



SBGCo Connect October 2022

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Greetings to all our readers!

October 2022's festive season is upon us with Navrarti, Dussera, Diwali - all line up in this month. Hers's wishing that positive vibes, energetic environment and joyful moods of these festivities bring the out the best days for everyone, at home and at office.

GSTR 3B of September continues to remain the last month for giving effect of the Annual Ratio regarding reversal of Common / Admin ITC in relation to exempt income as provided under Rule 42 of the CGST Rules, 2017.

The Government has been very vocal about ensuring discipline when it comes to following the assigned deadlines, be it income tax or indirect tax. The non-extension of due dates on the income tax front clearly lays down the intention of the Government that there will not be any relaxations afforded this year and the deadlines will have to be met. Hence, keeping that in mind, we would suggest our readers to not wait for November and December to work on their GSTR-9 and GSTR 9C, but rather be proactive and try and complete the same in well-in-advance of the due date.

A reminder to our readers that w.e.f. 01st October 2022, e-invoice provisions shall be applicable to all taxpayers having aggregate turnover exceeding Rs. 10 Crores in any previous financial years under GST. Therefore, necessary steps should be taken to ensure compliance w.e.f the notified date. Further, we would also suggest that declarations should be taken from all vendors who are not issuing E-invoices that their turnover has been below Rs. 10 crores since the inception of GST.

The exemption granted for Export related Freight billed to Indian Customer was available upto 30.09.2022 and the same has not been extended beyond 30.09.2022 by the CBIC, thus making such charges taxable. The impact of such a change has been covered in this newsletter.

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 October 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. GST related provisions of the Finance Act, 2022 now implemented.

- i. Time limit to issue credit note against invoice pertaining to FY 2021-22 and carry out amendment in any invoice pertaining to FY 2021-22 extended
 - Section 34 of the CGST Act, 2017 has been amended to provide that any Credit Note for invoices pertaining to a particular financial year can now be reflected on the portal before 30th November of the succeeding financial year. Similarly, section 39(9) of the CGST Act, 2017 has now been amended to provide that any amendment required to be made in any Invoice / Debit Note / Credit Note particulars issued in a particular financial year can now be done in any returns filed upto 30th November of the succeeding financial year.
 - The effect of the above amendment is that a taxpayer is allowed to rectify errors for by one additional month, i.e., he can make the necessary corrections while filing GSTR1/ GSTR3B of October instead of September earlier
- ii. Time limit for claiming ITC appearing in GSTR 2B of FY 2021-22 extended
 - Section 16(4) of the CGST Act, 2017 has been amended to provide that the ITC pertaining to any invoice or debit note of a particular financial year can be claimed on or before 30th November of the succeeding financial year or the date of furnishing relevant annual returns, whichever is earlier.
 - The effect of the above amendment is that a taxpayer gets one more month to claim input tax credit in respect of previous financial year by claiming the same in GSTR-3B of October instead of September earlier.
- iii. Other Changes
 - Readers can click on the link [here](#) to access the Union Budget FY 2022-23 highlights where the relevant amendments have been highlighted and explained in details.
 - The said amendments will be operative from 01.10.2022.

Notification No. 18/2022 - Central Tax - dated 28.09.2022

SBGCO Comments:

The above amendment bring relief to all the taxpayers as the year-end activities such as reversal of common input tax credit, claim of pending ITC, correction in details furnished in GSTR-1 will now be spread over upto GSTR-1 and GSTR-3B of October instead of all emphasis previously being on GST returns of September.

2. Amendment to CGST Rules, 2017

A. GST Returns course correction - amending old matching provisions and references to GSTR-2 and GSTR-3

The following rules have been amended / updated to eliminate the references to GSTR-2 or GSTR-3 along with old matching process and give sanctity to GSTR 3B for all purposes:

Rule 36 - Documentary requirements and conditions for claiming input tax credit



Rule 37 - Reversal of input tax credit in the case of non-payment of consideration

Rule 38 - Claim of credit by a banking company or a financial institution

Rule 42 - Manner of determination of input tax credit in respect of inputs or input services and reversal thereof

Rule 43 - Manner of determination of input tax credit in respect of capital goods and reversal thereof in certain cases

Rule 85 - Electronic Liability register

Rule 96 - Refund of integrated tax paid on goods or services exported out of India

B. GST Returns course correction - Deletion of Rules and Forms relating to old matching process involving GSTR-2 and GSTR-3

The following rules and forms have been omitted altogether in favour of the existing return filing process of GSTR 1 → GSTR 2B → GSTR 3B (Old process - GSTR 1 → GSTR 2 → GSTR 3)

Rule 69 - Matching of claim of input tax credit

Rule 70 - Final acceptance of input tax credit and communication thereof

Rule 71 - Communication and rectification of discrepancy in claim of input tax credit and reversal of claim of input tax credit

Rule 72 - Claim of input tax credit on the same invoice more than once

Rule 73 - Matching of claim of reduction in the output tax liability

Rule 74 - Final acceptance of reduction in output tax liability and communication thereof

Rule 75 - Communication and rectification of discrepancy in reduction in output tax liability and reversal of claim of reduction

Rule 76 - Claim of reduction in output tax liability more than once

Rule 77 - Refund of interest paid on reclaim of reversals

Rule 79 - Communication and rectification of discrepancy in details furnished by the ecommerce operator and the supplier

Form GSTR-1A, Form GSTR-2 and Form GSTR-3

C. Grounds added to the existing list of reasons for cancellation of registration

Rule 21 of the CGST Rules, 2017 now includes two new additional possibilities for invoking provisions of cancellation of GST registration, namely:

- For monthly return filers, returns not furnished for a continuous period of six (6) months
- For quarterly return filer, returns not furnished for a continuous period of two (2) tax periods

D. Curtailing the authorizations granted to GST practitioners

As per the amendment to Rule 83 (Provisions relating to a goods and services tax practitioner), a GST practitioner can no longer be authorized to file details of inward supplier. Corresponding amendments carried out in Form GST PCT-05 (Authorisation / withdrawal of authorisation for Goods and Services Tax Practitioner) as well. In other



words, the responsibility to furnish details of inward supplies rests solely on the taxpayer himself.

E. Aligning rules for claim of excess balance in electronic cash ledger

The existing Rule 89 provided that refund of excess cash balance must be claimed in Form GSTR-3, GSTR-4 or GSTR-7, as the case may be. But since the old matching process has been done away with, Rule 89 has now been amended to provide that refund of balance in electronic cash ledger will be claimed vide Form GST RFD-01.

Notification No. 19/2022 - Central Tax - dated 28.09.2022

SBGCO Comments:

Majority of amendments announced in CGST Rules, 2017 vide the said notification are in line with amendment made effective from 01.10.2022 as part of Finance Act, 2022. The old return process involving GSTR-1A, GSTR-2, GSTR-3 and GSTR 3A is now fully excluded from the current GST law with a clear indication that Form GSTR-2B and GSTR-3B are here to stay for the long term.

3. Restoring time limit for filing of refund claims by specified persons as per Section 55.

Notification No. 20/2018 - Central Tax dated 28.03.2018 provided that specified class of persons could claim refund of tax paid by it on inward supplies of goods or services or both before the expiry of eighteen months from the last date of the quarter in which such supply was received. W.e.f. 01.10.2022, the said notification is rescinded and hence, the time limit to claim refund under Section 55 now reverts to its original time frame, which is on or before expiry of six months from the last date of the quarter in which such supply was received.

Specified class of persons notified under Section 55 include - specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947 (46 of 1947), Consulate or Embassy of foreign countries.

Notification No. 20/2022 - Central Tax - dated 28.09.2022

II. Circulars and Instructions issued during the month

1. Guidelines for filing TRAN-1 / TRAN-2 or revising earlier filed TRAN-1 / TRAN-2

Pursuant to Supreme Court's decision in the case of Union of India vs. Filco Trade Centre Private Ltd [2022-VIL-63-SC], the CBIC has decided to open the GSTN portal during the period from 01.10.2022 to 30.11.2022 for filing TRAN-1 / TRAN-2 or revising earlier filed TRAN-1 / TRAN-2 for all taxpayers. Guidelines to be followed by taxpayers have been summarized hereunder:

- a. At the time filing / revision Form GST TRAN-1 / TRAN-2, the taxpayer shall be required to upload signed PDF copy of a declaration which is provided as 'Annexure A' to the present circular
- b. Transition credit claims should not be filed for C-Forms, F-Forms and H / I-Forms issued after 27.12.2017



- c. Entire claim of Form GST TRAN-2 shall be filed on a consolidated basis instead of month-wise format as prescribed in the law and 'tax period' in Form GST TRAN-2 shall be updated as the last month of the consolidated period for which the claim is being made.
- d. The applicant shall download a copy of the Form GST TRAN-1 / TRAN-2 filed on the common portal and submit a self-certified copy of the same, along with declaration in Annexure 'A' and copy of TRANS-3, where ever applicable, to the jurisdictional tax officer within 7 days of filing of declaration in Form GST TRAN-1 / TRAN-2.
- e. The applicant is required to take utmost care and precaution while filing or revising TRAN-1 / TRAN-2 as this is only a one-time opportunity. No further opportunity to again file or revise TRAN-1 / TRAN-2, either during this period or subsequently, will be available.
- f. Once "Submit" button is clicked, the form will be frozen, and no further editing of details shall be allowed. This frozen form would then be required to be filed on the portal using "File" button, with Digital signature certificate (DSC) or an EVC. Hence, applicant must ensure the correctness of all the details in Form GST TRAN-1 / TRAN-2 before clicking the "Submit" button.
- g. The applicant may be required to produce the requisite documents / records / returns / invoices in support of their claim of transitional credit before the concerned tax officers for verification of their claim.
- h. The jurisdictional tax officer will pass an appropriate order thereon on merits after granting appropriate reasonable opportunity of being heard to the applicant after verification of the transition claim. The transitional credit allowed as per the order passed by the jurisdictional tax officer will be reflected in the E. Cr. L of the applicant.

Circular No.180/12/2022-GST dated 09.09. 2022

SBGCO Comments:

The decision of the Supreme Court will help all the taxpayers who could not file petitions before the HC or SC for any limitations faced by them, as the portal shall now be open for filing TRAN-1 / TRAN-2 for everyone, fresh or revision.

2. Guidelines for Launching of Prosecution under GST

Section 132 of the CGST Act, 2017 codifies the offences under the Act which warrant institution of criminal proceedings and prosecution. The present circular issues Instruction to the officers regarding process, legal provisions and provides guidelines on how to handles the same.

A. Sanction of the Prosecution

- Since prosecution has serious repercussions for the person involved, the evidences gathered must carefully scrutinized and adequacy of evidence cannot be compromised.
- The standard of proof required in a criminal prosecution is higher than adjudication proceeding
- Decision should be taken on case-to-case basis considering various factors, such as, nature and gravity of offence, quantum of tax evaded, or ITC wrongly availed, or refund



wrongly taken and the nature as well as quality of evidence collected before initiating prosecution proceedings

- Prosecution should not be launched in cases of technical nature or where there is difference of opinion regarding interpretation of law.
- Evidence should be adequate such that it is established beyond reasonable doubt that the person had guilty mind, knowledge of the offence or had fraudulent intention.
- Decision on prosecution should normally be taken immediately on completion of the adjudication proceedings, except in cases of arrest where prosecution should be filed as early as possible.
- Prosecution complaint may even be filed before adjudication of the case, especially where offence involved is grave, or qualitative evidences are available.
- If the offender is arrested under section 69 of the CGST Act, 2017, prosecution complaint may be filed even before issuance of SCN

B. Monetary Limits

- When tax evasion, or misuse of ITC, or fraudulently obtained refund is more than Rs. 5,00,00,000/- (Rupees Five Hundred Lakh).
- Monetary Limits not applicable in case of:
 - Habitual Offender (two or more cases of confirmed demand of tax evasion / fraudulent refund or misuse of ITC in past two years and total tax involved is more than Rs. 5,00,00,000/-
 - Arrest cases (under Section 69)

C. Authority to Sanction prosecution

- Prior approval of Pr. Commissioner/Commissioner of CGST is mandatory
- In case of investigation by DGGI, prior approval of Pr. Additional Director General / Additional Director General, Directorate General of GST Intelligence

D. Other Miscellaneous points

- The instructions further describe the procedure to be followed by the proper officer in case of arrests and otherwise, for launching prosecution complaints.
- The instructions also discuss the cases when the prosecution complaints can be withdrawn by officer and likewise, what are scenarios when Appeal should be preferred in case of inadequate punishment / acquittal.

Instruction no 04/2022-23 - GST-Investigation dated 01.09.2022

SBGCO Comments:

Standard operation procedure work as a guideline for the proper officer to take appropriate action in accordance with the rules and regulation prescribed by the Department themselves. Such guidelines also assist the taxpayers as any unlawful action / step taken by the proper officer can be effectively mitigated as these standard guidelines have published in public domain.



III. Sea Freight - Air Freight Changes w.e.f. 01.10.2022

Upto 30.09.2022, Sea Freight and Air Freight invoiced to India customer was exempt vide Entry 19A and 19B of the Notification No. 12/2017 dated 28.06.2017 (as updated) with a sunset clause upto 30.09.2022. The CBIC has not extended the said exemption benefit beyond 30.09.2022 and hence, readers are requested to take note of the following changes w.e.f. 01.10.2022:

Particulars		W.e.f. 01.10.2022				upto 30.09.2022		
Activity	Bill To	Taxable	Place of Supply	Document Issued	Tax Rate	Taxable	Document Issued	Tax Rate
Air Import	Indian Customer	Continues to be Exempt under Entry 19	Destination of Goods	Bill of Supply	Nil	Exempt	Bill of Supply	Nil
Air Import	Foreign Customer	Continues to be Exempt under Entry 19	Destination of Goods	Bill of Supply	Nil	Exempt	Bill of Supply	Nil
Sea Import	Indian Customer	Taxable	Location of Registered Customer / Place of Handing over of goods for Unregistered Customers	Tax Invoice	5% (CGST or IGST based on place of supply)	Taxable	Tax Invoice	5%
Air Export	Indian Customer	Taxable	Destination of Goods [In view of proviso to Section 12(8)]	Tax Invoice	18% (IGST only)	Exempt	Bill of Supply	Nil
Air Export	Foreign Customer	Export	Destination of Goods	Export Invoice	Zero Rated	Export	Export Invoice	Zero Rated
Sea Export	Indian Customer	Taxable	Destination of Goods [In view of proviso to Section 12(8)]	Tax Invoice	5% (IGST only)	Exempt	Bill of Supply	Nil
Sea Export	Foreign Customer	Export	Destination of Goods	Export Invoice	Zero Rated	Export	Export Invoice	Zero Rated



B. Recent Decision from the Judiciary:

1. Oasis Reality vs. Union of India [2022-VIL-674-BOM]

Issue Raised:

Whether amount available in the Electronic Credit Ledger can be utilized to pay the 10% of the tax in dispute as pre-condition to filing of an Appeal under the GST law?

Gist of the Decision:

The Hon'ble Bombay HC noted that the recent circular F. No. CBIC - 20001/2/2022 - GST dated 06.07.2022 has clarified that amount in E. Cr. L. can be used for making any payment towards output tax under the CGST Act or IGST Act. Further, the High Court has held that Section 107(6) does not treat payment of 10% tax as deposit, but considers such payment as a pre-condition for filing of appeal in the nature of 'tax paid' before filing of appeal. Hence, based on the above interpretation of Section 107(6) and clarification issued by the circular, the Hon'ble HC held that E. Cr. L. balance can be used for making payment of 10% disputed tax liability.

SBGCO Comments:

The above decision of the Hon'ble Bombay HC has distinguished the previous decision of Orissa HC in the case M/s Jyoti Construction Vs. Deputy Commissioner of CT & GST (2021-VIL-715-ORI) wherein it was held that E. Cr. L. balance cannot be used and the reason by Bombay HC for not following the said judgement is that the clarification has been issued by CBIC after the pronouncement of the judgement in the case of M/s Jyoti Construction. This is a welcome decision from the Hon'ble HC as it will allow taxpayers to use Cash Ledger or Credit Ledger for payment of 10% of disputed tax liability before filing an appeal, depending on the availability of funds.

2. Numal Saikia vs. Pr. Commissioner of CGST and Customs [2022-TIOL-883-CESTAT-KOL]

Background Facts:

The appellant provided Works Contract services to various State and Central Government departments and claimed exemption under entry no. 13(a) / 12 / 12A / 14 of exemption notification no. 25 / 2012 - S.T. dated 20.06.2012. The department passed an Order holding that service tax is payable by the Appellant on the basis of Form 26AS statements of Income Tax.

Issue Raised:

Whether the department was right in demanding service tax from the appellants on the basis of Form 26AS statements (Income Tax)?

Gist of the Decision:

The Hon'ble Tribunal held that the Department did not discharge its onus to prove that the appellant is liable to pay service tax. The said judgement set aside the impugned Order and held that unless and until the clear analysis of the activity done by the appellant is carried out, demand of service tax cannot be confirmed.



SBGCO Comments:

This is a welcome decision from the Hon'ble Tribunal. Off late, there have been many show cause notices issued to assesseees across the nation wherein, demand has been alleged on basis of difference between financials / ITR / Form 26AS on comparison with ST-3 Returns. The said judgement is a welcome reminder to the department that merely a difference between two documents does not imply tax is payable. It must be established that taxable services were rendered and tax not been paid on the same.

3. Arun Krishnachandra Goswami Vs. UoI [2022-VIL-635-BOM]

Issue Raised:

Payment was required to be made under RCM directly to the Department but mistakenly made to Indian Railways instead by the petitioner. The petitioner approached the High Court to seek relief as they had inadvertently made payments of tax since inception of GST to the vendor (being Indian Railways) instead of the Government.

Gist of the Decision:

The Hon'ble High Court specifically noted that this was a case with unusual facts and circumstances. The Hon'ble HC, on the basis of the facts, held that there was no intention to evade tax by the petitioner. The Hon'ble HC also took cognizance of the fact that entire amount has been paid to Government of India, through Indian Railways. The Order passed by the HC held that Indian Railways should remit the taxes inadvertently paid to them back to the petitioner and the petitioner should make the payment to the Department within a total time frame of two-weeks and also requested the tax authorities to consider Petitioner's case sympathetically when it comes to levy of interest and penalty.

SBGCO Comments:

This is a very unique case faced by Hon'ble HC. The petitioner's bonafide belief that tax paid to Indian Railways was ultimately paid by Indian Railways to Government stood ground against the views of the Department. When tax was payable under RCM and there was no invoice received from Indian Railways, it is difficult to accept that such ignorance of law of such nature would be helpful before other forums for other similar cases.

4. R P Buildcon Pvt Ltd & Anr Vs. Superintendent, CGST & CX [2022-VIL-647-CAL]

Issue Raised:

If Department Audit has been completed for a particular financial year by the Audit Wing, can Anti-evasion wing issue show cause notice for the same financial year?

Gist of the Decision:

The Hon'ble High Court held that there is no specific provision under the GST laws which prohibited or barred the Anti-evasion authority to initiate the proceedings for the same year for which Department audit has been concluded by the Audit Wing. Hence, the HC held that the issuance of show cause notice was neither without jurisdiction nor there were any procedural



irregularities nor the proceeding were initiated in contravention of any statutory provisions of the statute and thereby refused to intervene in the same.

SBGCO Comments:

The Anti-evasion wing can initiate proceedings even though Department audit was completed. The Assessee may not be able to dissuade the Anti-evasion wing from issuing a SCN, however, their best argument in such cases (apart from grounds on merit) would be that demand cannot be confirmed by invoking extended period of limitation alleging intention to evade tax as Department was aware about the facts on account of the conduct of the Department Audit for the same period.

5. India Yamaha Motors Pvt Ltd vs Asst Commissioner [2022-TIOL-1186-HC-MAD-GST]

Issue Raised:

Can the petitioner be excused from payment of Interest on the grounds that there was sufficient ITC balance but returns were not filed / filed belatedly, under the GST provisions?

Gist of the Decision:

The Hon'ble HC held that the amended Section 50 of the CGST Act would come to the aid of the petitioner provided there was actual debit in the ledger on the GST portal. The HC held that if the argument of the petitioner is considered, it would tantamount to erasing the line between availment and utilization of the credit. It cannot be said that mere availability of credit in electronic credit ledger would amount to utilization with a view to insulate the petitioner from the levy of interest. Hence, interest would be levied even though sufficient balances were available in E. Cr. Ledger but there was no offset on account of delayed filing of returns.

SBGCO Comments:

The judgement has distinguished availability of ledger balance in E.C.L with that of E. Cr. L so as to provide that credits must be set-off to indicate utilization against tax liability. The said judgement ensures that importance of return filing procedure is not diluted or else, all assessee would claim relief from interest without filing of returns. The said judgement is also in line with the recent amendments made to Section 50 of the CGST Act w.r.t. levy of interest in various scenarios.

6. Pr. Commissioner of CGST and CX. vs Bushrah Export House Two Star Lucknow [2022-TIOL-1242-HC-ALL-GST]

Issue Raised:

SCN was issued alleging that goods had moved to the assessee (Surat) from his supplier (Surat) without generation of E-way bill. However, the said SCN was adjudicated against the assessee. Commissioner (Appeals) set-aside the impugned Order on the grounds that E-way Bill is not required for Intra-city movement in Gujarat. However, the Department filed the present Writ Petition against the said Order alleging that no E-way Bill was generated when the said goods were moved from Surat to Kanpur ICD.



Gist of the Decision:

The Hon'ble HC held that the decision of the Comm (A) was neither arbitrary nor illegal. The findings of the Comm (A) were correct. Hence, there was no infirmity with the Order that HC should look into. Further, the SCN had only alleged non-generation of E-way bill for the movement within Surat and not for the movement from Surat to Kanpur ICD. New allegations cannot be dealt with at this stage when the same were not a part of the SCN. Hence, the Writ Petition was dismissed.

SBGCO Comments:

One of the basic principles of natural justice states that the person against whom allegations are made must be made aware of the same and such allegations must be clear and specific. Orders cannot traverse the scope of the allegation in the SCN because other-wise it would then lead to a case where the opposite party was defending against one argument highlighted in the SCN, but the Order was passed on a different ground all-together leading to travesty of the process of the litigation. Hence, an Order must be confined to scope of the SCN and an Appeal against an Order would thus be restricted to the scope of the Order and nothing beyond it.



C. Recent Decisions from Advance Authority

1. Myntra Designs Private Limited [KAR ADRG 33/2022 = 2022-VIL-253-AAR]

Question raised:

Whether ITC would be eligible on the vouchers and subscription packages procured by the applicant from third party vendors that are made available to the eligible customers participating in the loyalty program against the loyalty points earned/ accumulated by the said customers?

Gist of the Ruling:

The applicant is not eligible to avail the ITC on the vouchers and subscription packages procured by the applicant from third party vendors that are made available to the eligible customers participating in the loyalty program against the loyalty points earned/ accumulated by the said customers in terms of Section 17(5)(h) of the CGST Act 2017. The AAR has held that the vouchers and subscription packages are free goods supplied by applicant to the eligible customers on redemption of loyalty points.

SBGCO comments:

The AAR has analysed and concluded that loyalty points do not have any monetary value as loyalty points are not transferable and cannot be converted to cash. Hence, when points are redeemed for vouchers and subscription packages by eligible customers, the AAR has concluded that eligible customers get such vouchers and subscription packages for free and hence, such ITC in the hands of applicant is disallowed. One critical fact that has been conveniently not reflected upon by the AAR is that loyalty points are earned for previous transactions done by eligible customers and to earn such loyalty points the customer has already made payments in the past / satisfied certain conditions. Hence, to plainly conclude that what is supplied is free does not appear to be correct. Further, what is disallowed in Section 17(5)(h) of the CGST Act, 2017 disallows is free supply of goods, not services. Subscription packages are in the nature of service and not goods, but still disallowed. Hence, to blatantly conclude that loyalty points are earned for free and that what is redeemed are all intangible goods seems incorrect interpretation.



2. Troikaa Pharmaceuticals Ltd [GUJ/GAAR/R/2022/38 = 2022-TIOL-106-AAR-GST]

Question raised:

- a. Whether GST shall be applicable on the amounts recovered by the company from employees or contractual workers for third party canteen services?
- b. Whether input tax credit of GST paid on food bill of the Canteen Service Provider shall be available (canteen facility is mandatory as per the Section 46 of the Factories Act. 1948)?

Gist of the Ruling:

- a. The AAR analysed that recovery of amounts from employees for third party canteen services is not in the course or furtherance of business as employer-employee relationship exists and hence, the same is not covered under the scope of "Supply". Hence, GST will not be applicable on recovery of amounts from employees for such cases.
However, in the case of contractual workers, supply of food was held to be supply of services and such recovery would be liable to GST.
- b. Based on the clarification issued by the Circular No. 172/04/2022-GST dated 06.07.2022, ITC of the GST paid on canteen charges is available to the extent of employees only.
ITC on Canteen charges in relation to contractual workers is not eligible since the same is not obligatory for the applicant to provide the same under any law in force for the time being.

SBGCO comments:

The AAR has analysed the provisions of GST Law, Contract Labour (Regulation and Abolition) Act, 1970 and relied on Department Circular before arriving at the above conclusions. The AAR has restricted the benefit to the extent of employees only and does not treat contractual labours in the same fashion as that of employed workers.



D. GST Compliance chart for October 2022

S N	Due Date	Form	Period	Periodicity	Special Remarks
1.	10.10.2022	GSTR - 7	Sept 2022	Monthly	To be filed by those who are required to deduct TDS under GST
2.	10.10.2022	GSTR - 8	Sept 2022	Monthly	To be filed by those who are required to collect TCS under GST
3.	11.10.2022	GSTR - 1	Sept 2022	Monthly	Taxpayers filing GSTR - 1 monthly
4.	13.10.2022	GSTR - 6	Sept 2022	Monthly	To be filed by an ISD
5.	13.10.2022	GSTR - 1	July 2022 to Sept 2022	Quarterly	To be filed by those under QRMP Scheme
6.	13.10.2022	GSTR - 5	Sept 2022	Monthly	To be filed by a non-resident foreign taxpayer registered in GST**
7.	18.10.2022	CMP - 08	July 2022 to Sept 2022	Quarterly	To be filed by Composition Dealer (Payment of Self-assessed tax)
8.	20.10.2022	GSTR - 3B	Sept 2022	Monthly	To be filed by Taxpayer filing monthly GSTR 3B
9.	20.10.2022	GSTR - 5A	Sept 2022	Monthly	To be filed by non-resident Online Information and Database Access or Retrieval (OIDAR) services provider
10.	22.10.2022	GSTR - 3B	July 2022 to Sept 2022	Quarterly	To be filed by those under QRMP Scheme (#)
11.	24.10.2022	GSTR - 3B	July 2022 to Sept 2022	Quarterly	To be filed by those under QRMP Scheme (\$)
12.	25.10.2022	ITC - 04	April 2022 to Sept 2022	Half-yearly	Principal sending goods for any treatment/process i.e., for job-work

(#) 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.

** As amended by the Finance Act, 2022 and the effective date of amended section notified as 01.10.2022



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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