



SBGCo Connect November 2023

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Greetings to all our readers and a very Happy Deepawali, in advance!

With the end of Income Tax Audit Season, begins the next phase of filing of GST Annual Return and Reconciliation Statement for FY 2022-23. It is imperative that taxpayers do not get complacent with the due date for GSTR 9 and 9C and file the details well in advance to escape the eleventh-hour rush on the GST portal.

November 2023 is also the month wherein the GST law provides last chance for correcting various compliances relating to previous financial year in the filing of returns for the month of October 2023 provided such returns reflecting such correction/ updation are filed on or before 30th November 2023. Such compliances include:

- a. Last chance to correct/ amend invoices pertaining to FY 2022-23 in Form GSTR-1
- b. Last chance to issue Credit Notes in relation to invoices dated FY 2022-23 in Form GSTR-1
- c. Last chance to claim ITC pertaining to FY 2022-23 in Form GSTR-3B

The 52nd GST Council Meeting announced an amnesty for taxpayers who missed to file an appeal on the common GST portal against adverse orders passed against them. The details of the said scheme, as laid down by the Press Release issued on 7th October 2023 is covered in the present newsletter.

In another significant new, the GST collections for the month of October 2023 also saw a jump and boasts of the 2nd best GST revenue collection of 1.72 lakh crore since the inception of GST. The revenue growth shows business buoyancy and this optimism leading to the Diwali season will likely have a positive impact on GST revenue numbers for the coming months as well.

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 November 2023](#)

All 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. Amnesty Scheme for filing of appeals (GST)

- The 52nd GST Council meeting announced amnesty scheme for all the taxpayers who could not file an appeal in time against demand orders issued on or before 31st March 2023.
- As per the press release issued by the GST Council, wherever the taxpayer has failed to file an appeal within the prescribed timelines against orders passed on or before 31st March 2023, such taxpayers will get an additional window to file their appeal on or before 31st January 2024 albeit with a small additional condition that pre-deposit required shall be 12.5% of disputed tax, out of which 20% of the total pre-deposit viz., 2.5% of disputed tax shall be paid by cash (i.e., by debiting electronic cash ledger).
- Additionally, appeal not involving demand of tax will not be eligible for such amnesty benefit. Further, if any amount has already been paid in excess of 12.5% of dispute, the same shall not be refunded back until the disposal of the said appeal.

Press Release dated 07.10.2023 read with Notification No. 53/2017 - Central Tax dated 02.11.2023

SBGCo Comments

The GST Council's amnesty scheme for filing of appeals will come as huge relief for taxpayers who have missed to file appeal against orders issued against them. Since the entire process is system driven, the portal can lock out the taxpayer from filing of filing after the prescribed timelines. The GST portal shall now enable all such locked-out taxpayers to file appeal upto 31st January 2024 in the interest of overall justice. However, E-way Bill and other cases only involving penalty will not be eligible for the above scheme.

II. Central Goods and Services Tax (Fourth Amendment) Rules, 2023

- **Amendment to Rule 28 (Value of supply of goods or services or both between distinct or related persons, other than through an agent)**
 - New Sub-rule (2) is added to Rule 28, wherein valuation provisions have been prescribed for providing corporate guarantee services.
 - The new sub-rule provides that in case where corporate guarantee is provided by a person (service provider) to any bank or financial institution on behalf of a related recipient, the value of service shall be 1% of guarantee offered or actual consideration.
 - In relation to such an amendment, CBIC has also issued a Circular No. 204/16/2023-GST dated 27.10.2023 wherein, specific clarification has been provided in respect of personal bank guarantee provided by "Directors" to banks for securing credit facilities for the company.
 - The said clarification provides as under:
 - (a) Since RBI's Circular No. RBI/2021-22/121 dated 9th Nov 2021 mandates that no consideration will be charged by Director, directly or indirectly, for providing personal guarantee for the company, hence, open market value of such transaction



will be treated as “Zero” and hence, the tax payable on such transactions shall be “NIL”

- (b) However, in case where the Director who had given personal guarantee is no longer associated with the Company, but the guarantee given still continues even after the termination of directorship, then in all such cases, sub-rule (2) of Rule 28 shall be invoked.

Notification No. 52/2023 - Central Tax dated 26.10.2023 read with Circular No. 204/16/2023 - GST dated 27.10.2023

SBGCo Comments

The CBIC has amended rules and provided clarification by way of a Circular to give effect of the decisions of the 52nd GST Council Meeting. The above amendment to rules provides that even when no consideration is charged for providing personal guarantee, the deemed value of service shall be 1% of the guarantee value, except in the case where personal guarantee is given by Director for the Company during his tenure as a Director. The said clarification is a timely one as many companies were facing scrutiny/ SCN for not discharging tax under RCM for personal guarantee services provided by the Director.

● **Time-limit prescribed for Provisional attachment of property**

- The rules for provisional attachment of property did not provide for any outer time-limit for the provisional attachment orders issued by the Commissioner.
- However, the Rule 159(2) is now amended to provide that the order of provisional attachment issued by the Commissioner shall be in-effect only for a maximum period of 1 year from the initial date of such order or a written communication to release provisional attachment if issued within a period of 1 year.
- The said amendment is also incorporated in the FORM GST DRC-22 wherein, specific note has been inserted at the end which clarifies that such order shall only be in effect upto a maximum period of 1 year.

Notification No. 52/2023 - Central Tax dated 26.10.2023

SBGCo Comments

This amendment comes as good relief to the taxpayers wherein provisional attachments previously issued by any Commissioner lasted without any time-limit. The outbound time-limit of one-year as provided through the above amendment shall now ensure that no complacency sets in the Department officers and the proceedings once initiated along with provisional attachments are completed in a time-bound manner.

● **Miscellaneous Changes.**

- Changes made to Rule 142(3) wherein, FORM GST DRC-05 (Intimation of conclusion of proceedings) previously referred to as an “Order” in the said Rule, shall now be referred to as an “Intimation”
- FORM GST REG-01 amended to include “one-person” company in the Registration Form for fresh registration.
- FORM GST REG-08 (Order of Cancellation of Registration as Tax Deductor at source or Tax Collector at source) amended.



- FORM GSTR-08 amended to incorporate interest and late fee collection along with the such form.
- FORM GST PCT-01 (Enrolment as Goods and Services Tax Practitioner) amended.

Notification No. 52/2023 – Central Tax dated 26.10.2023

III. Notifications issued during this past month

A. Changes in GST Rate notifications

• Further restriction on claim of ITC for Rent-a-cab operators charging GST @ 5%

- Rent-a-cab operators charging 5% GST rate on their output services were permitted to claim ITC only of input services received for the same line of business i.e., services of rent-a-cab procured from other service provider. Rent-a-cab operators charging 12% GST rate on their outward supplies did not have such restrictions on claim of ITC.
- In certain cases, the registered taxpayer would charge 5% GST for his outward services but would claim ITC of 12% for inward supplies of rent-a-cab services procured from other vendor.
- The Government has sought to plug this gap by restricting ITC claim for 5% service providers to the extent of 5% of ITC on the actual value of taxable supply received from another rent-a-cab operator.
- For example, Mr. A engages M/s. LMN for transport from New Delhi to Jaipur in a motor cab for Rs. 1000/-. M/s. LMN charges 5% GST on his outward supplies. For supplying such services, M/s. LMN hires motor cab from M/s. XYZ who charges 12% on his outward supply for Rs. 800/-. Previously, M/s. LMN could claim ITC of entire Rs. 48 (12% of 800/-) charged by M/s. XYZ. However, after the above amendment, ITC of M/s. LMN would be restricted to Rs. 20 (5% of 800/-).

SBGCO Comments

The rationale behind such amendment is not clear other than higher cash outflows and lower ITC accumulation in the hands of a few rent-a-cab operators. Eligible ITC makes pricing competitive and such restriction may result into cost escalation in a handful cases.

• Amendments in rate notification to align amendments proposed via Central Goods and Services Tax (Amendment) Act, 2023 regard “Specified actionable claims”

- Separate Rate entry notifying tax of 28% for Gambling is omitted. This is because the same would now be covered under “Specified actionable claims”
- Similarly, Entry in “Scheme of Classification of Services” for Gambling, Betting and Lottery Services have been omitted keeping in mind the recent amendments made effective from 01.10.2023 regarding specified actionable claim.

Notification No. 12/2023 – Central Tax (Rate) and Notification No. 15/2023- Integrated Tax (Rate), both dated 19.10.2023, effective from 20.10.2023



B. Rationalization of Exemptions

• Exemption for Specific Services provided to Govt. Authorities

- A new Entry 3B has been introduced whereby, the CBIC has provided exemption to specific services (viz., water supply, public health, sanitation conservancy, solid waste management and slum improvement and upgradation) when provided to Govt. Authorities.

SBGCO Comments

The said new entry uses the phrase “by way of” which would mean that the entry has a very narrow scope and the exemption would be available only when such function is primarily done by the service provider and would include outsourcing by such Governmental Authority.

• Ministry of Railways - only Forward Charge

- The CBIC has now amended all entries of the rate notification wherein the entries discussed about services provided by CG, SG or Local Authority to include “the Ministry of Railways (Indian Railways)” liable to tax under Forward Charge by the said Department itself
- Similar amendment has been carried out under RCM notification wherein Ministry of Railways is treated as an exception and the said entire services by them are liable to Forward Charge, just like Department of Posts.
- Likewise, CBIC has also amended RCM notification for goods wherein, Ministry of Railways will now be liable to discharge tax under FCM for supply of “Used vehicles, seized and confiscated goods, old and used goods, waste and scrap”

SBGCO Comments

The said entry may appear insignificant at first as we all knew all this while that Indian Railways was always charging GST on ticket reservation and other ancillary services provided by them. However, it does indirectly clarify that all ministries that function under one or the other department of the CG or SG are considered as CG and/ or SG itself by the Government as well.

Also, these amendments also ensure all outward supplies of Ministry of Railways (Indian Railways) is liable to tax under FCM and full ITC is available to them.

Notification No. 13/2023 & 14/2023 - Central Tax (Rate) and Notification No. 16/2023 & 17/2023- Integrated Tax (Rate), all dated 19.10.2023, effective from 20.10.2023 - Services

Notification No. 19/2023 - Central Tax (Rate) and Notification No. 22/2023 - Integrated Tax (Rate), all dated 19.10.2023, effective from 20.10.2023 - Goods

C. Refund restrictions relaxed

- The table below summarizes the change made in relation to taxpayers who cannot claim refund under GST for inverted duty structure in terms of Notification 15/2017 - Central Tax (Rate) dated 28.06.2017



Before Amendment	After Amendment
<p>Activity Specified in sub-item (b) of item 5 of Schedule II of the CGST Act</p> <p>i.e., <u>Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.</u></p>	<p><u>Construction of a complex, building or a part thereof, intended for sale to a buyer, wholly or partly, where the amount charged from the recipient of service includes the value of land or undivided share of land, as the case may be, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.</u></p>

SBGCO Comments

The amendment seems to be precautionary amendment wherein refund of inverted duty structure may not have been available for construction of civil structure previously, which has now been cured by deleting such restriction and only including construction activities of a complex, building and parts thereof for ineligible for claim of refund under inverted duty structure.

Notification No. 15/2023 - Central Tax (Rate) and Notification No. 18/2023- Integrated Tax (Rate), both dated 19.10.2023, effective from 20.10.2023

D. Modification in scope of services where GST is payable by E-commerce Operator (ECO)

- Previously, services by way of transportation of passengers by a radio-taxi, motorcab, maxicab, motor cycle, or omnibus were covered by Notification 17/2017- CT (rate) wherein, ECO are required to pay tax on such supplies.
- However, the said entry is now modified to provide that when the person supplying transportation of passenger services by ECO is a 'Company' [as per Section 2(20) of the Companies Act, 2013], tax on such supply shall be payable by the said company and in all other cases, ECO shall continue to pay the taxes.

Notification No. 16/2023 - Central Tax (Rate) and Notification No. 19/2023- Integrated Tax (Rate), both dated 19.10.2023, effective from 20.10.2023

E. Changes to GST Rates for Goods

- The table below summarizes new additional entries introduced in the GST Rate notification for specific goods listed herein:

Entry No.	Schedule	HSN	Description	New Rate	Old Rate
92A	I	1703	Molasses	5%	28%
96A	I	1901	Food preparation of millet flour, in powder form, containing at least 70% millets by weight, pre-packaged and labelled	5%	18%



Entry No.	Schedule	HSN	Description	New Rate	Old Rate
25A	III	22071012	Spirits for industrial use	18%	-

Notification No. 17/2023 - Central Tax (Rate) and Notification No. 20/2023- Integrated Tax (Rate), both dated 19.10.2023, effective from 20.10.2023

- The table below summarizes new exemption entry introduced in the GST Exemption notification for specific goods listed herein:

Entry No.	HSN	Description	New Rate	Old Rate
94A	1901	Food preparation of millet flour, in powder form, containing at least 70% millets by weight, <u>other than pre-packaged and labelled</u>	Exemption	18%

Notification No. 18/2023 - Central Tax (Rate) and Notification No. 21/2023- Integrated Tax (Rate), both dated 19.10.2023, effective from 20.10.2023

F. Additional entry introduced not eligible for Inverted Duty Refund (Goods)

- A new entry for below mentioned goods has been introduced to treat these as ineligible goods for claim of refund on account of inverted duty structure for specific inputs:

Sr. No	HSN	Description
6AA	5605	Imitation zari thread or yarn made out of Metallised polyester film /plastic film; Explanation: This entry shall apply for refund of input tax credit only on polyester film /plastic film

Notification No. 20/2023 - Central Tax (Rate) and Notification No. 23/2023- Integrated Tax (Rate), both dated 19.10.2023, effective from 20.10.2023

IV. Circulars issued in the month of October 2023.

- **Clarification regarding admissibility of export remittances received in Special INR Vostro account**
 - The Circular draws reference to Section 2(6)(iv) of IGST Act for “Export of services” which states that one of the conditions for export of services is that the payment for such service has been received by the supplier of service in convertible foreign exchange or in INR wherever permitted by the Reserve Bank of India.
 - The Circular relies on RBI’s A.P. (DIR Series) Circular No. 10 dated 11th July 2022 regarding International Trade Settlement in INR wherein the RBI has clarified that to promote growth of global trade with emphasis on exports from India, additional



arrangement for invoicing, payment, and settlement of exports / imports in INR have been put in place.

- Hence, the CBIC has clarified that when Indian Exporters are paid in export proceeds in INR from the Special Rupee Vostro Accounts of correspondent bank(s) of the partner trading country, opened by Authorized Dealers banks ('AD Banks'), then the condition of Section 2(6)(iv) of IGST Act shall be deemed to have been satisfied.
- In this regard, the AD Banks also require prior approval from the Foreign Exchange Department of RBI as well.

Circular No. 202/14/2023-GST dated 27.10.2023

SBGCO Comments

The above clarification is welcome move for exporters to invoice and receive export proceeds in INR. The exporters only need to take care that their banking partners follow the process/ guidelines issued by RBI for receiving export proceeds in INR. The GoI's policy to promote and ensure international recognition to INR has been synced with GST policies with such clarification.

- **Clarification regarding determination of place of supply in the following cases:**
 - a. Transportation of goods, including through mail and courier
 - b. Advertising sector
 - c. "Co-location services"

The table below summarizes the clarifications issued by the CBIC:

Issue	Clarification regarding PoS
After omission of Section 13(9) of the IGST Act, whether the services of " <u>transportation of goods, including through mail and courier</u> " will be governed by Section 13(2) of IGST Act (i.e., general/ default rule) or 13(3) of IGST Act (performance based)?	<p>The Circular clarifies that the place of supply of services of "<u>transportation of goods, other than through mail and courier,</u>" will be determined by the default rule under section 13(2) of IGST Act.</p> <p>The Circular also clarifies that prior to omission of Section 13(9) of IGST Act, "<u>transportation of goods by mail or courier</u>" was not covered by such provision and was governed by the general rule only. Hence, even after such omission, it will continue to be governed by Section 13(2) of IGST Act only.</p>
<u>Advertising sector</u> Case (i): <u>What would be the PoS of services of supply/ sale of space or supply/ sale of rights to use the space on the hoarding/ structure (immovable property) provided by the vendor to the advertising company?</u>	<p>PoS clarification as under:</p> <p>Case (i): Place of supply of any service provided by way of supply/ sale of space on an immovable property or grant of rights to use an immovable property shall be governed by the provisions of section 12(3)(a) of IGST Act i.e., location at which the immovable property is located.</p>



Issue	Clarification regarding PoS
<p>Case (ii): Advertising company wants to display its advertisement on hoardings/ bill boards at a specific location availing the services of a vendor. During this entire time, the vendor (may or may not own such display) is in possession of the hoarding/ structure at the said location on which advertisement is displayed and the advertising company is not occupying the space or the structure. <u>What would be the PoS of such services provided by the vendor to the advertising company?</u></p>	<p>Case (ii): In this case, Vendor is providing advertisement services by providing visibility to an advertising company's advertisement for a specific period of time on his structure possessed/ taken on rent by him at the specified location. Therefore, PoS shall be determined in terms of Section 12(2) of IGST Act (i.e., general/ default rule).</p>
<p>“Co-location” is a data center facility in which a business/ company rent space for its own servers and other computing hardware along with various other bundled services related to Hosting and information technology (IT) infrastructure.</p> <p>The business/ company primarily seek security and upkeep of its servers, storage and network hardware; operating systems, system software. <u>What is the PoS for such “Co-location” services?</u></p>	<p>The Circular clarifies that such services may not be limited to passive activity of making immovable property available to a company and hence, supply of colocation services cannot be considered as the services of supply of renting of immovable property. The PoS will therefore be governed by Section 12(2) of the IGST Act i.e., location of the recipient.</p> <p>However, in specific cases where, the arrangement is restricted to providing physical space on rent along with basic infrastructure, without components of Hosting and Information Technology (IT) Infrastructure Provisioning services, then such services shall be governed by Section 12(3) of IGST Act (location centric) i.e., PoS shall be location of such immovable property.</p>

Circular No. 203/15/2023-GST dated 27.10.2023

- **Clarification regarding GST rate on imitation zari thread or yarn**

The Circular clarifies that imitation zari thread or yarn made from metallised polyester film/ plastic film falling under HS 5605 are covered by Sr No. 218AA of Schedule I attracting 5% GST.

Circular No. 205/17/2023-GST dated 31.10.2023

- **Clarification regarding following points is issued by the CBIC:**

- a. ‘Same line of business’ in case of passenger transport service
- b. Reimbursement of electricity charges from lessees/occupants



- c. Job work for processing of “Barley” into “Malted Barley”
- d. Whether District Mineral Foundations Trusts (DMFTs) are Governmental Authorities
- e. Supply of horticulture/horticulture works made to CPWD

The table below summarizes the clarifications issued by the CBIC in regards to above points:

Issue	Clarification regarding GST applicability
Whether ‘same line of business’ in case of passenger transport service and renting of motor vehicles includes leasing of motor vehicles without operators?	The circular clarifies that input services in the same line of business include transport of passengers (SAC 9964) or renting of motor vehicle with operator (SAC 9966) and not leasing of motor vehicles without operator (SAC 9973). Leasing of Motor vehicles attracts GST and/or compensation cess at the same rate as supply of motor vehicles by way of sale.
Whether GST is applicable on reimbursement of electricity charges received by real estate companies, malls, airport operators etc. from their lessees/occupants	The circular clarifies that when supply of electricity is bundled with renting of immovable property and/ or maintenance of premises, it will be treated as composite supply of service and taxable rate of renting of immovable property shall be levied on entire value including electricity supply. The above answer remains same even when electricity is supplied separately. However, where the electricity is supplied by the Real Estate Owners, Resident Welfare Associations (RWAs), Real Estate Developers etc., as a pure agent, it will not form part of value of their supply.
Whether job work for processing of “Barley” into “Malted Barley” attracts GST @ 5% as applicable to "job work in relation to food and food products" or 18% as applicable on “job work in relation to manufacture of alcoholic liquor for human consumption?	Job work services in relation to manufacture of malt are covered by the entry Sr No. 26 (i)(f) which covers “job work in relation to all food and food products falling under chapters 1 to 22 of the customs tariff” attracting GST at 5%, irrespective of the end-use.
Whether District Mineral Foundations Trusts (DMFTs) set up by the State Governments are Governmental Authorities and thus eligible for the same exemptions from GST as	DMFT set up by the State Governments are Governmental Authorities and thus eligible for the same exemptions as applicable to other Governmental Authorities.



Issue	Clarification regarding GST applicability
available to any other Governmental Authority?	
Whether supply of pure services and composite supplies by way of horticulture/ horticulture works (where the value of goods constitutes not more than 25% of the total value of supply) made to CPWD are eligible for exemption from GST?	Horticulture/ horticulture works provided to CPWD in the nature pure services and composite supply of goods and services in which value of goods does not constitute more than 25%, shall be exempted vide Sr. No. 3 and 3A of notification No. 12/2017-CTR.

SBGCO Comments

The above circulars help in clearing the air of confusion regarding these specific supplies and also ensure that the Government's interpretation is made available to the public at large. The taxpayers impacted by such clarifications can take appropriate/ corrective action based on such clarification.

Special attention may be drawn to clarification issued by way of recovery of electricity charges which may have widespread impact specially because it will impact all such cases where electricity charges are recovered over and above the value of rent from the tenant/ lessee. The relief might be available in cases where common area electricity charges which are recovered on actual basis from all tenants on pure agent basis.

Circular No. 206/18/2023-GST dated 31.10.2023



B. Recent Decision from the Judiciary:

1. State of Telangana & Ors vs. Tirumala Constructions & Ors [2023-VIL-93-SC]

Background facts:

Certain retrospective amendments were proposed in the respective state's VAT Act after the same were replaced by GST Act w.e.f. 01.07.2017 (i.e., amendments were proposed to VAT Act after 01.07.2017 for the period prior to introduction of GST regime).

Key Issue Raised:

Can such amendment to the state VAT Act survive after the introduction of the GST regime?

Gist of the Decisions:

The Hon'ble SC held there is no dispute regarding legislation's ability to amend the provisions retrospectively. However, the day on which such retrospectively amendments are proposed/made effective, it is important to check that such legal competence should also exist.

The SC held that with the introduction of GST Act, the State Legislature ceased to have any authority over the subject matter, because the original entry 54 of the State List of the Constitution (i.e., power to levy VAT on sale of goods) had undergone a substantial change, and the power to change the VAT Act, ceased, on 01.07.2017. Hence, any retrospective amendment to the State VAT Act after 01.07.2017, would not hold good given the manner in which the Constitution was amended to introduce GST Law w.e.f. 01.07.2017.

SBGCO Comments:

The above decision has been ordered in terms of VAT laws of Telangana, Gujarat and Maharashtra State. The retrospective amendment proposed to the respective state's VAT Act was held as invalid citing law of legal competence. The said judgement will be helpful in all such cases where in amendments have been proposed in the erstwhile laws (Service Tax and VAT) albeit after introduction of GST, specifically where time-limit to issue notices was specifically extended in the erstwhile laws amending the provisions/ issuing ordinances.

2. VIVO Mobile India Pvt Ltd vs. Union of India & Anr. [2023-TIOL-1321-HC-ALL-GST]

Background facts:

An Order was passed by Deputy Commissioner wherein it was held that petitioner had claimed excess ITC of Rs. 110,06,90,100.31/- during Feb-20 to Aug-20, in violation of Rule 36(4) of the CGST Rules. The Petitioner deposited 10% of entire tax demand as disputed liability and filed the present writ petition. However, the Department officers recovered the entire amount of tax viz. Rs.110,06,90,100.31 and equal amount of penalty citing the reason that there was no stay order operating in favour of the petitioner, resulting into recovery of 110% of disputed amount.

Issue Raised:

Can the Department ignore the relaxation granted for the period Feb-20 to Aug-20 in application of Rule 36(4) of the CGST Rules?

Can the Department proceed to recover an amount more than what is actually demanded without taking into cognizance the details of tax already deposited by the petitioner?



Gist of the Decision:

The Hon'ble HC held that the amendments and clarification issued by the Government during the lock-down period have to be given effect to. Relaxation granted to application of Rule 36(4) for period Feb-20 to Aug-20 should have been considered by the Department. Since, department continued to treat ITC claimed during Feb-20 to Aug-20, individually, instead of block concept provided specifically for the period Feb-20 to Aug-20, the order of the Department is faulty to that extent.

Further, the HC noted that merely depositing 10% of disputed demand does not entitle to stay before a Writ petition, but the fact that Department proceeded to recover 110% of the disputed demand is grossly invalid. The State Department has been ordered to refund entire money recovered along with interest @ 6%. The HC also noted that the State Government is at the liberty to recover 10% of the interest to be paid to the petitioners from the erring officers for such illegal recovery on account of their complicity/ negligence in recovery proceedings.

SBGCO Comments:

The above order from the HC clearly notes that Department cannot claim a contrary stand against the Circular/ notification issued by the Department. Further, Order specifically permitting the State Government to recovery part interest from erring officers is clear indication of the misuse of the powers exercised by the officials. The taxpayer may or may not have done any act in contravention of the provisions of the law, however, the Officer cannot act beyond his power and beyond the provisions of the law laid down. All their actions must be limited to the powers granted under law which must be exercised with diligently.

3. Meera Tent Cloth Supplies vs. Additional Commissioner [2023-TIOL-1273-HC-ALL-GST]

Background facts:

The Petitioner is a registered firm engaged in the business of wholesale supply of carpet, plastic chair, sofa, etc. The petitioner is registered as composition taxpayer. Certain goods purchased from Gujarat were being transported which were intercepted by mobile squad officer. The said goods were accompanied by Tax invoice issued by supplier and E-Way Bill generated by the petitioner. At the time of interception, the Officer imposed tax and penalties on the ground that registration of petitioner is cancelled and there is intention to evade tax by availing benefit of ITC.

Key Issue Raised:

When petitioner is registered as composition tax payer, can there be allegation of intention to evade tax by virtue of availing benefit of ITC?

Gist of the Decisions:

The Hon'ble HC held that the genuineness of generation of E-way bill and the documents accompanying the E-way bill are not questioned by the Department. Further, one of the conditions of the composition scheme is that ITC cannot be availed. Hence, without the option of availing benefit of ITC, there cannot be intention to evade tax in such case. Hence, the order imposing tax and penalties set-aside.



SBGCO Comments:

Mobile Squad/ Roving squad officers should ideally limit to verification of details mentioned in EWB and invoice with the goods lying in the transport vehicle. However, as can be seen from the numerous judgements by the High Court, including the present one, jumping into the shoes of adjudicating authority only results into additional burden on financial resources of the Government and the taxpayers. For Composition scheme payers, allegation of fraudulent availment of ITC will never succeed since they cannot claim ITC.

4. Bhupendra Singh vs. STO [2023-TIOL-1357-HC-UKHAND-GST]

Background Facts:

The petitioner runs a proprietorship firm under the name and style of M/s. Bhaiji and Company. On 06.08.2022, a notice was issued to the petitioner on the GST portal requiring him to appear before the officer on 19.08.2022 in relation to premise verification. However, 19.08.2022 was subsequently declared as holiday. However, GST registration of the petitioner was cancelled on 23.08.2022 without affording him any fresh opportunity of hearing.

Issue Raised:

Can Department pass an order (for cancellation of registration) without affording fresh date of Personal hearing if the earlier date subsequently turns out to be a 'Holiday' ?

Gist of the Decision:

The Hon'ble HC set aside the Order and held that such order (of cancellation of registration) could not have been passed when the date granted for personal hearing is subsequently declared as a holiday. The officer should have granted fresh date of hearing and only after considering the written and oral submissions, any order should be passed.

SBGCO Comments:

In such cases, as a taxpayer, considering the severity of the matter, one should visit the officer the following day after the holiday to seek for a fresh date for personal hearing. This will ensure that the intention of compliance by taxpayer is taken on record and the officer is prevented from acting arbitrarily which may lead to more issues such as filing of such writ petitions.



C. Recent Decisions from Advance Authority

1. NCC Urban One Apartment Owners Mutually Aided Co-op Society Ltd [Order No. 18/2023 (Telangana) = 2023-TIOL-120-AAR-GST]

Background facts:

The Applicant is non-profit entity, registered under Telangana Mutually Aided Co-Op Society Act, and consists of only residential flats/ members.

Key Question raised:

1. Common area electricity charges from members on actual basis based on actual flat area of each member. Is the collection of common area electricity charges exempt from levy of GST?
2. In some cases, there is only a single meter from the electricity department for the whole tower. The individual consumption of each of the flats is measured by means of a submeter. Amounts are collected by the applicant from the members on actual basis by the applicant and such total amount is paid to electricity board by the applicant. Is this activity taxable?

Gist of the Ruling:

For both the above queries, the AAR held that the Applicant is acting as a pure-agent on behalf of its members in the case of recovery of electricity cost. There is no mark-up collected by the applicant. Hence, the above case of the Applicant falls under Rule 33 of the CGST Rules and such activity is not taxable under GST. Even otherwise, supply of electricity being exempt from the scope of GST, there would not levy of GST on such transaction.

SBGCO comments:

There are many societies (commercial or residential), where there is a single invoice by the electricity company and each unit's consumption is measured by sub-meters. The said decisions of AAR will aid such societies to re-affirm the stand that there is no levy of GST on such amounts collected from each member based on actual value only considering the provisions of pure-agent provided under the GST Law.



2. Jaiprakash Associates Limited [Order No. 19/2023 (Telangana) = 2023-VIL-191-AAR]

Background facts:

The Applicant has been awarded a contract by the State Government, which is on-going since June 2011. In September 2021, the Government agreed for upward rate revision for the changed site conditions beyond agreement period since June 2011.

Questions raised:

What is the time of supply of the work executed from September 2010 to June 2017 for which differential billing will be done now? Whether GST will be applicable on such differential billing?

Gist of the Ruling:

The AAR has held that time of supply for differential billing shall be the date on which such consideration/ payment is received. Further, Section 142(2)(a) of CGST Act (transition provisions) provides that such revision shall be leviable to GST as if such supply was made in GST regime and accordingly supplementary invoice or debit note shall be issued by applicant to the recipient for the differential billing with GST.

SBGCO comments:

The AAR has correctly interpreted the transition provisions to infer that such differential billing shall be leviable to GST. It is important to note that such amounts are different from arbitration settlement/ out-of court settlement amounts as such amount do not represent a consideration towards a supply. However, retrospective upward revision of prices for a supply during the execution of the contract represents consideration towards a supply.



D. GST Compliance chart for November 2023

SN	Due Date	Form	Period	Periodicity	Special Remarks
1.	10.11.2023	GSTR - 7	October2023	Monthly	To be filed by those who are required to deduct TDS under GST
2.	10.11.2023	GSTR - 8	October2023	Monthly	To be filed by those who are required to collect TCS under GST
3.	11.11.2023	GSTR - 1	October2023	Monthly	Taxpayers filing GSTR - 1 monthly
4.	13.11.2023	GSTR - 5	October2023	Monthly	To be filed by a non-resident foreign taxpayer registered in GST
5.	13.11.2023	GSTR - 6	October2023	Monthly	To be filed by an ISD
6.	13.11.2023	IFF	October2023	Monthly	To be filed by those under QRMP Scheme (optional)
7.	20.11.2023	GSTR - 3B	October2023	Monthly	To be filed by Taxpayer filing monthly GSTR 3B
8.	20.11.2023	GSTR - 5A	October2023	Monthly	To be filed by non-resident Online Information and Database Access or Retrieval (OIDAR) services provider
9.	25.11.2023	PMT - 06	October2023	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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