



SBGCo Connect December 2022

S B Gabhawalla & Co
Chartered Accountants



Greetings to all our readers!

As the world swings into the year-end festivities along with the on-going Qatar FIFA Football World Cup 2022, it is also the time file GST Annual return (Form GSTR 9) and Self-Certified Reconciliation Statements (Form GSTR 9C) for FY 2021-22 as the due date is 31st December. With so many new processes introduced recently, especially in Form GSTR 3B, it is advisable for all to ensure that Form GSTR 9 and 9C are completed well in time to avoid eleventh hour rush.

The two-month window for filing of Transitional Claim applications (in light of the order of the Hon'ble Supreme Court in the case of UoI vs. Filco Trade Centre Pvt Ltd - 2022-TIOL-75-SC-GST) has ended on 30.11.2022. The timeline for officers to verify the claims is a short one, upto 28.02.2023. Assessee would need to be proactive in this regard and in some cases follow up regularly with the Department as well so as to ensure, their claims are duly processed and they also get sufficient opportunity to present their case in case the officers decide to reject the application, wholly or partly.

The 47th GST Council meeting is planned on 17th December 2022 with one of the main agenda being constitution of the GST Tribunal. Non establishment of GST Tribunal has led to more assessee's opting to knock the doors of the HC and simultaneously leading to accumulation of cases pending to be filed. Recently, the Supreme Court of India also remarked on this issue and asked GST council to necessary action at the earliest.

In another set of technological updates, the National Informatics Centre handling both, generation of E-way Bills and E-invoices, have now developed a common sign-on for e-invoice and e-way bill. In another words, a supplier, who was not registered for e-way bill till now but generating e-invoice, can now login into e-way bill portal using the same credentials as that of e-invoice for the same GSTIN (& vice versa).

Through this month's 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. [GST Compliance Chart for the month of December 2022](#)

All the 19 sessions of the GST Back-to-Basics series 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. Changes in Form GSTR 9 for FY 2021-22 notified.

Due to change in the last date from due date of September return to 30th November for a number of activities, namely, amendment of transactions pertaining to previous FY, issuing CNs for supplies of previous FY, rectifications of errors for transactions pertaining to previous FYs, claiming ITC pertaining to previous FY, certain changes were required in the table headings of Annual Return (Form GSTR 9). Such changes have now been made by substituting “*between April, 2022 to September, 2022*” with “*of April, 2022 to October, 2022 filed upto 30th November, 2022*”

Notification No. 22/2022 - Central Tax - dated 15.11.2022

2. Substitution of Anti-profiteering Authority with Competition Commission of India.

As the term of Nation Anti-profiteering Authority comes to an end, the Government has decided not to extend the tenure of the authority and instead, appointed Competition Commission of India to henceforth look into issues regarding whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied, w.e.f. 01.12.22.

Accordingly, the relevant rules have been modified and certain Rules which were in relation to constitution of such authority, appointment-salary-allowances for the authority, tenure of the authority and so on for the previous Anti-profiteering Authority have been omitted namely, Rules 122, 124, 125, 134 and 137 of the CGST Rules, 2017

Notification No. 23/2022 - Central Tax & 24/2022 - Central Tax, both dated 23.11. 2022



II. Instructions and Circulars

3. Manner of processing of refunds of IGST in the cases where ICEGATE had withheld refund for risky exporters and transmitted the same to jurisdictional officers to sanction the same after due verification.

The CBIC board has now issued instructions on processing of refunds of IGST by jurisdictional officers when the same is transmitted to them by ICEGATE based on certain risk parameters for certain identified exporters.

- The instruction highlights that such refund application transmitted by ICEGATE would be available on back-office system to the officer under the head “Any Other (GST paid on exports)” along with system generated Form GST RFD-01 along with it.
- The jurisdictional officer cannot issue a deficiency memo against such refund applications.
- The proper officer shall then proceed to ascertain the genuineness of the export and verify all the other details including correctness of availment / utilization of ITC as done for refund filed under Rule 89 and exercise the same diligence to safeguard the interest of the revenue.

Instruction No. 04/2022 - dated 28.11.2022

4. Clarification on refund related issues

To clarify on certain representation received by the CBIC board regarding recent changes in refund of inverted duty structure (IDS), the following clarifications have been issued, tabulated hereunder:

Issue	Clarification
Whether the amended formula (vide NN 14/2022 - CT dated 05.07.2022) for calculation of unutilised ITC on account of IDS will apply to refund application filed on or after 05.07.2022 or all applications pending with proper officer as on 05.07.2022?	The said amendment in the formula is NOT clarificatory in nature. Hence, it will be applicable prospectively only i.e., for all refund application filed on or after 05.07.2022 in relation to unutilised ITC on account of IDS.
Whether the restriction placed on refund of unutilized ITC on account of IDS in case of certain goods falling under Chapter 15 and 27 (vide NN 09/2022 - CT (R) dated 13.07.2022) would apply to refund application filed on or after 18.07.2022 or all applications pending with proper officer as on 18.07.2022? <i>(Effective date of implementation was for NN 09/2022 - CT (R) was 18.07.2022)</i>	The restriction imposed vide NN 09/2022 - CT (R) dated 13.07.2022 on refund of unutilised ITC on account of IDS in case of specified goods falling under chapter 15 and 27 would apply prospectively only i.e., in respect of all refund applications filed on or after 18.07.2022 only.



Circular No. 181/13/2022-GST - dated 10.11.2022

SBGCO Comments:

The circular helps clarify doubts regarding recent changes in refunds on account for inverted duty structure and ensures that uniformity is maintained across the country, by assessee and tax officers, in this regard.

5. Guidelines for verifying the Transitional Credit

The process for filing revised / fresh TRAN-1 and / or TRAN - 2 for all assessee was earlier explained in the circular 180/12/2022 dated 09.09.2022.

Now, the present circular has been issued for the benefit of jurisdictional officers on how to verify the claim of Transitional Credit along with a detailed explanation indicating what type of transitional credit will be claimed by the assessee in each of the tables in the respective forms.

Circular No. 182/14/2022-GST - dated 10.11.2022

SBGCO Comments:

These instructions provide tentative timelines for the officer for each action / activity to be done by them after the receipt of application. It also lay down standard operating procedures (SOP) to be followed by so as to ensure that this one-time window is smoothly exercised and there are no further litigations in this regard. The CBIC has issued circulars and instructions in a timely manner so as to ensure that the entire process is transparent and both sides, assessee and tax officers, can take appropriate measures to ensure no more hiccups on transitional claim.



B. Recent Decision from the Judiciary:

1. RSB Transmission India Limited vs. Union of India [2022-VIL-745-JHR]

Issue Raised:

Whether the amount deposited as tax through valid challans by a registered person in the Government Exchequer prior to the filing of the GSTR-3B Returns could be treated as discharge of the tax liability where GSTR-3B return is filed late or whether interest could be levied on delayed filing of GSTR-3B in such circumstances under Section 50 of the CGST Act?

Gist of the Decision:

The HC held that, under the scheme of GST Law, discharge of tax liability in GSTR 3B is simultaneous with the filing of GSTR 3B return. The HC also held that amount in E.C.L. cannot be regarded as amount towards tax liability before it filing of GSTR 3B because a registered assessee can claim its refund any time by following due process under the law. The HC further held that any deposit in the E.C.L. prior to the due date of filing of GSTR 3B return does not amount to discharge of tax liability on the part of the assessee, because such cash is just in the nature of deposit in the E.C.L. Hence, interest liability, on account of delayed payment of tax by virtue of delayed filing of GST return, is leviable under Section 50 of the CGST Act even when amounts are available in E.C.L. as on the due date of filing of GSTR 3B.

SBGCO Comments:

There were some doubts regarding leviability of interest when amounts were deposited in E.C.L. but there was delay in filing of return / offsetting the said liability. Given the scheme of GST return filing process, the above decision of the High Court clearly lays down that discharge of tax liability coincides with filing of return. Unlike the service tax regime, merely a payment challan does not represent payment of tax in GST. The amount deposited in E.C.L. must be debited towards tax liability in Form GSTR 3B for the same to be treated as payment of tax.

2. M/s. Simon India Ltd vs. CT & GST Officer, Cuttack [2022-VIL-747-ORI]

Issue Raised:

On completion of the Department Audit, can the final audit report be issued by the Audit Team without considering taxpayer's reply?

Gist of the Decision:

The Hon'ble HC held that Explanation to Section 65 (4) of the CGST Act, 2017 provides for a thirty (30) day window for the assessee to file a reply to a draft audit report issued by the Audit Team on completion of the Department audit. Hence, any final audit report issued before expiry of this time limit of 30 days or receipt of reply (whichever being earlier) would be in contravention of the procedures laid out in the CGST Act, 2017. In the present case, since draft audit report and final audit report was issued on the same day, the HC set aside the final audit report.



SBGCO Comments:

The Department officers need to be trained regarding the procedures laid down by the GST law so as to ensure that resources of time, money and efforts, of both parties (taxpayer and Department) are appropriately utilized for the right cause. The procedure laid down, namely, completion of audit within 3 months, issuing draft audit report, giving time to taxpayer to file reply and finally issuing final audit report must be diligently followed.

3. Ponni sugars Erode Ltd vs. Commissioner of GST and C. Ex. [2022-TIOL-1080-CESTAT-MAD]

Issue Raised:

Can the prescribed time-limits of refund applications apply in cases where reversal of credit was done out of abundant precaution and such action was intimated to department every month via letters with a note stating that they reserved their rights to go in appeal to re-claim the credit?

Gist of the Decision:

The Hon'ble CESTAT Bench held that letters issued by the taxpayer every month intimating the reversal as well as reserving their right for litigation would tantamount to reversal of credit under protest. Once the dispute regarding reversal of credit was settled and held that such reversal was not required, it would indicate that such reversal was not required from the start. Thus, the taxpayer's refund application for credit reversed under protest would not be hit by time-barring.

SBGCO Comments:

The above judgement lays down the importance of well-documented communications with department. Whenever any stand is taken, specifically when tax is being paid / credit is being reversed out of caution which may lead to litigation in the future, it is necessary that such information is given to the department highlighting that such payment is made under protest.

4. Genpact India Pvt Ltd vs. UoI [2022-TIOL-1413-HC-P&H-GST]

Issue Raised:

When the definition of "intermediary services" has not changed from service tax regime to GST regime, can be department change their stand in the GST regime, even when there is no change in the business model of the same assessee?

Gist of the Decision:

The Hon'ble HC held that definition of "intermediary" under the service tax regime vis-a-vis the GST regime has remained similar. Further, the Circular 159/2021 dated 20.09.2021 issued by the CBIC clarifies that concept of "intermediary" was borrowed in GST from the Service Tax Regime. When the Department had accepted that the services of sub-contracting would not be covered by "Intermediary" services in service tax regime, the same position must be followed in GST regime as well, since the contract under which the services of sub-contracting are being provided has remained the same.



SBGCO Comments:

The legal maxim, “*res judicata*” has been applied by the HC in the present case. *Res Judicata* means that once a matter that has been finally juridically decided on its merits, the same cannot be litigated again between the same parties. In other words, in pre-GST regime, the Order of adjudicating officer held that sub-contracting services are not “intermediary” services and thus, in GST-regime, the stand by the Department cannot change when there is no material change in definition of “intermediary” and no change in business model of the same party.

5. Mahalaxmi Infra Contract Ltd vs. GST Council [2022-TIOL-1393-HC-JHARKHAND-GST]

Issue Raised:

In the case where there is no loss to the revenue, can amendments be allowed on the GSTN portal to update the correct GSTIN of the customer in the B2B section, even after 3 years?

Gist of the Decision:

The Hon’ble HC held that in the interest of justice, GSTR-1 of January 2019 should be allowed to be amended so that correct GSTIN of the customer could be updated. The said action was suggested to be carried out either in online mode or offline mode since the instant case does not represent any additional tax impact, or loss of revenue for the State Exchequer.

SBGCO Comments:

The HC has pronounced a judgement that has once again opened up a pandora’s box, at least for the tax period upto December 2021. Should amendments such as updating / correcting GSTIN be permitted when there is no tax impact, irrespective of the time frame? After December 2021, ITC is available only after matching of ITC and hence reconciliation of inward supply and tax invoices received would happen faster. For the period upto December 2021, the said judgement could act as a trigger for other taxpayers to move the court for such issues, especially where the quantum involved is huge.



C. Recent Decisions from Advance Authority

1. Multi-verse Technologies Private Limited [KAR ADRG 36/2022 (Karnataka) = 2022-VIL-289-AAR]

Background Facts:

The Applicant is engaged in the business of providing computer software application services (through the app known as MY[™]) which run on devices such as mobile phones, tablets, computers in the state of Karnataka and the said services are meant for facilitating business transactions of supply of goods or services or both connecting through their platform of suppliers / sellers and recipients / buyers.

Question raised:

- i. Whether the Applicant satisfies the definition of an e-commerce operator and the nature of supply as conceptualized in Section 9(5) of CGST Act 2017 r/w notification No. 17/2017 dated 28.06.2017?
- ii. Whether the supply by the service provider (person who has subscribed to Applicant's app) to his customers (who also have subscribed to Applicant's app) on the Applicant's computer application amounts to supply by the Applicant?
- iii. Whether the Applicant is liable to collect and pay GST on the supply of goods or services supplied by the service provider (person who has subscribed to Applicant's app) to his customers (who also have subscribed to Applicant's app) on the Applicant's computer application?

Gist of the Ruling:

Key findings regarding running of the computer software application:

- The App only connects the driver and passenger and the role of applicant ends on such connection.
- The Applicant does not collect consideration for the goods / service supplied by the supplier
- The Applicant does not have control over actual provision of supply by suppliers
- No details maintained regarding actual provision of supply between supplier and recipient connected by the App
- No call room / call centre to settle disputes if any.

Section 9(5) of the CGST Act, 2017 requires E-commerce operators to discharge tax liability on supplies rendered through them. In the present case, the app only connects the potential supplier and buyer but **does not provide services through** them because of the findings above.

- i. Applicant satisfies the definition of an e-commerce operator but does not satisfy the conditions of Section 9(5) of CGST Act 2017 to discharge of tax liability by electronic commerce operator.
- ii. The supply by the service provider (person who has subscribed to Applicant's app) to his customers (who also have subscribed to Applicant's app) on the Applicant's computer application does NOT amounts to supply by the Applicant.
- iii. The Applicant is not liable to collect and pay GST on the supply of goods or services supplied by the service provider (person who has subscribed to Applicant's app) to his



customers (who also have subscribed to Applicant's app) on the Applicant's computer application.

SBGCO comments:

The AAR has very meticulously analysed the activity of the Applicant and their App to understand all the critical factors correctly. As a result, the AAR has appropriately distinguished the current operations of the applicant with that of other e-commerce operators to pronounce the above rulings.

2. Attica Gold Private Limited [KAR ADRG 40/2022 (Karnataka) = 2022-VIL-288-AAR]

Background on "Marginal Scheme"

Rule 32(5) of the CGST Rules, 2017 provides the mechanism for the scope of supply and value of GST where the taxable person is a second-hand goods dealer. The value of supply would be derived as the difference between the purchase price of the goods and the selling price of the goods, and where the value of supply is negative, it shall be ignored.

Question raised:

- a. Whether Applicant who is under Marginal Scheme can claim Input Tax Credit on the expenses like Rent, Advertisement expenses, commission, Professional expenses and other like expenses?
- b. Whether ITC is allowed to be claimed on Capital Goods for the Applicant under Marginal Scheme?

Gist of the Ruling:

The AAR analysed Rule 32(5) of the CGST Rules, 2017 and held that Rule 32(5) only bars availment of input tax credit on the purchase of those second-hand goods which the taxpayer is supplying. However, there is no restriction on the availment of input tax credit in respect of input services or capital goods. Hence, claim of ITC on other expenses & Capital goods would be subject to section 16 to 21 of the CGST Act, 2017 and Rule 36-45 of the CGST Rules, 2017

SBGCO comments:

The AAR has very rightly analysed the provisions of the GST law relating to margin scheme for dealers of second-hand goods as the restriction for claim of ITC is only on the ITC of purchase of such second-hand goods only and not for other expenses.



D. GST Compliance chart for December 2022

S N	Due Date	Form	Period	Periodicity	Special Remarks
1.	10.12.2022	GSTR - 7	Nov 2022	Monthly	To be filed by those who are required to deduct TDS under GST
2.	10.12.2022	GSTR - 8	Nov 2022	Monthly	To be filed by those who are required to collect TCS under GST
3.	11.12.2022	GSTR - 1	Nov 2022	Monthly	Taxpayers filing GSTR - 1 monthly
4.	13.12.2022	GSTR - 6	Nov 2022	Monthly	To be filed by an ISD
5.	13.12.2022	IFF	Nov 2022	Monthly	To be filed by those under QRMP Scheme (Optional)
6.	13.12.2022	GSTR - 5	Nov 2022	Monthly	To be filed by a non-resident foreign taxpayer registered in GST
7.	20.12.2022	GSTR - 3B	Nov 2022	Monthly	To be filed by Taxpayer filing monthly GSTR 3B
8.	20.12.2022	GSTR - 5A	Nov 2022	Monthly	To be filed by non-resident Online Information and Database Access or Retrieval (OIDAR) services provider
9.	25.12.2022	PMT - 06	Nov 2022	Monthly	Challan to be filed for payment by those under QRMP Scheme
10.	31.12.2022	GSTR - 9	FY 2021-22	Annual	To be filed by those having Aggregate T/o of > 2Cr in FY 2021-22
11.	31.12.2022	GSTR - 9C	FY 2021-22	Annual	To be filed by those having Aggregate T/o of > 5Cr in 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:

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.co.in

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