

SBGCo Connect January 2023

S B Gabhawalla & Co

Chartered Accountants





Greetings to all our readers!

A very Happy New Year to all our Readers!

The Government has been very proactive w.r.t. issuing clarifications, guidelines and amending Rules this past month. Plethora of circulars and notifications have been issued in December 2022 and the same have been covered in detail, in our current issue. The Government also clarified that E-invoice limit is not being changed and ending the rumours going around amongst the taxpayer communities.

In a record-breaking feat, the gross GST collection have breached Rs 1.4 lakh crore mark for 10 consecutive months now, with December 2022's collection coming higher than November 2022 by 2.5% at Rs 1.5 lakh crore. This is crucial given the current world scenarios and how India has been leading from the front w.r.t. production and supply of goods and services. Rationalization of GST rates and stringent norms for filing of returns have really helped in maintaining the consistency in GST collections.

Once again, we would like to remind our readers that GST registration details w.r.t., mobile number and email ID should be updated for primary Authorised Signatory and the same should be regularly monitored. With the advent of increase in notices it is of utmost importance that no notice / enquiry from Department should go un-responded. Further, the GST portal login must be scanned for notices / communications from department at least twice a month so as to not miss out against replying to the same. There has been a tremendous rise in the number of notices being issued by the department and hence, it has become all the more important to ensure compliances related to Department notices / enquiries are adequately complied with.

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 January 2023](#)

All the 19 sessions of the GST Back-to-Basics series are available on our YouTube Channel, which can be accessed by clicking [here](#).

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

Team SBGCo



A. What's New?

I. Notifications issued during the month

1. Changes in CGST Rules, 2017

All the below mention changes in the CGST Rules, 2017 have been made effective from 26.12.2022, except where specifically mentioned otherwise.

A. Registration process related changes:

- Rule 8 has amended in a manner such that moving forward fresh mobile number and email ID shall not be used for generating one-time password at the time of Fresh Registration. Instead, one-time passwords would be sent to the mobile number and e-mail address linked to the Permanent Account Number (PAN) for which registration is being obtained.
- New Rule 8(4A) introduced wherein in certain cases of application for fresh GST Registration, based on data analysis and risk parameters, the applicant shall be required to undergo biometric-based Aadhaar authentication, clicking of photographs (of applicant or specified persons listed in case where the applicant is not an individual) and verification of documents uploaded in registration form along with Original Copy at the notified facilitation centres and the process of registration shall be deemed to be completed only after such process is duly completed.
- The said Rule 8(4A) has been currently made applicable for the state of Gujarat only. By virtue of powers granted in Rule 8(4B) of the CGST Rules, all other states and UT have been exempted until further notice.
- Rule 9(1) & (2) have been amended wherein, for such cases identified by the system based on data analysis and risk parameters, the time limit to grant GST registration / issue deficiency notice shall be 30 days from date of submission of application subject to above mentioned verification in newly introduced Rule 8(4A).
- W.r.t. grant of GST-TDS and GST-TCS registration number, there was no provision for registered person to themselves apply for cancellation of such registrations. Hence, CGST Rule 12(3) has been suitably amended so that the registered person can also apply for cancellation of GST-TDS and GST-TCS registration numbers.

B. Reversal of Input Tax Credit for non-payment of taxes

- Rule 37 of the CGST Rules, 2017 deals with reversal of ITC in cases of non-payment to the vendor within 180 days from the invoice date. The said Rule is now amended to clarify that in all cases where the recipient has failed to make complete payment to the vendor (of taxable value and tax), the recipient shall be liable to reverse ITC proportionately to the extent of unpaid amount. Only where recipient has not failed to pay, this rule shall not be triggered. (w.e.f. 01.10.2022)
- Rule 37A has been newly introduced wherein, if the supplier has uploaded invoice in Form GSTR 1 and filed the same but has not filed corresponding Form GSTR 3B till 30th September of the next financial year, then in such cases, the recipient is henceforth required to reverse such ITC in his Form GSTR 3B filed on or before 30th November.



Such ITC can be re-claimed by the recipient after the supplier has filed his Form GSTR 3B for such pending tax period for which such invoice pertains to.

C. Amendment to invoice rules for E-Commerce Operator (ECO) and Online Information Database Access and Retrieval (OIDAR) service providers

- Rule 46 of the CGST Rules has been amended whereby ECO and OIDAR service providers are required to capture the name, address of the recipient along with its PIN code and state name while issuing invoices to unregistered persons and such address shall be deemed to be address on record.
- Rule 46A dealing with “invoice-cum-bill of supply” is now amended and accordingly, such document shall contain particulars of invoices as specified in Rule 46 or Rule 54 (tax invoice) and Rule 49 (bill of supply).

D. Consequences of short payment of tax liability in Form GSTR 3B

- New Rule 88C has been introduced wherein, if the tax liability paid in a particular tax period's Form GSTR 3B is less than the liability declared in Form GSTR 1/ IFF for the same tax period by certain value and percentage as recommended by the GST Council, then such difference shall be communicated electronically to the taxpayer in Part A of FORM GST DRC-01B and within seven days of such notice, he either has to pay the difference liability along with interest or explain the difference on the GST portal. If the amount remains unpaid and no communication is received from the registered taxpayer, then such difference amount shall be treated as recoverable from him as per Section 79.
- Further, Rule 59(6) has been amended whereby, it is provided that if notice issued under Rule 88C is not responded satisfactorily or the difference is not paid, then, the registered taxpayer shall not be permitted to file Form GSTR 1 / IFF for the subsequent period (i.e., blocking filing of Form GSTR 1/ IFF)

E. Rules for Refund amended regards to documentation

- New clause (ka) has been introduced in Rule 89(2) wherein, documentation details to be submitted by unregistered persons at the time of filing claim for refund of GST have been highlighted.

F. Changes in Rules in relation to filing of Appeal under GST

- Earlier, Rule 108(3) of the CGST Rules required the registered person to file appeal on the common portal and submit certified copy of the Order within 7 days of such online submission for appeal to be accepted under the law.
- The said Rule is now revamped, wherein, the amended Rule states that no certified copy of order is required to be submitted in case where the Order against which appeal is filed is uploaded on the common portal by tax department.
- In other cases, where the Order is not uploaded on the common portal, the registered person is required to file appeal and physically submit a self-certified copy of the said decision or order within seven days of filing the said appeal and the date of issue of the



provisional acknowledgment shall be considered as the date of filing of appeal. When self-certified copy of the order is not submitted within 7 days, then date of filing of appeal would be considered as date of submission of such self-certified copy.

- Similar changes have been made in Rule 109 as well.
- Rule 109C has been introduced wherein, provision for withdrawal of appeal has been introduced by filing an application in FORM GST APL-01/03W.

G. Withdrawal of E-way Bill generation exemption

- Imitation jewellery classified under HSN 7117 will now require generation of E-way Bill subject to minimum value threshold.

H. Changes in Forms

Certain changes have been made to various procedural forms under GST including,

- a. FORM GST REG-19 (Order for Cancellation of Registration)
- b. Cosmetic changes in Form GSTR 1 including changes to provide for supplies made through ECO
- c. New Statement-8 in Form GST RFD-01 for “Refund for unregistered persons”
- d. New Form “FORM GST APL-01/03 W” for Application for Withdrawal of Appeal Application
- e. New Form “FORM GST DRC-01B” for intimating discrepancies on account of short payment of tax in Form GSTR 3B as per Rule 88C
- f. Modification in Form GST DRC-03 to include payment for erroneously refunded IGST
- g. Changes in Form GST DRC-25 in accordance with changes in Rule 161 of the CGST Rules.

Notification No. 26/2022 - Central Tax & 27/2022 - Central Tax, both dated 26.12.2022

SBGCO Comments

The changes brought in by the said notification clearly indicate that the intention of the Government is to ensure discipline in the registration process and return filing process. Even short payment of GST in GSTR 3B exceeding a prescribed value and percentage would trigger a notice and then blocking of GSTR 1 filing till resolution of the same. Non-payment of dues by supplier would further impact the claim as recipients are now expected to check whether the vendor has filed all GSTR 3B returns for which ITC is being claimed, making such claim of ITC subject to more scrutiny.



2. Changes in GST Rates

A. Goods related changes

GST Rate - IGST 5% / CGST and SGST 2.5% each

Old Entry	New Entry
102A. Ethyl alcohol supplied to Oil Marketing Companies for blending with motor spirit (petrol)	102A. Ethyl alcohol supplied to Oil Marketing Companies <u>or Petroleum refineries</u> for blending with motor spirit (petrol)
103A. Bran, sharps and other residues, whether or not in the form of pellets, derived from the sifting, milling or other working of cereals or of leguminous plants [other than aquatic feed including shrimp feed and prawn feed, poultry feed and cattle feed, including grass, hay and straw, supplement and husk of pulses, concentrates and additives, wheat bran and de-oiled cake]	103A. Bran, sharps and other residues, whether or not in the form of pellets, derived from the sifting, milling or other working of cereals or of leguminous plants [other than aquatic feed including shrimp feed and prawn feed, poultry feed and cattle feed, including grass, hay and straw, supplement <u>and additives</u> , husk of pulses <u>including chilka</u> , concentrates including <u>chuni or churi, khanda, wheat bran, de-oiled cake</u>]

GST Rate - IGST 12% / CGST and SGST 6% each

Old Entry	New Entry
48. Fruit pulp or fruit juice-based drinks	48. Fruit pulp or fruit juice-based drinks [<u>other than Carbonated Beverages of Fruit Drink or Carbonated Beverages with Fruit Juice</u>]
180. Mathematical boxes, geometry boxes and colour boxes, pencil sharpeners	180. Mathematical boxes, geometry boxes and colour boxes, pencil sharpeners

GST Rate - IGST 18% / CGST and SGST 9% each

Old Entry	New Entry
25. Ethyl alcohol and other spirits, denatured, of any strength [other than ethyl alcohol supplied to Oil Marketing Companies for blending with motor spirit (petrol)]	25. Ethyl alcohol and other spirits, denatured, of any strength [other than ethyl alcohol supplied to Oil Marketing Companies <u>or Petroleum refineries</u> for blending with motor spirit (petrol)]



3. Corresponding changes in exemption list for Goods

Old Entry	New Entry
102. Aquatic feed including shrimp feed and prawn feed, poultry feed & cattle feed, including grass, hay & straw, supplement & husk of pulses, concentrates & additives, wheat bran & de-oiled cake [other than rice-bran]	102. Aquatic feed including shrimp feed and prawn feed, poultry feed and cattle feed, including grass, hay and straw, supplement & husk of pulses, concentrates and additives, wheat bran and de-oiled cake [other than rice bran]
102C. NA (New Entry)	102C. Husk of pulses including Chilka, Concentrates including chuni or churi, Khanda

Notification No. 13/2022 - Central Tax (Rate) - dated 30.12.2022 effective from 01.01.2023

4. RCM entry for Goods enlarged.

Old Entry	New Entry
3A. Following essential oils other than those of citrus fruit namely: - a) Of peppermint (<i>Mentha piperita</i>); b) Of other mints: Spearmint oil (ex- <i>mentha spicata</i>), Water mint-oil (ex- <i>mentha aquatic</i>), Horsemint oil (ex- <i>menthasylvestries</i>), Bergament oil (ex- <i>mentha citrate</i>).	3A. Following essential oils other than those of citrus fruit namely: - (a) Of pepper mint (<i>Mentha piperita</i>); (b) Of other mints: Spearmint oil (ex- <i>mentha spicata</i>), Water mint-oil (ex- <i>mentha aquatic</i>), Horse mint-oil (ex- <i>menthasylvestries</i>), Bergament oil (ex- <i>mentha citrate</i>), <u><i>Mentha arvensis</i></u>

Along with the above, additional HSN entry included in the scope of the above RCM entry, viz., 3301 25 90

Notification No. 14/2022 - Central Tax (Rate) - dated 30.12.2022 effective from 01.01.2023

5. Clarification in scope of exemption for renting of residential dwelling.

Earlier in July 2022, the scope of exemption for renting of residential dwelling was curtailed and additional entry was included in the list of RCM entries wherein, renting of residential dwelling for use as residence by registered person was taxable under RCM. Subsequently, doubts arose as to whether Proprietors who are registered under GST are required to pay tax under RCM for renting of residential dwelling?

The Government has now clarified in the Exemption entry itself that the said exemption of renting of residential dwelling for use as residential would continue to be available to proprietors registered under GST if they satisfied the following two conditions:

- a. The residential dwelling is rented in his personal capacity for use as his own residence, and



- b. Such renting is on his own account and not that of the proprietorship concern

SBGCO Comments:

Clarification regarding scope of the exemption for renting of residential dwelling is a welcome decision whereby, all proprietors registered under GST would now feel a relief that they do not need to pay GST under RCM if they live in a rented premise used as their own residence.

II. Instructions and Circulars

6. Clarifications regarding dealing with ITC availed in Form GSTR 3B compared to details available in Form GSTR 2A for FY 2017-18 and FY 2018-19.

There has been a deluge of notices issued by Department in Form GST ASMT-10 & Form DRC-01A for various errors committed while filing returns for FY 2017-18 & FY 2018-19 and more prominently for issues regarding ITC claimed in Form GSTR 3B vs ITC appearing in Form GSTR 2A. The current circular issues following guidelines to the Department to deal with the following scenarios:

- A. Where the supplier has failed to file Form GSTR 1 but has filed Form GSTR 3B for the same tax period.
- B. Where the supplier has filed Form GSTR 1 as well as Form GSTR 3B for a tax period, but has failed to report a particular supply in Form GSTR 1.
- C. Where supplies were made to a registered person and invoice is issued as per Rule 46 of CGST Rules containing GSTIN of the recipient, but supplier has wrongly reported the said supply as B2C supply, instead of B2B supply, in his Form GSTR 1.
- D. Where the supplier has filed Form GSTR 1 as well as Form GSTR 3B for a tax period, but he has declared the supply with wrong GSTIN of the recipient in Form GSTR 1.

The CBIC has now clarified the steps to be taken by the tax officer in the above-mentioned scenarios:

- i. Identify the invoices on which ITC is availed by registered person (i.e., recipient) which are not reflecting in his Form GSTR 2A
- ii. Verify fulfilment of conditions laid down in Section 16 of the CGST Act for such invoices:
 - Valid tax invoice / debit note / tax paying document in possession of the recipient
 - Receipt of goods and / or services by the recipient
 - Payment of invoice with tax by recipient to the supplier
 - Payment of tax by supplier

To verify payment of tax by supplier, the officer should request the recipient to produce certificate (with valid UDIN) from concerned supplier's CA / CMA certifying that supplies in respect of the said invoices of the supplier have actually been made by the supplier to the said recipient and the tax on such supplies actually been made by the supplier to the said recipient and the tax on such supplies has been paid by the said supplier in his return in



FORM GSTR3B. This process has to be adopted in the cases when difference between the ITC claimed in FORM GSTR-3B and that available in FORM GSTR 2A of the registered person is greater than Rs. 5lakhs per supplier per annum. In other cases, the proper officer shall require the claimant to produce a certificate from the concerned supplier to that effect.

Additionally, in scenario “D” above, the proper officer will also intimate the concerned jurisdictional tax authority of the registered person, whose GSTIN has been mentioned wrongly by the supplier, and the ITC on those transactions is required to be disallowed, if claimed by such wrong recipients in their FORM GSTR-3B, subject to actual verification by the other jurisdiction tax authority.

The Circular further clarified that these measures are to be adopted only in case of bonafide errors committed in reporting during FY 2017-18 and 2018-19.

This circular shall apply to ongoing proceedings in scrutiny / audit / investigation, etc. for FY 2017-18 and 2018-19 and not to the completed proceedings.

Circular No. 183/15/2022-GST - dated 27.12.2022

SBGCO Comments:

Many taxpayers have been at the receiving end of the strict conditions of Section 16 of the CGST Act, 2017 for the initial years of GST wherein numerous bonafide error would have been committed on account of nascency of the GST law. We hope that this circular brings relief to numerous assesseees across the country.

7. Clarification regarding entitlement of ITC for services of transportation of goods to a place of outside India.

As per proviso to Section 12(8) of the IGST Act, 2017 the place of supply for transportation of goods to a place outside India shall be the destination of such goods i.e., foreign destination and not the State where the recipient is registered under GST. For such services, doubts had arisen regarding eligibility of ITC in the hands of the recipient and hence, the present circular has been issued clarifying as under:

- Such services of transportation of goods to a place outside India shall be treated as inter-State supply in terms of Section 7(5) of the IGST Act and hence, IGST would be levied by supplier in such cases irrespective of location of the recipient.
- Provisions of Section 16 and 17 do not restrict the availment of ITC by the recipient located in India and the place of supply being outside India.
- The supplier of services shall report the place of supply of services as “96-Foreign Country” for such services.

Circular No. 184/16/2022-GST dated 27.12.2022

SBGCO Comments:

State Code “97-Other Territory” is generally used for those areas of India which are neither governed by any state nor part of any UT. Using “97-Other territory” for paying IGST in compliance with Section 12(8) was only a work-around as GST portal & E-invoice portal did not provide the option to select “96-Foreign Country” for B2B supplies. The Government has now clarified that PoS for such transaction would be “96-Foreign Country” (i.e., destination



of goods). Simultaneously, clarification regarding eligibility of ITC would have also brought relief to numerous exporters who had reservations regarding claim of IGST ITC wherein the PoS was different than their own state.

8. Guidelines for re-computation of demand in the cases where the appellate authority or appellate tribunal or court holds that the charges of fraud or willful-misstatement or suppression of facts to evade tax are not sustainable.

In many cases, the notices issued by Department officer allege fraud or willful-misstatement or suppression of facts to evade tax i.e., invoke section 74 of the CGST Act, 2017. However, when the issue reaches the higher forum (appellate authority or appellate tribunal or court), it is ultimately held that such allegations are not sustainable and hence proper officer is then required to determine the tax payable invoking Section 73 of the CGST Act, 2017 (i.e., without fraud or willful-misstatement or suppression of facts to evade tax)

However, the time limit prescribed in Section 73(10) of the CGST Act generally expires by the time such higher forum pronounces the judgements in such cases. Time limit under Section 73 of the CGST Act required proper tax officer to issue order within 3 years from the date of filing of Annual Return / date of erroneous refund for that tax period and notice must be issued at least 3 months prior to issuance of final order (i.e., within 2 years and 9 months).

The present circular clarifies doubts regarding the time-frame within which the proper officer is required to re-determine the amount of tax payable and the methodology for such computation, especially when the judgements of higher forum are pronounced after the expiry of time limit of Section 73(10) of the CGST Act.

Circular No. 185/17/2022-GST - dated 27.12.2022

SBGCO Comments:

The above circular would be useful for officers to determine the liability after the same is returned back from higher forums. Further, the circular would also help taxpayers in cases where demand is ordered to be recomputed sans allegation of fraud or willful-misstatement or suppression of facts to evade tax.

9. Clarifications regarding taxability of No Claim Bonus offered by Insurance companies and applicability of E-invoice.

No Claim Bonus (NCB)

Issue	Clarification
Whether the deduction on account of NCB allowed by the insurance company from the insurance premium payable by the insured, can be considered as consideration for the supply provided by the	The customer / insured procures insurance policy to indemnify himself from any loss / injury as per the terms of the policy, and is not under any contractual obligation not to claim insurance claim during any period covered under the policy, in lieu of NCB. Hence, there is no supply provided by the insured to the insurance company in form of agreeing to the obligation to refrain from the act of lodging insurance claim during the



Issue	Clarification
insured to the insurance company?	previous year(s) and NCB cannot be considered as a consideration for any supply.
Whether NCB provided by the insurance company to the insured can be considered as an admissible discount for the purpose of determination of value of supply of insurance service provided by the insurance company to the insured?	The pre-disclosure of NCB amount in the policy documents and specific mention of the discount in form of NCB in the invoice is in consonance with the conditions laid down for deduction of discount from the value of supply (section 15(3) of the CGST Act) Hence, GST shall be leviable on actual insurance premium amount, payable by the policy holders to the insurer, after deduction of NCB mentioned on the invoice.

E-invoice applicability

Issue	Clarification
Whether the exemption from mandatory generation of e-invoices in terms of NN. 13/2020-CT, dated 21.03.2020, as amended, is available for the entity as whole, or whether the same is available only in respect of certain supplies made by the said entity?	The exemption from generation of e-invoices is for the entity as a whole and is not restricted by the nature of supply being made by the said entity. Illustration: Banking company is exempted from mandatory issuance of e-invoice in terms of NN. 13/2020-CT, dated 21.03.2020, as amended, for all supplies of goods and services and thus, will not be required to issue e-invoice with respect to any supply made by it.

Circular No. 186/19/2022-GST dated 27.12.2022

10. Clarifications regarding treatment of statutory dues under GST law in respect of the taxpayers for whom the proceedings have been finalised under Insolvency and Bankruptcy Code, 2016.

The Circular clarifies that proceedings conducted under Insolvency and Bankruptcy Code, 2016 (IBC) would be covered by Section 84 of the CGST Act, 2017. Hence, when any order is passed against a corporate debtor (against whom recovery proceedings under GST is also pending) approving the resolution plan, Government Dues (including dues pending under the CGST Act) would also be covered by the same.

Accordingly, no fresh notice of demand is required to be served by the tax officer for such reduced demand in accordance with the resolution plan. As per Rule 161 of the CGST Rules, 2017, the jurisdictional Commissioner shall issue an intimation in FORM GST DRC-25



reducing such demand, to the taxable person or any other person as well as the appropriate authority with whom recovery proceedings are pending.

Circular No. 187/19/2022-GST dated 27.12.2022

SBGCO Comments:

The Government has now clarified that pending dues under the GST Act would also be part of resolution plan passed in the case of corporate debtor and clarified regarding the steps to be taken by the Department in the case of reduction of demand on account of such resolution plan passed by the NCLT or similar authority.

11. Prescribing manner of filing of refund application by unregistered persons

The Circular prescribes the manner for claim of refund of taxes paid by unregistered persons only in cases where the contract / agreement for supply of services of construction of flat / building has been cancelled or where long-term insurance policy has been terminated but the time period for issuing credit note with GST under the provisions of section 34 of the CGST Act has expired for the supplier.

Circular No. 188/20/2022-GST dated 27.12.2022

SBGCO Comments:

Unregistered persons who previously missed out on claiming of refund on account of cancellation of contracts or policy termination can henceforth claim refund of GST if the tax is borne by them. This is a very welcome move and it will ensure GST cost does not become a deciding factor of such unregistered persons to continue with the contract or cancel the same, as refund would not be available to them.



B. Recent Decision from the Judiciary:

1. Arkkays National Engineering and Foundry Company vs. Commissioner of GST and C.Ex., Chennai [2022-TIOL-1146-CESTAT-MAD]

Issue Raised:

Whether credit availed on the basis of debit advices / bank statements is valid for CENVAT Credit Rules, 2004? Whether Credit can be availed for such bank charges without opting for ISD registration?

Gist of the Decision:

The Hon'ble Tribunal held that not taking an ISD registration is only a procedural error which is curable and the Hon'ble Madras HC has already held in the case of CCE Coimbatore Vs Pricol Ltd. - 2021 (48) G.S.T.L. 235 (Mad.), there is no statutory rule that disentitle an unregistered ISD to avail credit. Further, there is no dispute regarding provision of service in the present case and hence, credit cannot be denied if the same is claimed on the basis of bank advice / bank statement unless there is some discrepancy in them.

SBGCO Comments:

Unlike the GST regime, the Service Tax regime allowed for some breathing room w.r.t. availment of CENVAT credit. The Hon'ble Tribunal has rightly given preference to actual receipt of services and payment of the same. Procedural lapses do not impede the process of availing CENVAT credit.

2. Golden Key Construction vs. Superintendent, Kakkanad [2023-VIL-06-KER]

Issue Raised:

Can a common document "Form No. GST Reg 17/31" be issued for cancellation of registration?

Gist of the Decision:

The Hon'ble HC held that Form GST REG-17 is the form for issuance of show cause notice prior to cancellation of registration and Form GST REG-31 is the form of notice issued prior to suspension of registration. Such a combined document / procedure by "Form No. GST Reg 17/31" is not contemplated by the law. The HC set aside the cancellation order since the action taken by the officer was without following due process laid down by the law. The HC set aside the Cancellation Order and ordered the Petitioner to pay all the pending dues, interest, late fee and file returns within a period of two weeks for restoration of GSTIN.

SBGCO Comments:

The above decision again highlights the importance of the procedure laid down by the law. Be it the officer or the tax payer, the same must be followed diligently to ensure that the rights and liabilities of the other party are not impacted. Documentation is very critical and not following the same could lead to adverse action when the issues reach such higher forum. The CBIC should also take note of such decisions and take appropriate actions in the form of educative initiative for the officers so that such issues of not following the due process of the law are not repeated in the future.



3. Modicum Enterprise (OPC) Private Limited vs. Dy. / Asst. Commissioner of State Tax, Shibpur Charge [2022-VIL-847-CAL]

Issue Raised:

Can late fees be levied in the case where the cancelled registration has been restored and the reason for cancellation of registration was not non-filing of returns?

Gist of the Decision:

The HC noted that their registration was cancelled on the ground that the appellant was a non-existing dealer. But the same was restored on filing appeal against the said cancellation order. The Appellant Authority held that the grounds that the cancellation of registration was incorrect. Subsequently, when the Appellant attempted to file the returns for the interim period the GST portal demanded late fees of Rs.5,000/- per CGST and SGST Act as per Section 47. The Hon'ble HC held that the Appellant did not "fail" to furnish the returns because the registration was cancelled on a factually incorrect premise. Hence, the appellant cannot be penalised for by way of demand of late fees. Hence, the HC held that the Appellant should be permitted to file the returns without collection of late fees in this regard.

SBGCO Comments:

The HC has once again come to the aid of the taxpayer suffering at the hands of portal glitches / incorrect department action. The HC gave due emphasis to the reasons for which registration was cancelled and restored. Since the registration was not cancelled for non-filing of returns, the HC did not hesitate to give the benefit to the taxpayer since there was no default on the part of the taxpayer. This is a welcome decision and can be useful wherever the portal would not be able to handle the exceptional situations such as the present one.



C. Recent Decisions from Advance Authority

1. Eden Real Estates Private Limited [19/WBAAR/2022-23 (West Bengal) = 2023-VIL-06-AAR]

Questions raised:

- h. Whether the amounts charged by the applicant for right to use of car / two-wheeler vehicle parking space along with the sale of under constructed apartments to its prospective buyers is to be treated as a composite supply of construction of residential apartment services or the same is a distinct supply under section 7 of the CGST / WBGST Act, 2017?
- i. If the same is not to be treated as a composite supply, then the rate of tax applicable on such charges collected by the applicant from its prospective customers?
- j. If such apartments are sold after receipt of completion certificate from the competent authority, then whether the amounts collected for right to use of car parking space will also be treated as a NON-GST supply under Sch III of the CGST/WBGST Act, 2017 and no GST shall be payable on the amounts charged towards such right to use car parking space?
- k. Whether the taxability would change if such charges for right to use of car parking space is collected after the sale of the apartment has been done i.e., the customer had not opted for the car parking space at the time of purchase of the under constructed unit, but had sought for the same after the unit was handed over to the customer after receipt of the completion certificate?

Gist of the Ruling:

The AAR has noted the following facts:

- The facility of car parking is not supplied to any person who doesn't own a property within the said residential project.
- The applicant provides services towards right to use of car parking space to the prospective buyers who opt for the same.

Accordingly, the AAR has held that:

- a. Supply of services for right to use of car parking space is a separate supply and not to be construed as a composite supply of construction of residential apartment services.
- b. Supply of services for right to use of car parking space would be taxable @ 18%
- c. Tax is payable on supply of services for right to use of car parking space even when the apartments are sold after receipt of completion certificate from the competent authority
- d. Even if charges for right to use of car parking space are collected after the sale of the apartment has been done,

SBGCO comments:

The AAR has failed to consider one critical aspect while determining the aspect of composite supply that only if person owns a property in the said project, only then he would be eligible for the same. The AAR followed the decision of Appellate Advance Authority of West Bengal in the case of Bengal Peerless Housing Development Company Ltd. However, it remains to be seen how the courts view it, if and when such issue is taken up before the HC / SC.



2. Hyderabad Metropolitan Water Supply and Sewerage Board [No. AAAR/12/2022 (Karnataka) = 2022-VIL-86-AAAR]

Question raised:

- i. Does Medical insurance premium taken to provide health Insurance to the employees, pensioners and their family members, eligible for exemption as mentioned in Entry No. 3 of the NN 12/2017 - CT (R.), dated 28th June, 2017?
- ii. Does Vehicle insurance Policy taken to provide Insurance to the vehicles owned by the Board, eligible for exemption as mentioned in Entry No. 3 of the NN 12/2017 - CT (R.), dated 28th June, 2017?

[Entry 3 of NN 12/2017 - CT (R.) - Exemption for “Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the CG, SG or UT or local authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution]

Gist of the Ruling:

- i. The insurance services for employees and employees’ family members received by the applicant are not in direct and proximate relation to water supply and sewerage related function entrusted under Article 243W. Hence the supply received by the applicant does not fall under the said exemption entry and thereby, not exempted.
- ii. W.r.t. the vehicle, exemption would be eligible only if such vehicles are essential for performing the functions as entrusted in 243W of the constitution. If vehicle is used for other activities, namely, used for transportation of employees / board member / other persons with no direct relationship to functions, then exemption would not be available.

SBGCO comments:

The AAAR has upheld the decision of the AAR and rightly so. If such a stand is taken that all pure services provided to the CG, SG or UT or local authority by way of any activity in relation to any function entrusted to a Panchayat or in relation to any function entrusted to a Municipality are eligible for exemption then the importance of the phrase “in relation to” would be diluted. The AAAR has correctly interpreted “in relation to” to mean “a direct and proximate relationship” and according held as above.

3. Capfront Technologies P. Ltd [KAR ADRG 47/2022 (Karnataka) = 2022-TIOL-151-AAR-GST]

Background Facts:

The Applicant own a mobile application, developed and owned by them, called as "LoanFront. The said application software is used to facilitate lending of short-term personal loans and now they intend to sell the same.

Questions raised:

Whether the GST would be applicable on the aforesaid transfer of mobile application software?

(Relevant Exemption Entry No 2 of NN 12 / 2017 - CT(R.) dated 28.06.2017 - “Services by way of transfer of a going concern, as a whole or an independent part thereof”)



Gist of the Ruling:

Drawing conclusion from agreement deals, the AAR held that the assets as well liabilities of the business pertaining to "LoanFront" app is going to be transferred to the buyer. Since there would be continuity of business, the said transfer would amount to transfer of going concern. Accordingly, it was held that such transfer of independent part of business pertaining to "LoanFront" app would be eligible for exemption in terms of Entry 2 of NN 12 / 2017 dated 28.06.2017.

SBGCO comments:

The AAR has correctly understood the facts and applied them to the relevant entry of the exemption notification. An independent part of business being sold with all assets and all liabilities is sufficient for such transfer to be covered by the exemption notification, which has transpired in the present case.



D. GST Compliance chart for January 2023

S N	Due Date	Form	Period	Periodicity	Special Remarks
1.	10.01.2023	GSTR - 7	Dec 2022	Monthly	To be filed by those who are required to deduct TDS under GST
2.	10.01.2023	GSTR - 8	Dec 2022	Monthly	To be filed by those who are required to collect TCS under GST
3.	11.01.2023	GSTR - 1	Dec 2022	Monthly	Taxpayers filing GSTR - 1 monthly
4.	13.01.2023	GSTR - 6	Dec 2022	Monthly	To be filed by an ISD
5.	13.01.2023	GSTR - 1	Oct 2022 to Dec 2022	Quarterly	To be filed by those under QRMP Scheme
6.	13.01.2023	GSTR - 5	Dec 2022	Monthly	To be filed by a non-resident foreign taxpayer registered in GST
7.	18.01.2023	CMP - 08	Oct 2022 to Dec 2022	Quarterly	To be filed by Composition Dealer (Payment of Self-assessed tax)
8.	20.01.2023	GSTR - 3B	Dec 2022	Monthly	To be filed by Taxpayer filing monthly GSTR 3B
9.	20.01.2023	GSTR - 5A	Dec 2022	Monthly	To be filed by non-resident Online Information and Database Access or Retrieval (OIDAR) services provider
10.	22.01.2023	GSTR - 3B	Oct 2022 to Dec 2022	Quarterly	To be filed by those under QRMP Scheme (#)
11.	24.01.2023	GSTR - 3B	Oct 2022 to Dec 2022	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

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

Sunil Gabhawalla @ sunil@sbgco.in

Yash Parmar @ yash@sbgco.in

Parth Shah @ parth@sbgco.in

Darshan Ranavat @ darshan@sbgco.in

Prakash Dave @ prakash@sbgco.in

Aman Haria @ aman@sbgco.in

Our office address:

S B Gabhawalla & Co.,

802-803 Sunteck Grandeur

Off S V Road, Opp Subway

Andheri West Mumbai 400058

Landline - 022 - 66515100

Web: www.sbgco.co.in

Want to stay connected, join our Whatsapp group by clicking on the link -
<https://chat.whatsapp.com/KJRD8SHyjSK5FUkFj8Of4t>