision of AAR and held that the applicant has advertised and marketed their accommodation service as their main service and Naturopathy as additional service. Hence, the AAAR concluded that Naturopathy services and accommodation services are covered under composite supply of service and the accommodation service constitutes the predominant supply.

Hence, “the Naturopathy Centre” is not covered by Entry 74 of Notification No. 12/2017-CT (R), dated 28.06.2017 and not eligible for exemption for health-care services.

SBGCO comments:

The AAAR seems to have failed to appreciate that various services in the form of Nature cure (drugless cure) & Yoga therapies (Health care services) were not restricted only to the in-house customers, but was open to all. Further, it has also failed to analyse an important aspect as to perception of the customers who visit the centre viz., whether they visit to stay and receive naturopathy services as complimentary benefits or visit the centre to receive naturopathy services and in turn have to stay at such a centre. These aspects of the transaction appear to have not been analyzed by the Authority.



2. Adani Green Energy Ltd [Order No. GUJ/GAAR/R/2022/26 = 2022-VIL-138-AAR]

Question raised:

Whether the Applicant is liable to discharge GST under RCM in respect of the services of arranging for subscription supplied to the Applicant by the Managers located in the non-taxable territory?

Gist of the Ruling:

The AAR has held that the Managers located in the non-taxable territory are acting in the capacity of “intermediary” who arranges / facilitates supply of securities between two or more persons. Hence, the Place of Supply of services shall be determined in terms of Section 13(8)(b) of the IGST Act and the same shall be outside India. Since the place of service is outside India and the supplier is also outside India, the provisions of import of service are not triggered in the present case.

SBGCO comments:

The analysis by the AAR is spot on while discussing the roles, responsibility and functioning of the ‘Manager’ when Indian entity raises funds from a foreign country. The AAR has also noted that the definition of “Intermediary” includes a person arranges or facilitates the supply of securities (even though independent activity of supply of securities is not covered under GST). The ruling provided by the AAR would provide a relief to trade and commerce in general that department is also of the same view that RCM is not applicable for such cases.



D. Compliance chart for June 2022

S N	Due Date	Form	Period	Periodicity	Special Remarks
1.	10.06.2022	GSTR - 7	May 2022	Monthly	To be filed by those who are required to deduct TDS under GST
2.	10.06.2022	GSTR - 8	May 2022	Monthly	To be filed by those who are required to collect TCS under GST
3.	11.06.2022	GSTR - 1	May 2022	Monthly	Taxpayers filing GSTR - 1 monthly
4.	13.06.2022	GSTR - 6	May 2022	Monthly	To be filed by an ISD
5.	13.06.2022	IFF	May 2022	Monthly	To be filed by those under QRMP Scheme (optional)
6.	20.06.2022	GSTR - 3B	May 2022	Monthly	To be filed by Taxpayer filing monthly GSTR 3B
7.	20.06.2022	GSTR - 5A	May 2022	Monthly	To be filed by non-resident Online Information and Database Access or Retrieval (OIDAR) services provider
8.	20.06.2022	GSTR - 5	May 2022	Monthly	To be filed by a non-resident foreign taxpayer registered in GST
9.	25.06.2022	PMT - 06	May 2022	Monthly	Challan to be filed for payment by those under QRMP Scheme
10.	30.06.2022	GSTR - 4	FY 2021-22	Annual	Composition Taxpayer (with waiver of late fees - only for FY 2021-22)



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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