



# **SBGCo Connect November 2022**

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Greetings to all our readers!

The festive season of October has resulted in buoyancy in consumption patterns despite of rise in inflation. The Government has also enforced stricter actions against tax-evasion activities in the recent past. Hence, higher GST collections are expected for October-2022 which would also be in line with the steady rise in GST collections in the Q2 of FY 2022-23.

Crucial months of November and December now lie ahead concerning GST Annual Return and Reconciliation Statement after completion of the Income Tax Audit season. It is imperative that taxpayers do not get complacent with the due date for GSTR 9 and 9C and try and file the details well in advance to escape the eleventh-hour rush on the GST portal. Recently, the last-minute rush on GST portal led to extension of due date of GSTR 3B for September 2022, albeit it is was done only after original due date had passed.

Further, various compliances relating to previous financial year fall due in November 2022 (see newsletter of October 2022). Hence, taxpayers should ensure that their workings in relation to claim of ITC pertaining to previous financial year, amendments pertaining to invoices / credit notes / debit notes are ready well in-advance so that returns for the month of October 2022 are not delayed.

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 November 2022](#)

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. Due Date for filing of GSTR 3B for September 2022 extended.**

Due to website functioning issues on the due date of filing GSTR 3B for September 2022, the due date was extended by 1 day from 20.10.2022 to 21.10.2022 for taxpayers filing monthly GSTR 3B.

*Notification No. 21/2022 - Central Tax - dated 21.10.2022*

**II. Press Release & Instructions issued during the month**

**2. Clarification regarding Notification No. 18 / 2022 - Central Tax dated 28.09.2022**

Vide Notification No. 18 / 2022 - Central Tax, numerous provisions of Finance Act, 2022 were brought into effect w.e.f. 01.10.2022, inter alia, time-limit for certain compliances were relaxed and extended upto 30<sup>th</sup> November of the next financial year. The said compliances have been tabulated hereunder:

<b>Section</b>	<b>Corresponding Compliance</b>
Section 16(4)	Claiming of ITC in respect of any invoice or debit note in the return
Section 34(2)	Declaration of the details of credit notes in the return
Proviso to Section 37(3)	Rectification of particulars in details of outward supplies
Proviso to Section 39(9)	Rectification of particulars furnished in return
Proviso to Section 52(6)	Rectification of particulars in the statement furnished by a TCS operator

The press release has been issued clarifying that the extended timelines for compliances highlighted in the table above would be applicable to the compliances for FY 2021-22 onwards. It has been further clarified that due date for GSTR 3B of October's return (due in November) has not been altered and that only the last date of compliance has been set as 30<sup>th</sup> November of the next financial year, or the date of furnishing annual return for the said financial year, whichever is earlier.

*Press Release dated 04.10. 2022*

**SBGCO Comments:**

The press release has been issued in a timely manner wherein, the applicability of the said provisions was clarified well-in-advance.



### **3. Clarification regarding Pre-deposit payment methods for erstwhile Central Excise and Service Tax Appeals**

In the recent times, it has been observed that certain assessee chose to pay mandatory pre-deposit as required under Section 35F of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994 in relation to Central Excise and Service Tax Appeals via Form GST DRC-03 on the common GST portal. In many of these cases, the Appeals were rejected on the grounds of non-compliance of Pre-deposit requirements by Commissioner (Appeals) as such pre-deposit payment via Form GST DRC-03 is not a valid mode of payment for Central Excise and Service Tax related appeals.

Now, the CBIC Board has taken cognizance of the matter and issued the present clarification stating that Form GST DRC-03 is NOT a valid mode of payment of pre-deposit for Central Excise and Service Tax related appeals. The instruction letter further clarified that Form GST DRC-03 is NOT a valid mode of payment of pre-deposit under GST law as well. Hence, for Central Excise and Service Tax related appeals, the assessee must use the separate dedicated CBIC-GST integrated portal, "<https://cbic-gst.gov.in>" for complying with the mandatory pre-deposit requirements.

*Instructions dated 28.10.2022*

#### **SBGCO Comments:**

The CBIC clarifying the pre-deposit aspect for payment of pre-deposit for appeals pertaining to pre-GST regime was a much-needed clarification specially after the said issue had reached the doors of the Hon'ble High Court of Bombay. Hopefully, the GST officers will not be reluctant to refund the mandatory pre-deposit of erstwhile Central Excise and Service Tax period when the appeal is ordered in the favour of the assessee after this clarification.

However, it must also be noted that contradictory decisions in this matter do exist and the present circular only clarifies the stand of the CBIC in the said matter. Even though, circulars are binding only on the department and not on the assessee, it would be advisable to follow this circular and avoid disputes moving ahead.

### **III. Advisories on GSTN portal**

#### **4. Implementation of mandatory mentioning of HSN codes in GSTR-1**

From 01.10.2022, the GSTN portal is now geared up to ensure that the taxpayers with turnover up to Rs 5 crore turnover are mandatorily required to report 4-digit HSN codes in their GSTR-1 in compliance with Notification No. 78/2020 - Central Tax dated 15th October, 2020.

#### **5. Advisory on Filing TRAN forms for Taxpayers from Daman and Diu & Ladakh**

To clarify the doubts arising for the taxpayers of Ladakh and earlier 'Daman and Diu' region regarding how to file the TRAN-1 and whether it would be linked with the old TRAN-1 or not, the GSTN portal has clarified that taxpayers of both the above-mentioned regions must file or revise their TRAN-1 or TRAN-2 Forms only through their newly allotted GSTINs (NOT to use the old GSTIN for this one-time opportunity).



**6. Sequential filing of GSTR-1 & filing of GSTR-1 before GSTR-3B on GST Portal**

In compliance with the amended Section 37 & Section 39 of CGST Act, 2017 vide Notification No.18/2022- Central Tax dated 28.09.2022, following two changes are being implemented on the GST portal:

- a. Filing of previous GSTR-1 will be mandatory before filing current GSTR-1. For example, filing of GSTR-1 of October, 2022 will be mandatory before filing GSTR-1 of November, 2022.
- b. Filing of GSTR-1 will be mandatory before filing GSTR-3B for the current month. For example, a taxpayer will not be allowed to file GSTR-3B for October, 2022 if GSTR-1 of October, 2022 is not filed.



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

### **1. Sheetal Dilip Jain vs. State of Maharashtra [2022-TIOL-1276-HC-MUM-GST]**

#### **Issue Raised:**

Whether a period of 7 days to reply to a SCN is valid, when the provisions under Section 73 of the CGST Act clearly state that taxpayer has 30 days to respond to such SCN?

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

The HC held that such orders are unacceptable because Sections 73(8) of CGST Act permits a period of 30 days to either pay the tax or file a reply along with reasons as to why such amount is not payable.

### **2. M/s. Samridhi Enterprise (Prop. Prity Dokania) & Ors vs. State of Jharkhand [2022-VIL-702-JHR]**

#### **Issue Raised:**

Whether adjudication process be held to be valid when no SCN is issued and / or opportunity of hearing is not granted and / or passing vague adjudicating order?

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

The Hon'ble HC set aside all such adjudication orders and held as under:

- i. Failure to issue the mandatory SCN under Section 73/74 of the JGST Act along with summary SCN under Rule 142(1) vitiates the entire proceeding and violates principles of natural justice.
- ii. Not granting opportunity of hearing is a clear violation of Section 75(4) and 75(5) of the JGST Act.
- iii. Not issuing a detailed order is a violation of Rule 142 (5) of the JGST Rules, 2017.

### **3. Vadivel Pyrotech Pvt Ltd vs. Asst. Commissioner, Commercial Tax [2022-VIL-701-MAD]**

#### **Issue Raised:**

Whether issuance of ASMT-10 is mandatory before issuance of SCN if the same is issued in pursuance to scrutiny under Section 61 of the CGST Act, 2017? Can the SCN (Form DRC-01) & Order (Form DRC-07) be issued on grounds completely different than the points raised in ASMT-10, if the same are issued in pursuance to scrutiny under Section 61 of the CGST Act, 2017?

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

Setting aside the Order (Form DRC-07), the Hon'ble HC held that, if scrutiny under Section 61 of the CGST Act, 2017 has been initiated, then it is mandatory that Form ASMT 10 is issued before issuance of GST DRC-01 (SCN). Failure to issue Form ASMT-10 for the discrepancies forming the subject matter in the SCN, would vitiate the entire proceedings, including the adjudication process when the same is issued in pursuance to scrutiny under Section 61 of the CGST Act, 2017.



**SBGCO Comments for 1, 2 & 3:**

Following the statutory provisions while performing all duties including issuing Form ASMT-10 / Form DRC-01A / SCN (Form DRC-01), is very important. This ensures that the actions of the officers (including orders) are fair as the law is drafted in such a manner where both parties, officer and taxpayer, have enough scope for ensuring that their contention are well heard by the opposite party - which is one of the basic principles of Natural Justice.

**4. M/s. Brij Bihari Singh Vs. Commissioner of Commercial Tax [2022-TIOL-677-HC-ALL-GST]**

**Background Facts:**

SCN was issued to the taxpayer for cancellation of registration on 28.02.2019. The Taxpayer submitted his reply on 12.03.2019. subsequently, order for cancellation of registration was passed on 09.08.2019 after serving the order duly through GSTN portal. The taxpayer tried to file an appeal against the said order, but could not file the same on account of malfunctioning / errors in the functioning of the GSTN portal. The Appeal was finally filed on 20.09.2021. The said Appeal was rejected on the grounds of it being time barred. The issue faced by the taxpayer was acknowledged by GSTN authority when the grievance was filed by the taxpayer.

**Issue Raised:**

Whether the Appeal can be rejected on account of being time-barred (appeal filed 2 years after the order was passed), in such a scenario?

**Gist of the Decision:**

The Hon'ble HC held that the petitioner could not file the appeal electronically for reasons attributable solely to the GSTN portal and not for reasons attributable to the taxpayer. The issue of the GSTN portal was resolved only on 17.09.2021 and the taxpayer filed the appeal immediately thereafter. Since there was an external obstruction outside the control of the taxpayer, the period of limitation to file the appeal was deemed to have remained suspended till the time the GSTN portal was not made available for filing of appeal, through prescribed mode (electronically). Hence, the HC ordered that taxpayer's appeal should be heard on merits and not rejected on the grounds of being time-barred.

**SBGCO Comments:**

It is pertinent to raise queries / grievances when any taxpayer faces issued w.r.t. the functioning of the GSTN portal. This establishes the bonafide intent of the taxpayer to not just comply with the requirements of the law, but also establishes external difficulties faced by taxpayer. At the ground-level, the officers may not have the powers to accept such submissions, but the higher forums will always take cognizance and provide the due relief.



## **5. Raj Mohan vs. Commissioner of CGST [2022-TIOL-883-CESTAT-CHD]**

### **Issue Raised:**

Whether differences in figures reflected in ST-3 Returns and in Form 26AS (Income Tax) can be a basis for raising of demand under the Service Tax law?

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

The Hon'ble Tribunal held that differences in figures reflected in ST-3 Returns and form 26AS cannot be basis for raising Service Tax demand without actually examining the reasons for such differences. Further, the Tribunal also held suppression cannot be alleged in such a case as the amounts appearing in Form 26AS are already included in Income Tax Returns in Profit & Loss account and Balance Sheet which is a public document and that ST-3 Returns were also filed by appellants regularly.

### **SBGCO Comments:**

The present decision once again throws light on one of the basic pre-requisites of any adjudication process which is that the onus of establishing any wrong doing is on the person who alleges such wrong doing against the other person. Merely having a difference in different documents, pertaining to different laws, cannot form a basis for demanding any tax.





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

### **1. RITES Limited [HR/ARL/19/2022-23 = 2022-VIL-283-AAR]**

#### **Question raised:**

GST implications on the following issues, along with GST rate if GST is applicable on:

- a. Notice Period recovery
- b. Bond forfeiture of contractual employees
- c. Nominal / subsidized recovery of canteen charges
- d. Recovery on account of loss / replacement of ID Cards
- e. Liquidated damages due to delay in completion (including non-performance / short performance)
- f. Forfeiture of earnest money / security deposit / bank guarantee
- g. Writing off credit balances in the books of accounts

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

- a & b. For notice period recovery and bond forfeiture of contractual employees - the AAR relied on the recent Circular 178/10/2022-GST dated 03.08.2022 and held that such recoveries are outside the scope of GST and hence not liable to GST.
- c. Relying on previous AARs under GST regime, the nominal / subsidized recovery of canteen charges was also held to be outside the purview of taxability under GST.
- d. According to the AAR, ID card re-issue charges are covered by Schedule III (1) of the CGST Act and hence, such transactions also do not fall under the scope of taxable event under GST.
- e & f. The AAR relied on the recent Circular 178/10/2022-GST dated 03.08.2022 to hold that liquidated damages and forfeiture of earnest money deposits / bank guarantees are not liable to tax under GST.
- g. Writing off credit balances in books of accounts is an income but not a "Supply" and hence, no services are received or provided in such cases. Hence, such act of writing off credit balances in the books of accounts is outside the scope of GST.

#### **SBGCO comments:**

For multiple issues, the CBIC board had clarified vide the recent Circular 178/10/2022-GST dated 03.08.2022 and hence, most of the rulings are in line with the said Circular. Two key issues that would be useful to taxpayers and which were not discussed in the said circular are recovery of re-issue charges for ID cards and writing off credit balances in the books. Many a times, tax officers do ask taxpayers to pay taxes on such amounts along with interest in the course of Department Audits. This ruling can now be used to defend against such demands during Department Audit.



**2. Jayashankar Gramin and Adivasi Vikas Sanstha [MAH/AAAR/AM-RM/09/2022-23 (Maharashtra) = 2022-VIL-75-AAAR]**

**Background Facts**

The Appellant is a charitable trust registered under Maharashtra Public Charitable Trust Act, 1950 and under Section 12AA of the Income Tax Act, 1961. The trust undertakes services to orphans and homeless children by way of providing shelter, education, guidance, clothing, food and health, on behalf of the Women & Child Development Ministry of Government of Maharashtra. The trust also renders services under “One stop crisis centre” scheme (Subject matter in Advance Ruling) introduced by Ministry of Women and Child Development to destitute women who are litigating divorce, or homeless, or the victims of domestic violence. An amount up to Rs.2,00,000/- is granted after presentation of list of expenses incurred on behalf of Ministry of Women and Child Development. If monthly expenses incurred are less than the said limit, lesser amount is granted.

MH - AAR had held that such amounts received from will be liable to GST vide Order No GST-ARA-97/2019-20/B-91 dated 10.11.2021 (2021-VIL-417-AAR).

Hence, the present appeal is filed before AAAR against the said adverse order.

**Question raised:**

Whether the reimbursement amount paid by the Maharashtra Government to the Appellant for undertaking the activities specified under “One stop Crisis Centre Scheme” floated by the Central Government, will be subject to the levy of GST?

**Gist of the Ruling:**

The AAAR analysed that the amount of grant received by the Appellant Trust cannot be construed as “consideration” because the reimbursement received from the Maharashtra Government is in the nature of subsidy. Hence, various assistances, such as food, shelter, legal assistances, medical assistances, etc., to the destitute women, provided by the Trust would not be construed as supply in terms of Section 7(1)(a) of the CGST Act, 2017. Thus, the AAAR held that such reimbursement amounts based on actual expenditure will not be liable to GST.

**SBGCO comments:**

The AAAR has very rightly analysed the provisions of the GST law relating to grants and subsidies, which would not form part of “consideration” under the definition provided under Section 2(31) of the CGST Act, 2017. The application of the said ruling can be applied in other cases as well, where grants / subsidy is received from the CG / SG.



**3. New Jai Hind Transport Service (Prop. Gurjinder Singh Sandhu) [Ruling 10/2022-23 (Uttarakhand) = 2022-TIOL-121-AAR-GST]**

**Question raised:**

Whether the value of free diesel filled by service recipient under the accepted terms of contractual agreement in the fleet(s) placed by GTA service provider will subject to the charge of GST by adding this free value diesel in the value of GTA service, under the CGST Act, 2017 Uttarakhand GST Act, 2017?

**Gist of the Ruling:**

The AAR has analysed that without the fuel the vehicle does not operate (run) and without moving from one place to another, the act of transportation of goods by road does not happen. Hence, even though contract casts responsibility of fuel on the service recipient, the amount on account of the price of fuel was to be included in taxable value of transporter in accordance with Section 15(2)(b) of the CGST Act, 2017.

**SBGCO comments:**

The ruling of the AAR seems to have failed to understand the spirit of the Valuation provisions. If the contractual terms specify that the liability of fuel will be borne by the service recipient, then Section 15(2)(b) of the CGST Act does not require the same to be added to the value of services because such amount was not payable by the supplier in the first place as per the agreement. It remains to be seen as to how the higher courts interpret the said provision or else, we will again need a similar judgement like Bhayana Builders Pvt Ltd [2018-TIOL-66-SC-ST] as pronounced in the erstwhile regime clarifying the current issue.



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

<b>S N</b>	<b>Due Date</b>	<b>Form</b>	<b>Period</b>	<b>Periodicity</b>	<b>Special Remarks</b>
1.	10.11.2022	GSTR - 7	Oct 2022	Monthly	To be filed by those who are required to deduct TDS under GST
2.	10.11.2022	GSTR - 8	Oct 2022	Monthly	To be filed by those who are required to collect TCS under GST
3.	11.11.2022	GSTR - 1	Oct 2022	Monthly	Taxpayers filing GSTR - 1 monthly
4.	13.11.2022	GSTR - 6	Oct 2022	Monthly	To be filed by an ISD
5.	13.11.2022	IFF	Oct 2022	Monthly	To be filed by those under QRMP Scheme (Optional)
6.	13.11.2022	GSTR - 5	Oct 2022	Monthly	To be filed by a non-resident foreign taxpayer registered in GST
7.	20.11.2022	GSTR - 3B	Oct 2022	Monthly	To be filed by Taxpayer filing monthly GSTR 3B
8.	20.11.2022	GSTR - 5A	Oct 2022	Monthly	To be filed by non-resident Online Information and Database Access or Retrieval (OIDAR) services provider
9.	25.11.2022	PMT - 06	Oct 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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