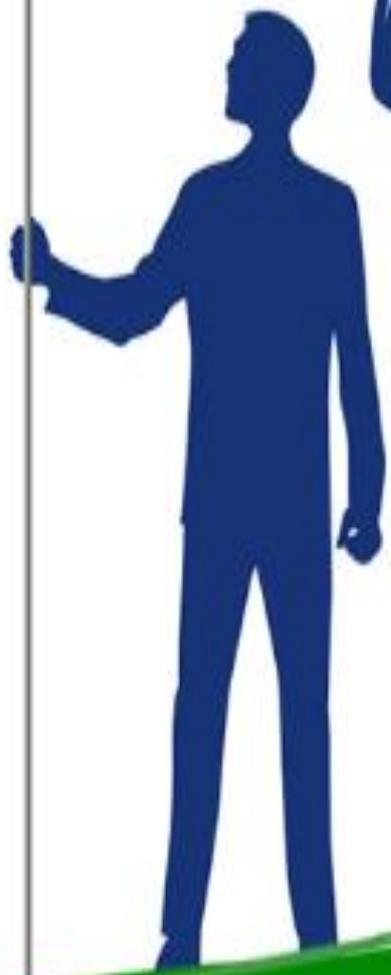




15th
AUGUST

India 
INDEPENDENCE DAY



SBGCo Connect August 2022

S B Gabhawalla & Co
Chartered Accountants





Greetings to all our readers!

18th July 2022 marked a mid-month Monday that saw slew of changes being brought into effect for goods and services. Our SBGCO NewsFlash issued on 14th July 2022 covers most of the notification issued on 13th July 2022 – the same can be accessed by clicking the link [here](#).

31st July 2022 also marked the due date for filing of ITRs for non-audit assesseees and despite strong representations the due date for the same were not extended sending a clear signal to the taxpayers that the Government wants to streamline the timelines. Due date for GST Annual Return & Reconciliation Statement also will not be extended as there is no reason this time, unlike previous two years with lockdowns and unlocking of economy. Hence, taxpayers who are liable for GST Annual Return & Reconciliation Statement should initiate the process and try and accomplish the filing of GSTR 9 and GSTR 9C well within the deadline to avoid last minute pressure.

On 01st August 2022, the Government issued a notification to bring more taxpayers in the ambit of E-invoice provisions by reducing threshold limit to Rs. 10 Crores from existing limit of Rs. 20 Crores w.e.f. 01.10.2022.

August 2022 also marks onset for various festivities across the nation and more prominently, India celebrates its 75th Independence Day. On this auspicious occasion we would like to take this opportunity through our newsletter, to wish our fellow countrymen, a very Happy 75th Independence Day. Jai Hind!

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 August 2022](#)

GST - Back to Basics

Continuing with our lecture series, we have 4 sessions scheduled in the month of August 2022. The schedule for this month is as under:

Date	Topic	Speaker
02/08/2022	Zero Rated Supplies, Deemed exports and consequential refunds	Darshan Ranavat
09/08/2022	Exemptions under GST	Sunil Gabhawalla
23/08/2022	Ensuring Compliance under GST	Aman Haria
30/08/2022	GST Implementation	Parth Shah

The previous 11 sessions conducted by us 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. E-invoice Limit reduce from INR 20 Crore to 10 Crore.

The threshold limit for applicability of E-invoice has been gradually reduced in a phased manner over time to gradually increase the taxpayer base liable to comply with the same. The same has now been reduced to Rs. 10 crores w.e.f. 1st October, 2022.

As a result, all registered person who have crossed Annual Turnover of Rs. 10 Crore in any financial year since the inception of GST, shall be liable to comply with e-invoicing provisions.

SBGCO comments:

The Government knows that the E-invoice provisions are now being made applicable for smaller businesses and hence, the notification has been issued 2 months in advance for all such taxpayers to initiate the changes and be ready for implementation by 01st October 2022.

Notification No 17/2022 - Central Tax dated 01.08.2022

2. GSTR 9 and GSTR 9C for FY 2021-22

The CBIC notified Form GSTR 9 (Annual Return) and GSTR 9 (Reconciliation Statement) for FY 2021-22. There are no changes in the form compared to previous year. However, couple of changes in disclosure requirement have been notified as compared to previous year for Form GSTR 9 only which are summarized as under:

- a. Non-GST transactions, if any, have to be mandatorily disclosed separately in Table 5F. Nil-rated supply and Exempt supply can be disclosed in their respective tables in Table 5 or disclosed together under Exempt supply in Table 5D.
- b. HSN summary for outward supply must be reflected with 6-digit HSN codes for taxpayers having turnover greater than 5 Crore and 4-digit HSN code for other taxpayers. Inward HSN summary is still optional for FY 2021-22.

Notification No. 14/2022 - Central Tax dated 05.07.2022

3. Proposed changes in Form GSTR 3B

Handful of changes recommended in GST Council meeting regarding Form GSTR 3B have now been notified. The changes are summarized under:

- a. Separate rows in Table 3 for disclosing taxable supplies made through e-commerce operators on which e-commerce operators pay tax (one row for E-commerce Operators and one row for registered person)
- b. Changes in Table 4 pertaining to ITC summarized in the table below:

Table	Existing Rows	New Rows and disclosure changes
4(A)(1)	Import of goods	Import of goods - No change
4(A)(2)	Import of services	Import of services - No change
4(A)(3)	Inward supplies liable to reverse charge	Inward supplies liable to reverse charge - No change



Table	Existing Rows	New Rows and disclosure changes
4(A)(4)	Inward supplies from ISD	Inward supplies from ISD - No change
4(A)(5)	All other ITC - (ITC claimed as per invoices accounted in books which match with GSTR 2B)	ITC on Domestic Inward Supplies excluding 1 to 4 - [(a) Amounts appearing GSTR-2B to be disclosed (irrespective of whether recorded in books or not) + (b) Amount of ITC re-claimed which was earlier reversed in 4(B)(2) to be added.]
4B	ITC Reversed	ITC Reversed
4(B)(1)	As per Rules 42 and 43	As per Rules 42 and 43, Section 17(5) - <u>Permanent reversals</u> which are not to be re-claimed in future including ineligible ITC
4(B)(2)	Other	Others - <u>Temporary reversals</u> like - a) on account of non-payment to vendor within 180 days, b) ITC appearing in GSTR-2B but not appearing in books (unmatched ITC).
4C	Net ITC Available [(A) - (B)]	Net ITC Available [(A) - (B)]
4D	Ineligible ITC	Other Details
4(D)(1)	Ineligible ITC disclosure as per section 17(5)	ITC reclaimed which was reversed under Table 4(B)(2) in earlier tax period
4(D)(2)	Other Ineligible ITC	Ineligible ITC under section 16(4) and ITC restricted due to PoS provisions

Notification No. 14/2022 - Central Tax dated 05.07. 2022 & Circular No. 170/02/2022 - GST dated 06.07.2022

4. Deemed revocation of suspension of GST registration in certain cases.

The CGST Rules, 2017 have now been amended to introduce a proviso after Rule 21A (4) to provide that suspension of GST registration shall be deemed to have been revoked when all pending returns have been filed by the taxpayer, subject to the condition that GST officer has only suspended the GST registration but not cancelled them.

Notification No. 14/2022 - Central Tax dated 05.07. 2022

5. No Common Credit Reversal required for sale of Duty Scrips.

Explanation to Rule 42 and 43 has been amended to include that sale of Duty Scrips [which are currently exempted vide Sr. 122A of NN 02/2017 - Central Tax (Rate) dated 28.06.2022] shall not warrant reversal under Rule 42 and 43 of the CGST Rules, 2017.

Notification No. 14/2022 - Central Tax dated 05.07. 2022

6. Declaration on 'Tax Invoice' by certain categories of taxpayer who are not required to comply with E-invoice provisions.

The CGST Rules, 2017 provided that certain categories of registered taxpayers were exempted from generating e-invoice even though their turnover crossed the threshold limit. The Tax invoice format AS provided under Rule 46 is now amended to provide that all the registered taxpayers who are exempted from generating E-invoice must mention a



declaration on their Tax Invoice stating that they are not required to comply with E-invoice provisions. The specific category of taxpayers include:

- i. an insurer, a banking company, a financial institution including NBFC
- ii. goods transport agency providing transportation services
- iii. supplier of passenger transportation service
- iv. admission to exhibition of cinematograph films in multiplex screens
- v. SEZ units

Declaration in Tax Invoice should be as under:

“I/We hereby declare that though our aggregate turnover in any preceding financial year from 2017-18 onwards is more than the aggregate turnover notified under sub-rule (4) of rule 48, we are not required to prepare an invoice in terms of the provisions of the said sub-rule.”

Notification No. 14/2022 – Central Tax dated 05.07. 2022

7. Electronic Cash. Ledger related changes.

- a. New Payment modes to deposit tax added by way of Unified Payment Interface (UPI) & Immediate Payment Services (IMPS) and corresponding changes made respective Form PMT-06 as well.
- b. Tax, interest, penalty, fee can now be transferred between Electronic Cash Ledgers of taxpayers with same PAN i.e., distinct persons under GST via Form GST PMT – 09.
The only condition that is placed is that there should not be any unpaid liability in the electronic liability register of the transferor.

Notification No. 14/2022 – Central Tax dated 05.07. 2022

8. Payment of erroneously sanctioned refund

Rule 86(4B) has been introduced to provide that taxpayer who repay the erroneous refund sanctioned to them along with interest and penalty in Form GST DRC-03, either on their own or after being pointed out by Department, the department would recredit the erroneous portion of refund into the E. Cr. Ledger vide Form GST PMT-03A.

Notification No. 14/2022 – Central Tax dated 05.07. 2022

The Procedure to claim recredit of the erroneous portion of refund into the E. Cr. Ledger vide Form GST PMT-03A has also been provided vide corresponding circular dated 06.07.2022. The circular clarifies that till the time automated system is not developed on the common GST portal to handle such cases, till that time, the following procedure to be adopted:

- i. The taxpayer shall deposit the amount of erroneous refund along with applicable interest and penalty, wherever applicable, through FORM GST DRC-03 by debit of amount from electronic cash ledger and clearly mention the reason for making payment in the text box as the deposit of erroneous refund.
- ii. The taxpayer shall then make a written request to the jurisdictional proper officer to re-credit the amount in E. Cr. L (format letter provided in circular)



- iii. On being satisfied with the submissions of the taxpayer, the shall jurisdictional officer shall re-credit an amount in E. Cr. L., equivalent to the amount of erroneous refund so deposited by the registered person, by passing an order in FORM GST PMT-03A, preferably within a period of 30 days from the date of receipt of request for re-credit.

Circular No. 174/06/2022 - GST dated 06.07.2022

9. Retrospective interest calculation provisions.

New Rule 88B introduced (retrospectively w.e.f. 01.07.2017) in CGST Rules to provide for mode of calculation of interest. The cases covered are summarized below:

- a. Delayed filing of return - interest will be calculated on that portion which is debited in the electronic cash ledger.

This case only includes delayed filing when all supplies of a particular tax period are declared in the said tax period. If a supply of a particular month is reported in subsequent returns, then, interest would be payable on the entire tax portion of such supply without the benefit of utilization of credit against the same.

- b. In case of where ITC is incorrectly claimed and utilized, the interest will be calculated from the date of utilisation of such wrongly availed input tax credit till the date of reversal of such credit or payment of tax in respect of such amount.

Elaborate rule has been introduced to determine the date of utilization which would be useful specially in cases where ITC balance remains in the E.Cr.L. after offsetting output tax liability.

Notification No. 14/2022 - Central Tax dated 05.07. 2022

10. Changes in Refund process under GST.

- a. Special forms have been introduced for refund of tax in case of export of electricity
- b. For computing the amount of eligible refund under Rule 89(4) of the CGST Rules, 2017, (refund of unutilized ITC on account of export of goods and / or services) the value of goods exported out of India shall be considered as lower of the following two options:
- FoB value declared, or
 - Value declared in tax invoice or bill of supply
- c. Modification in the refund formula for Inverted Duty Structure under Rule 89(5)

Old Formula	New Formula
Maximum Refund Amount = (Turnover of inverted rated supply of goods and services) x Net ITC Adjusted Total Turnover} - tax payable on such inverted rated supply of goods and services	Maximum Refund Amount = {(Turnover of inverted rated supply of goods and services) x Net ITC Adjusted Total Turnover} - {tax payable on such inverted rated supply of goods and services \times (<u>Net ITC \div ITC availed on inputs and input services</u>)}



- d. Rule 95A relating to Refund of taxes to the retail outlets established in departure area of an international Airport beyond immigration counters making tax free supply to an outgoing international tourist is withdrawn w.e.f. 01.07.2019
- e. Special provisions introduced in Rule 96 (Refund of integrated tax paid on goods or services exported out of India) for withholding and disbursing of refund by Customs for risky exporters to safeguard the interest of the revenue.

Notification No. 14/2022 – Central Tax dated 05.07.2022

II. Circulars / Guidelines / Instructions issued during the month

11. Clarifications regarding applicability of demand and penalty in cases involving fake invoicing.

Due to increase in cases of fake invoicing (issuing tax invoice without actual supply of goods or services or both), the Department sought to clear different scenarios and applicable provisions of the law relating to demand of tax and penalty. The below table summarizes the various cases explained by the circular:

SN.	Case / Example	Clarification
1	Regd. Person “A” issues fake invoice to “B”. Implications on “A” in such a case?	No Demand / Penalty recovery under Section 73/74 of the CGST Act since there is no “Supply” in this case. “A” will be liable for penal action under section 122 (1)(ii) of the CGST Act for issuing fake invoices.
2.	Regd. Person “A” issues fake invoice to “B”. Regd. Person “B” claims ITC of such fake invoice. However, Supplies made by “B” are with underlying goods / services. Implications on “B” in such a case?	“B” has claimed ITC without actual receipt of goods / services and hence, contravened provisions 16(2)(b) of the CGST Act. “B” will be liable for demand and recovery of such incorrectly availed ITC under section 74 of the CGST Act, along with recovery of interest as well. No penal provisions under section 122 to be invoked on “B” for the same offense.
3.	Regd. Person “A” issues fake invoice to “B”. Regd. Person “B” claims ITC of such fake invoice and further passes on ITC to Regd. Person “C” by issuing fake invoice. Implications on “B” in such a case?	“B” has claimed ITC without actual receipt of goods / services and hence, contravened provisions 16(2)(b) of the CGST Act. Further, there was no supply of goods / services by “B” to “C”. Hence, No Demand / Penalty recovery under Section 73 / 74 of the CGST Act on “B” for inward and outward transactions. However, “B” will be liable for penal action under section 122(1)(ii) of the CGST Act (issuing fake invoice) and section 122 (1)(vii) of the CGST



SN.	Case / Example	Clarification
		Act (for taking/ utilizing ITC on the basis of fake invoice)

Section 73 / 74 of CGST Act - issuance of SCN for recovery of tax / ITC along with interest and penalty
Penalty u/s 122(1)(ii) & 122(1)(vii) of the CGST Act - Rs. 10,000/- or amount equivalent to the tax involved, whichever is higher.

Circular No. 171/03/2022 - GST dated 06.07.2022

SBGCO Comments:

Fake invoicing has become a menace with huge amounts of money being involved. Hence, the Department has been actively monitoring and tracking such details. With a view to provide clear guidelines to the Department officers regarding legal penal provisions in regard, this circular shall be of great assistance.

12. Clarifications regarding various issue pertaining to GST.

Clarification regarding the following matters issued by CBIC:

- refund claimed by the recipients of supplies regarded as deemed export (#1 & #2)
- interpretation of section 17(5) of the CGST Act (#3 & #4)
- perquisites provided by employer to the employees as per contractual agreement (#5)
- utilisation of the amounts available in the electronic cash ledger (E.C.L.) and electronic credit ledger (E.Cr.L) for payment of tax and other liabilities. (#6, #7 & #8)

SN.	Issue	Clarification
1.	Whether the ITC availed by the recipient of deemed export supply for claiming refund of tax paid on supplies regarded as deemed exports would be subjected to provisions of Section 17 of the CGST Act, 2017?	The ITC of tax paid on deemed export supplies, allowed to the recipients for claiming refund of such tax paid, is not ITC in terms of the provisions of Chapter V of the CGST Act, 2017. Therefore, the ITC so availed by the recipient of deemed export supplies would not be subjected to provisions of Section 17 of the CGST Act, 2017.
2.	Whether the ITC availed by the recipient of deemed export supply for claiming refund of tax paid on supplies regarded as deemed exports is to be included in the "Net ITC" for computation of refund of unutilised ITC under rule 89(4) & rule 89(5) of the CGST Rules, 2017.	The ITC of tax paid on deemed export supplies, allowed to the recipients for claiming refund of such tax paid, is not ITC in terms of the provisions of Chapter V of the CGST Act, 2017. Therefore, such ITC availed by the recipient of deemed export supply for claiming refund of tax paid on supplies regarded as deemed exports is not to be included in the "Net ITC" for computation of refund of unutilised ITC under rule 89(4) & rule 89(5) of the CGST Rules, 2017.
3.	Whether the proviso at the end of section 17(5)(b) of the CGST	Proviso in question:



SN.	Issue	Clarification
	Act is applicable to the entire clause (b) or the said proviso is applicable only to sub-clause (iii) of clause (b)?	<p><i>“Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.”</i></p> <p>The above proviso at the end of section 17(5)(b) of the CGST Act is applicable to the entire clause (b).</p>
4.	Whether the provisions of section 17(5)(b)(i) of the CGST Act bar availment of ITC on input services by way of “leasing of motor vehicles, vessels or aircraft” or ITC on input services by way of any type of leasing is barred under the said provisions?	“Leasing” referred in section 17(5)(b)(i) refers to leasing of motor vehicles, vessels and aircrafts only and not to leasing of any other items. Accordingly, availment of ITC is not barred under section 17(5)(b)(i) of the CGST Act in case of leasing, other than leasing of motor vehicles, vessels and aircrafts.
5.	Whether various perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are liable for GST?	Perquisites provided by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST when the same are provided in terms of the contract between the employer and employee (Schedule III of CGST Act would cover such a cases)
6.	Whether the amount available in the <u>E.Cr.L.</u> can be used for <u>making payment of any tax</u> under the GST Laws?	It is clarified that any payment towards output tax, whether self-assessed in the return or payable as a consequence of any proceeding instituted under the provisions of GST Laws, can be made by utilization of the amount available in the electronic credit ledger of a registered person. However, output tax does not include tax payable under RCM.
7.	Whether the amount available in the <u>E.Cr.L.</u> can be used for <u>making payment of any liability</u> other than tax under the GST Laws?	It is clarified that amount available in the E. Cr. L. <u>cannot be used</u> for making payment of any interest, penalty, fees or any other amount payable under the said acts. Similarly, E. Cr. L. cannot be used for payment of erroneous refund sanctioned to the taxpayer, where such refund was sanctioned in cash.
8.	Whether the amount available in the <u>E.C.L.</u> can be used for <u>making payment of any liability</u> under the GST Laws	It is clarified that the amount available in the E.C.L. <u>may be used</u> for making any payment towards tax, interest, penalty, fees or any other amount payable under the provisions of the GST laws.



Circular No. 172/04/2022 - GST dated 06.07.2022

SBGCO Comments:

Clarification regarding use of balance in E.Cr.L. still require some more clarity as the language used does not provide clear picture, for example, as to whether, such balance can be used for payment of pre-deposit for filing of appeal.

13. Clarifications regarding refund under Inverted Duty Structure when the supplier is supplying goods under some concessional notification.

The current circular has been issued which intends to amend Para 3.2 of the Circular No. 135/05/2020-GST dated 31.03.2020. It is now clarified that in cases where though inputs and output goods are same but the output supplies are made under a concessional notification such cases would be admissible for refund under the provisions of Section 54(3)(ii) of the CGST Act, 2017 as this case would also lead to credit accumulation.

The two conditions placed for claiming refund are that output supply should neither be Nil rated nor fully exempted and supply of such goods or services are not notified by the Government for their exclusion from refund of accumulated ITC

Circular No. 173/05/2022 - GST dated 06.07.2022

SBGCO Comments:

Much needed clarification for many taxpayers who were supplying goods under concessional notifications without corresponding benefits for purchase of the same goods. Though the benefit of refund under Inverted Duty structure should have been ideally available but since there were difficulties for taxpayers to claim the same so this clarification will definitely ease a lot of burden on account of accumulation of ITC.

14. Clarifications regarding manner of filing refund of unutilized ITC on account of export of electricity.

The current circular has been issued to lay down the procedure in which refund of unutilized ITC shall be claimed.

- i. **Form:** Application shall be made under “Any Other” category electronically on the common GST portal in FORM GST RFD-01. Reason for refund - “Export of electricity-without payment of tax (accumulated ITC).” At this stage, the applicant is not required to make any debit from the electronic credit ledger.
- ii. **Supporting Documents:** The applicant would be required to furnish the details contained in Statement 3B of FORM GST RFD-01, containing the number and date of the export invoices, details of energy exported, tariff per unit for export of electricity as per agreement. The applicant will also be required to upload the copy of statement of scheduled energy for electricity exported by the Generation Plants issued as part of Regional Energy Account by Regional Power Committee Secretariat (“RPC”) under regulation 2(1)(nnn) of the CERC (Indian Electricity Grid Code) Regulations, 2010 for the relevant period



- iii. Relevant Date: The relevant date shall be the last date of the month, in which the electricity has been exported as per monthly Regional Energy Account (REA) issued by the RPC Secretariat under regulation 2(1)(nnn) of the CERC (Indian Electricity Grid Code) Regulations, 2010 and accordingly two years shall be counted.
- iv. Formula for claim of refund: The formular provided under Rule 89(4) shall be used for calculation of refund of unutilised ITC
Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) x Net ITC ÷ Adjusted Total Turnover
The turnover of export of electricity would be calculated by multiplying the energy exported during the period of refund with the tariff per unit of electricity, specified in the agreement.
Further, the turnover of electricity supplied domestically would be excluded while calculating the adjusted total turnover since the same is exempted under GST and the proper officer shall verify that no ITC has been availed in making domestic supply of electricity.
- v. Processing of Refund: Once the proper officer is satisfied with the calculation and the amount of refund due has been computed, the proper officer shall request the applicant, in writing, if required, to debit the said amount from the electronic credit ledger through FORM GST DRC-03 and only the proof of debit in E.Cr. L. is submitted, the proper officer shall then proceed to issue the refund order in FORM GST RFD-06 with corresponding payment order

Circular No. 175/07/2022 - GST dated 06.07.2022

SBGCO Comments:

The circular brings in a lot of procedural clarity w.r.t. claim of Refund by taxpayers who export electricity. The Circular also lays down a lot of guidelines for the taxpayers and the officers which will also help in ensuring speedy processing of such refund applications.

15. Withdrawal of Circular No. 106/25/2019-GST dated 29.06.2019.

Circular No. 106/25/2019-GST dated 29.06.2019 was issued wherein certain clarifications were given in relation to Rule 95A of the CGST Rules, 2017. Since Rule 95A has now been omitted retrospectively w.e.f. 01.07.2019, according the CBIC has now withdrawn Circular No 106/25/2019-GST dated 29.06.2019

Circular No. 176/08/2022 - GST dated 06.07.2022

SBGCO Comments:

This is a natural corollary to the omission of Rule 95A of the CGST Rules, 2017 and thereby the circular issued in relation to such rule would also be rescinded.



B. Recent Decision from the Judiciary:

1. Union of India vs. Filco Trade Centre Pvt Ltd [2022-VIL-434-TEL]

Issue Raised:

Numerous High Courts had instructed the GSTN to re-open the Transition Forms on the Common GST Portal for the aggrieved assessee who could not claim the transition benefits on account of technical glitches on the portal. Hence, the present petition was filed before the Hon'ble Supreme

Gist of the Decision:

Supreme Court issued the following directions:

- a. Two-month window for availing transition credits on common portal wherein GSTN directed to open the portal for Forms TRAN-1 and TRAN-2 (Sept-22 and Oct-22).
- b. The option shall be available for all and not just those assesseees who have filed petitions before the High Courts
- c. Common GST Portal should be glitches free for these two months
- d. Officers would be given 90 days to verify the veracity of the claims / transitional credit and pass orders after giving reasonable opportunity to the assesseees. The allowed credit to be reflected ECL thereafter.
- e. GST Council may issue appropriate guidelines in this regard.

SBGCO Comments:

This decision in the form of directions to GSTN portal is a monumental decision which would have effect of re-opening of GST portal from claims relating to the transitional period. It remains to be seen as to how the GSTN portal addresses this issue as the SC has directed it to open for all taxpayers and not just those who have filed petitions. The task appears to be cut out for the GST Council and the GST department officers as challenges need to be addresses fast and the officers would also be given very limited time to review and close the matter.

2. Tega Industries Ltd vs. Dy. Commissioner of C. Ex. & ST [2022-TIOL-636-CESTAT-AHM]

Background Facts:

SEZ unit claimed refund of service tax paid on Business Support services received from a DTA unit. The Department denied the refund on the grounds that the services received by SEZ unit are not that of Business Support services, but actually Marketing Services which are not listed in the approved list of the approval committee for the SEZ.

Issue Raised:

Whether refund can be granted to SEZ unit in such case in accordance with Notification No. 12/13-ST dated 01.07.2013?

Gist of the Decision:

The Hon'ble Tribunal held that classification of services cannot be challenged at the recipient's end. Further, the Tribunal also held that the services received are indeed Business Support services and even if the services received aren't categorized as Business Support



services, the refund would still be eligible even if such services would not be a part of the approved list of by the approval committee of SEZ. The reason being, non-inclusion of services in the approved list would only be a procedural lapse and SEZ Act will have an overriding effect of the service tax laws.

SBGCO Comments:

Two critical principles have been highlighted by the Hon'ble Tribunal in the said judgements. Firstly, classification of services cannot take place at the recipient's end (it must happen at the supplier's end only) and secondly, SEZ refund is not dependent on whether the services are listed in the approved list of approval committee of the SEZ.

3. J P Biscuits Pvt Ltd Vs. C.C.E. & S.T. Surat-I [2022-TIOL-640-CESTAT-AHM]

Background Facts:

The Appellant deposited certain amount in anticipation of liability and intimated the department regarding the same within 3 days of such payment (Central Excise regime). Subsequently, the advance was not adjusted against any duty as the anticipated liability did not materialize. The refund application made after 2 years of payment of such advance.

Issue Raised:

Does the time limit to claim refund apply in the case where the amount deposited never attained character of tax or duty?

Gist of the Decision:

Relying on previous decisions, the Hon'ble Tribunal categorically held that time limit for claim of refund prescribed in Section 11B of the Central Excise Act, 1944 applies to amount that have attained the colour of tax. In the present case, the amount paid as advance was not adjusted against any liability and continued to remain as advance only. Since the same was not in the nature of tax, the limits specified under Section 11B of the Central Excise Act, 1944 would not be applicable in the present case.

SBGCO Comments:

This judgement embodies the principle of unjust enrichment. The Government cannot collect any amount from assessee which is not in the nature of tax. Once any amount is received by the Government which is not a tax, then, they cannot unjustly enrich themselves for such amounts. Hence, it is their obligation to refund the same when the assessee asks for the same. There is no time limit prescribed for filing refund application of such amounts which aren't tax. This principle would also be applicable under the GST laws.

4. Nagarro Enterprises Services Pvt Ltd Vs. Commissioner, CGST, Jaipur [2022-TIOL-575-CESTAT-DEL]

Issue Raised:

What date will be considered as date of filing refund claim - date on which refund was originally filed or date on which highlighted defect was rectified?



Gist of the Decision:

The Hon'ble Tribunal has held that the date on which refund was originally filed would be treated as the actual date of filing refund claim and accordingly, whether the refund claim is filed within time limit prescribed would be checked from such date. The date on which defect was rectified will have little bearing as such removal of defect cannot substitute the actual date of filing refund claim.

SBGCO Comments:

Though the judgement is from pre-GST era, it should be of relevance even in the GST regime. It must be noted that the GST regime has a different refund application mechanism as compared to the erstwhile laws whereby, once defect memo is issued in GST, the taxpayer is required to file a fresh refund application. It remains to be seen what interpretation Courts adopt under GST w.r.t., date of filing of refund application. Hence, as a precautionary measure, always file GST refund applications atleast 2 months before the expiry of period so that defect memo if any can be rectified and fresh application can also be filed within the prescribed timelines.

5. Vodafone Idea Ltd vs UoI [2022-TIOL-997-HC-MUM-GST]

Issue Raised:

What is the place of supply of services when a telecom operator in India supplies services in the nature of international Inbound Roaming Services (IIR) and International Long Distance (ILD) Services to Foreign Telecom Operators (FTOs), when the customers of FTOs are located in India?

Gist of the Decision:

The Key contention in the present case was whether the services are provided to the individual customers of FTO who are in India (section 13(3)(b) of IGST Act, 2017) or services are supplied to the FTO (section 13(2) of IGST Act, 2017). If the customers of FTO are treated as service recipient then Place of supply shall be India (location of such recipient) and if FTO is treated as service recipient, then place of supply shall outside India and Petitioner would be liable for refund on export of service (as other conditions of export of services are satisfied).

The Hon'ble Mumbai HC held that petitioner has entered into agreement for supply of such service with that of FTO only and had issued invoices for supply of services to FTOs only. The petitioner does not know who are the ultimate service recipients of the FTO as the petitioner only recognises the FTO. The Hon'ble HC also held that that customer's customer cannot be treated as petitioner's customer and hence, invoking Section 13(3)(b) of the IGST Act, 2017 would be incorrect in such circumstances.

SBGCO Comments:

The decision re-iterates that contract / agreement must be given due importance to determine the applicability of the provisions of the law. Even though the ultimate recipient were located in India, but as far as the Indian telecom operator was concerned, their agreement was with FTO and while adjudicating the Indian telecom operator, the law does not recognize FTO's customers as Indian telecom operator's customer.



C. Recent Decisions from Advance Authority

1. Krishna Institute of Medical Sciences Limited [Order No. 04/AP/GST/2022 (Andhra Pradesh) = 2022-VIL-207-AAR]

Question raised:

- a. Whether administering of COVID-19 vaccination by hospitals is Supply of Good or Supply of Service?
- b. Whether administering of COVID-19 Vaccine by clinical establishments (Hospitals) qualify as “Health care services” as per Notification No. 12/2017 Central Tax Rate dated 28.06.2017?
- c. Whether administering of COVID-19 vaccination by clinical establishment is exempt under GST Act?

Gist of the Ruling:

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

- i. Administering of Covid-19 Vaccine is a Composite supply, wherein the principal supply is the ‘sale of vaccine’ and the auxiliary supply is the service of ‘administering the vaccine’ and the total transaction is taxable at the rate of principal supply i.e., 5%.
- ii & iii. Administering of Covid-19 Vaccine cannot be termed as ‘Healthcare services’ and hence, not eligible for any exemption under GST.

SBGCO comments:

The AAR has opened up a pandora’s box w.r.t. administering of COVID-19 vaccines. The judgement of the AAR gives one answer without really providing enough counter arguments w.r.t. assessee’s interpretation that such supply is that of healthcare services as administering of vaccine involves various facets, namely, documentation / record maintenance, pre-vaccine consultation, disinfecting skin before administering the dose, usage of syringe, vaccine dose and also involves post-vaccination observation / consultation.

Simple analogy that can be given is an example of a restaurant wherein, there are numerous activities are involved and food is served but the entire bundle is considered as service. Hence, it would be interesting to see if such question is further raised before higher authorities and it will be interesting to see the final outcome unfurl.

2. Sunil Giri [Order No. RAJ/AAR/2022-23/08 (Rajasthan) = 2022-VIL-206-AAR]

Question raised:

Whether the value of diesel which is in the scope of service recipient would be included in taxable value of supply of the service provider (who is providing truck for transportation of products from one location to another)?



Gist of the Ruling:

The AAR held that Section 15 of the final CGST Act, 2017 specifically states that ‘any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both’ will be part of the value of supply. The valuation provisions are restricted to amount payable by supplier only. When certain liability is to be borne by the service recipient in accordance with the agreement entered between the contracting parties, then such amount is not required to be included in the value of the supply provided by the supplier. Hence, the value of diesel filled free of cost (FOC) by the service recipient is not includable in the value of the service proposed to be provided by the Applicant in the facts and circumstances of the present case.

SBGCO comments:

The AAR has correctly interpreted the provisions of the law by comparing valuation provision of the Model GST Law and the present final GST Law. Further, the AAR also placed reliance on the CBIC Circular no. 47/27/2018 - GST dated 08.06.2018, issued in this regard. After the Bhayana Builders decision by the Supreme Court (2018-VIL-08-SC-ST), the same issue was settled in the service tax regime and now with the clear wording of the law along with the CBIC circular, such issue of FOC provision by recipient would not likely cause any valuation challenges under the GST regime.

3. Arden Healthcare Pvt Ltd [Order No. KER/131/2021 (Kerala) = 2022-TIOL-87-AAR-GST]

Question raised:

Whether the health-care services provided to patients at their residence through qualified nurses and other technically qualified persons are taxable in GST?

Gist of the Ruling:

While providing their ruling, the AAR has arrived at the following conclusions:

- a. The Applicant has obtained a license from the Local Government (Thrissur Municipal Corporation) to practice as health clinic. The services provided by the applicant include physiotherapy, ventilator care, CPR, emergency home care, etc. The qualified nurses employed by the employee keep and maintain systematic patient records with nursing care plan, diet chart, daily procedure care checklist, daily inventory checklist, records of vital charts with temperature, BP, pulse etc. of the patient. Hence, the services provided by the Applicant qualify as health-care services.
- b. The definition of the term ‘clinical establishment’ as appearing in exemption entry 74 of NN 12/2017-CT (R) includes a nursing home, clinic, sanatorium or any other institution by, whatever name called, that offers services or facilities requiring diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India, or a place established as an independent entity or a part of an establishment to carry out diagnostic or investigative services of diseases. Hence, the applicant qualifies as clinical establishment for providing the above-mentioned services from the residence of the patients.



Therefore, services provided by the applicant as described above are exempted under GST vide entry at SI. No. 74 of Notification No 12/2017 Central Tax (Rate) as applicable for providing healthcare services provided by clinical establishments.

SBGCO comments:

The AAR, has correctly analysed the scope of the exemption entry provided in the notification. The exemption entry does not place any emphasis on the location where the healthcare services should be provided. It is only important that healthcare services should be provided by a clinical establishment. The AAR has analysed these two aspects only and according concluded that healthcare services provided at the residence of the patients is also eligible for exemption. Even the Government is aware that certain patients receive healthcare services at their home and that is the reason that the exemption entry (since the service tax regime) never placed any importance to the place where healthcare services are provided as long as they are provided by a clinical establishment.



D. GST Compliance chart for August 2022

S N	Due Date	Form	Period	Periodicity	Special Remarks
1.	10.08.2022	GSTR - 7	July 2022	Monthly	To be filed by those who are required to deduct TDS under GST
2.	10.08.2022	GSTR - 8	July 2022	Monthly	To be filed by those who are required to collect TCS under GST
3.	11.08.2022	GSTR - 1	July 2022	Monthly	Taxpayers filing GSTR - 1 monthly
4.	13.08.2022	GSTR - 6	July 2022	Monthly	To be filed by an ISD
5.	13.08.2022	IFF	July 2022	Monthly	To be filed by those under QRMP Scheme (Optional)
6.	20.08.2022	GSTR - 3B	July 2022	Monthly	To be filed by Taxpayer filing monthly GSTR 3B
7.	20.08.2022	GSTR - 5A	July 2022	Monthly	To be filed by non-resident Online Information and Database Access or Retrieval (OIDAR) services provider
8.	20.08.2022	GSTR - 5	July 2022	Monthly	To be filed by a non-resident foreign taxpayer registered in GST
9.	25.08.2022	PMT - 06	July 2022	Monthly	Challan to be filed for payment by those under QRMP Scheme



Disclaimer

This newsletter is for general public information and knowledge sharing. In case any clarifications required, you may connect with us at:

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