



# BUDGET

SBGco ~~connect~~ February 2021

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Greetings to all our readers!!

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

Today, the Finance Minister presented the Union Budget for FY 2021-22. It was for the first time that the Budget was presented in the Digital form. The budget focused on 6 pillars, (1) being Health and wellbeing, (2) Physical & Financial Capital Infrastructure, (3) Development for Aspirational India, (4) Reinvigorating Human Capital, (5) Innovation and R&D and finally, (6) Minimum Government and Maximum Governance. The focus of the government to shift to 'Digital India' is evident through the many changes proposed in the tax laws to that effect.

From tax perspective, no major changes have been highlighted in the FMs speech. However, ongoing through the Finance Bill, a few surprising amendments – some expected and some out of the blue are noticed. We have summarized the GST related amendments proposed in the “Budget 2021” section of the newsletter.

This will also be the first month that companies with turnover between Rs. 100 to 500 crore would be filing their GSTR 1 after implementation of provisions relating to e-invoicing. There are some system changes which such taxpayers must take care of while filing GSTR 1, with an additional layer of reconciliation as e-invoicing data is auto-populated to GSTR 1 and therefore there will be a need for reconciliation between auto-populated figures and system generated sales register. This would require additional time and hence, it is important to start the process as early as possible and not wait till the last moment.

February 2021 is also the deadline for GST Annual Return and GST Audit for FY 2019-20. From past experience, it appears that it is unlikely that the due date for GST Annual Return and GST Audit for FY 2019-20 will be extended beyond 28.02.2021. It is therefore advised that readers take proactive measures toward timely filing of their GST Annual Return and GST Audit as there is limited time available now.

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

1. [Budget 2021](#)
2. [What's New?](#)
3. [Recent decisions from the Judiciary](#)
4. [Recent Advance Rulings and analysis of the same](#)
5. [Compliance Chart for the month of February 2021](#)

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

Team SBGco



## **Budget 2021 – Proposals relating to GST**

### **1. Mutuality no longer applicable under GST**

The scope of supply under Section 7(1) is proposed to be enlarged to also include the activities or transactions by a person to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration. The said amendment seeks to overcome the GST impact of the Supreme Court verdict in the case of State of West Bengal vs. Calcutta Club Limited 2019-TIOL-449-SC-ST-LB wherein the principle of mutuality was held applicable to VAT and service tax proceedings. Consequential amendment is also sought to be carried out in Schedule II. The amendments are proposed to be given retrospective effect from 01.07.2017 and would have far reaching implications in case of clubs and co-operative societies.

### **2. Tightening of screws for claiming claim Input Tax Credit**

An additional condition is sought to be introduced in Section 16(2) whereby the input tax credit claim of the recipient is made conditional to the reflection of the invoice/debit note in the GSTR-2A. The said amendment will be effective from a date to be notified after the enactment of the Bill. Once notified, the tolerance limit of 5% provided for unmatched credits under Rule 36(4) may become redundant.

### **3. Interest on Net Cash liability (retrospective amendment)**

The proviso to Section 50(1) requiring the payment of interest on account of delayed payment of tax only on the net amount of tax is sought to be given retrospective effect from 1 July 2017

### **4. Substantial changes in provisions relating to ‘Zero-rated’ supplies**

Section 16 of the IGST Act is proposed to be amended to restrict the benefit of zero rating in case of supplies to SEZ Units only in scenarios where the said goods or services are used for authorised operations. Accordingly, any goods or services supplied to such SEZ Units and not used for authorised operations shall become liable for payment of IGST.

Section 16(3) is further amended to fundamentally change the tax treatment of zero-rated supplies. Prior to the proposed amendment, suppliers of zero-rated supplies (exports & supplies to SEZ Units) had two options – (a) export against LUT without payment of tax and claim refund of accumulated input tax credit or (b) export on payment of tax and claim subsequent refund of output tax so paid (hereinafter referred to as ‘rebate’). As per the proposed amendment, the suppliers are left with only the default option of export against LUT without payment of tax and refund of accumulated input tax credit. The rebate option would not be generally available to all taxpayers but only to class of persons or goods or services as may be notified separately under section 16(4).

Section 16(3) also requires the re-payment of refund of accumulated input tax credit in case the sale proceeds of goods exported are not realised within the time limits prescribed under FEMA.



## 5. E-way bill related procedures

Section 74 of the CGST Act is being amended so as to make seizure and confiscation of goods and conveyances in transit a separate proceeding from recovery of tax. Accordingly, the closure of proceedings under section 74 would not amount to automatic closure of proceedings under sections 129 and 130.

Section 107 of the Act is proposed to be amended to require a pre-deposit of 25% of the penalty due in case of an appeal filed against an order passed under section 129 dealing with E-way bill violations.

The provisions relating to interception of goods in transit and the consequences of violation of the e-way bill provisions have been thoroughly revamped. The earlier provisions sought to recover tax, interest and penalties resulting in duplication of tax demands. The amended provisions now seek to recover only penalties (although the quantum of penalties have been substantially increased). The following table summarises the current provisions and the proposed amendments in this regard:

Scenario	Reference	Current Provisions	Proposed Amendments
Taxable Goods where owner comes forward	129(1)(a)	Tax and Penalty equal to 100% of Tax	Penalty equal to 200% of the Tax
Exempted Goods where owner comes forward	129(1)(a)	2% of Value of Goods or Rs. 25000 whichever is less	2% of Value of Goods or Rs. 25000 whichever is less
Taxable Goods where owner comes forward	129(1)(b)	Tax and Penalty equal to 50% of Value of Goods	Penalty equal to 200% of the Tax or 50% of the Value of Goods whichever is higher
Exempted Goods where owner comes forward	129(1)(b)	5% of Value of Goods or Rs. 25000 whichever is less	5% of Value of Goods or Rs. 25000 whichever is less

Consequential amendments to effectuate the above change are proposed in other provisions of Section 129. Further, Section 129(6) is proposed to be amended to permit the sale of goods or conveyance on failure to pay the penalty demanded under the above provisions within 15 days of the date of receipt of order.



**6. Modification in GST Audit and Annual Return process**

The requirement to get the annual accounts audited and submit a certified reconciliation statement under section 35 in Form GSTR 9C is proposed to be done away with. Instead, section 44 is proposed to be amended to include a self-certified reconciliation statement as a part of Form GSTR 9 itself. The said amendment will be effective from a date to be notified after the enactment of the Bill. It may therefore be noted that the requirement to submit the certified reconciliation statement in GSTR 9C for period ended 31 March 2020 continues and the due date for the same is currently stated to be 28 February 2021

**7. Automatic recovery of self-assessed tax not paid**

Section 75(12) provides for an automatic recovery of taxes which are self-assessed but unpaid. The said provision is sought to be amended to also include the tax payable in respect of outward supplies declared in the return under section 37 (GSTR1) but not included in the return under section 39 (GSTR3B).

**8. Power to call statistics amended to power to call for information**

The scope of the power of the Commissioner to call for information under Section 151 has been enhanced.

**9. Widening of scope of provisional attachment of property, including bank accounts**

The scope of Section 83 relating to provisional attachment of property including bank accounts is sought to be widened to include all cases where proceedings have been initiated under Chapter XII, Chapter XIV or Chapter XV if the Commissioner is of the belief that the provisional attachment is required to protect the interests of the Revenue.

The above-mentioned amendments proposed in the Union Budget 2021-21 will be effective from a date to be notified in the official Gazette after the enactment of the Bill



## Whats' New?

### 1. Remission of Duties and Taxes on Exported Products ("RoDTEP") scheme

A new scheme, RoDTEP (Remission of Duties and Taxes on Exported Products) has been launched by the government for exporter of goods w.e.f. 01.01.2021. The scheme provides for rebate of Central, State and Local duties / taxes / levies which are not refunded under any other duty remission schemes. RoDTEP shall replace the existing MEIS announced via press release on dated 31.12.2020.

Under this scheme, the rebate as a percentage of the Freight on Board (FOB) value of exports would be credited in terms of credit scrips in the exporter's RoDTEP (Credit ledger) Account which could be utilized to pay Basic Customs duty on imported goods or transferred to another person's account maintained with ICEGATE. The scheme will cover multiple sectors and the sequence of introduction of various sectors shall be gradually announced by a dedicated committee. Even SEZ units can opt for the benefit under this scheme. However, they would be required to make extra disclosure while filing the Shipping Bill.

The process of implementation of RoDTEP scheme in Customs Automated System has been released by ICEGATE and the same can be viewed / accessed from the following link:

[https://icegate.gov.in/Download/RoDTEP\\_Advisory-v3.o.pdf](https://icegate.gov.in/Download/RoDTEP_Advisory-v3.o.pdf)

### **SBGco Views:**

*A reading of the scheme demonstrates the attempts made by the Government towards improving the ease of doing business, by automating the process for granting of benefits and doing away with manual application for claiming the same. However, exporters intending to claim the benefit should be cautious while filing their Shipping Bills to ensure free flow of benefits.*

### 2. Restrictions placed on filing of GSTR-1 (monthly or quarterly)

Till now, a taxpayer could have continued filing GSTR 1 despite his GSTR 3B not having filed. This anomaly is sought to be taken care of with the introduction of rule which blocks a taxpayer from filing his GSTR 1 if GSTR 3B for previous two months have not been filed by taxpayers and in case of quarterly filers, GSTR-1 will not be permitted if GSTR-3B for preceding quarter is not filed. This Rule shall also be applicable to such taxpayers to whom Rule 86B is applicable.

The amendment has been made effective from 01.01.2021 vide notification 01/2021 - Central Tax dated 01.01.2021

### **SBGco Views:**

*A welcome move, as buyers can check the compliance status to ensure that their input tax credit is not at risk.*





## Recent Decisions from the Judiciary

Citation	Facts of the case	Gist of the Judgment	SBGco Views
<p>AMP Capital Advisors India Private Ltd Vs. Commissioner, CGST</p> <p>2021-TIOL-51-CESTAT-CHD</p>	<p>The refund application of the Assessee was granted by the Appellate Authority and also upheld by the Tribunal. When the assessee approached the Department for giving effect of the Order of the Appellate Authority / Tribunal, he was asked to again file a refund claim subsequent to the order of the Tribunal which was rejected by the review committee citing time barring of application.</p>	<p>The Hon'ble CESTAT observed that once the issue was settled by the Tribunal that the refund in terms of application filed on 29.06.2012 was due to them, the department was required to suo moto grant the refund within 3 months from the date of such order.</p> <p>The judgement further goes on to note that when the previous refund application is pending for disposal, forcing the assessee to file another refund application for the same was incorrect and dragging the assessee in unwanted litigation.</p>	<p>This decision shows a sorry state of affairs, which an assessee has to deal with while seeking refund. It is a settled position that once an issue is decided in assessee's favor, the same should be respected and its' effect given, unless it has been stayed before a higher forum.</p>
<p>Commissioner of Service Tax vs. Silverline Estates</p> <p>2021-TIOL-222-HC-KAR-ST</p>	<p>For residential apartments (which has received completion certificate in 2009), the assessee had collected certain amounts from buyers and deposited the same in a separate escrow account for lack of clarity on the liability of service tax. The Adjudicating authority (without assessment / adjudication) passed an order demanding the said amount deposited in separate escrow accounts, along with Interest and penalty on the grounds that the collection and deposit of such amount in bank account, amounted</p>	<p>The High Court was faced with only substantial question of law i.e. Whether the determination of service tax by the Central Excise Officer, is necessary making a demand under Section 73A(3) of the Finance Act, 1994?</p> <p>Relying on the decision of Karnataka High Court in the case of Prashanthi vs. UOI (2015-TIOL-1596-HC-KAR-ST), the HC held that assessment must precede the demand. Further, the power to create demand under section 87 of the Finance Act, can be</p>	<p>The Judgement re-iterates the fact that powers provided by the law cannot be used by officers without following the due procedure envisaged under the law.</p> <p>The Tribunal being the last fact-finding authority, had already held that separate amounts recovered by assessee was not in the nature of service tax and therefore, the HC only answered the question regarding substantial question of law.</p>



Citation	Facts of the case	Gist of the Judgment	SBGco Views
	to collection of service tax as per provisions of Section 73A of the Finance Act, 1994. The Tribunal had already held that the amounts collected by the assessee was not service tax. The Department preferred an appeal against the said order of the Tribunal before the HC.	exercised only after adjudication i.e. assessment of the amounts.	
Indian Overseas Bank vs. Commissioner of CCE and Service Tax, Chennai  2021-TIOL-57-CESTAT-MAD	The Appellant had paid insurance premium for insuring the deposits of public with them. The Insurance Corporation had also levied and collected service tax from the bank for providing their services of insurance. The department had disallowed the CENVAT credit paid by bank for the services provided by the Insurance Corporation for insuring the deposits of public. The Appellant preferred appeal against the said order.	Allowing the Appeal, the Tribunal held that payment of insurance premium is mandatory (or else licence granted by RBI could be cancelled) and required for rendering output service of “banking and other financial services” and thus, such insurance services were “Input services” for the purposes of Cenvat Credit Rules. The Tribunal also emphasised the importance of the principle of stare decisis as this was an issue covered by the decision of Larger Bench in South Indian Bank Vs. CCE & ST-Calicut [2020-TIOL-861-CESTAT-BANG-LB]	The Hon’ble Tribunal followed an important principle of maintaining judicial discipline thereby, ensuring that on decided issues, the process of re-inventing the wheel does not take place as long as the facts of the matter are same or on the similar lines.
Spray Engineering Devices Limited Vs. Commissioner of C. Ex. and S.T., Shimla  2021-TIOL-41-CESTAT-CHD	The Tribunal had held that extended period was not invocable in case of RCM liability to be paid by the assessee. Hence, the assessee filed a refund application for the service tax amount paid by them in excess of the amount required to be paid. The	The Hon’ble Tribunal held that what was contested by the appellant in the earlier round of litigation was not relevant and the only germane point was the final order of the Tribunal in the earlier matter which was decided observing extended period is not	This is again a welcome decision wherein the Tribunal has issued directions to the Department that curtailed legal principles, such as stare decisis, audi alteram partem, etc. must be strictly followed by Revenue.





Citation	Facts of the case	Gist of the Judgment	SBGco Views
	<p>adjudicating authority and Commissioner (Appeals) both rejected the refund application of the assessee on the grounds that Appellant has already paid service tax with interest in terms of section 73(3) of the Finance Act, 1994. Contesting the said order against rejection of refund, the Appellant moved the Tribunal again.</p>	<p>invokable. Hence, on application of refund, the lower authorities should have should have accepted the order of the Tribunal as final and granted the amount due to the Appellant. The Hon'ble Tribunal allowed the refund claim along with interest and also directed the same to be paid within one month of the receipt of the order.</p>	



## Recent Advance Rulings

Citation	Ruling sought on?	Gist of the Ruling	SBGco Views
<p>Amneal Pharmaceuticals Private Ltd.</p> <p>[2021-TIOL-27-AAR-GST = GUJ / GAAR / R / 51 / 2020]</p>	<p>Whether recovery of Notice Pay from employees who are leaving the company without completing the notice period as specified in the Appointment Letter issued as per the contract entered between Employer and the Employee is liable for GST?</p>	<p>The Authority held that amounts recovered from employees on account of notice period not served would be liable to pay GST @ 18% under the entry of "services not elsewhere classified".</p>	<p>The levy of service tax on such recoveries has been a controversial issue. While majority of the decisions from HC/ Tribunal are in favor of the taxpayers, the Advance Ruling Authority has consistently held that GST is payable on such recoveries. Clarification from Government on this burning issue would be much appreciated.</p>
<p>Aravind Drillers</p> <p>[2021-TIOL-51-AAR-GST = 39/AAR/2020 (Tamil Nadu)]</p>	<p>The Applicant, engaged in the activity of providing services of borewell drilling for various purposes, sought ruling on following questions:</p> <p>a. Whether the following supply of services provided by the applicant are in relation to agricultural operations directly in connection with raising of agricultural produce</p> <p>i. Drilling of Borewells for supply of water for agricultural operations like cultivation including seeding, planting and ploughing.</p> <p>ii. Letting out of compressors for pumping of water from the borewells to the agricultural fields</p> <p>b. If yes, whether the said services are covered by the entry SI. No 54 of</p>	<p>a. i. Drilling of borewell (even in the agricultural land) is a construction service involving drilling water well and not a support service for agriculture.</p> <p>ii. Compressor is not an agricultural machinery and is a General-Purpose Machinery Hence, both the above activities are not directly in relation to agricultural operations.</p> <p>b. The above two activities of the applicant are not 'Support service for agriculture' classifiable under SAC 9986 and therefore the exemption at SI.No.54 of Notification No.12/2017-C.T.(Rate) is not applicable</p>	<p>It is a settled law that exemptions provided in the law must be interpreted strictly and in the present case, the AAR has construed the meaning of Agriculture support services using the help of Explanatory Notes to the scheme of Classification of Services to determine to applicability of GST on the said transaction.</p> <p>It remains to be seen whether activity done for non-agriculture-based activities can be classified as support services for agriculture when performed for farmer / agriculture land.</p>



Citation	Ruling sought on?	Gist of the Ruling	SBGco Views
	Notification 12/2017 CT (Rate) dated 28.06.2017		
<p>Gujarat Narmada Valley Fertilizers &amp; Chemicals Ltd</p> <p>[2021-TIOL-56-AAR-GST = GUJ / GAAR / R / 93 / 2020]</p>	<p>Applicant had entered into a lease agreement dated 01.12.2015 with to supply services of renting of immovable property, along with the interior infrastructure like partitions, cabins, work-stations, electrical air conditioners, fire safety systems, tables, chairs etc. at agreed monthly rent. The Applicant had sought ruling on the following questions:</p> <p>a. Whether GST is payable on electricity or incidental charges levied by the applicant in addition to rent as per Lease Agreement?</p> <p>b. Can electricity charges paid by the Applicant to Torrent Power Ltd. (the supplier of electricity) for electricity connection in the name of landlord and recovered based on sub-meters from different tenants be considered as amount recovered as pure agent of the tenant when the legal liability to pay electricity bill to Torrent Power Ltd. is that of Applicant?</p>	<p>a. The facts of the present case infer that the electricity charges collected by the applicant is not covered under the provisions of Sec. 15(2)(c) of the CGST Act, 2017 and as such would not be includible in the value of supply.</p> <p>b. The electricity charges collected by the landlord from the lessee at actuals based on the reading of the sub-meters is covered under the amount recovered as a pure agent in terms of the provisions of Rule 33 of the CGST Rules, 2017 in respect of the lessor</p>	<p>It might be first time in the history of Advance authority rulings that despite the applicant itself suggesting that GST is leviable on the transaction and pure agent provisions would not be applicable, the AAR concludes to the contrary. Perhaps it is because in this case, the recipient was the President of India acting through the Commissioner of Central Excise, Audit-I, Ahmedabad and the burden of tax was to be borne by the Authority itself.</p>
<p>Sparsh OHC Manpower Service</p> <p>2021-TIOL-25-AAR-GST = GUJ / GAAR / R / 55 / 2020</p>	<p>Applicant provides service of appointing Doctors, Nursing Staffs, Ambulances, relating administrative services etc. to corporate entities (Factory / Plant premises) to facilitate the medical care for their staff. The Applicant sought ruling on whether</p>	<p>Services provided by the applicant do not qualify under the definition of “healthcare service” and applicant's office / establishment does not get qualified under the definition of “clinical establishment”. Therefore, the</p>	<p>The AAR has correctly interpreted the exemption notification in relation to healthcare services. Had the doctors directly provided services to corporate entities, then it would have been a different story.</p>



<b>Citation</b>	<b>Ruling sought on?</b>	<b>Gist of the Ruling</b>	<b>SBGco Views</b>
	Specified services (i.e., appointing Doctors, Nursing Staffs, Ambulances, relating administrative services etc.) covered under GST and whether it falls in the category of taxable or exempted services?	services provided by applicant to the corporate entity for medical care of their staff does not get covered under the Sr. No.74 of exemption Notification No. 12/2017 – CT (R).	In the current fact matrix, it is difficult to perceive Applicant as a clinical establishment and thus, the judgement by AAR seems to be in accordance with the intention of the law.
Sterling Accuris Wellness Pvt Ltd 2021-TIOL-47-AAR-GST = GUJ / GAAR / R / 69 / 2020	The Applicant is a clinical establishment engaged purely in diagnostic services such as clinical biochemistry, micro-biology, Haematology, clinical pathology, etc. and has entered into an agreement with their client for supply of pathology or diagnostic services for their client's research purpose. The Appellant sought an advance ruling as to whether they are liable to pay GST on pathology or diagnostic services supplied to the client who is a researcher?	The AAR held that the applicant is liable to pay GST on pathology or diagnostic services supplied to the client who is researcher on the grounds that exemption is available for diagnosis of illness, injury, deformity, abnormality or pregnancy of patients. In the present case, tests are conducted solely for academic and research purpose. Further, these tests are not in relation to any recognized system of medicine practise.	Even in general parlance and the industry at large, it is a regular practice that tests and activity carried out for academic and research purposes are not eligible for exemption from GST for Healthcare services and the AAR has also provided ruling on the similar lines.



### Compliance Chart for the month of February 2021

S N	Due Date	Form	Period	Periodicity	Special Remarks
1.	10.02.2021	GSTR – 7	January 2021	Monthly	To be filed by those who are required to deduct TDS under GST
2.	10.02.2021	GSTR – 8	January 2021	Monthly	To be filed by those who are required to deduct TCS under GST
3.	11.02.2021	GSTR – 1	January 2021	Monthly	Taxpayers filing GSTR - 1 monthly
4.	13.02.2021	GSTR – 6	January 2021	Monthly	To be filed by an Input Service Distributor
5.	20.02.2021	GSTR - 3B	January 2021	Monthly	Taxpayers having Aggregate T/o of > 5Cr in FY 2019-20
6.	20.02.2021	GSTR – 5A	January 2021	Monthly	To be filed by non-resident Online Information and Database Access or Retrieval (OIDAR) services provider
7.	20.02.2021	GSTR – 5	January 2021	Monthly	To be filed by a non-resident foreign taxpayer registered in GST
8.	22.02.2021	GSTR – 3B	January 2021	Monthly	Taxpayers having Aggregate T/o of < 5Cr in FY 2019-20 (#)
9.	24.02.2021	GSTR – 3B	January 2021	Monthly	Taxpayers having Aggregate T/o of < 5Cr in FY 2019-20 (\$)
10.	28.02.2021	GSTR – 9	FY 2019-20	Annual	To be filed by those having Aggregate T/o of > 2Cr in FY 2019-20
11.	28.02.2021	GSTR – 9C	FY 2019-20	Annual	To be filed by those 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

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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