

Turnover Criteria	E-invoice Applicability
500 Crores and above	01 st October 2020
100 Crores and above	01 st January 2021
50 Crores and above	01 st April 2021
Others	Any time soon



SBGco Connect - April 2021

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Greetings to all our readers!!

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

The Finance Bill, 2021 which was presented on 01.02.2021 by the Hon'ble Finance Minister has been passed by both the Houses of the Parliament (with some modifications) and received the President's Assent on 29.03.2021 itself, and now the same is Finance Act, 2021. It is imperative to note that for amendments pertaining to Goods and Service Tax (which were summarized in detailed in our February-2021 edition of the newsletter), the same would be effective from a future date which will be separately notified in the Official Gazette by the Government.

The new Financial Year, also brings with it two new additional requirements, namely mentioning of 6-digit HSN code in invoices in all invoices for tax-payers having Aggregate turnover above Rs. 5 crores & 4-digit HSN code in B2B invoices for other tax payers and implementation E-invoice provisions for tax payers having aggregate turnover exceeding Rs. 50 crores in any of the 3 preceding Financial year under GST regime. Implementation of dynamic QR code for tax payers having aggregate turnover exceeding Rs. 500 crores has been postponed to 01.07.2021.

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 April 2021](#)

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

Team SBGco



What's New?

1. E-invoicing mandatory for registered tax payers having PAN India turnover greater than Rs. 50 Crore

W.e.f. 1st April 2021, all Registered tax payers having aggregate turnover exceeding Rs. 50 crores for any of the 3 preceding Financial years would be required to follow the procedure laid down for generation of E-invoice for all B2B, B2G and Export transactions.

Notification 05/2021 - Central Tax dated 08.03.2021

SBGco Views:

The Government has gradually reduced the limit from 500 to 100 and now 50 crores for applicability of E-invoice. This is a clear sign that in the near future, this limit would gradually diminish and E-invoice shall be made applicable to all B2B, B2G and Export transactions.

2. Implementation of Dynamic QR Code for assessee having aggregate turnover greater than 500 crores further extended

Requirement to incorporate Dynamic Quick Response (QR) code in the B2C Invoice issued by a registered taxable person with aggregate turnover in any preceding financial year (after FY 2017-18) exceeding Rs. 500 Crore has been further extended to 01st July 21 by way of waiver of penalty for non-compliance upto 30th June 2021.

Notification 06/2021 - Central Tax dated 29.03.2021

SBGco Views:

The government has decided to extend the implementation date for dynamic DR code given the lack of clarity and delayed clarifications issued regarding the same.

3. Revised timelines for filing Bill of Entry

Bill of Entry will now be required to filed as per the below mentioned amended timelines

Revised Timeline	Applicability
Latest by end of the day of arrival of the vessel / aircraft / vehicle	- Imports from Bangladesh, Sri Lanka, Maldives, Myanmar and Pakistan - All imports at all Air Cargo Complexes - All imports at all Land Customs Stations
Latest by end of the day preceding the day of arrival of the vessel / aircraft / vehicle	- Imports from all countries except the above mentioned at all Sea Ports - All imports at all Inland Container Depots (ICDs)

Further, Advance Bill of Entry can be filed on the strength of either Master Bill of Lading / Master Airway Bill or House Bill of Lading / House Airway Bill or both.

Notification 34/2021, 35/2021 and 36/2021 – Customs (NT) dated 29.03.2021

SBGco Views:

The amendment to Section 46 of the Customs Act by virtue of insertion of provision for advance filing of Bill of Entry for pre-arrival processing and assessment would reduce the time lag and ensure faster customs clearance.



4. Clarification in respect of Refund Related Issues

Board has issued Circular No. Circular No. 147/03/2021 dated wherein certain issues faced in respect of refund claims have been clarified as under:

- Operational challenge in claiming refund by recipient of a deemed export supply with Board clarifying that such recipient to avail the tax paid on such supplies as ITC and upon filing of refund claim, the said amount shall be reduced from the balance in electronic credit ledger subject to the availability of balance at the time of filing of refund claim. Prior to the clarification, there were challenges towards claim of refund as the tax component was not required to be shown as availment in GSTR 3B which resulted in refund amount claimed being lower than the ITC availment during the said period resulting in systems challenges.
- Condition of cumulative review of liability disclosed under IGST while processing application for refund claims on account of zero-rated supplies extended for the period from 30.06.2019 to 31.03.2021 thus

enabling smooth processing of refund claim in cases where errors were committed after 01.07.2019 till 31.03.2021.

- Rule 89 (4) was amended vide Notification 16/2020 – CT dated 23.03.2020 to provide that while determining the turnover of value of export of goods, the value of goods exported should not be more than 1.5 times the value of similar goods when supplied locally. There was confusion as to whether this condition should be applied also while determining the adjusted total turnover, which included the value of goods exported. The Board has now clarified that the 1.5 multiple shall be applied for both, numerator as well as denominator, thus rationalizing the procedural aspects.

SBGco Views:

This is a welcome clarification from the Board providing sweet solutions to specific issues faced by taxpayers. This demonstrates the Governments' commitment to work towards helping the exporters smoothly claim their refunds.



Recent Decisions from the Judiciary

Citation	Facts of the case	Gist of the Judgment	SBGco Views
Navneet R. Jhanwar vs. State Tax Officer 2021-VIL-216-J&K	The petitioner had filed refund application during the lockdown which was first treated as time barred initially but later on accepted by officer on learning about extension of time limits prescribed by the Government. However, subsequently, the refund was rejected on the grounds of merits but without an opportunity of being heard. Hence, the petitioner filed the present writ petition against the said rejection before the Hon'ble HC.	While remanding the matter to the officer for fresh consideration after putting the petitioner to proper show cause notice and affording the opportunity of being heard, [and relying on decision of Madras High Court in the case of R. Ramadas v. Joint Commissioner of C. Ex., Puducherry - 2021 (44) G.S.T.L. 258 (Mad.)] noted the following principles of Natural Justice: a. A show cause notice, which is the foundation on which the demand is passed and the same should not only be specific and must give full details regarding the proposal to demand, and the demand itself must be in conformity with the proposals made in the show cause notice. b. The very purpose of the show cause notice issued is to enable the recipient to raise objections, if any, to the proposals made and the concerned Authority are required to address such objections raised. This is the basis of the fundamental Principles of Natural Justice.	Such instances of non-issuance of show cause notice, no opportunity of being heard, cryptic / non-speaking order, etc. is becoming a norm under the GST Regime. The tax authorities should be sensitized to the fact that as an adjudicating authority, it become their moral responsibility to discharge their duties without violating the principles of natural justice of the other party. Failure to do so results only in unwarranted & protracted litigation and associated costs for the taxpayers.



Citation	Facts of the case	Gist of the Judgment	SBGco Views
Robbins Tunnelling and Trenchless Technology (India) Pvt Ltd vs. the State of MP 2021-VIL-86-MP	The petitioner had imported certain parts from its parent company from USA and the clearing agent while shipping the goods from Custom Station, Mumbai to the Registered Office of the petitioner, situated in MP, generated E-way bill in which by mistake erroneously entered its own name in the column of consignee. During the movement of goods, the State Tax Officer of Anti Evasion Bureau, detained the vehicle and also levied tax and penalty against the petitioner and the said order was upheld on appeal before the Joint Commissioner S.G.S.T. (Appeals), Bhopal. Hence, the present writ petition was filed before the Hon'ble HC.	The Hon'ble High Court observed that IGST was paid along with Custom Duty at the time of making of a Bill of Entry for home consumption. Further, except for the name, (the address and distance and other details of E-Way Bill) all other details in Part A of the E-way Bill were fully matching with all the related documents. Hence, based on the peculiar facts of the case, the Hon'ble HC squashed the order rejecting the appeal of the petitioner and also directed the respondents to consider the present case of the petitioner for imposition of a minor penalty, treating it to be a clerical mistake (as per Circular No. CBEC/20/16/03/2017-GST dated 14.09.2018)	This is very welcome judgement from the Hon'ble High Court keeping in mind the peculiar facts of the case. The said circular gave illustrative cases of minor mistakes such as Spelling mistakes in the name of the consignor or the consignee or Error in Pin codes subject to certain conditions or error in 1 or 2 digits of document number and so on. The Judgement has widened the scope of clerical mistakes without impacting critical details of documents including e-way bill and also ensuring no tax evasion in the same process.
Neptune Plastics vs. Union of India 2021-VIL-98-J&K	The petitioner claimed transition credit in Form GSTR-3B instead of submitting of TRAN-1 for claiming the said benefit. The Assistant Commissioner denied the same stating that the reason for non-filing of TRAN-1 was not due to technical glitch in filing TRAN-1, so the case of the petitioner could not be considered. Hence, the present writ petition has been filed before the Hon'ble High Court.	The Hon'ble High Court held that the petitioner cannot be deprived of the benefit of claiming the credit lying in its account on the stipulated date only on the basis of procedural or technical wrangles that one form TRAN-1 was not filled by the petitioner particularly when the petitioner has reflected the said credit in its return GSTR-3B. The Judgement also places reliance on the case of Adfert Technologies Pvt. Ltd. and Ors. v Union of India and Ors (2019-VIL-537-P&H)	The Judgement again upholds the principle that unutilized credits from the erstwhile Acts are vested rights of the assessee and the same cannot be taken away on procedural or technical grounds.



Citation	Facts of the case	Gist of the Judgment	SBGco Views
DMR Constructions vs. Assistant Commissioner 2021-VIL-208-MAD	In the present case, 23 writ petitions were filed challenging the denial of transition of credit in respect of Tax Deducted at Source (TDS) in terms of Section 13 of the Tamil Nadu Value Added Tax Act, 2006. The common factual position in all these writ petitions was that petitioners have accumulated credit of TDS under the Tamil Nadu Value Added Tax Act and the transition of the same (for set off against output GST liabilities) was denied.	While allowing the batch of Writ petitions, the HC noted that that once that any deduction made towards anticipated tax liability (like TDS) would assume the character of tax and will not change or fluctuate depending on whether it is held as credit or whether it is an adjustment against tax liability. Further, section 140 of the CGST Act talks of carrying forward of the credit of VAT and Entry Tax under the existing law to GST and for this purpose the amount collected / deducted as captured in the returns of turnover filed under the erstwhile TNVAT regime would stand included for the purposes of transition under Section 140. The Judgment also referred to similar proposition laid down in the case of Magma Fincorp Ltd. V. State of Telangana [2019 (26) GSTL 7]	This is a welcome judgement and hopefully puts to rest any confusion w.r.t. transition of accumulated VAT regime related TDS to GST under the transition provisions.



Recent Advance Rulings

Citation	Ruling sought on?	Gist of the Ruling	SBGco Views
Snow Fountain Consultants Order No 57 dated 24.06.2020 (UP) = 2021-VIL-177-AAR	<p>The Applicant will be providing Project Development Service and Project Management Consultancy services to State Urban Development Authority. The applicant has sought ruling on the following questions:</p> <p>a. Whether the Project Development Service and Project Management Consultancy (PMC) services provided by the applicant to recipient under the Contract from State Urban Development Authority and the Project Management Consultancy services under the Contract for PMAY would qualify as an activity in relation to function entrusted to Panchayat or Municipality under Article 243G or Article 243W respectively, of the Constitution of India?</p> <p>b. Whether such services provided by the applicant would qualify as Pure services (excluding works contract service or composite supplies involving supply of any goods) as provided in serial number 3 of Notification No. 12/2017- Central Tax (Rate) dated 28 June, 2017?</p>	<p>a. The Authority noted that State Urban Development Authority has been established as a state level nodal agency, under the department for Urban Employment and Poverty Alleviation by Uttar Pradesh Government and further noted that PMAY is a Scheme to provide central assistance to Urban Local Bodies (ULBs) and other implementing agencies through States/UTs for Rehabilitation of existing slum dwellers using their land as a resource through private, participation, and affordable Housing in Partnership. Furthermore, after analysing the scope of work assigned to the applicant along with Article 243W and Article 243G of the Constitution of India, the AAR held that the PMC services rendered by the applicant under the two contracts are in relation to functions entrusted to Municipalities under Article 243W and to Panchayats under Article 243G of the Constitution of India.</p> <p>b. The AAR also noted that services mentioned in the two contracts would qualify as Pure Service and thus be eligible for exemption from levy of GST.</p>	<p>The AAR has analysed the scope of the contracts, Article 243W and 243G of the Constitution of India in conjunction with Exemption notification and lawfully held that the two contracts for which ruling was sought are eligible for exemption.</p>



Citation	Ruling sought on?	Gist of the Ruling	SBGco Views
<p>ION Trading India Private limited</p> <p>Order No. 11 / AAAR / 16 / 03 / 2020 (UP) = 2021-VIL-16-AAAR</p>	<p>The Applicant is a private limited company engaged in the business of software development. The applicant has sought ruling on the following questions</p> <p>a. Whether amount recovered from the employees towards car parking charges payable to Shantiniketan Properties Private Limited (building authorities), would be deemed as "Supply of service" by the applicant to its employees?</p> <p>b. If the first question is answered in affirmative, whether the value of aforesaid supply would be NIL, being provided in the capacity of a "Pure Agent"? If valuation is not accepted as NIL, what would be the value of such supply?</p> <p>c. If GST is payable on the such amount recovered from the employees, whether the GST paid by the applicant to building authorities towards car parking charges would be admissible as input tax credit against supply of car parking services to employees?</p>	<p>a. The AAAR has held that the applicant providing right to its employees to use parking facility on the parking space provided by the building authority is covered by Sr. No 2 of Schedule II i.e. "Activities to be treated as Supply of Goods or supply of Service" as they are also collecting certain amounts from their employees.</p> <p>b. The AAAR, further observes that since, the applicant is transferring the entire amount collected, from their employees towards parking charges, to the Building Authorities and the other conditions of "Pure Agent" are satisfied, the applicant is providing the said services in the capacity of a Pure Agent.</p> <p>c. Since question (b) is answered in favour of the applicant, the current question becomes redundant and not answered by AAAR.</p>	<p>It is a little surprising to note that the AAAR did not analyse whether the activity of facilitation of parking space is or is not a "supply" as per section 7 of the CGST Act, but directly proceeded to confirm the same as service based on entry in Schedule II. This ruling is in contradiction to the advance ruling in the case of M/s. Posco India Pune Processing Center Private Limited, MH-AAAR, wherein "parents' health insurance expenses recovered from employee was held as not amounting to supply of service".</p> <p>However, the analysis by AAAR that the said activity is performed in the capacity of "Pure Agent" may be well received by the industry, at large since most of the employee recoveries are carried out at cost.</p>



Citation	Ruling sought on?	Gist of the Ruling	SBGco Views
<p>Manoj Mittal 18 / WBAAR / 2020-21 = 2021- TIOL-103-AAR- GST</p>	<p>The Applicant is engaged in business of sweet parlour and restaurant service including take-aways. The applicant is also engaged in providing catering services to an educational institution. The applicant has sought ruling on the following questions:</p> <ol style="list-style-type: none">Whether sale from the portion of the sweetmeats and bakery shop should be categorized as supply of goods? Whether input tax credit should be eligible on the sale of items specified above?Can the supply of food items and beverages from the facility which offers the opportunity of eating at the same premises be classified as restaurant services attracting a rate of GST of 5%? Can input tax credit be availed on restaurant services provided above?In case of receipt of common input tax credit in the form of inputs, input services and capital goods, will reversal of input tax credit be required in terms of Rule 42 and 43 of the CGST Rules 2017?Will the catering services provided to the educational institution qualify as an exempt supply based on the agreement?	<p>The applicant submitted that books of accounts of two business (premises) are maintained separately and based on that the AAR held that:</p> <ol style="list-style-type: none">Counter sale of food & beverages is to be treated as supply of goods as there is no element of service involved. Accordingly, input tax credit shall also be allowed.However, facility of eating at premises along with takeaway shall be treated as restaurant services and shall attract tax @ 5% and credit of input tax charged on goods and services used in supplying the service shall not be eligible.Since the Applicant is engaged in both activities, they will have to comply the provisions of section 17 (1) & (2) of the CGST Act, 2017 and claim credit accordingly.Supply of catering services to the educational institution shall be covered vide entry no. 66 (b)(ii) of the Exemption Notification No. 12/2017 - CT(R.) dated 28.06.2017 and shall therefore be exempted from payment of tax. Though not sought, the Authority has held that when supplied to the auditor / parents on programme days, the exemption shall not be available, and tax shall be payable at 5%.	<p>Denial of exemption merely because the food is consumed by the parents during the programmes seems to be an extreme conclusion. The condition under the notification is that the service should have been supplied to educational institution which is satisfied. It remains to be seen how the Appellate Authority deals with this issue.</p>



Citation	Ruling sought on?	Gist of the Ruling	SBGco Views
<p>Dwarikesh Sugar Industries Limited</p> <p>Order No. 52 (UP) dated 22.01.2020 = 2021-VIL-168-AAR</p>	<p>The Applicant is engaged in the business of manufacture and sale of sugar and allied products. The applicant has sought ruling on the following questions based on Corporate Social Responsibility (CSR):</p> <p>a. Whether expenses incurred by the Company in order to comply with requirements of CSR under the Companies Act, 2013 qualify as being incurred in the course of business and eligible for ITC in terms of the Section 16 of the CGST Act, 2017?</p> <p>b. Whether ITC in relation to CSR activities which have been obligated under a law are restricted under Section 17 (5) of CGST Act, 2017? If Yes,</p> <p>i. Whether free supply of goods as a part of CSR activities is restricted under Section 17 (5) (h) of CGST Act, 2017?</p> <p>ii. Whether goods and services used for construction of school building which is not capitalized in the books of accounts is restricted under Section 17 (5) (c) / 17 (5) (d) of CGST Act, 2017?</p>	<p>a. The AAR, relying on various judicial precedents of higher forums, observed that the applicant is compulsorily required to undertake CSR activities in order to run its business and therefore, it becomes an essential part of his business activities. Therefore, CSR activities are to be treated as incurred “in the course of business”.</p> <p>b. (i) A ‘gift’ is a gratuity and an act of generosity and does not require a consideration which is clearly distinct from CSR activities. ‘Gift’ is voluntary and occasional but CSR Expenses are obligatory and regular in nature (and mandated by Companies Act). Thus, CSR expenses are not incurred voluntarily. Accordingly, they do not qualify as ‘gifts’ and therefore, credit is not restricted under Section 17(5) of the CGST Act, 2017.</p> <p>(ii) Section 17 (5) (c) & (d) of the CGST Act, 2017 has specifically restricted the ITC on construction / work contract service to the extent of capitalisation. Therefore, the ITC of goods and services used for construction of school building will not be available to the applicant to the extent of capitalisation.</p>	<p>This is a very welcome ruling and well-reasoned order. Every question of the applicant has been well analysed and the final answer in that regard has been given considering a holistic approach between GST and Companies Act.</p>



Citation	Ruling sought on?	Gist of the Ruling	SBGco Views
Dhingra Trucking Pvt Ltd HAR / HAAR / R / 2019-20 / 10 = 2021- TIOL-101-AAR- GST	<p>The applicant company has constructed several logistics warehouses in Haryana and one such warehouse shall be leased to one of its customers. The applicant has sought ruling on the following questions:</p> <p>a. whether Input Tax Credit of GST in respect of inputs/ capital goods used or intended to be used for creation of covered logistics facility space (warehouse) to be rented out for storage purposes be eligible for Input Tax Credit?</p> <p>b. Whether Input Tax Credit of GST in respect of inputs in form of goods and services be eligible if the goods and services are consumed and used in construction of covered logistic facility space when the said Input Tax Credit would be utilized in order to discharge and pay CGST and HGST/ IGST on rent received from tenants of the warehouse?</p>	<p>The AAR categorically noted the decision of Orissa HC in the case of Safari Retreats Private Limited (2019-TIOL-1088-HC-ORISSA-GST), where the HC had held that the petitioner was entitled to claim ITC in respect of supplies received for the construction of mall which was used for providing taxable outward supplies.</p> <p>However, the AAR has not followed the said decision as the HC did not declare the provisions of section 17(5)(d) of the CGST Act as 'ultra vires' and concluded that the Applicant is not eligible to claim input tax credit in respect of inputs/ capital goods used or intended to be used for creation of covered logistics facility space (warehouse) to be rented out for storage purposes and consequently, the second question was similarly answered negatively on the same lines.</p>	<p>The tussle for claiming input tax credit on inputs, input services and capital goods for construction activity is far from settling. While literal interpretation does hint at denial of ITC, a harmonious interpretation of law does not. Hence, all eyes will now be on SC as it deals with the same question raised before it in the case of Safari Retreats Private Limited.</p>



Compliance Chart for the month of April 2021

S N	Due Date	Form	Period	Periodicity	Special Remarks
1.	10.04.2021	GSTR - 7	March 2021	Monthly	To be filed by those who are required to deduct TDS under GST
2.	10.04.2021	GSTR - 8	March 2021	Monthly	To be filed by those who are required to collect TCS under GST
3.	11.04.2021	GSTR - 1	March 2021	Monthly	Taxpayers filing GSTR - 1 monthly
4.	13.04.2021	GSTR - 6	March 2021	Monthly	To be filed by an Input Service Distributor
5.	13.04.2021	GSTR - 1	January 2021 to March 2021	Quarterly	To be filed by those under QRMP Scheme
6.	18.04.2021	CMP - 08	January 2021 to March 2021	Quarterly	To be filed by Composition Dealer (Payment of Self-assessed tax)
7.	20.04.2021	GSTR - 3B	March 2021	Monthly	Taxpayers having Aggregate T/o of > 5Cr in FY 2019-20
8.	20.04.2021	GSTR - 5A	March 2021	Monthly	To be filed by non-resident Online Information and Database Access or Retrieval (OIDAR) services provider
9.	20.04.2021	GSTR - 5	March 2021	Monthly	To be filed by a non-resident foreign taxpayer registered in GST
10.	22.04.2021	GSTR - 3B	January 2021 to March 2021	Quarterly	To be filed by those under QRMP Scheme (#)
11.	24.04.2021	GSTR - 3B	January 2021 to March 2021	Quarterly	To be filed by those under QRMP Scheme (\$)

(#) Last date for filing return without late fees and interest for the states of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, the Union Territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands and Lakshadweep.

(\$) Last date for filing return without late fees and interest for the states of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand, Odisha, the Union Territories of Jammu and Kashmir, Ladakh, Chandigarh and Delhi.



Disclaimer

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