

**GOODS AND SERVICE  
TAX  
celebrates  
6th ANNIVERSARY**

**SBGCo Connect - July 2023**

**S B Gabhawalla & Co  
Chartered Accountants**



Greetings to all our readers!

1<sup>st</sup> July 2023 marks the 6<sup>th</sup> Anniversary of the introduction of the Goods and Service Tax Act. What have we seen in these past 6 years? Let us have a look:

- 1000+ Notification issued by the Centre alone
- 200+ Circulars
- 200+ Press Releases
- 20+ Removal of Difficulty Orders
- 15+ Instructions & Ordinances
- 49 GST council meetings (50<sup>th</sup> meeting is planned to take place in July 2023)
- 35+ GSTN portal Advisories
- Countless Court decisions already

Authored books for GST have already reached their 10<sup>th</sup> or 11<sup>th</sup> editions in 6 years summarizing the voluminous updates and changes the GST law brings on a regular basis. It has been an adventurous ride so far and it promises to continue the same for the upcoming few years as well.

We would like to remind our readers that E-invoice threshold limit has been reduced from Rs. 10 crores to Rs. 5 crores by the Government and the implementation date for the same is set as 01.08.2023. All taxpayers whose turnover has crossed Rs. 5 crores in any financial years since the inception of GST will now be covered by the E-invoice provisions w.e.f. 01.08.2023.

In a bid to enhance the security of E-way bill and E-invoice login credentials, the National Information Centre (NIC) managing the above portals has planned to implement 2-factor authentication for every login attempt for all taxpayers having turnover greater than 100 crores. The exact specifications and details of this new feature have been covered in our current newsletter.

Through this month's newsletter, we bring to you a summary of recent developments in GST, divided into the following sections:

- [What's New?](#)
- [Recent decisions from the Judiciary](#)
- [Recent Advance Rulings and analysis of the same](#)
- [GST Compliance Chart for the month of July 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. Extension for filing Form GSTR 3B for specified districts in Gujarat for May 2023**

- Biparjoy cyclone caused heavy rains resulting in water-logging and floods in many districts of Gujarat. Hence, the Government has decided to extend the due date for filing Form GSTR 3B for taxpayers having principal place of business in the districts of Kutch, Jamnagar, Morbi, Patan and Banaskantha.
- The revised due date for filing Form GSTR 3B of May 2023 was shifted from 20.06.2023 to 30.06.2023 for the above-mentioned specified class of taxpayers only.

*Notification No 17/2023- Central Tax dated 27.06.2023*

### **II. Extension of time limit for furnishing Form GSTR 1, Form GSTR 3B & Form GSTR 7 for taxpayers of the State of Manipur for the month of April & May 2023.**

- On account of the ongoing unrest in the state of Manipur, CBIC has extended the due date of the following returns tabulated below for all taxpayers having GST registration in the state of Manipur for the month of April & May 2023.

<b>Particulars</b>	<b>Period</b>	<b>Original Due Date</b>	<b>Revised Due Date</b>	<b>Notification No.</b>
Form GSTR 1	April-23	11.05.2023	30.06.2023	<i>14/2023- Central Tax</i>
	May-23	11.06.2023		
Form GSTR 3B	April-23	20.05.2023	30.06.2023	<i>15/2023- Central Tax</i>
	May-23	20.06.2023		
Form GSTR 7	April-23	10.05.2023	30.06.2023	<i>16/2023- Central Tax</i>
	May-23	10.06.2023		

### **III. GSTN Portal Advisory**

#### **i. E-invoice verifier App**

- "E-Invoice QR Code Verifier" App is available on the Google Play store for download for Android users wherein, the said app can be utilized to scan the QR codes on the e-Invoices. There is no user login/ authentication process on this app and hence, any user can use this app to scan and verify the e-invoices
- On scanning the QR code, the app will authenticate the information embedded in the code and as a result, the recipient will be able to compare it with information printed on the invoice.
- The detailed advisory can be accessed by clicking [here](#).

*GSTN portal advisory dated 08.06.2023.*



**ii. Introduction of new “Return Compliance” in Form GST DRC-01B.**

- The GSTN portal has now automated issuance of notice in Form DRC-01B for difference in the liability declared in Form GSTR-1/IFF and that paid through Form GSTR-3B where the difference is beyond a configurable threshold limit.
- Hence, if the liability declared in Form GSTR-1 is not paid in Form GSTR-3B, then the GSTN portal will automatically issue a notice in Form GST DRC-01B. **If a taxpayer does not file a response to Form GST DRC-01B for the previous tax period, then for the subsequent tax period, they will not be able to file their Form GSTR-1.**
- While filing a response to Form GST DRC-01B, the taxpayer will be given some pre-defined reasons and a residuary reason as well. However, in case, there is actual mismatch and there is a genuine short payment, then Form GST DRC-03 will be required to be filed where the reason for payment is to be selected as “Return Compliance” and the date of filing of Form GST DRC-03 should be after the date of issuance of Form GST DRC-01B.
- The said mechanism on the GST portal is applicable to all assesseees and for quarterly filers (i.e., QRMP Scheme), Form GST DRC-01B shall be generated after filing of quarterly Form GSTR-3B
- For detailed information and FAQs of this new “Return Compliance” module, our reader can click on the link [here](#).

**SBGCO Comments**

The GSTN portal is becoming more and more stringent w.r.t. filing of returns and payment of tax dues. The GSTN portal, on the recommendations of the GST Council, is adding new features regularly to ensure regular, timely and accurate compliance by taxpayers. The taxpayers must ensure, that liability reflected each month in Form GSTR-1 and Form GSTR-3B matches to avoid such automated notices. This also emphasizes the importance of automated e-mails received when any notice is uploaded on the GST portal. If the e-mail is missed and the notice is not responded to, then the filing of GSTR-1 for the subsequent period will get stuck.

**IV. Instructions issued during the month**

**A. Guidelines for processing of applications for registration.**

- Instructions for GST officers were issued on 14<sup>th</sup> June 2023 for the detailed guidelines to be followed by GST officers in relation to processing of registration and related amendment applications.
- The instruction manual clarifies that the necessity of issuing this instruction is borne out of problem of fake registration and fake input tax credit.
- The instruction lays down that GST officers must verify each and every detail minutely when an application for registration is filed by an applicant. The officer must try to verify the authenticity of the documents furnished by cross-verifying the same with publicly available sources including the websites of the concerned authorities.
- The GST officer must check the risk rating made available by the DGARM in respect of each ARN and pay special attention to the cases where a “High” risk rating has been assigned.



- The instruction highlights instances where GST officer may seek clarification or information or document.

*Instruction No 03/2023- GST dated 14.06.2023*

**SBGCO Comments:**

The issuance of this instruction in the form of guidelines clearly highlights the seriousness with which the Government intends to tackle the issue of fake invoicing and fake registration. The guidelines also cast a burden on the taxpayers to ensure accurate information is submitted to ensure hassle-free registration process.

**V. E-invoice & E-way bill portal updates**

- To enhance the security of E-invoice & E-way bill portals, the National Informatics Centre has now introduced 2-Factor authentication for logging in to the respective portals.
- Hence, w.e.f. 15<sup>th</sup> July 2023, in addition to username and password, OTP will also be authenticated for every single login attempt for all taxpayers with Aggregate Annual Turnover above 100 Crore.
- There are 3 different ways of receiving this OTP and any one of them can be used by taxpayers:
  - a. Via SMS - OTP sent to the registered mobile number as SMS.
  - b. On 'Sandes' app - 'Sandes' is a messaging app provided by government to send and receive SMS
  - c. Using 'NIC-GST-Shield' app: 'NIC-GST-Shield' is a mobile app provided by e-Way Bill /e-Invoice System, so that OTP can be generated by using the app. This app can be downloaded from only from the e-Waybill / e-Invoice portal. After installing the app on the registered mobile number, user must ensure that the time displayed in the app should be in sync with e- Waybill/ e-invoice system. On opening the app, OTP will be displayed to the user.

**SBGCO Comments:**

The Government has already synchronized E-way bill and E-invoice login credentials. With this additional feature of 2-factor authentication, the Government now plans to strengthen the accessibility to E-way bill and E-invoice systems to prevent unauthorized access/misuse of the same. Additionally, it remains to be seen what happens in the case where E-invoice is generated by back-end system integration with ERPs/ accounting software and there is no direct login attempt on the E-way bill and E-invoice portals as no clarity is provided for such cases.



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

### **1. Samyak Metals Pvt Ltd vs. Union of India [2023-TIOL-626-HC-P&H-GST]**

#### **Background facts:**

During the search proceedings, the petitioner was forced to deposit tax in lieu of the ITC claimed by it on the purchases made from a particular supplier to the tune of Rs. 35,73,147/- each under CGST and SGST including interest and penalty in February 2021. Thereafter, for 2 years, the Department neither issued Form GST DRC-04 nor passed any adjudicating order in respect of the amounts so recovered.

#### **Issue Raised:**

Can Department retain amounts recovered from the petitioner in Form GST DRC-03 without acknowledging the same or not issuing any SCN or not passing any order u/s 74 of the Act, 2017?

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

The Hon'ble High Court has taken note of the fact that the Department has neither acknowledged the payment in Form GST DRC-04 nor initiated adjudication proceedings by way of issuance of SCN. As a result, the HC has held that the Department has neither followed the guidelines laid down by Instruction No. 01/2022-23 dated 25.05.2022 issued by the CBIC nor the procedure laid down in Rule 142 (2) of the CGST Rules. Hence, such amounts cannot be retained by the Department as the same is without the authority of law. the HC ordered the Department to refund the said amounts along with 6% simple interest.

#### **SBGCO Comments:**

This is a welcome judgment that now thrusts the onus on the Department to either acknowledge the payments or initiate adjudication proceedings at the earliest to appropriate the amounts collected from the taxpayers against defined allegations. This will ensure that even the taxpayer is aware of the underlying dispute and can present his case accordingly during the adjudication process, in a timed bound manner.

### **2. M/s. Gargo Traders vs. The Joint Commissioner of Commercial Taxes [2023-TIOL-670-HC-KOL-GST]**

#### **Background Facts:**

The petitioner had made certain purchases from Global Bitumen (their vendor) during FY 2018-19. The petitioner had claimed ITC on the purchases made from the said vendor. However, the said vendor's registration was cancelled retrospectively and therefore, the jurisdictional officers of the petitioner proceeded to demand tax along with interest and penalty for ITC claimed after the date of cancellation of the registration of the vendor.

#### **Issue Raised:**

Can the claim of ITC be disallowed merely on the grounds that vendor's registration was cancelled retrospectively?



**Gist of the Decision:**

The Hon'ble HC noted that the Department cannot disallow the ITC in the hands of the supplier merely on the grounds of retrospective cancellation of GST registration of the vendor. The HC noted that when the purchases were made by the petitioner, the registration of the vendor was still active and hence, the petitioner cannot be faulted for subsequent retrospective cancellation. The ITC in the hands of the petitioner cannot be disallowed unless it is proved that the transaction was not genuine or there was any collusion between the two parties. The Hon'ble HC set aside the order and directed the department to consider the submissions and documentation of the petitioner before arriving at a conclusion.

**SBGCO Comments:**

The above matter is another classic example of ITC claim onus shifting on the recipient. The recipients of supply must establish the genuineness of every purchase transaction especially in case of supply of goods. The Department does require the taxpayer to maintain documents such as Delivery Challan, LR / Transporter's receipt copy, Goods Inward Receipt, etc. to sufficiently establish the claim of credit. Additionally, it has become more and more imperative for the recipients of any supply to ensure that the supplies they procure are from well-trusted and compliant vendors to ensure that their claim of ITC is not questioned subsequently.

**3. Alex Tours and Travels Pvt Ltd vs. Asst. Commissioner of CGST [(2023) 7 Centax 158 (Del.)]**

**Background Facts:**

The Assessee's refund claim was rejected at the adjudication level but subsequently allowed by the Appellate Authority. However, the Department refused to process the refund claim of the assessee on the grounds that the department plans to appeal against the order of the appellate authority before the tribunal as and when the same is formed. The Department also insisted that the assessee file fresh refund claims after favourable order from the Appellate authority.

**Issue Raised:**

Are the Department's actions asking the assessee to file fresh refund claims and holding back the refund on the grounds that they plan to file an appeal before a higher forum, correct?

**Gist of the Decision:**

The Hon'ble HC rejected the Department's view that fresh refund applications need to be filed once the appellate authority had allowed the refund application. The Order further goes on to state that the Department can proceed to file an appeal but it cannot hold on to the refund since the appellate authority has already allowed the claim. If the Department does not agree with the views of the Appellate Authority that does not give them any powers to withhold the refund.

**SBGCO Comments:**

The CBIC needs to set out SOPs for various aspects like powers, functions, responsibilities, duties of the Department and how to function in certain standard situations. The HC in the above case clearly rejected the actions of the Department and rightly ordered them to grant the refund. Such actions unnecessarily lead to unwanted litigation which only adds to the existing litigation burden of the country.



#### **4. M/s. Tiwari Industries vs UoI [(2023) 7 Centax 132 (All.)]**

**Issue Raised:**

Can no reply to a show cause notice be a valid ground for cancellation of GST registration?

**Gist of the Decision**

The Hon'ble HC set aside the cancellation of GST registration order and directed the Department to consider the submissions of the Appellant afresh. The HC noted that non-reply cannot be a ground for proceeding against any assessee. Especially in the case of cancellation of GST registrations, there must be cogent reasons spelled out in the order for taking actions against the assessee.

**SBGCO Comments:**

The Taxpayers need to be extremely vigilant in the case of issuance of any form of notice by the Department. Course correction like in the above case of restoring GST registration can sometimes take years to fructify. Sometimes, the Department may not even give enough time to submit a reply and even in such cases, the assessee must seek to submit a reply, which can include, inter-alia, additional time to submit a detailed reply. Proactiveness is the need of the hour as in this digital age, the notices are sent on GST portal and assessee are expected to keep a check on their email and GSTN portal.

#### **5. Kia Motors India Private Ltd vs. State of Madhya Pradesh [2023-TIOL-667-HC-MP-GST]**

**Background Facts:**

Demo vehicle (not for sale) was being transported in the State of Madhya Pradesh. On interception of the said goods, it came to light that no E- way bill was generated for such movement of demo vehicle.

**Issue Raised:**

If the goods transported are not used for further supply, then is E-way bill still mandatory?

**Gist of the Decision:**

The Hon'ble HC held that the reason for generation of E-way bill is not dependent on the fact that whether the said movement is for supply or not. E-way bill is required for movement of goods having a value greater than Rs. 50,000/- even for reasons other than supply. Hence, the HC did not interfere with the order against which the present writ petition was filed.

**SBGCO Comments:**

Taxpayers must be careful with regard to e-way bill provisions when transporting goods having a value greater than Rs. 50,000/-, unless they are specifically exempted under the provisions. The HC interpreted the law as it is and noted that the provisions of E-way bill do not discuss the element of 'supply.' Instead, E-way bill provisions only focus on the 'movement of goods.'





**6. Ramji Jaiswal vs. State tax officer [(2023) 7 Centax 90 (Cal.)]**

**Issue Raised:**

If the vehicle is intercepted 18 hours after the expiry of the E-way bill, can the department levy penalty under the E-way bill provisions?

**Gist of the Decision:**

The Hon'ble HC observed that the time gap between expiry of the E-way Bill and interception was less than a day and there was a genuine problem of break-down of the vehicle in question. There was no proof of any deliberate or willful intention of the petitioner to avoid and evade the tax. Hence, for the above-mentioned reasons, the HC set-aside the penalties levied.

**SBGCO Comments:**

The HC was lenient enough to allow the petition in the favour of the assessee in the above case. However, it must be noted that the e-way bill portal does provide for an extension of e-way bill validity for various reasons including vehicle breakdown. Assessee must ensure that the validity of the e-way bill is duly extended in cases when the goods could not reach the assigned destination before the expiry of the e-way bill. Such extension must be informed on the e-way bill portal between 8 hours before the expiry time and 8 hours after the expiry time.



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

### **1. TPSC (India) Private Limited [TSAAR Order No.10/2023 (Telangana) = 2023-VIL-105-AAR]**

#### **Background facts:**

The Applicant had sub-contracted EPC work related to Steam Turbine Generator and Auxiliaries during FY 2013-14. Due to the delay in the supply of drawings, raw materials, etc. by the Applicant, the project completion was delayed. The work of the sub-contractor was descopeed subsequently.

The said descopeed work was then allotted to other sub-contractors. The entire contract was completed before the implementation of GST and duly suffered VAT and Service Tax. However, handing over the completed project was in December 2018. Due to descopeing of work, the sub-contractor lodged a claim against the Applicant. The claim resulted in arbitration and was then followed by an out-of-court settlement between both parties.

#### **Questions raised:**

1. Whether the contract be completed during the Pre-GST period and the consequential demand based on the completed contract can be brought to assessment under GST?
2. Whether the liquidated damages, without any supply of materials and labour be assessed to GST?
3. Whether the mutually agreed and settled amount, based on arbitral award, is liable to be taxed under GST?
4. Whether there is any taxability under GST on interest payable on the liquidated damages?

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

1. No (Since there is no supply under GST, the time of supply also does not trigger under GST. Hence, the receipt of money under the GST regime cannot alone trigger any tax)
2. No (reliance placed on clarification issued vide CBIC circular No.178/10/2022, dated 03.08.2022)
3. No (for reasons highlighted in the above answers).
4. No (Since the principal supply itself is not taxable under GST, interest on such receipt also will not be liable to tax under GST)

#### **SBGCO comments:**

EPC contracts are long period contracts and if any dispute arises in them, the arbitration process further takes a few more years to reach a settlement. Hence, there is a possibility of change in law in the intermediate period and this is exactly what happened in the above case. The CBIC in the present case had already issued a Circular clarifying the tax applicability in the case of liquidated damages and the AAR has correctly relied on the principles laid down in the said Circular.



**2. Vedmutha Electricals India Pvt Ltd [AAR No. 05/AP/GST/2023 (Andhra Pradesh) = 2023-TIOL-92-AAR-GST]**

**Background facts:**

The Applicant's supplier issued Tax Invoice in terms of Rule 46 of CGST Rules, 2017, and charged GST on such taxable value. The said supplier paid GST and filed Form GSTR-3B for the relevant tax period and reported details of supplies Form GSTR-1. The applicant also received the said goods and made payment of consideration as per the tax invoice for the goods received from the supplier.

Subsequently, on account of various incentives/ schemes, the supplier has raised financial/commercial credit notes without GST for account settlement purposes only. The supplier has also submitted an affidavit stating that they did not reduce GST liability on account of financial/commercial credit notes.

**Questions raised:**

1. Whether the applicant is duly eligible to take full credit of GST charged in Tax invoice issued by the supplier and GST was paid by such supplier to the Government even though later commercial/ financial credit note is issued for part amount of such invoice?
2. Whether the applicant is required to reverse the ITC proportionately to the extent of financial/commercial credit note issued by supplier?

**Gist of the Ruling:**

1. Yes. The applicant is eligible to claim full credit as per tax invoice as value of supply shall not include any discount by way of issuance of credit note that do not fulfil the conditions of Section 15(3)(b) of the CGST Act, 2017.
2. No. ITC reversal is not required provided the applicant pays the value of the supply as reduced after adjusting the amount of post-sale discount in terms of financial/commercial credit note received from the supplier plus the amount of original tax charged by the supplier.

**SBGCO comments:**

The AAR has correctly clarified the legal interpretation regarding the claim of ITC in the hands of the recipient when the supplier gives post-supply discounts in the form of Turnover Discounts, Quantity Discount, Cash Discounts, Additional Scheme Discounts, and so on. This AAR will also be helpful in all cases where the Department officers demand reversal of proportionate ITC even though complete tax payments are made to the suppliers.



**D. GST Compliance chart for July 2023**

<b>S N</b>	<b>Due Date</b>	<b>Form</b>	<b>Period</b>	<b>Periodicity</b>	<b>Special Remarks</b>
1.	10.07.2023	GSTR - 7	June 2023	Monthly	To be filed by those who are required to deduct TDS under GST
2.	10.07.2023	GSTR - 8	June 2023	Monthly	To be filed by those who are required to collect TCS under GST
3.	11.07.2023	GSTR - 1	June 2023	Monthly	Taxpayers filing GSTR - 1 monthly
4.	13.07.2023	GSTR - 5	June 2023	Monthly	To be filed by a non-resident foreign taxpayer registered in GST
5.	13.07.2023	GSTR - 6	June 2023	Monthly	To be filed by an ISD
6.	13.07.2023	GSTR - 1	April 2023 to June 2023	Quarterly	To be filed by those under QRMP Scheme
7.	18.07.2023	CMP - 08	April 2023 to June 2023	Quarterly	To be filed by Composition Dealer (Payment of Self-assessed tax)
8.	20.07.2023	GSTR - 3B	June 2023	Monthly	To be filed by Taxpayer filing monthly GSTR 3B
9.	20.07.2023	GSTR - 5A	June 2023	Monthly	To be filed by non-resident Online Information and Database Access or Retrieval (OIDAR) services provider
10.	22.07.2023	GSTR - 3B	April 2023 to June 2023	Quarterly	To be filed by those under QRMP Scheme (#)
11.	24.07.2023	GSTR - 3B	April 2023 to June 2023	Quarterly	To be filed by those under QRMP Scheme (\$)

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

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



## **Disclaimer**

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

Sunil Gabhawalla @ [sunil@sbgco.in](mailto:sunil@sbgco.in)

Yash Parmar @ [yash@sbgco.in](mailto:yash@sbgco.in)

Parth Shah @ [parth@sbgco.in](mailto:parth@sbgco.in)

Darshan Ranavat @ [darshan@sbgco.in](mailto:darshan@sbgco.in)

Prakash Dave @ [prakash@sbgco.in](mailto:prakash@sbgco.in)

Aman Haria @ [aman@sbgco.in](mailto:aman@sbgco.in)

Our office address:

S B Gabhawalla & Co.,

802-803 Sunteck Grandeur

Off S V Road, Opp Subway

Andheri West Mumbai 400058

Landline - 022 - 66515100

Web: [www.sbgco.co.in](http://www.sbgco.co.in)

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