

# **SBGCo Connect - July 2022**

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Greetings to all our readers!

01<sup>st</sup> July 2022 marks the completion of 5 years of GST in India. The journey has been a roller-coaster ride with numerous changes along the way which keeps us reminding that it is still a WIP GST law. Tax base of assessee have increased significantly, gross collections scaling new height, technological upgradation in terms of E-way Bills and E-invoices are some of the key highlights of the first 5 years. The next targets would most likely include decision regarding inclusion of petroleum products under GST net and establishment of Appellate Tribunals, which are looming on everyone's mind as well.

As we enter the month of July, we enter the compliance phase for the previous financial year. Finalization of Books of Accounts, Company Law Audits, Tax Audits, Reconciliation related work in GST (outward and inward) and so on would trail each other for timely completion. Hence, it becomes critical to plan all the activities well in advance so as to ensure there are no last-minute surprises / hiccups.

The 47<sup>th</sup> GST Council Meeting concluded on 29<sup>th</sup> June 2022 and a slew of changes were recommended by the GST Council. The analysis of the said decisions of the GST Council Meeting have been covered via our "SBGco NewsFlash" circulated on 30<sup>th</sup> June 2022.

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

- A. [What's New?](#)
- B. [Recent decisions from the Judiciary](#)
- C. [Recent Advance Rulings and analysis of the same](#)
- D. [GST Compliance Chart for the month of July 2022](#)

### **GST - Back to Basics**

Continuing with our lecture series, we have 5 sessions scheduled in the month of July 2022. The schedule for this month is as under:

| <b>Date</b> | <b>Topic</b>   | <b>Speaker</b>  |
|-------------|--|-----------------|
| 01/07/2022  | Place of Supply - International Transactions             | Yash Parmar     |
| 05/07/2022  | Input Tax Credit - Section 17 (1) to (4) a.w. Rule 42/43 | Darshan Ranavat |
| 12/07/2022  | Input Tax Credit - Section 17 (5) Ineligible ITC         | Yash Parmar     |
| 19/07/2022  | Reverse Charge Mechanism                                 | Aman Haria      |
| 26/07/2022  | Refunds  | Darshan Ranavat |

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

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

Team SBGCo



## **A. What's New?**

### **I. Notifications issued during the month**

#### **1. Waiver of Interest for E-commerce Operators**

The CBIC has provided a list of GSTINs (E-Commerce Operators) who could not file their monthly return in Form GSTR - 8 due to technical glitch on the portal for September 2020 to January 2021 but had deposited the tax collected under provisions of Section 52 (GST-TCS). The present notification is issued to provide waiver of interest for such GSTINs, for the period beginning from deposit of tax in E.C.L. to date of filing of Form GSTR -4 for the specified months.

*Notification No. 08/2022 - Central Tax dated 07.06.2022*

#### **2. Collection and Levy of Compensation Cess extended by 4 more years.**

Compensation Cess is levied on notified luxury goods and demerit goods in the 28% basket. The Compensation cess introduced for a period of 5 years from introduction of GST and about to conclude on 30.06.2022. Vide the present notification, the Government has extended the period for levy and collection of Compensation Cess upto 31<sup>st</sup> March 2026.

*Notification No. 01/2022 - Compensation Cess dated 24.06.2022*

### **II. Circulars / Guidelines / Instructions issued during the month**

#### **3. Procedures for sanction, post-audit, review of refund claims.**

The Department has issued an instruction letter to be followed by the Department for sanction, post-audit, review of refund claims. The said instruction does not lean into the procedure aspect of the processing of refund as the same has already been discussed in previous circulars. The present instruction, deals with the following guidelines:

- I. Matters to be included while issuance of a *speaking order* for different kinds of refund claims
- II. Post audit and review of claims by Department

#### I. Matters to be included while issuance of a *speaking order*

There were number of representations received highlighting different practices being followed for passing of order relating to refunds. Hence, to ensure uniformity of process and effective monitoring of sanction of refund claims, the CBIC issued this present instruction letter which clarify the details that are required to be included in the sanction order issued:

##### i. Details to be included in sanction orders of all refund claim:

- period for which refund claim has been filed, date of filing & category of claim
- whether refund for the same period is not filed under "Any other" category
- Details of Deficiency memo issued previously for same period, if any.
- Review of timely filing of refund claim within prescribed time limit
- Details of the documents/ statements uploaded along with the refund claim



- Whether all other returns filed by claimant, is there any pending recovery / any amount to be withheld?
  - Details of SCN issued, if any
  - Compliance with provisions of unjust enrichment
- ii. Additional details in case of refund of accumulated ITC / refund of IGST paid on zero-rated supplies:
- Details of Debit in E. Cr. L (accumulated ITC refund)
  - Details of payment of IGST in GSTR 3B (with payment of tax)
  - Calculation / Computation as per formular prescribed and verification of all parameters
  - Review of calculation of Net ITC
  - Review with ITC appearing in GSTR 2A
  - Is the refund barred under any provisions of the law?
  - In the case of refund of inverted duty structure, whether the supply qualifies for refund
  - Details of shipping bill / bill of export and verification with ICEGATE
  - Whether the supply is meant for authorized operations (DTA to SEZ supply cases)
  - Verification of Endorsement by the specified/authorized officer of the SEZ
  - Receipt of payment for services, including copies of BIRC / FIRC / other relevant documents based on refund type
- iii. Additional details in case of refund of tax paid on deemed exports:
- Compliance with procedure laid down in the law for deemed exports
  - Details of Debit in E. Cr. L of the ITC claimed as refund
  - Verification that no ITC has been claimed by recipient when refund is claimed by supplier
- iv. Additional details in case of refund of excess cash balance:
- Details of Debit in E. C. L of the amount claimed as refund
  - Calculation of amount in terms with provisions of section 49(6) of CGST Act.
- v. Additional details in case of refund filed under “Other Category”
- Verification of refund claim for their correctness from the source like FORM GSTR-1, FORM GSTR-3B, ICEGATE, etc and any other source, if required
  - Details of verification conducted and reasoning for grant / rejection of refund
  - If ITC is claimed as refund under “Other Category”, whether the same has been debited from E. Cr. L., if required.
- II. Post-Audit and Review
- i. Refund sanction / rejection order should be reviewed for legality and propriety by Commissioner in terms of Section 107(2) of the CGST Act and if required, instruction to subordinate for filing appeal should be given within 6 months of the date of communication of the said order.
- ii. Such post-audit may be conducted only for refund claims amounting to Rs. 1 Lakh or more



iii. Guidelines for post-audit and review:

- All refund orders passed must be immediately transmitted online to the review module.
- a Post-Audit Cell under Deputy / Assistant Commissioner along with one / two Superintendents and Inspectors may be instituted for such post-audit and review
- Post-audit should be concluded within 3 months from the date of issue of order
- The findings of the post-audit team shall be communicated to the review branch within the said time period of 3 months.
- Subsequently, review of refund order shall be completed at least 30 days before the expiry of time limit for filing appeal by Department.

***SBGCO Comments:***

Taxpayers have had a tough time deciphering the refund orders which are generally cryptic / one-liner / lacking analysis for rejection of refund. There have been numerous judgements as well where the HCs have set aside orders which are devoid of reasoning. The present instruction manual is a welcome move setting guidelines for the officers to be followed while passing an informed and speaking order and ensure that principles of natural justice of taxpayers are not violated.



## **B. Recent Decision from the Judiciary:**

### **1. Ola Fleet Technologies Pvt Ltd vs. UoI [2022-VIL-434-TEL]**

#### **Issue Raised:**

The Petitioner paid IGST instead of CGST + SGST on account of incorrect tagging / mapping of states in their IT systems. Can the petitioner be allowed to adjust the IGST Paid against CGST and SGST demanded by the Department?

#### **Gist of the Decision:**

The Hon'ble High Court placed reliance on Section 77 of the CGST Act and Section 19 of the IGST Act and held that adjusting IGST paid by the petitioner against CGST and SGST would amount to adopting a procedure, which is not provided in the GST law. Such act of permitting adjustment would be tantamount to going beyond the statute. Hence, the petitioner was directed to pay the amount of CGST and SGST amount in terms of the SCN issued (without interest) and subsequently proceed to claim refund of the IGST paid incorrectly in terms of the CGST Rules.

#### **SBGCO Comments:**

This is the second judgement (after similar decision by Jharkhand HC in the case of Shree Nanak Ferro Alloys Pvt Ltd - 2020-VIL-30-JHR) which has distinguished the Kerala HC decision in the case of Saji. S vs Commissioner of GST [2018-VIL-508-KER] where adjustment was permitted. The current decision upholds the law as laid down under Section 77 of the CGST Act and Section 19 of the IGST Act for incorrect taxes collected and paid to the Government and simultaneously, instructing the petitioner to first pay the correct tax and then claim refund of incorrect payment of tax along with benefit of waiver of interest, which is also provided in the said provisions of the law itself.

### **2. Mahendra Feeds and Foods vs. Dy. Commissioner of GST and C. Ex. [2022-VIL-380-MAD]**

#### **Background Facts:**

The Petitioner has been served with show cause notice for mismatch in ITC claimed in GSTR 3B vs ITC appearing in GSTR 2A. According to the Department, supplier has either not paid the tax or not reflected the said transactions to the account of the petitioner. After considering the submissions of the petitioner challenging the SCN without providing any evidence of tax paid by supplier, Order was passed confirming the demand.

#### **Issue Raised:**

Is SCN a valid form of communication of such discrepancies? Is the Department obliged to communicate such mismatch of ITC to both supplier and recipient at an earlier point in time in terms of Section 42(3) of the CGST Act?

#### **Gist of the Decision:**

The Hon'ble High Court did not accept the contention of the petitioner that show cause notice is not a valid form of communication. The HC further held that once the petitioner was in receipt of such notice, they should have gathered documents evidencing payment of tax by



supplier and submitted it along with their reply to such show cause notice. The petitioner should have taken steps to rectify the mismatch once the same was highlighted to them by the Department. Thereby, the HC dismissed the writ petition keeping options of appeal to appellate forum open for the petitioner.

**SBGCO Comments:**

This HC judgement is likely to have major repercussions in issues dealing with ITC mismatch because this judgement goes on to state that once the show cause notice was issued highlighting the mismatch, the taxpayer should have taken steps to rectify the same or provide supporting documents to substantiate that tax was paid by the supplier.

The Maharashtra State Government had recently issued circular to clarify that for ITC mismatch cases of FY 2017-18 and FY 2018-19 (Internal Circular No 02A of 2022 dated 25.02.2022, covered in our March 2022 newsletter which can be accessed by clicking [here](#)), the recipient should submit ledger confirmations / certificates of tax payment by supplier along with copies of tax invoice. It seems likely that for the initial period of introduction of GST, this will be approach that will be required to be followed to establish the bonafide claim of ITC.

**3. Sun Pharmaceuticals Ltd Vs. C.C.E. & S.T. Daman [2022-VIL-468-CESTAT-AHM-CE]**

**Issue Raised:**

Whether the appellant is entitled for refund of unspent balance of Personal Ledger Account (PLA) due to change in taxation regime from central excise to GST even after the time limit for refund has expired?

**Gist of the Decision:**

The Hon'ble CESTAT has held amount deposited in PLA is not a deposit of duty, but it is a deposit which is in the form of advance towards duty. The amount lying in the PLA takes the colour of excise duty only when it is utilized for payment of duty on clearance of excisable goods. Until the amount of PLA is utilized towards duty, the unspent balance of PLA is only an advance. Hence, the Tribunal held that time limit prescribed in the Central Excise Act, 1944 will not be applicable for unspent balance of PLA since the same has not yet acquired the colour of duty for applicability of the said time limit prescribed in the law.

**SBGCO Comments:**

The GST law has borrowed this concept from Central Excise Law and modified PLA to Electronic Cash Ledger (ECL) under GST. Even under GST, the amount lying unutilized in the ECL can be claimed as a refund without any time and the reason for the same is exactly the same as held in the above judgement. ECL balance is not "tax", but just a deposit and hence, the time limit of two years for claim of refund under GST shall not be applicable for such a case. This has also been clarified by CBIC vide Circular No. 166 / 22 / 2021 - GST dated 17.11.2021.



#### **4. Power Finance Corporation Ltd Vs. CCE & ST, LTU, Delhi [2022-VIL-437-CESTAT-DEL-ST]**

**Issue Raised:**

Whether the Appellant is eligible for claim of CENVAT credit in relation to expenses incurred as Corporate Social Responsibility (CSR) as provided under the Companies Act, 2013?

**Gist of the Decision:**

The Hon'ble Tribunal held the scope of definition of input services has to be read in a manner provided in the law without adding words and meaning to the definition. The judgement holds that the definition of input service uses the terms "for providing output service" and such phrase should be understood to mean that input services only include those services which are used for providing output services and should exclude those services which are used for some other business purposes. According to the Hon'ble Tribunal, CSR expenditure falls under the category of "some other business purposes."

Further, the Hon'ble Tribunal also held that CSR expenditure would arise only if there are profits and thereby indicating that such expenditure is a result of output services and not used for output services. Hence, CSR expenditure would not eligible for claim of CENVAT Credit.

**SBGCO Comments:**

The above decision of the CESTAT further creates more doubts than it resolves. There are judgements that hold CSR expenses are eligible for CENVAT credit and some against it. Similarly, under GST as well, it has been a mixed bag until now as to whether ITC for CSR is eligible or not. The CBIC should earnestly come out and clear the ambiguity surrounding CSR expenditure so that taxpayers and Govt officials are both clear as to what treatment should be given for such credit.

#### **5. Lifecell International Pvt Ltd vs Commissioner of GST and CE, Chennai [2022-VIL-469-CESTAT-CHE-ST]**

**Issue Raised:**

Whether refund of Service Tax can be claimed if tax was paid under RCM on advance payment made for import of services but subsequently the contract did not materialize, and the entire amount paid to foreign service provider was refunded by them?

**Gist of the Decision:**

The Hon'ble Tribunal held that the department cannot retain any amount which is not collected under the authority of law. It further held that when there is no liability to pay the service tax, the amount paid by the appellant cannot be retained by the department. Since, in the present case, refund of advance money from foreign service provider was not in doubt, the Tribunal had no hesitation to hold that Service Tax paid by the Appellant should be refunded because, the only restriction provided under the GST law (transition provisions) for claim of service tax is unjust enrichment. There is no restriction regarding time limit to claim refund of service tax. Hence, the Department should have only verified non-provision of service and unjust enrichment but not time limit to claim refund for such transition cases.





**SBGCO Comments:**

The above judgement of the Tribunal is a welcome decision which not only upholds the law as laid down but also brings out two important principles viz., no amount can be collected as tax without authority of law and transition provisions are beneficial provisions wherein conditions from Service tax provisions should be read in only to the extent provided in the new law.

**6. TPI Advisory Services India Private Limited Vs. CCT [2022-TIOL-864-HC-KAR-ST]**

**Background Facts:**

The Petitioners had issued 4 invoices in Service Tax regime near the transition phase and paid service tax thereon as per provisions of the law. Subsequently, on account of introduction of GST, the customer had apprehensions regarding the invoice, so the Petitioners issued a credit note and raised fresh invoices under GST and paid GST on the same. Thereafter, the Petitioners filed a claim of Refund of the Service Tax paid earlier. Department and CESTAT did not accept the claim of the Appellant.

**Issue Raised:**

Can the Appellant claim refund of Service Tax paid in the above scenario?

**Gist of the Decision:**

The Hon'ble HC relied on the Supreme Court decision in the case of Shiv Shanker Dal Mills etc. Vs. State of Haryana, wherein the SC has held that "*when public bodies, under colour of public laws, recover people's moneys, later discovered to be erroneous levies, the dharma of the situation admits of no equivocation. There is no law of limitation, especially for public bodies, on the virtue of returning what was wrongly recovered to whom it belongs.*" Once the facts of double payment of tax were accepted by the Department, the HC decided the case in the favour of the Appellant on the ground of unjust enrichment by Government and Public Bodies.

**SBGCO Comments:**

No Government Body can unjustly enrich themselves at the expense of the taxpayer and when such event occurs, law of limitation (i.e., time limit to claim refund of such amount) does not apply as the amount received by the Government Body is not tax, but an amount received without the authority of Law.



### **C. Recent Decisions from Advance Authority**

#### **1. Jayabheri Orange Country Owners Association [TSAAR Order No. 29/2022 (Telangana) = 2022-TIOL-66-AAR-GST]**

##### **Background:**

The Applicant is a Resident Welfare Association (RWA) collecting monthly maintenance charges, certain annual fee by name sinking fund and charges for electricity used in common area.

##### **Question raised:**

- a. Whether GST is applicable on monthly collection not exceeding Rs.7,500 per member even if total collection of the society is more than Rs.20 lakhs a year?
- b. Whether GST is applicable on total monthly maintenance of Rs.7,500 per member plus annual sinking fund collected in July or August month in which annual sinking fund will be collected due to monthly collection including annual sinking fund exceeding Rs.7,500 per member for that month?
- c. Whether GST is applicable on monthly collection of common area electricity charge paid by the members over and above the maintenance charges?

##### **Gist of the Ruling:**

After analysis the provisions of GST Law and Exemption notification, the AAR has held:

- i. GST is not applicable if monthly collections do not exceed Rs.7,500 even though total collection of the society is more than Rs.20 lakhs a year.
- ii. Yes, GST will be applicable for the month in which total monthly collection exceeds Rs.7,500 per member for charges including sinking fund.
- iii. GST is not applicable on the electricity charges collected from the members over and above the maintenance charges.

##### **SBGCO comments:**

The AAR has held that GST is payable by RWA only when both the conditions are met simultaneously, i.e., total collections exceeding threshold of Rs. 20 lakhs and monthly collection exceeding Rs. 7,500 per member. Further, in case of annual collections, the AAR states that GST is payable for the month in which the collection exceeds Rs. 7,500 per member.

#### **2. Singareni Collieries Company Ltd [TSAAR Order No. 30/2022 (Telangana) = 2022-TIOL-70-AAR-GST]**

##### **Question raised:**

- a. Whether the Applicant is obliged to pay GST on the forest permit fee paid for transportation of coal from Forest by it under reverse charge mechanism?
- b. If GST is payable, can services received by the Applicant be classifiable under HSN 9973 (Leasing or rental services without an operator)?



**Gist of the Ruling:**

The AAR has held that the amount collected by the Forest Department is a fee to allow the transit of vehicles carrying coal through the forest area. Such service of permitting vehicles is covered under entry 5(e) of the Schedule II to the CGST Act, 2017 wherein 'to do an act' is deemed to be a service. The said service is taxable under reverse charge mechanism vide the entry No. 5 of Notification No. 13 / 2017 - CT (R) dated 28.06.2017.

**SBGCO comments:**

It is important to understand that regulatory / compensatory fees collected by CG / SG / Local Authority need not always have element of *quid pro quo* with the fee collected. Most licences / permit fees are in such nature only where *quid pro quo* may not be established. It is important to analyse the reason / purpose for payment of such fees to analyse whether the fees are collected for any statutory functions as listed in the Constitution of India under Article 243 W / 243 G. If the fees paid do not fall under the categories as listed down under Article 243W / 243G, then RCM liability will most likely be triggered under GST.

**3. Coral Manufacturing Works India Pvt Ltd [Order No. GUJ/GAAR/R/2022/26 = 2022-VIL-138-AAR]**

**Question raised:**

Whether ITC of GST is admissible for supply of steel, cement and other consumables to the extent of their actual usage in the execution of the works contract service when supplied for construction of immovable property in the form of the factory which is an Integrated Factory building with Gantry Beam, which in turn used for mounting across the pre-cast concrete beams, poles and over which the crane would be operated?

**Gist of the Ruling:**

The AAR has denied the claim of ITC on two grounds:

- d. entire construction of the 'Integrated factory premise' with the strengthening of the walls, increase in the volume / size of plinth beam, etc are only part of Civil structures of the Factory housing the 'Plant and Machinery' and are not the foundation with which such 'Plant and Machinery' are fixed to earth. The additional foundation / beams are to be considered as 'any other civil structure', excluded from the scope of 'plant and machinery'
- e. the invoices for Steel, Cement and other consumables are not established to be in the name of the applicant.

**SBGCO comments:**

The AAR has overlooked certain key parameters, namely, Engineer's certificates and Chartered Accountant's certificate for capitalization of plant and machinery. The ITC was intended to be claimed proportionately of the works contract services only to the extent of capitalization under Plant and Machinery head based on the certificates issued by engineer and chartered accountant, but the AAR still concluded that such integrated factory premises are civil structure and not plant and machinery.



**D. GST Compliance chart for July 2022**

| <b>S N</b> | <b>Due Date</b> | <b>Form</b> | <b>Period</b>           | <b>Periodicity</b> | <b>Special Remarks</b>  |
|------------|-----------------|-------------|-------------------------|--------------------|---|
| 1.         | 10.07.2022      | GSTR - 7    | June 2022               | Monthly            | To be filed by those who are required to deduct TDS under GST   |
| 2.         | 10.07.2022      | GSTR - 8    | June 2022               | Monthly            | To be filed by those who are required to collect TCS under GST  |
| 3.         | 11.07.2022      | GSTR - 1    | June 2022               | Monthly            | Taxpayers filing GSTR - 1 monthly   |
| 4.         | 13.07.2022      | GSTR - 6    | June 2022               | Monthly            | To be filed by an ISD   |
| 5.         | 13.07.2022      | GSTR - 1    | April 2022 to June 2022 | Quarterly          | To be filed by those under QRMP Scheme  |
| 6.         | 20.07.2022      | GSTR - 3B   | June 2022               | Monthly            | To be filed by Taxpayer filing monthly GSTR 3B  |
| 7.         | 20.07.2022      | GSTR - 5A   | June 2022               | Monthly            | To be filed by non-resident Online Information and Database Access or Retrieval (OIDAR) services provider |
| 8.         | 20.07.2022      | GSTR - 5    | June 2022               | Monthly            | To be filed by a non-resident foreign taxpayer registered in GST  |
| 9.         | 22.07.2022      | GSTR - 3B   | April 2022 to June 2022 | Quarterly          | To be filed by those under QRMP Scheme (#)  |
| 10.        | 24.07.2022      | GSTR - 3B   | April 2022 to June 2022 | Quarterly          | To be filed by those under QRMP Scheme (\$)   |
| 11.        | 28.07.2022      | GSTR - 4    | FY 2021-22              | Annual             | Composition Taxpayer (with waiver of late fees - only for FY 2021-22) **                                  |
| 12.        | 31.07.2022      | CMP - 08    | April 2022 to June 2022 | Quarterly          | To be filed by Composition Dealer (Payment of Self-assessed tax) **                                       |

(#) 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.

\*\* Press Release dated 29.06.2022



## **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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