

# **SBGCo Connect**

## **April 2023**

**S B Gabhawalla & Co**  
**Chartered Accountants**



**GST Appellate Tribunal**  
**Coming Soon!**



Greetings to all our readers! We wish that we find you in good health & spirits.

In a written reply to a question in Lok Sabha (on 27<sup>th</sup> March 2023), the Union Minister of State for Finance Shri Pankaj Chaudhary stated that there has been 15% increase in GST Collection Year-on-Year (Y-o-Y). Further, it is worthwhile to note that monthly GST revenue has been more than 1.4 lakh crore for 11 consecutive months in the FY 2022-23, which is a huge achievement and depicts resilience of the Indian economy to the other countries facing a recent slowdown. Cumulatively, it is also expected that GST collections would exceed ₹18 lakh crore for this financial year, which would also be the first since the inception of GST.

The amended Finance Bill, 2023 received the President's assent on 31<sup>st</sup> March 2023 and thus become an Act, w.e.f. 31.03.2023. Amendments relating to GST provisions would be applicable from a future day which would be notified by issuing a separate notification in this regard. The said Finance Act, 2023 has also incorporated the provisions for the formation of GST Tribunal, which shall finally see the light of day after the introduction of the GST regime. The salient features of the GST Tribunal are covered in this issue of our newsletter.

W.e.f. 01<sup>st</sup> April 2023, all entities which have crossed turnover of Rs. 10 Crore in the Financial Year 2022-23 or before, are required to issue E-invoice in compliance with Notification No. 17/2022 - Central Tax dated 01.08.2022.

On the last day of the financial year 2022-23, CBIC issued a host of notifications including amnesty schemes with waiver / reduced late fees in a few cases and giving effect to the decisions taken in the 49<sup>th</sup> GST Council Meeting held in February 2023. The details of the said notifications have been included in this issue of our newsletter.

For detailed note on related year-end activities to be done by a registered taxpayer under GST, you can refer to our previous newsletter by clicking [here](#).

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 April 2023](#)

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

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

Team SBGCo



## A. What's New?

### I. Notifications issued during this month

#### A. Capping maximum late fees for delayed filing of pending GSTR 9.

Applicable to: Regular taxpayers

Section 47(2) provides for late fee of Rs. 200 per day (CGST and SGST Act Rs. 100/- each) for delayed filing of Annual return subject to 0.25% of the turnover in the respective State. The Govt. has now announced a maximum capping of the late fees to Rs. 20,000/- (CGST and SGST Act Rs. 10,000/- each) if the pending Annual Returns for FY 2017-18 to FY 2021-22 is filed between 01.04.2023 to 30.06.2023.

*Notification No. 07/2023 - Central Tax dated 31.03.2023*

#### B. Waiver / Reduction in late fees for filing of GSTR 4.

Applicable to: Composition taxpayer

The Govt. has announced reduced late fees if registered Composition taxpayer files their pending GSTR-4 returns (quarterly from July 2017 to March 2019 and Annually thereafter from FY 2019-20 to FY 2021-22) between 01.04.2023 to 30.06.2023.

Particulars	Remarks
If GST payable is NIL for that period	Full waiver
In all other cases	Maximum Late Fees capped to Rs. 500 (CGST and SGST each Rs. 250/-)

*Notification No. 02/2023 - Central Tax dated 31.03.2023*

#### C. Capping maximum late fees payable for delayed filing of pending GSTR 10

Applicable to: Registered taxpayers (after the cancellation of GST registration)

For all taxpayers who missed to file Final Return after the cancellation of GST registration, can now file GSTR 10 (Final Return) between 01.04.2023 to 30.06.2023 with the total late fees capped to a maximum of Rs. 1,000/- (CGST and SGST Rs. 500/- each).

*Notification No. 08/2023 - Central Tax dated 31.03.2023*

#### D. One-time window for filing of an application for revocation of cancellation of GST registration:

Applicable to:

- Taxpayers whose registration was cancelled on or before 31.12.2022 but failed to file an application for revocation within 30 days
- Taxpayers whose appeal against cancellation order is rejected on the grounds of failure to file revocation application within 30 days
- Rejection order by officer against an application for revocation on the grounds of failure to file revocation application within 30 days.

Conditions to be fulfilled:

- Application of revocation of cancellation of GST registration must be filed on or before 30.06.2023
- Filing of returns due upto the effective date of cancellation of registration



- Payment of any amount due as tax, along with any amount payable towards interest, penalty and late fee for such pending returns

*Notification No. 03/2023 - Central Tax dated 31.03.2023*

**E. Withdrawal of best judgement assessment order in special cases**

Applicable to: Best judgement assessment order passed on or before 28.02.2023 but registered taxpayer failed to file valid return within 30 days of such order.

Conditions to be fulfilled:

- Valid GST return must be filed on or before 30.06.2023
- Interest and late fees if any, should be discharged as well

Special Note:

The Best judgement assessment order shall be deemed to be withdrawn even in the cases where an appeal has been filed by taxpayer against such order, irrespective of the outcome of the appeal filed.

*Notification No. 06/2023 - Central Tax dated 31.03.2023*

**F. Extension of time limit for issuance of adjudication orders by Department.**

The table below summarizes the changes in timeline for issuing order by Department in cases which do not involve fraud or any willful-misstatement or suppression of facts (i.e., Section 73 of the CGST Act, 2017) resulting into additional time at their disposal for issuance of SCN and adjudicating the same.

<b>Financial Year</b>	<b>Old due date</b>	<b>Revised due date</b>
FY 2017-18	30.09.2023	31 <sup>st</sup> December 2023
FY 2018-19	31 <sup>st</sup> Dec 2023	31 <sup>st</sup> March 2024
FY 2019-20	31 <sup>st</sup> Mar 2024	30 <sup>th</sup> June 2024

*Notification No. 09/2023 - Central Tax dated 31.03.2023*

**G. Retrospective amendment to GST registration process**

W.e.f. 26.12.2022, Rule 8(4A) of the CGST Rules, 2017 has been retrospectively amended whereby the date of submission of GST registration application shall be date of successful authentication of Aadhaar number or fifteen (15) days from submission of the application, whichever is earlier.

**SBGco Comments:**

As a result of the above amendment, the officers shall now get additional buffer days for processing of GST registration if Aadhaar Authentication is not done by the applicant on the same day as submission of GST registration application. More-over the GST law now places higher importance on Aadhaar Authentication in the cases for fresh GST applications.



## **II. Finance Act, 2023 - GST Tribunal related amendments**

The Finance Bill, 2023 as presented during Union Budget Session did not feature the amendment relating to Composition of the GST Tribunal. Subsequently, before the said bill was placed before the Lok Sabha, the bill was amended to include the constitution of the Goods and Services Tax Appellate Tribunal. The salient features of the same are highlighted below:

- GST Appellate Tribunal will hear appeals against orders passed by Appellate Authority and Revisional Authority
- Principal Bench will be constituted at New Delhi, consisting of President, a Judicial Member, a Technical Member (Centre) and a Technical Member (State).
- State Benches will be constituted with notified jurisdiction (on recommendation of GST Council and request from the State) consisting of two Judicial Members, a Technical Member (Centre) and a Technical Member (State).
- Issues related to place of supply shall be heard only by the Principal Bench @ New Delhi.
- Where the tax or ITC involved or amount of fine, fee, penalty determined does not exceed 50 lakh rupees and does not involve question of law, such appeals may be heard by single member bench subject to such conditions as may be prescribed on the recommendations of the GST Council. All other cases shall be heard together by one Judicial Member and one Technical Member.

### **SBGCO Comments:**

After multiple remarks from various High Courts, the provisions relating to Constitution and functioning of GST Appellate Tribunal have been amended in the CGST Act, 2017 as per the GST Council Meeting held in February 2023. As per the latest provisions, each state Appellate Tribunal will likely have two division benches and thereby, be able to deal with more appeals. It remains to be seen as to what is the final mechanism which will be adopted for appointing judicial members and state-level technical members.

## **III. Portal related updates**

### **A. One-person Company registration**

Since 'One-person company' is not yet notified under GST law, there were difficulty faced by those who wanted to register under GST as a 'one-person company'. The GSTN has now issued a work-around advisory that until the time, 'one-person company' is notified, applicant may select (Constitution of Business under 'Business Details' tab using drop-down list) option "Others" and mention "One-person company", in Part B of GST Registration Form 'REG-01'.

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



## **B. Introduction of GST PMT-09 (Cash balance transfer from one GSTIN to another within same PAN)**

GSTN has finally enabled the much-awaited functionality for taxpayers to transfer the amount available in the Cash ledger from one GSTIN to another GSTIN registered of the same PAN by filing Form GST PMT-09.

However, one caveat has been placed by the GSTIN whereby no such transfer of cash balances shall be permitted if the registered taxpayer has any unpaid liability in his electronic liability register.

Dashboard Services GST Law Downloads Search Taxpayer Help and Taxpayer Facilities e-Invoice

Dashboard > Services > Ledgers > Electronic Cash Ledger English

### Electronic Cash Ledger

Financial Year	Month	Cash balance as on date :- 31-03-2023
2022-2023	March	₹ 2.00

- Electronic Cash Ledger
- File GST PMT-09 for transfer of amount(within same GSTIN)
- File GST PMT-09 for transfer of amount(to different GSTIN on same PAN).**
- View Filed GST PMT-09

## **C. 6-digit HSN reporting in E-invoice**

6-digit HSN code has been made mandatory for all assesseees with turnover greater than 5 crores on the GST portal. The GSTN has issued an advisory that a similar update will soon be rolled out with IRPs for E-invoicing as well. The taxpayers must make the necessary changes to their systems as GSTN will soon announce the implementation date of the same as well.

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



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

### **1. State of Karnataka vs. Ecom Gill Coffee Trading Pvt Ltd [2023-TIOL-18-SC-VAT]**

#### **Background facts:**

VAT claim of purchasing dealer was rejected at the ground level on account of the cancellation of registration of suppliers or suppliers filing NIL returns for the respective period. The Appellate Authority of Karnataka reversed the decision and held that purchasing dealer should not suffer due to default of seller. Appeal against such judgement by the Department was rejected by the High Court of Karnataka. Karnataka's revenue department thus filed an appeal before the Hon'ble SC.

#### **Issue Raised:**

Three issues were raised before the Hon'ble SC:

- a. Whether burden of proving that ITC claim is correct lies upon the purchasing dealer claiming such ITC?
- b. Whether mere production of invoices or payment made by cheques is not enough and cannot be said to be discharging the burden of proof cast u/s 70 of the KVAT Act, 2003?
- c. Whether genuineness of transaction and actual physical movement of goods are sine qua non for claiming ITC?

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

The Hon'ble Apex Court held in the favour of the Department and observed that the purchasing dealer must prove the genuineness of the transaction as the burden of proof has been cast upon them under section 70 of the KVAT Act, 2003.

Further, the SC also held that additional cogent evidence must be produced by the purchasing dealer such as details of the vehicle which has delivered the goods, payment of freight charges, acknowledgement of taking delivery of goods, tax invoices and payment particulars, details of the actual physical movement of the goods, etc. Mere production of invoice and payment proof shall not be sufficient to establish the genuineness of the transaction.

#### **SBGCO Comments:**

Though the judgment has been pronounced in the context of KVAT, 2003, the after-effects of the decision will be felt in the GST regime as well. There is a similar provision under the CGST Act viz., Section 155, which also casts the burden of proof for claim of ITC on the recipient of supplies.

The above decision of the SC will invariably be used by the Department in cases such as, where the vendor has not uploaded ITC in GSTR 2A of the customer; where ITC has matched but supplier's registration is cancelled retrospectively or there is an allegation of fake invoicing against the supplier. In all such cases, claim of ITC may be required to be substantiated with such additional documentation as laid down by the above judgement of the Apex Court.



## 2. Tonbo Imaging India Private Ltd vs. Union of India [2023-VIL-198-KAR]

### **Background Facts:**

Turnover of zero-rated supply of goods was defined under Rule 89(4)(C) which was amended vide NN. 16/2020-CT dtd. 23.03.2020.

<b>Old Rule</b>	<b>Amended Rule</b>
“Turnover of zero-rated supply of goods means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking as declared by the supplier, whichever is less, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both”	“Turnover of zero-rated supply of goods means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking <b><u>or the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed supplier, as declared by the supplier,</u></b> whichever is less, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both”

The petitioner supplies customized / unique products which are “zero-rated” as per the provisions of the GST Law. The Petitioner’s refund application filed after 23.03.2020 were rejected on grounds that petitioner had not submitted proof for value of like value of goods supplied domestically in compliance with amended Rule 89(4)(C).

### **Issue Raised:**

Whether amended provisions of Rule 89(4)(C) of the CGST Rules are legal and valid?

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

The Hon’ble HC directed the officer to process refunds and also struck down the amended portion of Rule 89(4)(C) of the CGST Rules on the grounds that:

- d. Such amendment is unreasonable and arbitrary as it bears no rational nexus with the objective of provisions relating to “zero-rating”
- e. Such amended provision over-rides the parent legislation i.e., ultra vires Section 54 of the CGST Act (refund of tax)
- f. Such amended rule is violative of Articles 14 and 19(1)(g) of the Constitution of India as it discriminates between exports with payment and exports without payment
- g. The amended rule is vague as it does not provide for cases where unique and customized products are exported and there are no comparable values available.

### **SBGCO Comments:**

The Government did not provide any rationale or explanation as why the additional condition of restricting value of exports of goods to 1.5 times value of domestic supply was introduced in the first place. Even when the amendment was introduced, there was a lot of backlash amongst the exporters. The HC rightly took note of the intention of the law of the “zero-rating” because if such an amendment would have continued then it would have resulted in exporters raising prices of their products which would impact their standing in the international market or would absorb the cost themselves, thus demoting export business from India.





**3. Deepa Traders vs. Principal Chief Commissioner of GST and Central Excise, Chennai [2023-VIL-167-MAD]**

**Background Facts:**

During initial months of introduction of GST, the petitioner made certain errors in GSTR-1 namely, incorrect recipient GSTIN / name, incorrect invoice number/ date, omission of invoice in GSTR-1 but tax paid in GSTR-3B, IGST was inadvertently remitted under the heads SGST and CGST but could not correct the same within the time-limit prescribed in the law.

**Issue Raised:**

Whether amendment may be permitted now to correct the transactions of FY 2017-18, for which time limit has already expired under the law?

**Gist of the Decision:**

The Hon'ble HC held that there is no revenue loss to the exchequer in the present case and such correction would enable proper reporting of the turnover and also enable ITC claim to be made in an appropriate fashion. The HC directed the GSTN network to permit the corrections in the instant case.

**SBGCO Comments:**

CBIC has issued circular no. 183/15/2022-GST dated 27.12.2022 to by-pass the impact of such decisions of High Courts as the said CBIC circular has now permitted vendors to issue certificates to their recipients in cases where there has been a genuine error regarding recipient GSTIN but tax has been duly paid by the vendor.

**4. M/s. Balaji Exim vs. Commissioner of CGST & Ors. [2023-VIL-181-DEL]**

**Issue Raised:**

Can a refund of the taxpayer be rejected on the apprehensions that one of the suppliers may have issued fake invoices, without establishing non-receipt of goods by taxpayer?

**Gist of the Decision:**

The Hon'ble HC held that refund applications cannot be rejected unless it is established that the taxpayer has not received the goods or paid for them. Further, refunds cannot be rejected without conclusive evidence that invoices issued by one of the suppliers are 'fake invoice'. The HC also noted that the actual export of goods by the taxpayer is not questioned at any stage of the refund process. Hence, on account of both the above grounds, department was directed to process the refund application of the taxpayer.

**SBGCO Comments:**

The above decision throws light on two critical aspects:

- a. Even though the law does not mandate verification of supplier's affairs, it is important to ensure that all documentation in relation to receipt of goods by the taxpayer must be maintained with utmost care. The recent SC judgement (summarized above) in the case of Ecom Gill Coffee Trading Pvt Ltd [2023-TIOL-18-SC-VAT] also supports this view.
- b. The law will always come to aid in cases where the Department raises such issues without evidence.



**5. Metal Trade Corporation vs. Special Secretary, Head of the GST Council [2023-VIL-182-MAD]**

**Background Facts:**

The petitioner received notice from the Central Authority and they are already complying with the said notice. However, they have filed the present writ challenging the summons issued by the State Department.

**Issue Raised:**

Do both the Central and State Authorities have powers to initiate proceedings / issue summons against the petitioner simultaneously under the respective GST Acts?

**Gist of the Decision:**

The Hon'ble HC held that truth cannot be unearthed without participating in the proceedings. The Petitioner can raise all their objections while participating in the proceedings. The HC however noted that, for the same issue there cannot be prosecution by the State Department, if the Centre has already concluded the proceedings. Hence, the HC ordered the petitioner to comply with the notice of the State Department, attend the summons issued and thereafter, on the basis of all the objections and grounds raised by the petitioner, the respective officer shall proceed on merits (in accordance with the law).

**SBGCO Comments:**

There has been a spate of proceedings initiated by the department in the recent past and many taxpayers have received notices from both Central and State Departments. In some cases, three different wings of the Central Authority have issued notices, namely, normal jurisdiction, audit wing and intelligence wing. The taxpayers must keep in mind that not complying with the notices is never an alternative as the same could back-fire. However, as noted by the High Court in the above case, all facts and objections must be communicated in writing so that no adverse action is initiated against the taxpayer on account of non-compliance.



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

### **1. Suez India Private Ltd [KAR ADRG 08/2023 (Karnataka) = 2023-VIL-38-AAR]**

#### **Background facts:**

Applicant is a leader in water resource management and provides works contract services to Bengaluru Water Supply and Sewerage Board [BWSSB].

#### **Questions raised:**

- a. Whether the services provided to BWSSB would be considered as a service provided to a governmental authority under GST Laws?
- b. What is the applicable GST rate on supply of works contracts services in relation to sewage treatment made by the Applicant to BWSSB, on or after 1st Jan 2022?

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

- a. The services provided to BWSSB would be considered as a service provided to a governmental authority.
- b. The GST rate applicable for services supplied to BWSSB, on or after 1st Jan 2022 would be 18%.

#### **SBGCO comments:**

The AAR has not discussed whether BWSSB is a “local authority” or not as GST rate of 12% would be applicable if such services are provided to a local authority. There have been numerous advance ruling applications in relation to services supplied to an entity related to Government. However, there is very little guidance / standardization as to how to determine whether the entity is a local authority or not.

### **2. Indian Metals and Ferro Alloys Ltd [04/ODISHA-AAR/2021-22 = 2023-VIL-44-AAR]**

#### **Questions raised:**

Whether service received by a registered person by way of renting of residential premises used as a guest house of the registered person subject to GST under Forward Charge Mechanism (FCM) or Reverse Charge Mechanism (RCM)?

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

Irrespective of the purpose of use (guest house or not), if the residential dwelling is rented to a registered person under GST, the tenant must discharge the GST liability under RCM as per Notification No. 05/2022-Central Tax (Rate) dated 13th July 2022.

#### **SBGCO comments:**

The analysis by the AAR in the above decision seems to downplay the importance of use of the rented premise. Recently, in another case before the Hon’ble HC of Karnataka in the case of Taghar Vasudeva Amrish [2022 (63) G.S.T.L. 445 (Kar.)], the HC laid emphasis on the usage of the rented premise while deciding on the applicability of the exemption notification related to residential dwelling. The HC specifically focused on the term ‘dwelling’ and deduced that the same could be used inter-changeably with ‘residence.’



#### D. GST Compliance chart for April 2023

S N	Due Date	Form	Period	Periodicity	Special Remarks
1.	10.04.2023	GSTR - 7	March 2023	Monthly	To be filed by those who are required to deduct TDS under GST
2.	10.04.2023	GSTR - 8	March 2023	Monthly	To be filed by those who are required to collect TCS under GST
3.	11.04.2023	GSTR - 1	March 2023	Monthly	Taxpayers filing GSTR - 1 monthly
4.	13.04.2023	GSTR - 5	March 2023	Monthly	To be filed by a non-resident foreign taxpayer registered in GST
5.	13.04.2023	GSTR - 6	March 2023	Monthly	To be filed by an ISD
6.	13.04.2023	GSTR - 1	Jan 2023 to March 2023	Quarterly	To be filed by those under QRMP Scheme
7.	18.04.2023	CMP - 08	Jan 2023 to March 2023	Quarterly	To be filed by Composition Dealer (Payment of Self-assessed tax)
8.	20.04.2023	GSTR - 3B	March 2023	Monthly	To be filed by Taxpayer filing monthly GSTR 3B
9.	20.04.2023	GSTR - 5A	March 2023	Monthly	To be filed by non-resident Online Information and Database Access or Retrieval (OIDAR) services provider
10.	22.04.2023	GSTR - 3B	Jan 2023 to March 2023	Quarterly	To be filed by those under QRMP Scheme (#)
11.	24.04.2023	GSTR - 3B	Jan 2023 to March 2023	Quarterly	To be filed by those under QRMP Scheme (\$)
12.	25.04.2023	ITC-04	Oct 2022 to March 2023	Half-yearly	Taxpayers with T/O > 5 crore who are sending goods for job-work
13.	25.04.2023	ITC-04	FY 2022-23	Annually	Taxpayers with T/O < 5 crore who are sending goods for job-work
14.	30.04.2023	GSTR - 4	FY 2022-23	Annually	To be filed by a Composition Dealer

(#) Last date for filing return without late fees and interest for the states of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, the Union Territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands, and Lakshadweep.

(\$) Last date for filing return without late fees and interest for the states of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand, Odisha, the Union Territories of Jammu and Kashmir, Ladakh, Chandigarh and Delhi



## **Disclaimer**

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

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