



# **SBGCo Connect April 2024**

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Greetings to all our readers!

We, at SBGCo, are glad to announce that we are soon going to launch a series of regular mini-vlogs, called “*GSTPod*” for keeping our readers updated via short videos covering topics such as recent updates, indirect tax news, explaining GST concepts and much more! Stay tuned for more information coming your way, very soon!

On the GST collections front, FY 2023-24 concluded with the second-highest GST collections recorded in the six-plus years since the GST's inception. The press release issued on 1<sup>st</sup> April 2024 by the PIB, highlights that average monthly collection in FY 2023-24 rose to Rs. 1.68 lakh crores from Rs. 1.50 lakh crores each month from FY 2022-23. Strong compliance driven measures along with a stable GDP growth during FY 2023-24 have ensured an overall 11.5% increase in GST collections from previous financial year.

The Finance Bill, 2024 did indicate changes proposed to the ISD mechanism making it mandatory in the GST law. However, the revised process/ mechanism for the proposed ISD provisions is yet to be provided in the GST rules. Considering the fact that GST Council is unlikely to meet until the conclusion of the Lok Sabha Elections, it is very likely that clarity on the revised ISD mechanism may also not be forthcoming. The taxpayers and the tax practitioners alike, shall have to wait a little longer to decide on the way forward for ISD related process changes.

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 2024](#)

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

Team SBGCo



## **A. What's New?**

### **I. Advisories issued by GST Portal**

- **Integration of E-Waybill system with all E-invoice generation portals**

- The GSTN portal has shared that all the E-invoice generation portals are now integrated with E-way bill systems whereby, taxpayers can simultaneously generate E-way Bills along with generation of E-invoices.

The said advisory issued by GSTN portal, dated 08.03.2024, can be accessed by clicking on the link [here](#).

- **Introduction of New 14A and 15A tables in Form GSTR 1/ IFF**

- Details of transactions made by taxpayers whereby e-commerce operators (ECO) are required to collect/pay tax is reported in Table 14 and 15 of the Form GSTR 1/ IFF.
- Uptill now, there was no option to amend the details in case where some inadvertent error had crept in the returns.
- The GSTN portal has now introduced Tables 14A and 15A in Form GSTR 1/ IFF w.e.f. February 2024 returns where by, taxpayers can now amend details of the supplies made through ECO.

The said advisory issued by GSTN portal, dated 12.03.2024, can be accessed by clicking on the link [here](#).

### **II. Instructions issued by CBIC**

- **Guidelines issued for CGST field formations in maintaining ease of doing business while engaging in investigation with regular taxpayers**

- To enhance the efficiency of the investigation process, the CBIC has issued directives to CGST Field officials aimed at standardizing the investigation practices and facilitating a smoother experience for taxpayers. Here are some key highlights from the guidelines issued by the CBIC:

- a. The (Pr.) Commissioner shall be responsible for developing and approving any intelligence, conducting search, and completing investigation in a case.
- b. Prior written permission required of the zonal (Pr.) Chief Commissioner in case investigation intended pertains to one of the below mentioned categories:
  - matters of interpretation seeking to levy tax/ duty on any sector/ commodity/ service for the first time
  - Big industrial house and major multinational corporations
  - Sensitive matters or matters with national implications
  - Matters which are already before GST Council
- c. If inquiry is already initiated by another investigating office (Eg. DGGI/ State investigation) against a particular taxpayer, then (Pr.) Commissioner must engage in



dialogue with the other investigating office and try to facilitate that only one of the offices pursuing all the subject matters with respect to the taxpayer

- d. When there is an interpretation issue (i.e., different interpretation by taxpayer and Department) regarding a particular trade practice, the CBIC has advised that a self-contained reference of such issue must be highlighted to the GST policy wing/ TRU at the earliest so that it can be placed before the GST Council.
- e. In initiating investigation with respect to a listed company or PSU or Govt Dept./agency or an Authority established by law, the CBIC has instructed to first request for relevant details in reasonable time, rather than issuing summons to the designated officer of such entity upfront.
- f. The letter/ summons should disclose the specific nature of the inquiry being initiated/ undertaken. The vague (or general) expressions such as that the officer is making inquiry in connection with “GST enquiry” or “evasion of GST” or “GST evasion” etc. must be avoided.
- g. Information available digitally/online on GST portal should not be called for under letter/summons from a regular taxpayer.
- h. Summons issued during investigations should strictly adhere to their defined scope, as outlined in Section 70 of the CGST Act, 2017. Any attempt to broaden the scope beyond what is permissible under the law, such as conducting a fishing expedition, is not permissible
- i. Reasonable time to comply with summons should be granted in accordance with content and the details sought.
- j. An investigation initiated must reach the earliest conclusion, preferably within a one year.

*Instruction No. 01/2023-24-GST (Inv.) dated 30.03.2024*



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

**Category: Cross-empowerment of officers**

**1. Vardhan Infrastructure vs. Special Secretary [2024-TIOL-505-HC-MAD-GST]**

**Background facts:**

The petitioner is assigned to the Central Jurisdiction i.e., assessed by the Central Authorities under the CGST Act, 2017. However, the petitioner has been assessed by State Authorities by issuance of notice and corresponding Order under TNGST Act, 2017.

**Key Issue Raised:**

In the absence of a proper Notification under Section 6 of the respective GST Enactments for cross-empowerment, can an assessee who is assigned to a particular authority, be assessed by the counterpart authority?

**Gist of the Decisions:**

The Hon'ble HC observed that no notification has been issued for cross-empowerment with advice of GST Council, except for the purpose of refund of tax. Hence, if an assessee has been assigned administratively with the Central Authorities, pursuant to the decision taken by the GST Council as notified by Circular No.01/2017 bearing Reference F.No.166/ Cross-Empowerment/ GSTC/ 2017 dated 20.09.2017, the State Authorities have no jurisdiction to interfere with the assessment proceedings in absence of a corresponding Notification under Section 6 of the respective GST Enactments (and vice versa). Hence, any and all actions taken by the state authorities against the petitioner are without jurisdiction.

**SBGCO comments:**

Unless specifically provided for, no officer can usurp the power of investigation or adjudication of an assessee who is not assigned to him. GST has been crafted in such a fashion that Officers of one authority cannot interfere even if they have information that might indicate potential violations by the taxpayer, unless they have administrative authority over the said taxpayer. They may pass the information their counterpart to take necessary action after considering the information made available. Hence, on receipt of any notice from any department official, it is always advisable to verify if the said authority has power to issue the notice to the respective taxpayer.

**Category: Principles of adjudication**

**2. Samsung India Electronics Pvt Ltd vs. State of UP [2024-TIOL-468-HC-ALL-GST]**

**Background facts:**

The petitioner is a company engaged in the export of Information Technology design and software development services pertaining to mobile devices. For rendering the said IT services, the petitioner procures various inputs, input services, and capital goods. The petitioner exported services under LUT and applied for refund of unutilised ITC. For April 2019 to June 2019, entire refund was sanctioned barring a small amount on account of ITC not appearing in form GSTR 2A. However, for subsequent period, partial refund of the petitioner was rejected on account of specific goods that Department believed to be capital goods and such a reason was not part of the show cause issued to the petitioner. The Appellate Authority also confirmed the rejection of the refunds on the same grounds.



**Issue Raised:**

- a. Whether refund can be denied for new grounds given the same set of facts?
- b. Whether refund can be denied for reasons not part of SCN?

**Gist of the Decision:**

- a. The Hon'ble HC of Allahabad held that the principles of consistency is sacrosanct in taxation matters, unless reasons are recorded in writing. The Revenue cannot be allowed to take a different stand when facts are almost identical. The HC held that arbitrary withholding of refund claims for specific periods, despite past precedents and the absence of any material change in circumstances, is contrary to the principles of fairness and equity.
- b. The HC held that the Department must clearly bring out the allegations in the SCN issued to the taxpayers. The Department cannot confirm any demand beyond the confines of the SCN issued. Confirming any demand on any grounds outside the scope of the SCN leads to violation of the principles of natural justice.

The HC set aside the order and allowed the Writ Petitions filed.

**SBGCO comments:**

Any authority, whether quasi-judicial (e.g., appellate authority) or judicial (e.g., Tribunal, Courts) cannot take contrary view for subsequent periods when there is no material change in the circumstances. Such actions would be against the principles of fairness and equity.

Likewise, action taken beyond the confines of a SCN would not only undermine the recipient's right to a fair hearing but also erode trust in the integrity and impartiality of the adjudicatory process. Hence, it important for every tax officer to meticulously draft every SCN so as to provide fair opportunity to the assessee to defend himself. Under GST, the law (Section 75(7) of the CGST Act) itself provides that demand cannot be confirmed beyond SCN.

**3. Balaji Medical and Diagnostic Research Centre vs. Union of India**

**Background facts:**

A SCN was issued against the petitioner regarding various issues viz., under declaration of output tax, excess claim of ITC, under declaration of ineligible ITC and ITC claimed from dealers whose registration has been cancelled. The Petitioner submitted a replied reply for each issue giving full disclosures. However, the demand raised in the SCN was confirmed by the adjudicating officer on the grounds that the reply submitted by the petitioner was "unsatisfactory."

**Key Issue Raised:**

Can such an Order be passed by any Proper Officer?

**Gist of the Decisions:**

The Hon'ble HC set aside the Order and held that, Proper Officer should have atleast considered the detail reply on merits and then formed an opinion. Without explaining why the reply is 'unsatisfactory', the Proper Officer has not applied his mind to the reply submitted by the petitioner. The HC observed that if the Proper Officer feels that the reply by the taxpayer is unsatisfactory, then they should seek additional information/ details. The HC directed the Proper Officer to seek additional details, grant fresh hearing to the petitioner and then pass a speaking order.



**SBGCO comments:**

It is a right of every taxpayer that the reply submitted by them should be considered on merits. Any adverse action against the taxpayer without considering their submission is as good as trampling the rights of the taxpayer and tossing the principles of natural justice outside of the window. Some adjudicating authorities may continue to trample the rights of the taxpayers, and the higher forums will have to continue to intervene such arbitrary proceedings.

**Category: Responsibility of Taxpayer**

**4. M/s. Sakthi Poly Products vs. Commercial Tax Officer [2024-VIL-246-MAD]**

**Background facts:**

Notice in Form GST ASMT-10, Intimation in Part A of Form GST DRC-01A, SCN in Form GST DRC-01, notice for personal hearing and Assessment Order in Form GST DRC-07 were all issued on the common portal. The petitioner only came to be aware of the same when he received a phone call from the GST Department.

**Key Issue Raised:**

Whether the assessment proceeding is valid in the present case?

**Gist of the Decisions:**

The Hon'ble HC has held the reason given by the petitioner that they were unaware of the assessment is not acceptable. The HC held that it is the obligation of the taxpayer to monitor the GST portal regularly.

However, considering the recurrent nature of the issue of ITC claimed in Form GSTR 3B and ITC appearing in Form GSTR 2A, the HC permitted the petitioner to defend their case before the adjudicating authority on the condition that 10% of tax demand is deposited.

**SBGCO comments:**

It is important to note that monitoring the GST portal regularly would not take much time of the taxpayer. However, if the taxpayer turns a blind eye to his obligations, it can definitely result in serious wastage of resources, including time and money. Hence, as a simple and effective practice, a taxpayer must monitor their GST portal twice a month to ensure no communication is missed.



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

### **1. Manish Manpower Agency [Order No. KAR ADRG 03/2024 (Karnataka) = 2024 (1) TR 8795]**

#### **Background facts:**

The Applicant are providing manpower services to Zilla Panchayat, Taluk Panchayat, Forest Department, KPTCL, Railway Department. The nature of manpower services provided are in the form of 'C' Group and 'D' Group, teachers, Data Entry Operators, Staff Nurse, Typists, Cooks, Assistant Cooks, Watchman, Cleaning Staffs, etc.

#### **Questions raised:**

Whether the supply of manpower services to Zilla Panchayat (Social Welfare Department) and Taluka Panchayat are exempted from GST under Sr. No. 3 of the Notification No. 12/2017-Central Tax (Rate) as Pure Services?

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

The AAR has held that manpower services shall be eligible for exemption under Sr. No. 3 of the Notification No. 12/2017-Central Tax (Rate) as Pure Services only if the following conditions are fulfilled:

- a. the manpower services are provided to Zilla Panchayat/ Taluk Panchayat/ Social welfare department/ Backward Classes Welfare Department, and
- b. the activity for which manpower service is provided should be for an activity in relation to any function entrusted to a Panchayat or a Municipality under article 243G or 243W of the Constitution of India, respectively.

Accordingly, it has been held that supply of manpower services like First Division Assistant, Second Division Assistant, Typists, Drivers, Data Entry Operator, "D" Group, etc to Zilla Panchayat/ Taluk Panchayat/ Social welfare department/ Backward Classes Welfare Department would not be eligible for exemption since such supply is not in relation to functions entrusted to a Panchayat or a Municipality under article 243G or 243W of the Constitution of India, respectively.

However, Supply of manpower services like cleaning staff, cook, assistant cook, staff nurse, teachers and watchman to hostels and residential schools/colleges run by Social welfare department is exempted since the manpower services provided are by way of an activity in relation to the functions entrusted to a Panchayat or a Municipality under article 243G or 243W of the Constitution of India, respectively.

#### **SBGCO comments:**

The AAR has correctly interpreted the exemption notification in regards to pure services to CG/ SG/ Local Authority. It is crucial to note that not every service provided to CG/ SG/ Local Authority is eligible for claim of exemption, but only such services that are in relation to the functions entrusted to a Panchayat or a Municipality, are eligible for exemption under Sr. No. 3 of the Notification No. 12/2017-Central Tax (Rate).





**2. Suswani Foundations Pvt Ltd [Order No. 123/AAR/2023 (TN) = 2024-VIL-55-AAR]**

**Background facts:**

The Applicant is constructing an industrial building to be rented out as godowns for commercial purpose. The Applicant will be purchasing Cement, Steel, PEB Sheet, Building Materials like bricks, sand, blue metals etc., and engaging Consultants / Architects for the construction of the godowns.

**Key Question raised:**

Whether ITC is available on inputs procured for the godowns constructed entirely for renting out for commercial purposes to other registered dealers?

**Gist of the Ruling:**

The AAR has observed that ITC is not available for goods or services obtained for the construction of an immovable property, as per Section 17(5)(d) of the CGST Act. Specifically, it has ruled that, in the present case, a godown constitutes an immovable property. Consequently, the Applicant is ineligible for Input Tax Credit on inputs used in constructing godowns intended for commercial renting to registered dealers.

**SBGCO comments:**

At this juncture, it is imperative to highlight that Orrisa High Court, in the case of Safari Retreats Pvt Ltd. Vs. Chief Commissioner of CGST [2019-VIL-223-ORI] has allowed the claim of ITC for construction of immovable property intended for renting out. The Department has filed a SLP before the Hon'ble Supreme Court against such decision. However, no AAR has endorsed the views of the Hon'ble Orrisa HC and only proposed to disallow such ITC in terms of Section 17(5)(d) of the CGST Act. The resolution of this matter awaits the opinion of the Hon'ble Supreme Court, which is anticipated to provide definitive clarity on the issue.



**D. GST Compliance chart for March 2024**

<b>S N</b>	<b>Due Date</b>	<b>Form</b>	<b>Period</b>	<b>Periodicity</b>	<b>Special Remarks</b>
1.	10.04.2024	GSTR - 7	March 2024	Monthly	To be filed by those who are required to deduct TDS under GST
2.	10.04.2024	GSTR - 8	March 2024	Monthly	To be filed by those who are required to collect TCS under GST
3.	11.04.2024	GSTR - 1	March 2024	Monthly	Taxpayers filing GSTR - 1 monthly
4.	13.04.2024	GSTR - 5	March 2024	Monthly	To be filed by a non-resident foreign taxpayer registered in GST
5.	13.04.2024	GSTR - 6	March 2024	Monthly	To be filed by an ISD
6.	13.04.2024	GSTR - 1	Jan 2024 to March 2024	Quarterly	To be filed by those under QRMP Scheme
7.	18.04.2024	CMP - 08	Jan 2024 to March 2024	Quarterly	To be filed by Composition Dealer (Payment of Self-assessed tax)
8.	20.04.2024	GSTR - 3B	March 2024	Monthly	To be filed by Taxpayer filing monthly GSTR 3B
9.	20.04.2024	GSTR - 5A	March 2024	Monthly	To be filed by non-resident Online Information and Database Access or Retrieval (OIDAR) services provider
10.	22.04.2024	GSTR - 3B	Jan 2024 to March 2024	Quarterly	To be filed by those under QRMP Scheme (#)
11.	24.04.2024	GSTR - 3B	Jan 2024 to March 2024	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:

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