

SBGco Connect – August 2021

S B Gabhawalla & Co
Chartered Accountants





Greetings to all our readers!!

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

August marks the beginning of various festivities across the nation and we would like to take this opportunity to wish our readers and fellow citizens a very Happy 75th Independence Day.

August and September hold a very key place under the GST regime as due date to make any amendments / changes to return filing details (outward and inward, both) for the preceding financial year approaches its' deadlines. In order to ensure that no such deadlines are missed, it is imperative that reconciliation activities are carried out with reasonable time in hand and wherever required, corrective actions taken. A detailed note on such activities to be undertaken has been included in this month's newsletter.

Readers should also note that various relaxations / concessions / waivers provided for on account of lockdown have now been discontinued and the due dates for various compliances have been restored to normalcy. Hence, you are advised to ensure timely compliances to avoid any extra cash-outflows in the nature of interest, late fees, penalty, etc.,

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

- A. [What's New?](#)
- B. [Precautionary Notes for activities pertaining to FY 2020-21](#)
- C. [Recent decisions from the Judiciary](#)
- D. [Recent Advance Rulings and analysis of the same](#)
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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. Format for Annual Returns (GSTR 9) and Reconciliation Statement (GSTR 9C) notified for FY 2020-21

Vide series of notifications, amendments to format for GSTR 9 & GSTR 9C have been notified. The amendments primarily deal with following:

- Following provisions of Finance Act, 2021 notified w.e.f 01.08.2021:

- Section 110 omitting Section 35 (5) of CGST Act, 2017
- Section 111 amending section 44

Notification 29/2021 - Central Tax, dated 30.07.2021

- Appropriate amendments to format of GSTR 9 & 9C for FY 2020-21 and to incorporate the amendments made vide the Finance Act, 2021.

Notification 30/2021 - Central Tax, dated 30.07.2021

- Exemption from filing Annual return for taxpayers having annual aggregate taxable turnover upto 2 crores extended to FY 2020-21 as well.

Notification 31/2021 - Central Tax, dated 30.07.2021

II. Circular issued during the month:

2. Clarification regarding applicability of the extension of Limitation Order issued by the Hon'ble Supreme Court

The Supreme Court has in suo moto proceedings initiated by it, held that the period of limitation in filing petitions, applications, suits, appeals and / or all other proceedings, irrespective of the period of limitation prescribed under the general or special laws, shall stand extended with effect from 15th March, 2020 till further orders

The effect of the above Order was that irrespective of the limitation prescribed under any Law, the period of limitation stood exclude the period from 15.03.2020 till further orders.

There was certain confusion w.r.t applicability of the said Order, w.r.t which the Board has now issued following clarifications to ensure uniform applicability:

- a. The order is not applicable to all actions / proceedings under the GST Act, but applicable only to quasi - judicial and judicial matters (namely, appeal to be filed before Joint / Additional Commissioner (Appeals), Commissioner (Appeals), Appellate Authority for Advance Ruling, Tribunal and various courts)
- b. The Orders of the Hon'ble SC apply to appeals, reviews, revisions etc., and not to original adjudication (which include all procedure upto the stage of adjudication of a



show cause notice namely, scrutiny of returns, issuance of summons, search, enquiry or investigations and even consequential arrest, replying to show cause notices, passing orders and so on)

- c. Proceedings pending before the quasi - judicial and judicial authorities need to be adjudicated or disposed off either physically or through the virtual mode.

Circular No. 157/13/2021 dated 20.07.2021

SBGCO comments:

The circular is a welcome clarification intended to streamline the process for all stakeholders under the GST Law. The time limit for filing appeal, suit, etc under GST laws for various issue though remains extended, taxpayers must tread carefully, be mindful of the various communications received from the Department and as long as possible, stick to the timelines assigned for timely compliance and minimizing litigation rounds. For various other extensions and relaxations which had been issued vide powers under Section 168A of the CGST Act, the taxpayers would be required to refer respective notifications issued from time to time during 2020 and 2021.

III. Other Updates relating to portal

3. Aggregate Turnover computed by the portal

The GSTN Portal has been constantly evolving to provide new and improved features to taxpayers and now, taxpayers have been provided with details of their Annual Aggregate Turnover, GSTN and PAN-wise, on the 'Dashboard' in each registration's login. The GSTN portal also permits to amend the turnover twice within a period of one month of release of this functionality, in case of any discrepancy identified by the taxpayer. The detailed announcement by the GSTN portal can be accessed by clicking [here](#).

4. Updating bank account details in new GST Registrations

The GSTN Portal has been displaying a message for taxpayers in general who have taken fresh registrations in the recent past to update their bank details. The registration rules require that while Bank Account details need not be provided at the time of applying for registration, the same needs to be updated within 45 days of the first login after successful registration.

The GST Portal has observed non-compliance by many taxpayers in this regard and hence, issued a general cautionary statement highlighted the steps to be taken to update Bank Account details. On the flip side, failure to update Bank account details could lead to actions being initiated by the jurisdiction officer.

The announcement from GSTN Portal along with steps to be followed by taxpayers can be viewed by clicking [here](#).



B. Precautionary Notes for activities pertaining to FY 2020-21

1. Need to file pending GSTR 1 and GSTR 3B returns

It is imperative that all such taxpayers, who have not yet filed GSTR 1 & GSTR 3B for FY 2020-21 file the same at the earliest as there is no relaxation from filing the said returns. Also, the consequences of non-filing are grave and can result in various Department Proceedings, such as proceedings for cancellation of registration, Best Judgment Assessment, Search & Seizure, etc., The above generally also carry penal as well as interest consequences.

Apart from them, the credit claim of clients may also be jeopardized resulting in trade disputes.

2. Impact of Annual Ratio under Rule 42 of the CGST Rules, 2017 for the FY 2020-21

Businesses engaged in providing both – taxable as well as exempt services are required to reverse proportionate input tax credit claimed to the extent it pertains to exempt services. The procedure for the same is provided for u/r 42 & 43 of the CGST Rules, 2017.

The said Rules provide that while on a monthly basis, reversal is to be done provisionally, at the end of the FY and the same shall be calculated finally for the FY before the due date for furnishing the return for the month of September following the end of each FY.

In case there is a short reversal, the same needs to be done along with interest and in case of excess reversal, the re-credit can be claimed. However, the same needs to be done within the time-line prescribed u/r 42. It is therefore imperative that the necessary exercise be undertaken to ensure proper compliance.

3. Expiry of time limit for claiming ITC appearing in GSTR 2A of FY 2020-21

Section 16(4) of the CGST Act, 2017 provides that the ITC pertaining to any invoice or debit note of a particular financial year cannot be claimed later than the due date of furnishing GSTR-3B return for September of the next financial year or the date of furnishing relevant annual return whichever is earlier. Accordingly, the time limit to claim ITC of invoices and debit notes pertaining to FY 2020-21 falls due while filing the GSTR-3B for the month September 2021.

It therefore becomes important that business analyze their purchase registers and GSTR 2A and determine the following:

- Cases where credit has been claimed but not appearing in GSTR 2A
In this case, it is important that communications are sent to such erring vendors to ensure that they file their returns within time and the credits get reflected in the GSTR 2A.
- Cases where transaction is appearing in GSTR 2A but credit has not been claimed
In such cases, it becomes important to book the invoices and claim the credit, if the transaction pertains to the business but has not been accounted / credit has not been claimed for any reason. If the credit is not claimed in the GSTR 3B of September 2021 or before, the same will become time-barred and ineligible.



4. Expiry of time limit to issue credit note against invoice pertaining to FY 2020-21 and carry out amendment in any invoice pertaining to FY 2020-21

Section 34(2) of the CGST Act, 2017 provides that a registered person is permitted to issue credit note in following cases:

- Where the taxable value/ tax charged thereof is found to exceed the taxable value or tax payable in respect of such supply.
- Where goods supplied are returned by the recipient.
- Where goods or services or both supplied are found to be deficient

However, the above credit notes need to be not later than September following the end of the FY in which supply was made. Also, it becomes important to ensure that such CNs are also disclosed in the GSTR1 filed for the month not later than September 2021 in view of Section 39 (9).

It therefore becomes important for business to identify all such cases and take necessary corrective actions. Failure to do so would result in loss of GST paid at the time of issuance of the invoice as reduction in output tax liability cannot be claimed after September.



C. Recent Decision from the Judiciary:

1. Origin Learning Solutions Pvt Ltd vs. Commissioner of Service Tax [2021-TIOL-417-CESTAT-MAD]

Issue Raised:

Whether CENVAT credit missed to be reflected in ST-3 return can result in denial of credit and thereby, denial of refund even if the said input services are used for export of services?

Gist of the Decision:

Accounting in the books of accounts is proper and utilization of such input service for export of services is not challenged. Hence, not mentioning the credit availed in ST-3 returns is only a procedural lapse, which can be condoned. Thus, cenvat credit was held to be eligible for refund.

SBGCO Comments:

It is a welcome decision for many taxpayers where the refund claim / claim of CENVAT credit was hit due to non-reflection of credit claim in ST-3 returns.

However, this decision may have limited or no application under GST regime owing to the specific provisions relating to claim of input tax credit which were absent under the CENVAT Credit Rules, 2004.

2. Ruchi Soya Industries Ltd vs. Commissioner of Customs, CGST and C. Ex., Indore [2021-VIL-292-CESTAT-DEL-ST]

Issue Raised:

Whether payment of compensation to service recipient by service provider in case of lacunae on the part of the service provider can be covered under the scope of declared service in the nature of “agreeing to the obligation to tolerate the Act” in the hands of the service recipient?

Gist of the Decision:

- The amount received as compensation by service recipient is a safeguard against some loss for the downfall in service quality
- Such receipt of compensation cannot make service recipient, a service provider
- The concept of ‘Declared Services’ has therefore been wrongly invoked by the Department.

SBGCO Comments:

One more welcome decision from the Tribunal which upholds the view that compensation received by recipient for some loss incurred by the recipient on account of contractual obligations is not a service and cannot be covered by “declared services”. This will be of help to the taxpayers not only under the service tax regime, but also under the GST regime where levy of tax on liquidated damages is already mired with controversy.

3. **Dharamshil Agencies vs. Union of India [2021-TIOL-1563-HC-AHM-ST]**

Issue Raised:

Importance of providing reasonable time for pre-show-cause consultation

Gist of the Decision:

- Issuing the pre-show cause notice consultation to the petitioner at 13.55 hours and calling them to remain present at 16.00 hours on the same day cannot be sustained and was set-aside
- Such action on the part of officers was held to be in contravention of the circular as it defeated the laudable object behind issuing such a circular by the CBIC.

SBGCO comments:

This decision profoundly explains the noble intention of the Board behind the Master Circular mandating pre-SCN consultations. However, the fact that the Department has been viewing the same as a mere procedure is apparent from the current case where a short notice of only 2 hours was given for the pre-SCN consultation. Offcourse, such instances also makes one question the relevance of the pre-SCN consultation if the Department has pre-decided to issue show cause notice.

4. **Nagri Eye Research Foundation vs. Union of India [2021-TIOL-1532-HC-AHM-GST]**

Issue Raised:

- Whether GST Registration is required for medical store run by Charitable Trust?
- Whether such store providing medicines at a lower rate amount to supply under GST?

Gist of the Decision:

- Since the scope of 'Business' under GST Law includes 'any trade or commerce whether or not for a pecuniary benefit', the activity of the Trust of selling medicines for a consideration could not be excluded from the scope of 'Supply' and hence, the Trust was liable for registration under GST.
- Selling medicines for a lower rate has no impact in determining whether such an activity is covered under the scope of 'Supply' under GST.

SBGCO Comments:

Whether Charitable trusts receiving consideration for sale of goods/ services can be said to be doing so in the course or furtherance of business, even if the same relates to its' charitable activities has always been a subject matter of debate, even under the pre-GST regime? The SC had in the case of Sai Publication Fund [2002-TIOL-2655-SC-CT] held that if the main activity is not in the course or furtherance of business, even incidental activities relating to it would continue to be outside the scope of business.

In this background and especially considering the fact that the decision of Gujarat HC was passed ex-parte where all the grounds may not have been brought before the Court, the precedential value of such decision would always remain in question.

5. **Aich Brothers vs. Union of India [2021-TIOL-1572-HC-GUW-GST]**

Issue Raised:

Registration not restored even after outstanding tax dues paid by taxpayer but interest dues pending

Gist of the Decision:

The HC opted for a liberal approach keeping in mind the Covid situation. The HC directed the taxpayer to make an application before the Assistant Commissioner requesting for option to discharge interest dues in instalments and also directed the officer to accept such an application and on discharge of interest dues, the registration to be restored.

6. **Rama Varma Club vs. Joint Commissioner, Cochin [2021-TIOL-1574-HC-KERALA-ST]**

Issue Raised:

Whether there was a violation of the principles of natural justice when 3 (three) opportunities between February 2021 and March 2021, were given to the petitioner to appear for a hearing but the petitioner failed to do so?

Gist of the Decision:

The HC noted that none of the office bearers had come to know about the opportunity of personal hearing as the office of the club was operating with limited staff on account of the pandemic. Further, keeping a liberal view on account of the Covid-19 situation, the HC directed the officers to give one more final opportunity to the petitioner and also directed the petitioner to not claim any further adjournments.

SBGCO Comments:

In both the above cases, i.e., Aich Brothers and Rama Varma Club, the High Courts had to intervene and adopt a lenient view considering the hardships on account of the Covid-19 situation. Though, it is a welcome judgement, the past trends suggest that officers at the ground level rarely consider such facts and in majority of the cases, such writ petitions are the only option available for the assessee to get immediate relief.

D. Recent Decisions from Advance Authority

1. M/s. Soft Turf [AAR/11/2020 (Kerala) = 2021-TIOL-175-AAR-GST]

Question raised:

Classification & rate of PVC carpet mats

Gist of the Ruling:

The AAR held that classification has to be decided as per the terms of headings, sub-headings and tariff items and the relevant section / chapter, notes / sub-notes in terms of the interpretative rules to the Customs Tariff. The AAR noted that only because there is another chapter heading with lower rate, the classification cannot be changed as the assessee has been manufacturing the same product since pre-GST regime and held that the correct classification was under HSN 3918 with applicable GST rate 18%.

SBGCO comments:

Certain observations and comments of the decision are very noteworthy and lay down certain significant guidelines while taking any taxation position under any tax law, whether it be classification issue or taxability issue. The tax position must be well-thought and thoroughly researched and to the extent possible supported by law and judicial precedents.

2. Maharashtra State Dental Council (MSDC) [GST-ARA-125/2019-20/B-30 (Maharashtra) = 2021-TIOL-172-AAR-GST]

Question raised:

Classification and taxability of online / offline tendering process and exemption eligibility under notification 12/2017-CT (Rate)

Gist of the Ruling:

Online / Offline tendering process is in the nature of service classifiable under heading 9997. Even though MSDC is constituted by an Act of Parliament - "The Dentists Act. 1948 (XVI of 1948)" as a not-for-profit institution with a view to regulate the dental profession and dental ethics, the activities of the council are not covered by any exemption and hence, the receipts for registration of prospective Dental Practitioners to the Council will be liable to GST.

SBGCO comments:

Pecuniary benefits are no longer considered as a criterion for determining the taxability of supply of goods or services under the GST law. The exemption list for charitable trusts is also restricted to very specific activities and the even the concept of Principle of Mutuality is effectively negated under the GST Law. Trusts, Associations, AOP / BOIs must tread carefully when taking any decision w.r.t. taxability of their activities and receipts especially in view of the decision of Gujarat HC in the case of Nagari Eye Research Foundation.



E. Compliance chart for August 2021

S N	Due Date	Form	Period	Periodicity	Special Remarks
1.	10.08.2021	GSTR - 7	July 2021	Monthly	To be filed by those who are required to deduct TDS under GST
2.	10.08.2021	GSTR - 8	July 2021	Monthly	To be filed by those who are required to collect TCS under GST
3.	11.08.2021	GSTR - 1	July 2021	Monthly	Taxpayers filing GSTR - 1 monthly
4.	13.08.2021	GSTR - 6	July 2021	Monthly	To be filed by an Input Service Distributor
5.	13.08.2021	IFF	July 2021	Monthly	To be filed by those under QRMP Scheme (Optional)
6.	20.08.2021	GSTR - 3B	July 2021	Monthly	To be filed by Taxpayer filing monthly GSTR 3B
7.	20.08.2021	GSTR - 5A	July 2021	Monthly	To be filed by non-resident Online Information and Database Access or Retrieval (OIDAR) services provider
8.	20.08.2021	GSTR - 5	July 2021	Monthly	To be filed by a non-resident foreign taxpayer registered in GST
9.	25.08.2021	PMT-06	July 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:

Sunil Gabhawalla @ sunil@sbgco.in

Yash Parmar @ yash@sbgco.in

Parth Shah @ parth@sbgco.in

Darshan Ranavat @ darshan@sbgco.in

Prakash Dave @ prakash@sbgco.in

Aman Haria @ aman@sbgco.in

Our office address:

S B Gabhawalla & Co.,

802-803 Sunteck Grandeur

Off S V Road, Opp Subway

Andheri West Mumbai 400058

Landline - 022 - 66515100

Web: www.sbgco.in

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<https://chat.whatsapp.com/KJRD8SHyjSK5FUkFj8Of4t>