



SBGCo Connect – June 2024

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Greetings to all our readers!

In the last week of May 2024, the Statistics Ministry announced that India's GDP increased by 8.2% for FY 2023-24, solidifying its status as the world's fastest-growing major economy. This growth rate exceeded the government's forecast of 7.6%. The BJP-led NDA government won the Lok Sabha elections on June 4, 2024, in a close contest. It is now the government's responsibility to sustain this growth in their third term as well.

With the elections now concluding, the policy-making decisions will soon resume with the GST Council gathering back after a small hibernation. Our readers and taxpayers are advised to keep close track of the amendments/ notifications that will soon follow. It is likely that way forward on two key aspects, viz. ISD mechanism and setting up of GST Tribunals, will soon be announced.

In June, taxpayers involved in the construction of residential projects must calculate the ratio of purchases from registered suppliers versus unregistered suppliers. According to the 80-20 rule, if less than 80% of total purchases for the previous financial year are from registered suppliers, tax must be paid under RCM for the shortfall. The deadline for calculating this ratio and paying the necessary tax under RCM is June 30th.

We would like to remind our readers that while the deadline for claiming credit for FY 2023-24 is the GSTR 3B filing in October 2024, it is advisable to address issues with defaulting or non-compliant vendors as soon as possible. Ensure all eligible ITC is reflected in Form GSTR 2B at the earliest opportunity. Additionally, reconcile outward supplies with GST returns during account finalization for statutory audit, so any necessary corrections are made well before the October GST returns deadline.

Through this month's newsletter, we bring to you a summary of recent developments in GST, divided into the 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 June 2024](#)

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

Team SBGCo



A. What's New?

I. Notifications issued during the month

- **Reconfiguration of certain jurisdictions in the state of Rajasthan.**

- The CBIC has re-organized a few jurisdictions (viz., Alwar, Jaipur, Jodhpur, Udaipur) by amending the original notification 02/2017 dated 19.06.2017.
- The above highlighted zones have now been realigned with retrospective effect from 05.08.2023

Notification nos. 10/2024 - Central Tax dated 29.05.2024 & 11/2024 - Central Tax dated 30.05.2024

II. Portal updates

- **New E-way Bill Portal launched**

- GSTN network announced that 2nd E-way Bill portal has been launched from 01.06.2024 (i.e., <https://ewaybill2.gst.gov.in>). GST Network has clarified that this second portal will run parallel to the main portal and will synchronise the e-way bill details with main portal within a few seconds.
- It also clarified that the users can generate and update E-ways bills on both the portals, independently, using the same existing login credentials. Further, API mode is also available for this second portal.
- Lastly, it has also been clarified that criss-cross operations of printing and updating of Part-B of E-Way Bills can be carried out on both the portals (i.e., updating of Part-B of the E-Way bills of portal 1 can be done at portal 2 and vice versa).

The said GSTN advisory can be accessed by clicking on the link [here](#).



B. Recent Decision from the Judiciary:

Category: Extension of time limit for adjudication under GST

1. Faizal Traders Pvt Ltd vs. Deputy Commissioner [2024-TIOL-736-HC-KERALA-GST]

Background facts:

The petitioner challenged the issuance of Notification No. 13/2022-Central Tax dated 05.07.2022 & Notification No.09/2023-Central Tax dated 31.03.2023 whereby the time limit for issuance of Order under Section 73(10) was extended upto 31.12.2023 for FY 2017-18.

Key Issue Raised:

Whether the said notifications are bad in law and ultra vires the provisions of Section 168A of the CGST Act (*Power of Government to extend time limit in special circumstances*)?

Gist of the Decisions:

The Hon'ble HC held Section 168A of the CGST Act empowers the Government to extend the limitation period for taking actions which could not be completed or complied with due to *force majeure* (some extraordinary/ unexpected event which is generally outside the control of humans). The HC held that COVID-19 Pandemic was one such '*force majeure*' event. Since the pandemic happened immediately after due date of filing of Annual return for FY 2017-18, the audit and scrutiny for the Financial Year 17-18 were impeded. Hence, the extension of time limit for adjudication by Department is not ultra vires the powers granted under Section 168A of the CGST Act, even if such event is not specifically mentioned in Notification No. 13/2022-Central Tax dated 05.07.2022 & Notification No.09/2023-Central Tax dated 31.03.2023.

SBGCO comments:

The debate over the legality of extending time limits for adjudication during the initial years should now be set aside. Initially, the government granted extensions to taxpayers for filing monthly and annual returns due to the unavailability of all functionalities on the government portal. Similarly, during the COVID-19 pandemic, when government offices operated with reduced staff and staggered timings, the High Court's decision to allow these extensions appears justified.

Category: Issuance of SCN based on information from third-party

2. ZR Enterprise vs. State of Gujarat [2024-TIOL-803-HC-AHM-ST]

Background facts:

SCN was issued under Service tax for F.Y. 2015- 16 & FY 2016-17 strictly based on data made available by the Income Tax Authority without making any enquiry regarding the nature of service provided by the petitioner.

Key Issue Raised:

Can a show cause notice be issued based on third-party information without conducting any verification/ independent inquiry regarding rendition of service by the assessee?

Gist of the Decisions:

The Hon'ble HC observed that in the present case, had the officer conducted verification/ independent inquiry, it would have come to light that the petitioner was providing GTA services wherein tax was payable by the recipient under RCM. The Hon'ble HC squashed the



SCN and held that the department officer assumed the jurisdiction without there being any basis for issuing the show-cause notice.

The HC held that show-cause notice could not have been issued only on the basis of the information retrieved from the Income Tax Department in Form 26AS. The HC also held that SCN cannot be issued without disclosing the facts as to what type of services are rendered by the assessee for which the tax was leviable.

SBGCO comments:

The show cause notice marks the commencement of litigation between the taxpayer and the department. It is crucial that this notice includes all relevant facts and is issued only after thorough verification and examination of all critical elements. Information shared by a third party does not exempt the department from conducting its own due diligence to ensure the information aligns with the law under which the notice is being issued. The recent judgment is a welcome decision, providing relief to taxpayers who have received notices without proper due diligence by the department, which had previously shifted the entire burden onto the taxpayers.

Category: Cross-empowerment

3. Vardhan Infrastructure vs. Special Secretary [2024-TIOL-824-HC-MAD-GST]

Background facts:

The petitioner has approached the Hon'ble High Court to set aside the order issued by the Central Authority on the ground that the Central Authority did not have jurisdiction to adjudicate the petitioner. Similarly, numerous other petitioners also filed a writ petition seeking intervention from the Hon'ble High Court where State & Centre tax officers have exceeded their jurisdiction.

Key Issue Raised:

Whether adjudication can be done by Centre/ State Authority who do not have administrative jurisdiction over an assessee?

Gist of the Decisions:

The Hon'ble HC held that under GST, the administrative jurisdiction of every assessee has been assigned to one authority only. Further, Section 6(1) of the respective GST Enactments empowers the Government to issue notification on the recommendation of GST Council for cross-empowerment. However, no notification has been issued except under Section 6(1) of the respective GST Enactments for the purpose of refund. Since cross-empowerment has not been notified, the Hon'ble HC set aside all the Orders on the grounds that the department exceeded their jurisdiction.

SBGCO comments:

For taxpayers and assesseees, it is crucial to thoroughly process all available information during any adjudication process. While it is important to challenge issues of valid jurisdiction, non-compliance with notices should not be based solely on the claims of incorrect jurisdiction by department officials. Relief regarding incorrect jurisdiction is typically granted only at higher forums. Therefore, it is equally important to ensure that documentation and transactions comply with legal provisions on their merits as well.



Category: computation of the due date to file an appeal

4. Pramod Kumar Tomar (Prop. Paramount Steel) vs. Addn. Commissioner [2024-TIOL-749-HC-DEL-GST]

Background facts:

The petitioner received the Order on 12.08.2023 through online mode (i.e., uploaded on GST portal). The online appeal was filed on 12.11.2023. The Appellate authority rejected the appeal on the grounds that the appeal was barred by time.

Issue Raised:

Whether the appellate authority was correct in rejecting the appeal on the grounds of limitation?

Gist of the Decision:

The Hon'ble High Court held that the appellate authority failed to take note of Section 12 of the Limitation Act, 1963 which states that the day on which the order is communicated has to be excluded from computation of the time limit for filing of appeal. In the present case, the Order was issued and communicated on 12.08.2023. Hence, the period of limitation for filing of appeal would start from 13.08.2023 and end on 12.11.2023. Hence, the appeal was filed within time and the appellate authority had incorrectly rejected the appeal on ground of time barring. The HC restored the appeal and ordered the appellate authority to decide the case on merits.

SBGCO comments:

As a quasi-judicial body, the appellate authority should consider all relevant facts and decide cases judiciously. Even if there was a delay of one day, the appellate authority should have asked the assessee to submit a request for condonation of delay, given that the alleged delay was within a condonable period, and then proceeded to decide the case on its merits. The recent decision, instead of resolving the matter, resulted in additional litigation for the already overburdened High Courts of India, only to have the case sent back to the appellate authority for a decision on its merits.

Category: Invocation of extended period of limitation for claim of credit

5. Hero MotoCorp Ltd vs. Commissioner (Appeals) [2024-TIOL-443-CESTAT-DEL]

Background facts:

Cenvat credit was claimed by the appellant in the returns on a consolidated basis, as per the requirement of the return filing form. The department proposed to disallow certain claims of credit reported in the returns by invoking extended period of limitation.

Key Issue Raised:

Whether the department is correct in invoking extended period of limitation for claim of credit reported in the return form?

Gist of the Decisions:

The Hon'ble Tribunal held that the appellant cannot be faulted for not disclosing any information which was not required to be disclosed under the law. Since the returns are designed by the Government and the they themselves have not sought line-level details of



claim of credit, the appellant was correct in disclosing the cumulative total of the credit claimed.

If the Department wanted to scrutinize the claim of credit, they should have had called for the relevant details and issued notice for demand under normal period of limitation. The Department has failed to establish the presence of any of the five elements (i.e., fraud, collusion, suppression of facts, wilful misstatement or contravention with intent to evade payment of service tax) required to invoke an extended period of limitation. Hence, the Order was set aside on the grounds of limitation without going into the merits of the case.

SBGCO comments:

The above decision, although made in the context of service tax, is equally applicable to the GST regime. The disclosure of credit claims under both service tax and GST is similar, involving a consolidated claim value for the month reported in the returns. These returns are designed by the government, and taxpayers have complied with the required details. The department cannot invoke an extended period of limitation solely based on an interpretation of the eligibility of a credit claim without establishing an intention to evade tax on the part of the assessee.



C. Recent Decisions from Advance Authority

1. M/s. Center for international Admission and Visas [Order No. 09/2024 (Telangana) = 2024-VIL-69-AAR]

Background facts:

The Applicant provides referrals of the aspirants/ students who wish to study abroad to the universities/ colleges located outside India. The Applicant is responsible to prepare the case of the aspiring student and refer it to the concerned foreign college and university, as per the requirement of the aspiring student and the fitment to the college/ university. The Applicant is not bound to refer a student to any particular college or university. The foreign college/ university retains full and complete discretion about whether to accept a student applicant for enrolment. The Applicant works as an independent contractor providing its own service of 'marketing/ recruitment/ referral' to the foreign colleges and university.

Questions raised:

Whether the services of 'Marketing/ Recruitment/ Referral' by the Applicant to foreign universities/ colleges would qualify as 'intermediary' and thus attract levy of GST or the said services would qualify as 'export of services' in terms of Section 2(6) of IGST Act?

Gist of the Ruling:

The AAR has noted the following key aspects of the agreements between the applicant and foreign colleges/ universities:

- The applicant cannot and does not represent itself as an agent or broker of the foreign colleges/ universities
- The applicant cannot influence or interfere in the selection process
- The applicant has no role /responsibility with regards to education provided by foreign colleges/ universities
- The prospective student is under no obligation to join the foreign colleges and university they have been referred to by the applicant

The AAR has concluded that the applicant cannot be said to be facilitating the services of the foreign colleges and hence, the applicant cannot be treated as an 'intermediary' for the purpose of Section 2(13) of the IGST Act.

Further, while analysing the definition of 'export of service' provided under Section 2(6) of the IGST Act, the AAR has held that all the conditions have been fulfilled and hence, activity of the Applicant for foreign college and university should qualify as 'export of service.'

SBGCO comments:

The above decision by the AAR is a well-reasoned order. Despite the applicant receiving consideration termed as 'commission/fees' from foreign universities/ colleges, the AAR did not take this at face value. Instead, the AAR thoroughly analyzed the transaction, agreements, and relevant department circulars before arriving at a decision regarding the taxability of the applicant's transaction.



2. Landmark Cars East Private Limited [Order No. 01/WBAAR/2024-25 (West Bengal) = 2024-VIL-66-AAR]

Background facts:

The applicant is an authorized agent of Mercedes Benz for supply of cars, related spare parts and is also engaged in providing various services such as repairs, warranties, roadside assistance and servicing.

Key Question raised:

- a. Whether ITC is eligible on inward supply of car from Mercedes Benz India which are used for demonstration purpose to the potential customer i.e., Demo cars?
- b. What would be the classification and rate of tax at the time of sale of demo car?
- c. Whether amount received by the applicant from manufacturer towards reimbursement of "Loss on Sale of Demo Car" constitute as "supply"?

Gist of the Ruling:

- a. The demo vehicles are purchased all along for further supply with the condition that they will be kept for demonstration purpose to the potential customer for a specific period of time. Hence, the ultimate intention of the appellant is to sell the demo car and hence, the restriction imposed in section 17(5)(a)(A) of the GST Act is not applicable i.e., ITC on purchase of demo car is eligible for claim of credit.
- b. Outward supply of demo car would attract same rate of tax of its inward supply and classified under HSN 8702 and 8703, as applicable.
- c. The compensation received from the manufacturer on sale of demo car at a loss, is a consideration received by the applicant to tolerate the act of suffering loss (incidental to reduction in sale value on sale of demo car). Hence, such receipt of consideration from the manufacturer would be chargeable to GST @ 18%.

SBGCO comments:

The contractual terms and intention of transacting parties are always paramount while deciding the taxability/ eligibility of exemption/ eligibility of claim of credit. The intention of the parties in the above case was always to sell the demo car albeit after some time. Hence, the AAR has rightly allowed the claim of credit on demo cars purchased by dealers.



D. GST Compliance chart for June 2024

| S N | Due Date | Form | Period | Periodicity | Special Remarks |
|------------|-----------------|-------------|---------------|--------------------|---|
| 1. | 10.06.2024 | GSTR - 7 | May 2024 | Monthly | To be filed by those who are required to deduct TDS under GST |
| 2. | 10.06.2024 | GSTR - 8 | May 2024 | Monthly | To be filed by those who are required to collect TCS under GST |
| 3. | 11.06.2024 | GSTR - 1 | May 2024 | Monthly | Taxpayers filing GSTR - 1 monthly |
| 4. | 13.06.2024 | GSTR - 6 | May 2024 | Monthly | To be filed by an ISD |
| 5. | 13.06.2024 | IFF | May 2024 | Monthly | To be filed by those under QRMP Scheme (Optional) |
| 6. | 13.06.2024 | GSTR - 5 | May 2024 | Monthly | To be filed by a non-resident foreign taxpayer registered in GST |
| 7. | 20.06.2024 | GSTR - 3B | May 2024 | Monthly | To be filed by Taxpayer filing monthly GSTR 3B |
| 8. | 20.06.2024 | GSTR - 5A | May 2024 | Monthly | To be filed by non-resident Online Information and Database Access or Retrieval (OIDAR) services provider |
| 9. | 25.06.2024 | PMT - 06 | May 2024 | 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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