



SBGco Connect - June 2021

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Greetings to all our readers!!

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

After a long hiatus of nearly seven months, the 43rd Council Meeting of the GST Council was held on 28.05.2021. The GST council has announced a slew of procedural reliefs, which has been discussed in detail in the [What's New?](#) section of this Newsletter.

April 2021 also witnessed a record breaking highest ever GST collection of Rs. 1.41 lakh crore. Despite the current circumstances, such a huge number is not just an economy booster, but also a positive sign of the things to come. Further, based on the concerns raised by various stakeholders, the Centre has constituted an eight-member ministerial panel under the convenorship of Meghalaya Chief Minister Conrad K Sangma to examine GST exemptions on a range of Covid-19 essentials.

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

1. [What's New?](#)
2. [Recent decisions from the Judiciary](#)
3. [Recent Advance Rulings and analysis of the same](#)
4. [Compliance Chart for the month of June 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 offices are currently closed. We strive to continue the workflow from respective homes to the best possible extent. Our entire team is available over phone / email to serve you from our homes to the extent possible.

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

Team SBGco



What's New?

I. Summary of outcome of the decisions taken by the GST Council during the 43rd GST Council meeting

1. Filing of GST Returns with Email / Mobile OTP option further extended for all.

The Government had earlier enabled the EVC (OTP) option for filing of GST returns upto 31.05.2021. The said option is now set to be extended upto 31.08.2021

2. GSTR - 1 / Invoice Furnishing Facility (IFF) relaxation

The last date to submit invoice level details in the monthly returns has been proposed to be relaxed for the month of May 2021 as under:

Return	Period	Existing due date	Revised Due date
GSTR - 1	May' 21	11.06.2021	26.06.2021
IFF	May' 21	13.06.2021	28.06.2021

3. GSTR - 3B late fee waiver

Extension of waiver of late fees on delayed filing of GSTR - 3B for the month of May 2021 provided the same has been filed within the revised due dates as per the table below:

Particulars	Last date to file GSTR - 3B without late fees
Having aggregate T/o > 5 Cr in preceding FY (Monthly GSTR - 3B)	15 days from the existing due date of furnishing respective returns
Having aggregate T/o < 5 Cr in preceding FY (Monthly GSTR - 3B)	30 days from the existing due date of furnishing respective returns

It may be noted that the due date of filing the GSTR 3B Return has not been extended. It is only that the late fees have been waived and the interest rate has been reduced - which is explained in the subsequent point.

4. Relaxation for Interest payable with GSTR - 3B / PMT - 06

Extension of benefit of lower interest rates in case of delay in filing of GSTR - 3B extended for the month of May 2021 as well.

Particulars	Interest Payable
Having aggregate T/o > 5 Cr in preceding FY (Monthly GSTR - 3B)	First 15 days from the existing due date @ 9% Thereafter @ 18%
Having aggregate T/o < 5 Cr in preceding FY (Monthly GSTR - 3B) or making monthly payment vide PMT - 06 under QRMP scheme	First 15 days from the existing due date - NIL Next 15 days @ 9% Thereafter @ 18%



5. Rule 36(4) compliance relaxation further extended

In view of the hardships being faced by taxpayers and staggered relaxation of GSTR 1 and GSTR 3B, the ITC claim compliance by virtue of Rule 36(4) has been further relaxed to extend the benefit upto June 2021 i.e., cumulative effect of Rule 36(4) compliance (ITC claim to not exceed 105% of the total ITC eligible) to be given in the GSTR - 3B of June 2021 for the months of April, May and June 2021, put together.

6. Capping of Late Fees for various returns

The GST council shall rationalize late fees payable by providing an upper limit for the total late fees (CGST + SGST) which would be payable PROSPECTIVELY on account of delayed filing as under:

Particulars	Total Late Fees
For GSTR - 1 and GSTR - 3B	
Nil tax liability in GSTR-3B	Rs. 500
Nil Outward Supplies in GSTR-1	
Aggregate T/o < 1.5 Cr in preceding FY	Rs. 2,000
Aggregate T/o between 1.5 Cr and 5 Cr in preceding FY	Rs. 5,000
Aggregate T/o > 5 Cr in preceding FY	Rs. 10,000
For GSTR - 4 for Composition Taxpayer	
Nil Liability	Rs. 500
Other cases	Rs. 2,000
For GSTR - 7 (TDS deposit cases)	
Per Day Capping	Rs. 50
Total Capping	Rs. 2,000

7. Amnesty Scheme for Late fees for pending GSTR - 3B

The GST council has also proposed amnesty scheme for defaulting taxpayers by capping the total late fees payable (CGST + SGST) for all the pending GSTR - 3B to be filed between 01.06.2021 and to 31.08.2021 for the period July, 2017 to April, 2021 as under:

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

8. Annual Return for FY 2020-21

- i. Amendments proposed in the Union Budget 2021 to be notified soon, w.r.t. Annual Return and the same would be applicable for FY 2020-21 onwards.
- ii. Filing of Annual Return to continue to remain optional for taxpayers having aggregate T/o < 2 Cr for FY 2020-21
- iii. The self-certified reconciliation statement in Form GSTR - 9C to be required to filed by taxpayers having aggregate T/o > 5 Cr for FY 2020-21

9. Other Key Relaxations / Exemptions / Clarifications

- New Due date for filing GSTR - 4 (for Composition scheme taxpayers) has been extended to 31.07.2021.
- Due date for filing of ITC - 04 for the quarter of Jan to Mar' 21 extended from 31.05.2021 to 30.06.2021.
- Extension of due dates for completion of any compliance, filing of appeal, furnishing any document, etc. by any person or



completion of any proceeding or passing of any order or issuance of any notice, intimation, etc. by any authority which was due between 15.04.2021 to 29.06.2021 till 30.06.2021. However, the same does not apply to provisions related to availment of ITC, filing of returns, generation of E-way bills, issuance of tax invoices, debit notes and credit notes or filing of refund claims.

- The existing system of GSTR 1 and GSTR 3B to be made permanent return filing system by suitable amendments in the GST law.
- Retrospective applicability of amendment in section 50 of the CGST Act, for payment of interest only on net cash outflow.
- Services of providing food including mid- day meals supplied to an educational institution including shall be exempt from levy of GST irrespective of funding of such supplies from government grants or corporate donations.
- Input Services used for conducting examination including entrance examination by National Board of Examination shall be exempt from GST.
- Clarity in notifications to be brought about to clarify that land owner promoters could utilize credit of GST charged to them by developer promoters in respect of such apartments that are subsequently sold by the land promoter and on which GST is paid.
- Services supplied by Government to its undertaking / PSUs by guaranteeing loans would be exempt from GST.

- Maintenance, repairs an operations (MRO) services for vessels would attract 5% and Place of Supply of such MRO services would also be based on location of recipient of service.
- Specified COVID-19 related goods such as medical oxygen, oxygen concentrators and other oxygen storage and transportation equipment, certain diagnostic markers test kits, COVID-19 vaccines, and so on may be exempted from IGST on import for donating to the government or on recommendation of state authority to any relief agency upto 31.08.2021. Further, such exemption has been extended to Amphotericin B used for treating Black Fungus cases.

SBGco Views:

The relaxations provided in the previous month have been now extended for compliances falling during the month of June 2021 as well. Hopefully, the compliance processes are streamlined at the earliest and the exemptions / clarifications / relaxation benefits are availed by maximum registered persons.

II. Amendment to CGST Rule, 2017 (Vide Notification No. 15 /2021 dated 18.05.2021)

- 1. Power to Additional Commissioner or the Joint Commissioner or the Commissioner to accept application for revocation of cancellation of GST registration beyond the period of 30 days**

The Additional Commissioner or the Joint Commissioner or the Commissioner, as the case may be, now have the power to extend the period for which application for revocation of cancellation of



GST registration may be accepted beyond the period of 30 days prescribed under Rule 23 of the CGST Rules, 2017. SOP for process to be followed till the time system changes are undertaken has also been issued vide circular No. 148/04/2021 – GST dated 18.05.2021.

SBGco Views:

Such discretion may be helpful to cases where the taxpayer could not genuinely make application for revocation of GST registration within the time limit of 30 days.

2. Relaxation for counting the limitation period while filing refund application within 2 years from ‘relevant date’

The said insertion of a proviso after Rule 90(3) states that the time period from the date of filing of the refund claim in FORM GST RFD-01 till the date of communication of the deficiencies in FORM GST RFD-03 shall be excluded while calculating two years when the appellant files the fresh application after rectifying the said deficiencies.

SBGco Views:

The Government is also aware about the road-blocks intentionally created by some officers by misuse of deficiency memos and to rectify the said hardship caused to genuine refund applicants, the said amendment has been brought in.

To further explain, let’s say the due date to file Refund Application for a particular transaction / tax period is 30.06.2021. The taxpayer files a refund claim on 10.06.2021, well in advance. However, the proper officer issues a deficiency memo requiring additional

clarification / documentation on 26.06.2021. Now, prior to amendment, the due date for filing the refund application would have been 30.06.2021, but after the said amendment, the revised due date to file a fresh refund application for the same tax period / transaction after rectifying the deficiencies highlighted in the previous memo would be 16.07.2021 (16 days between filing of refund claim and issuance of deficiency memo would be excluded from the limitation period of two years)

3. Option to withdraw refund application introduced.

A new sub-rule has been inserted after Rule 90(4), whereby, the taxpayer has been provided with an option to withdraw the refund application at any time before issuance of provisional refund sanction or final refund sanction order or refund payment order or refund withhold order or show cause notice by exercising the said option on filing of Form GST RFD-01W (which is also notified in the same notification).

The Amendment also provides that on submission of such withdrawal application, any amount previously debited by the applicant from E Cr. ledger or E. Cash ledger shall be credited back to the same.

SBGco Views:

The amendment shall now permit the taxpayer to withdraw refund application for any reasons such as better alternative available or incorrect claim and so on. More flexibility is being offered to help the taxpayers.



4. **Deletion of proviso permitting adjustment of refund due against any outstanding in GST or other existing laws**
The proviso to Rule 92(1) that permitted the officer to completely adjust the refund amount against any outstanding demand under the GST Law or under any existing law has been now deleted.

SBGco Views:

This is a welcome relief whereby GST refund shall not be adjusted against demand / outstanding dues in other laws, simplifying the refund process under without intermingling with other laws.



Recent Decisions from the Judiciary

Citation	Facts of the case	Gist of the Judgment	SBGco Views
Swati Menthol and Allied Chemicals Ltd and Anr vs. Commissioner, GST and Central Excise 2021-TIOL-1171-HC-P&H-CX	<p>The petitioner is engaged in the manufacture of Menthol Crystal / Powder / Solution and Amr De-mentholised Oil. Based on certain investigated in the year FY 2009-10, the petitioner was issued show cause notice dated 02.03.2010. Detailed reply to the said show cause notice was also submitted by the petitioner.</p> <p>Aggrieved by the non-adjudication of the show cause notices issued to the petitioners for more than 10 years, the petitioners approached the Court for issuance of a writ in the nature of certiorari seeking quashing of the said show cause notice on the grounds of 11 years' delay in adjudication.</p>	<p>The Hon'ble High Court observed that Section 11A (11) of the Central Excise Act provides that the officer shall '<i>wherever possible to do so</i>' determine the amount of duty payable within 6 months (non-fraud, non-collusion, etc) or 1 year (in case of fraud, suppression, collusion, etc). Further, the term '<i>wherever possible to do so</i>' could not be stretched for a period of 10 years.</p> <p>The Hon'ble High Court relied on the decision of GPI Textiles Limited (2018-TIOL-1686-HC-P&H-CX) squashed the impugned show cause notice for non-adjudication for more than a decade as the same is not sustainable in the eyes of the law.</p>	<p>This reminds of the Latin Legal Maxim "<i>Vigilantibus non dormientibus jura subveniunt</i>" which literally translates to "<i>the law assists those that are vigilant with their rights, and not those that sleep thereupon.</i>"</p> <p>Merely because there are no strict timelines for issuing a show cause notice, does not mean, the officers take their own sweet time for adjudication. The judgement is again a welcome reminder for the Department to ensure, that timelines provided in the law must be followed and nothing should be taken for granted.</p>



Citation	Facts of the case	Gist of the Judgment	SBGco Views
<p>Ramakrishnan Mahalingam vs. State Tax Office</p> <p>2021-TIOL-1040-HC-MAD-GST</p>	<p>The Petitioner's registration was cancelled on 16.09.2019 on account of non-filing of returns for a continuous period of six months. Subsequently, two applications for revocation of GST registration were filed by the petitioner. The first revocation application was rejected vide an order for non-compliance by petitioner. Second application was rejected by the officer referring to outstanding interest on belated payment of tax dues and for allegedly wrongful claim of ITC.</p> <p>The Petitioner challenged the registration cancellation order and the rejection of revocation application vide the present writ filed before the Hon'ble High Court.</p>	<p>The Hon'ble High Court observed that rejection of the revocation application because the petitioner had incorrectly availed of ITC was incorrect because assessment of ITC is not a pre-requisite for revocation of registration. Revocation of registration must be granted if the petitioner has filed the returns, paid the dues, remitted late fee. If additional conditions such as incorrect availment of ITC is considered for rejection of revocation application, then it would be equivalent to "putting the cart before the horse".</p> <p>The Hon'ble High Court ordered for reviving the registration of petitioner and also noted that the officer is at a liberty to take the matters pertaining to incorrect availment of ITC vide separate assessment process laid down in Section 73 of the GST Act.</p>	<p>This is a very welcome decision from the Hon'ble High Court. Off late, it was being observed that the taxpayers were not able to claim the benefits of beneficial provisions in view of the tax authorities imposing such conditions though not provided for in the legislation. This judgement provides that once the conditions for revocation are satisfied, the officers should not find new ways to deny the revocation of registration not perceived by the law.</p>



Citation	Facts of the case	Gist of the Judgment	SBGco Views
Schlumberger Asia Services Ltd Vs Commissioner of CE & ST, Gurgaon-I 2021-VIL-218-CESTAT-CHD-ST	<p>The Appellant had transitioned unutilized balance of Education Cess, Secondary & Higher Education Cess and Krishi Kalyan Cess (hereinafter referred as 'cesses') to GST, when GST was introduced. Subsequently, vide a retrospective amendment dated 30.08.2018 in Section 140 of the CGST Act, 2017 the appellant could not carry forward the credit of 'cesses' lying in their cenvat credit account to GST. Hence, the appellant reversed the same in their GST returns and filed a refund claim of the amount lying unutilized as on 01.07.2017 in their cenvat credit account of such 'cesses'.</p> <p>The said refund application was rejected by the Commissioner and hence, the present appeal was filed before the Hon'ble Tribunal.</p>	<p>The Hon'ble Tribunal noted that only vide a retrospective amendment on 30.08.2018, the carry forward of 'cesses' was denied to the Appellant. Hence, the 'relevant date' for filing the refund claim of the amount lying unutilized in the cenvat credit account of such 'cesses' should be considered from 30.08.2018 and not from 30.06.2017. Since, the application was filed by the appellant within one year of 30.08.2018, the said refund application was held to be valid and not barred by limitation. Further, the Hon'ble Tribunal relied on the decision of Bharat Heavy Electricals Ltd vs. Commr. of CGST & Customs, (2020-VIL-402-CESTAT-DEL-CE), wherein, it was held that the assessee is eligible for the cash refund of the cesses lying as cenvat credit balance as on 30.06.2017 in their accounts. On the basis of the timely filing of refund claim and following the precedent set in the earlier case, the Hon'ble Tribunal, allowed the refund claim of the 'cesses'.</p>	<p>The Judgement should be a welcome decision for assessee stuck in legal battle to claim refund of cesses lying unutilized in their Cenvat credit balances. The Judgement also guides about limitation period in cases where retrospective amendments has taken place in the law and holds that the period of limitation would not be counted from the effective date of such retrospective amendments, but from the date it became effective retrospectively. The simple reason behind the same is the assessee is not expected to foresee a retrospective amendment curtailing their rights and cannot be expected to do something which was not possible in the intervening period before retrospective amendment.</p>



Citation	Facts of the case	Gist of the Judgment	SBGco Views
<p>Qualcomm India Pvt Ltd vs. Union of India</p> <p>2021-TIOL-1170-HC-MUM-ST</p>	<p>The Petitioner has filed 19 (nineteen) refund applications for various periods starting from June 2008, right upto December 2014. The petitioner received the refund amounts as sanctioned however, the refund amounts were sanctioned beyond three months from the date of filing of refund applications. The petitioner filed a handful for reminder letters for sanction of interest with the appropriate authority. But the said letters were either not responded to or request was not processed for 'no documents were presented evidencing delayed sanction of refund'.</p> <p>The respondents in the present case filed an affidavit along with their reply and asserted that 'there was no intentional delay in granting the refund to the petitioner' and therefore payment of interest would not arise and such a writ petition should be dismissed.</p>	<p>The Hon'ble High Court observed that based on the details and facts submitted by the petitioner, refunds were granted after a delay of more than 3 months.</p> <p>Allowing the Petition, the Hon'ble High Court after analysing section 11BB of the Central Excise Act, 1944 and following the decision in the case of Ranbaxy Laboratories Ltd (2011-TIOL-105-SC-CX), held that Section 11BB does not speak about or exempts any delay which is not intentional i.e., the said section does not distinguish delay which is intentional and delay which is unintentional. Hence, once there is a delay in payment of refund application of more than three months, payment of interest on such delayed refund becomes obligatory (a mandate of the statute).</p>	<p>Such litigations are more in the nature of wastage of resources because, one of the basic principles of law of '<i>stare decisis</i>' are blatantly disregarded. '<i>Stare decisis</i>' is the legal principle which means 'to stand by things decided' meaning not to re-invent the wheel every time the same issue comes up. Once the law is clear and there are Supreme Court judgements that clearly state that interest flows automatically for delay beyond prescribed time, the department cannot avoid their obligation by resorting to such unhealthy tactics. This judgement by the Hon'ble High Court would certainly put the controversy to rest for good.</p>



Recent Advance Rulings

Citation	Facts of the Case	Conclusion of the Authority/ Appellate Authority	SBGco Views
<p>Page Industries Limited</p> <p>KAR/AAAR/05/2021 = 2021 - TIOL - 17 - AAAR - GST</p>	<p>Ruling sought on: Whether ITC can be availed for promotional products / Materials and Marketing Items used in brand promotion/ product marketing?</p> <p>The Applicants send items such as display boards, posters, etc. to their franchisees and distributors used for promoting the brand / products as well as items such as carry bags, pens, calendars, etc. for giving to the customers.</p> <p>Conclusion of the AAR: ITC cannot be availed.</p>	<p>The Appellate Authority upheld the decision of AAR and held that the ITC was not available on the said items.</p> <p>The AAAR held that the activity of sending materials to the distributor / franchisee were neither covered within the scope of a taxable supply nor covered under the ambit of Schedule I of the CGST Act and therefore, the same was classifiable as 'non-taxable supply' under GST.</p> <p>The AAAR further held that carry bags, pens, calendars, etc. distributed by Applicants at their own sole discretion were covered within the scope of 'gift' and hence credit could not be claimed on the same in view of specific restriction provided for u/s 17 (5).</p>	<p>The issue of whether input tax credit on goods used/ consumed in the course of marketing / promotion of goods is available or not is a litigative topic under GST. The AAR has already in the case of Sanofi India Ltd (2019-TIOL-182-AAR-GST) held that goods distributed with the sole intent of promoting the growth of ones' own product would not be hit by blocked credit under Section 17(5)(h) of the CGST Act. This decision will certainly reignite the controversy surrounding this touchy issue.</p>
<p>Sri Puttahalagaiah GH</p> <p>KAR ADRG 19/2021 = 2021-TIOL-132-AAR-GST</p>	<p>Ruling sought on: Whether services of renting of immovable property services provided to Backward Classes Welfare Department, Government of Karnataka which used the said premises to provide hostel facility to backward classes students was exempted from GST?</p>	<p>The AAR held that the services provided were exempted vide entry 3 of notification 12/2017 - CT (rate) since the services provided by the Applicant were covered under article 243G of Constitution.</p>	<p>This is a welcome decision from the AAR and will be very helpful in determining the scope of entry 3 of notification 12/2017 - CT (Rate).</p>



Compliance Chart for the month of June 2021

S N	Due Date	Form	Period	Periodicity	Special Remarks
1.	04.06.2021	GSTR - 3B	April 2021	Monthly	To be filed by Taxpayer having T/o < 5 Cr in Previous FY without interest and late fees
2.	09.06.2021	PMT-06	April 2021	QRMP Scheme	To be filed by those under QRMP Scheme without interest and late fees
3.	10.06.2021	GSTR - 7	May 2021	Monthly	To be filed by those who are required to deduct TDS under GST
4.	10.06.2021	GSTR - 8	May 2021	Monthly	To be filed by those who are required to collect TCS under GST
5.	13.06.2021	GSTR - 6	May 2021	Monthly	To be filed by an Input Service Distributor
6.	20.06.2021	GSTR - 3B	May 2021	Monthly	To be filed by Taxpayer having T/o > 5 Cr in Previous FY without interest and late fees
7.	20.06.2021	GSTR - 5A	May 2021	Monthly	To be filed by non-resident Online Information and Database Access or Retrieval (OIDAR) services provider
8.	20.06.2021	GSTR - 5	May 2021	Monthly	To be filed by a non-resident foreign taxpayer registered in GST
9.	26.06.2021	GSTR - 1	May 2021	Monthly	Taxpayers filing GSTR - 1 monthly
10.	28.06.2021	IFF - B2B	May 2021	Monthly	To be filed by those under QRMP Scheme

Please note: For taxpayers, with Monthly GSTR 3B but having T/o < 5 Cr in preceding FY, the due date to file GSTR - 3B for May 2021 would be 5th July 2021, without interest and late fees. Similarly, for taxpayers opted for QRMP scheme, the due date to make payment of tax for month of May 2021 would be 10th July 2021, without interest.



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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